



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Chapter 17A, Code of Iowa as amended by Sixty-seventh General Assembly, H.F. 2099, section 3, and supersedes Part I of the Iowa Administrative Code Supplement.

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

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

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

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to section 17A.6 of the Code as amended by 67GA, H.F. 2099 and S.F. 244. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the administrative rules co-ordinator and published in the Bulletin.

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Iowa Administrative Bulletin

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Fourth quarter	April 1, 1979, to June 30, 1979	10.50 plus 0.32

Single copies may be purchased for \$2.00 plus \$0.06 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

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

Iowa Administrative Code - \$305.00 plus \$9.15 tax

(Price includes Volumes I through IX, four supplement binders and a one-year subscription to the Code Supplement.)

Iowa Administrative Code Supplement (replacement pages) - \$110.00 plus \$3.30 tax

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AGENDUM

The Administrative Rules Review Committee will hold its meeting, Monday, December 11, 9:00 a.m., Senate Committee Room 24, in lieu of the regular statutory meeting. The following rules will be reviewed.

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CONSERVATION COMMISSION[290]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)*6" of Code.

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

The state conservation commission under the authority of sections 107.24 and 17A.4 of the Code, proposes to adopt the following new rule.

A public hearing for oral presentation will be conducted at the commission's second floor conference room, Wallace State Office Building, Des Moines, Iowa 50319, at 10:30 a.m. on January 2, 1979; consideration will be given to written data, views, or arguments thereto received by the state conservation commission on or before December 29, 1978.

CHAPTER 20 TROTLINES

290—20.1(109) Trotlines where permitted. It shall be lawful to use trotlines or throw lines in all rivers and streams of the state, except in Mitchell, Howard, Winneshiek, Allamakee, Fayette, Clayton, Delaware, Dubuque, and Jackson counties. Trotlines or throw lines may be used in the above nine counties in the Maquoketa River, Jackson County; Turkey River, mouth to state Highway 13; and Upper Iowa River, mouth to state Highway 76.

This rule is intended to implement section 109.74 as amended by the Sixty-seventh General Assembly, House File 356.

CONSERVATION COMMISSION[290]

NOTICE OF INTENDED ACTION

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

The state conservation commission under authority of sections 107.24 and 17A.4 of the Code, proposes to rescind chapter 108, Fishing Regulations in Iowa Administrative Code and adopt a new chapter in lieu thereof.

A public hearing for oral presentations will be conducted at the second floor conference room, Wallace State Office Building, Des Moines, Iowa 50319, at 11:00 a.m., on January 2, 1979; consideration will be given to written data, views, or arguments thereto received by the state conservation commission on or before December 29, 1978.

CHAPTER 108 1979-80 FISHING REGULATIONS

290—108.1(109) Seasons, daily catch limits, possession limits, and minimum length limits.

KIND OF FISH	INLAND WATERS OF THE STATE				BOUNDARY RIVERS
	OPEN SEASON	DAILY CATCH LIMIT	POSSESSION LIMIT	MINIMUM LENGTH LIMITS	MISSISSIPPI RIVER MISSOURI RIVER BIG SIOUX RIVER
Rock Sturgeon	Closed	0	0		Same as inland waters
Paddlefish*	Continuous	2	4	None	Same as inland waters
Yellow Perch	Continuous	25	50	None	Same as inland waters except no catch or possession limit.
Trout	Continuous*	5	10	None*	Same as inland waters
Catfish	Continuous	8	16	None	Same as inland waters except no catch or possession limit.
Largemouth Bass	Continuous.	5	10	None*	Largemouth and smallmouth black bass; Same as inland waters except aggregate daily catch limit 10; aggregate possession limit 20.
Smallmouth Bass	Continuous	5	10	None*	Continuous open season aggregate daily catch limit 10, aggregate possession limit 20. No minimum length or weight.
Combined Walleye and Sauger	Continuous*	5	10	None	Continuous open season; daily catch limit 5; possession limit 10. No minimum length limits.
Northern Pike	Continuous*	3	6	None	Same as inland waters
Muskellunge or Hybrid Muskellunge	Continuous*	1	1	30"	Same as inland waters
Ocean Striped Bass	Continuous	1	1	None	Same as inland waters
All other fish species	Continuous	None	None	None	Same as inland waters
Frogs (except Bullfrogs)	Continuous	48	96	None	Same as inland waters
Bullfrogs (Rana Catesbeiana)	Continuous	12	12	None	Same as inland waters

290—108.2(109) Exceptions to seasons and limits, set in 108.1(109).

108.2(1) Natural lakes. In Lakes West Okoboji, East Okoboji, and Spirit Lake the open season on walleye, sauger, muskellunge or hybrid muskellunge and northern pike shall be April 28, 1979, to February 28, 1980.

108.2(2) Minimum length - largemouth and smallmouth bass. A minimum length limit on largemouth and smallmouth bass of twelve or fourteen inches shall apply on selected lakes as approved by the commission and posted as such.

108.2(3) Paddlefish snagging regulations.

a. Areas. Paddlefish snagging shall be limited to the following areas: Iowa boundary waters of the Mississippi and Missouri Rivers; Missouri River oxbow lakes which are open to the river; Iowa River from the lower dam at Iowa City to the Mississippi River and the Des Moines River from the hydroelectric dam at Ottumwa to the Mississippi River.

b. Limits. The daily catch limit shall be two; possession limit four.

108.2(4) Special trout regulations.

a. Brook trout. There shall be no open season on brook trout in portions of the South Fork of Big Mill Creek, Jackson County and North Cedar Creek, Clayton County where posted. Fishing for other species in the posted areas shall be by artificial lure only.

b. Brown trout. The minimum length limit of brown trout shall be fourteen inches in a portion of Bloody Run Creek, Clayton County where posted. Fishing in the posted area shall be by artificial lure only.

These rules are intended to implement sections 109.38, 109.39, 109.67, and 109.76 of the Code.

HEALTH DEPARTMENT [470]

MEDICAL EXAMINERS

NOTICE OF INTENDED ACTION

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

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

The board of medical examiners, pursuant to the authority of sections 17A.3, 17A.4, 17A.5, 147.36, 147.76, Code of Iowa, 1977 and Acts of the Sixty-seventh General Assembly, 1977 session, chapter 95, sections 2., 3., 4., 5., 6. and 9., proposes to rescind rules appearing in Health (470) Chapter 135 IAC relating to medical examiners and adopt the following new rules in lieu thereof.

Interested persons, governmental agencies and associations may present written comments or statements concerning the proposal no later than 4:30 p.m. on Wednesday, December 20, 1978, to Ronald V. Saf, Executive Director, State Board of Medical Examiners, 910 Insurance Exchange Building, Des Moines, Iowa 50309.

CHAPTER 135 MEDICAL EXAMINERS GENERAL

470—135.1(17A) Definitions. The following definitions shall be applicable to the rules of the Iowa state board of medical examiners:

135.1(1) "Board" shall mean the board of medical examiners of the state of Iowa.

135.1(2) "Department" shall mean the state department of health.

135.1(3) "Commissioner" shall mean the commissioner of public health.

135.1(4) "Physician" shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy under the laws of this state.

135.1(5) "Profession" shall mean medicine and surgery, osteopathic medicine and surgery and osteopathy.

135.1(6) "The practice of medicine and surgery" shall mean holding one's self out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition and who shall either offer or undertake, by any means or methods, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition.

135.1(7) "License" shall mean a certificate issued to a person licensed to practice medicine and surgery, osteopathic medicine and surgery and osteopathy or certified as a physician's assistant, paramedic and emergency medical technician under the laws of this state.

135.1(8) "Licensee" shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery and osteopathy or certified as a physician's assistant, paramedic and emergency medical technician under the laws of this state.

135.1(9) "Physician's assistant" shall mean a person who has successfully completed an approved program or is otherwise found to be qualified as a physician's assistant

and is approved by the board to perform medical services under the supervision of one or more physicians approved by the board to supervise such assistant.

135.1(10) "Paramedic" shall mean any person who has a current "paramedic certificate" issued by the board to perform emergency medical services.

135.1(11) "Emergency medical technician" shall mean any person who has a current "EMT certificate" issued by the board to perform emergency medical services.

135.1(12) "Licensee discipline" or "discipline" shall mean any sanction the board may impose upon its licensees for conduct which threatens or denies citizens of this state a high standard of professional care.

135.1(13) "Disciplinary proceeding" shall mean any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

135.1(14) "Peer review" shall mean evaluation of professional services rendered by a professional practitioner.

135.1(15) "Peer review committee" shall mean one or more persons acting in a peer review capacity who have been appointed by the board for such purpose.

135.1(16) "Respondent" shall mean any individual(s) who shall be charged in a complaint with a violation of professional ethics and/or practice.

135.1(17) "Rule" shall mean a requirement, procedure, or standard of general application prescribed by the board relating to either the administration or enforcement of chapters 147, 148, 148B, 150 and 150A of the Code.

135.1(18) "Order" shall mean a requirement, procedure or standard of specific or limited application adopted by the board relating to any matter the board is authorized to act upon, including the professional conduct of licensees and the examination for licensure and licensure of any person under the laws of this state.

135.1(19) "Malpractice" shall mean any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a physician in the practice of his profession.

135.1(20) "Medical practice Acts" shall mean chapters 147, 148, 148B, 150 and 150A, Code of Iowa.

135.1(21) For the purpose of these rules, the present tense includes the past and future tenses and the future, the present and past, and the past, the present and future; the masculine gender includes the feminine and the neuter, and the feminine, the masculine and neuter, and the neuter, the masculine and feminine; and the singular includes the plural, and the plural, the singular, as the context requires.

470—135.2(17A) Description of board. The purpose of the board of medical examiners is to administer and enforce the provisions of chapters 147, 148, 148B, 150 and 150A, Code of Iowa, with regard to the practice of medicine and surgery, osteopathic medicine and surgery and osteopathy, including the examination of candidates; determining the eligibility of candidates for licensure by examination and endorsement; granting temporary, special and resident physician's licenses; certifying physician's assistants, paramedics and emergency medical technicians, investigating violations and infractions of the medical practice Act, and revoking, suspending or otherwise disciplining a physician who has violated the provisions of the medical practice Act.

HEALTH[470] (cont'd)

470—135.3(17A) Organization of board. The board is comprised of five members licensed to practice medicine and surgery, two members licensed to practice osteopathic medicine and surgery and two representatives of the general public. The members are appointed by the governor and confirmed by the senate. The term of office is for three years and a member may not serve more than three terms or nine years. The board:

135.3(1) Is a policymaking body relative to matters involving medical education and licensure, postgraduate hospital training and discipline.

135.3(2) Conducts business according to established policy as approved by the members.

135.3(3) Organizes annually and elects a chairperson, vicechairperson and a secretary from its membership.

135.3(4) Governs its proceedings by Robert's Rules of Order, Revised.

135.3(5) Appoints a full time executive director who:

a. Is not a member of the board.

b. Under guidance of the members of the board performs administrative activities relating to the department in the administration and enforcement of the laws relative to the practice of medicine and surgery, osteopathic medicine and surgery and osteopathy and the certification of physician's assistants, paramedics and emergency medical technicians.

135.3(6) Has the statutory authority to:

a. Administer and enforce the laws and administrative rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, physician's assistants, paramedics and emergency medical technicians;

b. Review or investigate, or both, upon written complaint or upon its own motion pursuant to other evidence received by the board, alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline;

c. Determine in any case whether an investigation, or further investigation, or a disciplinary proceeding is warranted;

d. Initiate and prosecute disciplinary proceedings;

e. Impose licensee discipline;

f. Petition the district court for enforcement of its authority with respect to licensees or with respect to other persons violating the laws which the board is charged with administering;

g. Establish and register peer review committees;

h. Refer to a registered peer review committee for investigation, review, and report to the board, any complaint or other evidence of an act or omission which the board reasonably believes to constitute cause for licensee discipline. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction;

i. Determine and administer the annual renewal of licenses;

j. Establish and administer rules for continuing education requirements as a condition to license renewal.

470—135.4(17A) Official communications. All official communications, including submissions and requests, should be addressed to the Executive Director, Iowa State Board of Medical Examiners, 910 Insurance Exchange Building, Des Moines, Iowa 50309.

470—135.5(17A) Office hours. The office of the board is open for public business from 8:00 A.M. to 4:30 P.M., Monday to Friday of each week.

470—135.6(17A) Meetings. Regular meetings of the board generally are held each month. The board currently administers three-day licensing examinations twice each year. Information concerning the dates and locations for meetings and examinations may be obtained from the board's office.

470—135.7(17A) Public Meetings. All meetings of the board shall be open and public and all citizens of Iowa shall be permitted to attend any meeting, except as otherwise provided by statute.

135.7(1) The board may, by a vote of two-thirds of its members, hold a closed session for the following reasons:

a. To review or discuss records which are required or authorized by state or federal law to be kept confidential.

b. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosures would be likely to prejudice or disadvantage the position of the board in that litigation.

c. To discuss the contents of a licensing examination.

d. To initiate licensee disciplinary investigations or proceedings.

e. To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A of the Code.

f. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, which if disclosed would enable law violators to avoid detection.

g. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.

h. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

470—135.8(17A) Petition to promulgate, amend or repeal a rule.

135.8(1) An interested person or other legal entity may petition the board requesting the promulgation, amendment or repeal of a rule.

135.8(2) The petition shall be in writing, signed by or on behalf of the petitioner and contain a detailed statement of:

a. The rule that the petitioner is requesting the board to promulgate, amend or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in full with the matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or boldface.

b. Facts in sufficient detail to show the reasons for the proposed action.

c. All propositions of law to be asserted by petitioner.

d. Sufficient facts to show how petitioner will be affected by adoption, amendment or repeal of the rule.

e. The name and address of petitioner and of any other person known to be interested in the rule sought to be adopted, amended or repealed.

135.8(3) The petition shall be in typewritten or printed form, captioned BEFORE THE IOWA STATE BOARD OF MEDICAL EXAMINERS and shall be deemed filed when received by the executive director.

135.8(4) Upon receipt of the petition the executive director shall:

a. Within ten days mail a copy of the petition to any

HEALTH[470] (cont'd)

parties named therein. Such petition shall be deemed served on the date of mailing to the last known address of the party being served.

b. Shall advise petitioner that petitioner has thirty days within which to submit written views.

c. May schedule oral presentation of petitioner's view if the board so directs.

d. Shall, within sixty days after date of submission of the petition, either deny the petition or initiate rulemaking proceedings in accordance with chapter 17A of the Code.

135.8(5) In the case of a denial of a petition to promulgate, amend or repeal a rule, the board or its executive director shall issue an order setting forth the reasons in detail for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

470—135.9(17A) Public hearings. Prior to adoption, amendment or repeal of any rule, the board shall give notice of intended action by causing said notice to be published in the Iowa Administrative Code. Written comments relating to the proposed action by the board may be submitted to the board at its official address no later than twenty days after the notice has been published. The Administrative Rules Review Committee may, under the provisions of 17A.8(6) of the Code, on its own motion or on written request by any individual or group, review this proposed action at a regular or special meeting where the public or interested persons may be heard. A public hearing shall be scheduled prior to the adoption, amendment or repeal of any rule(s) provided the request for hearing is in writing, received no later than twenty days after the notice has been published and the request for hearing is made by: Twenty-five interested persons, a governmental subdivision; an agency; an association of twenty-five persons; or upon the discretion of the board.

135.9(1) The chairperson of the board or a presiding officer appointed by the board shall preside over the public hearing.

a. The date, time and location of the public hearing shall be set by the board. The appropriate individuals, governmental subdivisions, agencies or associations making the request shall be notified of said date, time and location of hearing by certified mail.

b. Any individual(s) may present either written or oral comments pertinent to the rule(s) for which the public hearing has been scheduled. Any individual(s) desiring to make written comments shall submit these comments to the presiding officer prior to the hearing date. Any individual(s) desiring to make an oral presentation shall submit a written request to the board prior to the hearing date.

c. The authority of the chairperson of the board or presiding hearing officer during the public hearing includes:

(1) Setting a ten minute time limit on oral presentations if necessary.

(2) Excluding any individual(s) who may be either disruptive or obstructive to the hearing; and

(3) Ruling that the oral presentation and/or discussion is not pertinent to the hearing.

d. The conduct of the chairperson of the board or presiding officer during the public hearing shall include but need not be limited to:

(1) Open the hearing and receive appearances.

(2) Enter the notice of hearing into the public record.

(3) Review rule(s) under adoption, amendment or repeal and provide rationale for the proposed action by the board.

(4) Receive oral presentations.

(5) Read into the official public record written comments which have been submitted.

(6) Inform those individuals present that within thirty days of the date of hearing, the board shall issue a written statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons either for accepting or overruling considerations urged against the rule.

(7) Adjourn the hearing.

470—135.10(17A) Declaratory rulings.

135.10(1) Upon petition filed by any individual, partnership, corporation, association, governmental subdivision, private or public organization or state agency, the board may issue a declaratory ruling as to the applicability of statutes and rules, policy statements, decisions and orders under its jurisdiction.

135.10(2) A petition for a declaratory ruling shall be typewritten or printed and at the top of the first page shall appear in capitals the words: PETITION FOR DECLARATORY RULING BEFORE THE IOWA STATE BOARD OF MEDICAL EXAMINERS.

135.10(3) The petition shall include the name and official title, if any, address and phone number of each petitioner. If the request is at the behest of an entity mentioned in subrule 135.10(1) it shall name the entity.

135.10(4) The body of the petition shall contain:

a. A detailed statement of facts upon which petitioner requests the board to issue its declaratory ruling.

b. The statute, rule, policy statement, decision or order for which a ruling is sought.

c. The exact words, passages, sentences or paragraphs which are the subject of inquiry.

d. The specific questions presented for declaratory ruling.

e. A consecutive numbering of each multiple issue presented for declaratory ruling.

135.10(5) The petition shall be filed either by serving it personally on the executive director or by mailing it to the Executive Director, 910 Insurance Exchange Building, Des Moines, Iowa 50309.

135.10(6) The executive director shall acknowledge receipt of petitions or return petitions not in substantial conformity with the above rules.

135.10(7) The board may decline to issue a declaratory ruling for any of the following reasons:

a. A lack of jurisdiction.

b. A lack of clarity of the issue presented.

c. The issue or issues presented are pending resolution by a court of Iowa or by the attorney general.

135.10(8) In the event the board declines to make a ruling, the executive director shall notify the petitioners of this fact and the reasons for the refusal.

135.10(9) When the petition is in proper form and has not been declined, the board shall issue a ruling disposing of the petition within a reasonable time after its filing.

135.10(10) Rulings shall be mailed to petitioners and to other parties at the discretion of the executive director. Rulings shall be indexed and available for public inspection.

135.10(11) A declaratory ruling by the board shall have a binding effect upon subsequent board decisions and orders which pertain to the party requesting the ruling and in which the factual situation and applicable law are indistinguishable from that presented in the petition for declaratory ruling. To all other parties and in factual situations which are distinguishable from that presented

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in the petition, a declaratory ruling shall serve merely as precedent.

**REQUIREMENTS TO PRACTICE
MEDICINE AND SURGERY
OSTEOPATHIC MEDICINE AND SURGERY
AND OSTEOPTHY**

470—135.101(147, 148 and 150A) General requirements.

135.101(1) Each applicant for a license shall comply with the following requirements:

a. Applicant shall submit a completed application on a form prescribed by the board with required credentials and fee.

b. Present a photostatic copy of the degree doctor of medicine and surgery or osteopathic medicine and surgery or its equivalent issued to the applicant by a school or college of medicine and surgery or osteopathic medicine and surgery approved by the board.

(1) The list of approved schools or colleges of medicine approved by the American Medical Association and the list of colleges of osteopathic medicine and surgery, approved by the American Osteopathic Association are accepted. However, such acceptance shall not apply to a diploma granted by an approved school or college of medicine and surgery or osteopathic medicine and surgery if the applicant did not complete his or her academic training at said approved college.

(2) The board may accept in lieu of a diploma from a medical college approved by it, all of the following:

1. A diploma issued by a medical college which has been neither approved nor disapproved by the board; and

2. The completion of one year of training as a resident physician which training has either been approved by or is acceptable to the board; and

3. The standard certificate issued by the Educational Council for Foreign Medical Graduates or the completion of a fifth pathway program in accordance with the criteria established by the American Medical Association.

135.101(2) Applicant shall present a photostatic copy of a certificate indicating the completion of one year of internship or residency training in a hospital approved by the board.

a. The lists of hospitals approved for intern and resident training in the United States and Canada, prepared by the Council on Medical Education and Hospitals of the American Medical Association and the Committee on Hospitals of the American Osteopathic Association and the Royal College of Physicians and Surgeons of Canada are accepted by the board.

135.101(3) Applicant must satisfactorily pass a state or national board examination.

a. Present a photostatic copy of a state license or national board certificate obtained by applicant as a result of such examination.

135.101(4) Each applicant must include a record of the number and date each license was issued, the manner in which such license or licenses were obtained, and a statement as to whether or not any license so issued has ever been suspended or revoked.

135.101(5) Each application shall include a chronologic statement as to all the places where the candidate has practiced, type of practice engaged in and the period of time so engaged.

135.101(6) Any candidate applying for licensure shall be required to appear for a personal interview before the board or before a member thereof, unless waived by the board.

470—135.102(147, 148 and 150A) Rules for conducting examinations.

135.102(1) The application accompanied by a fee of one hundred dollars must be on file at least sixty days prior to the date of the examination.

135.102(2) The board may require written, oral and practical examinations of any applicant, but ordinarily applicants who pass the written examination will be excused from oral or practical examinations.

135.102(3) The board has adopted and is administering the federation licensing examination (FLEX). Flex examinations are ordinarily held in June and December of each year. Applications for the June examination must be filed by April 1 and applications for the December examination must be filed by October 1.

135.102(4) The flex examination is a three-day examination and the candidate must successfully pass the entire examination with a flex weighted average of seventy-five percent or better, in one sitting.

a. Any candidate who fails in his examination shall be entitled to take a second examination without further fee or application at any time within fourteen months after the first examination. The candidate shall be required to repeat the entire examination in his second examination.

b. A candidate who fails in his second examination is required to obtain a flex weighted average of seventy percent or better on his second examination to be entitled to take the examination for a third time. The candidate must file an application form and pay the one hundred dollar examination fee. The applicant shall be required to repeat the entire examination in his third examination.

c. A candidate who fails in his third examination is required to obtain a flex weighted average of seventy-two percent or better in his third examination to be entitled to take the examination for a fourth time. The candidate must file an application form and pay the one hundred dollar examination fee. The applicant shall be required to repeat the entire examination in his fourth examination.

d. A candidate will not be permitted to take the examination more than four times in this state.

135.102(5) A senior student expecting to graduate from an approved college of medicine and surgery or osteopathic medicine and surgery may be admitted to the examination upon presentation of a statement from the dean of his college certifying his or her good standing relative to the completion of his medical education, but his or her license will not be granted until he or she has furnished proof of graduation and satisfactory completion of one year of internship or resident training.

135.102(6) No candidate shall under any circumstance enter the examinations more than thirty minutes late unless excused by the board or member thereof, and no candidate shall leave the room within thirty minutes after distribution of the examination papers. All time lost by being absent shall be included in the time allotted to the examination of that particular subject.

135.102(7) Candidates will not be permitted to communicate with each other during examination, or to have in their possession help of any kind. Any applicant who violates this requirement will be dismissed and deemed to have failed the entire examination.

135.102(8) The federation licensing examination shall be administered in accordance with the "Chief Proctor's Manual" prepared by the Federation of State Medical Boards of the United States, Inc., with the co-operation of the National Board of Medical Examiners.

HEALTH[470] (cont'd)**470—135.103(147, 148, 150, 150A) Licensure by reciprocity or endorsement.**

135.103(1) Each applicant shall submit a completed application form accompanied by a fee of one hundred dollars.

135.103(2) A license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy by reciprocity or by endorsement may be issued on the basis of a written examination in substantially all of the subjects required by this board given by a state examining board having reciprocal or endorsement relations with the board, provided, however, that the applicant must comply with all other requirements for licensure by examination in this state.

135.103(3) If any state with which this state has reciprocal or endorsement relations, places any limitations or restrictions upon licentiates of this state, the same limitations or restrictions may be imposed upon licentiates of such state applying for admission to practice in this state on the basis of reciprocity or endorsement.

135.103(4) The statement made in the application must be reviewed and verified by the state examining board issuing the original license, certifying under seal as to the subjects in which the applicant was examined, the grade obtained in each subject and the general average or flex weighted average attained in the entire examination.

135.103(5) In all cases the board reserves the right to review the examination papers and grades upon which reciprocal or endorsement certification may be granted before accepting the same.

135.103(6) No reciprocal license or license by endorsement shall be issued except on the basis of a license received by examination, and the applicant must have completed at least one year of intern or resident training approved or accepted by the medical examiners. However, foreign graduates must complete two years of such training.

135.103(7) No reciprocal license or license by endorsement shall be issued to an applicant who has failed the flex examination more than four times in another state.

135.103(8) A candidate who has not passed a medical examination in another state in one sitting shall not be eligible for licensure by endorsement in this state.

135.103(9) The medical examiners may require written, oral or a practical examination of any applicant for licensure by reciprocity or endorsement.

407—135.104(147, 148 and 150A) License by endorsement of national board certificate.

135.104(1) The rules listed under the title "Licensure by Reciprocity Agreement or Endorsement" shall apply to all candidates for licensure by endorsement of national board credentials.

135.104(2) The certificate of examination issued by the National Board of Medical Examiners or by the National Board of Osteopathic Examiners of the United States of America may be accepted in lieu of the examination required for licensure in Iowa.

470—135.105(148) License to practice as a resident physician.

135.105(1) The license shall be designated "Resident Physician License" and shall authorize the licensee to serve as a resident physician only, under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery, in an institution approved for this purpose by the board. Such license shall expire on the thirtieth day of June following the date of issuance and

may be annually renewed at the discretion of the medical examiners at a fee of ten dollars.

135.105(2) Each applicant shall:

a. Submit a completed application form accompanied by a fee of twenty-five dollars.

b. Present a photostatic copy of a diploma issued by a school or college of medicine and surgery or a school or college of osteopathic medicine and surgery approved by the board, or present other evidence of equivalent medical education approved by the board. The board may accept in lieu of a diploma from a school or college of medicine approved by it, all of the following:

(1) A diploma issued by a school or college of medicine which has been neither approved or disapproved by the board.

(2) The standard certificate issued by the Educational Council for Foreign Medical Graduates, Incorporated or the completion of a fifth pathway program in accordance with criteria established by the American Medical Association.

135.105(3) Candidates may be required to satisfactorily complete an examination prescribed by the medical examiners.

a. The board may require written, oral or practical examination.

b. In any case, the board may require the candidate to appear for a personal interview before the board or a member thereof.

c. Grades received in a state licensure or national board examination may be accepted in lieu of a written examination conducted by the board, in which instance:

(1) The applicant shall present a photostatic copy of an original certificate of license or national board certificate obtained as a result of such examination.

(2) The statements made on the application must be reviewed and verified by the examining board issuing the original certificate, who will also certify, under seal, as to the grades given thereon and the general average attained.

470—135.106(148) Temporary licensure.

135.106(1) The board may, in its discretion, issue a temporary license authorizing the licensee to practice medicine and surgery whenever, in the opinion of the board, a need exists therefor and the person possesses the qualifications prescribed by the board for such license, which shall be substantially equivalent to those required under chapter 148 or chapter 150A as the case may be. A temporary license shall be issued for one year and, at the discretion of the board may be annually renewed, not to exceed two additional years, at a fee of fifty dollars per year.

135.106(2) Each applicant shall:

a. Submit a completed application form accompanied by a fee of fifty dollars.

b. Present a photostatic copy of a diploma issued by a school or college of medicine and surgery or osteopathic medicine and surgery approved by the board. The board may accept, in lieu of a diploma from a medical college approved by it, all of the following:

(1) A diploma issued by a medical college which has been neither approved nor disapproved by the board; and

(2) The completion of one year of training as a resident physician, which training has been approved by or is acceptable to the board; and

(3) The recommendation of the Educational Council for Foreign Medical Graduates, Incorporated or similar accrediting agency.

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(4) The board may waive the provisions of paragraph "b", subparagraphs (1), (2) and (3) for a foreign physician, here for teaching purposes only, who is properly admitted under a visa of the state department of the United States.

(5) Furnish an affidavit from a licensed physician, superintendent of an institution or dean of an approved college of medicine and surgery or osteopathic medicine and surgery in this state setting forth facts supporting the need that exists for the issuance of said license.

135.106(3) Candidates may be required to satisfactorily complete an examination prescribed by the medical examiners.

a. The medical examiners may require written, oral or practical examinations.

b. In any case, the medical examiners may require the candidate to appear for a personal interview before the board or a member thereof.

c. Grades received in a license examination before the duly constituted authority of another state, territory, foreign country or before the national board of medical examiners or national board of osteopathic examiners may be accepted in lieu of a written examination conducted by the medical examiners, in which instance:

(1) The applicant must furnish a photostatic copy of his national board certificate or an original certificate of license obtained as a result of such examination.

(2) The statements made in the application must be reviewed and verified by the examining board issuing the original certificate, who will also certify, under seal, as to the schedule of subjects in which the applicant was examined, the grades given thereon and the general average attained.

470—135.107(147) License renewal date. A license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy shall expire on the thirtieth of June following the date of issuance of the license.

470—135.108(147) License-examination-renewal fees. The following fees shall be collected by the board.

135.108(1) For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of examination given by the medical examiners, one hundred dollars.

135.108(2) For a license to practice medicine and surgery or osteopathic medicine and surgery or osteopathy issued by endorsement or under a reciprocal agreement, one hundred dollars.

135.108(3) For the renewal fee of a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, fifteen dollars.

135.108(4) For a certified statement that a licensee is licensed in this state, ten dollars.

135.108(5) For a duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the department of health has been destroyed or lost, ten dollars.

135.108(6) For a license to practice as a resident physician, twenty-five dollars.

135.108(7) For the renewal of a license to practice as a resident physician, ten dollars.

135.108(8) For a temporary license, fifty dollars.

135.108(9) For the renewal of a temporary license, fifty dollars.

470—135.109(17A) Specified forms to be used. All applications for examinations, certificates and licenses shall be on forms prescribed by the board. These forms may

include, but not be limited to, the following, and where practicable, any one or more of the following forms may be consolidated into a single form.

Board Form	Form Title
1	Application for a license to practice medicine and surgery or osteopathic medicine and surgery on the basis of written examination.
2	Application for a license to practice medicine and surgery, osteopathic medicine and surgery on the basis of interstate endorsement or by acceptance of the certificate of the National Board of Medical Examiners of the United States of America, Inc., or the National Board of Osteopathic Examiners.
3	Resident physician's application for licensure.
4	Application for a temporary license.
5	Application for approval of a physician's assistant.
6	Application for reinstatement of license to practice medicine and surgery.
7	Application for renewal of a medicine and surgery license.
8	Application for renewal of an osteopathic medicine and surgery license.
9	Application for renewal of an osteopathic license.
10	Application for renewal of a resident physician's license.
11	Application for renewal of a physicians' assistant certificate.
12	Complaint form.
13	Report of continuing medical education.
14	Certificate of exemption from continuing education requirements.
15	Application for waiver of minimum education requirements due to disability or illness.

DISCIPLINE

470—135.201(67GA,Ch.95) General. The board has authority to impose discipline for any violation of chapters 174, 148, Title VIII, or Acts of the Sixty-seventh general assembly, 1977 session, chapter 95 or the rules promulgated thereunder.

470—135.202(67GA,Ch.95) Method of discipline. The board has authority to impose the following disciplinary sanctions:

- a. Revocation of license.
- b. Suspension of license until further order of the board or for a specified period.
- c. Nonrenewal of license.
- d. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.
- e. Probation.
- f. Require additional education or training.
- g. Require a re-examination.
- h. Order a physical or mental examination.
- i. Impose civil penalties not to exceed one thousand dollars (\$1000.00).
- j. Issue citation and warning.
- k. Such other sanctions allowed by law as may be appropriate.

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470—135.203(67GA,Ch95) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

- a. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.
- b. The facts of the particular violation.
- c. Any extenuating circumstances or other countervailing considerations.
- d. Number of prior violations or complaints.
- e. Seriousness of prior violations or complaints.
- f. Whether remedial action has been taken.
- g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

470—135.204(67GA,Ch95) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 135.202, including civil penalties in an amount not to exceed \$1000.00, when the board determines that the licensee is guilty of the following acts or offenses:

135.204(1) Fraud in procuring a license.

a. Fraud in procuring a license includes, but is not limited to an intentional perversion of the truth in making application for a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy in this state, and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the state department of health any false or forged diploma, or certificate or affidavit or identification or qualification in making an application for a license in this state.

135.204(2) Professional incompetency.

a. Professional incompetency includes, but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;

(2) A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

(3) A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances;

(4) A willful or repeated departure from or the failure to conform to the minimal standard or acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in the state of Iowa.

135.204(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, and includes any representation contrary to his legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another.

b. Engaging in unethical conduct includes, but is not limited to a violation of the standards and principles of medical ethics and code of ethics as set out in rules 135.401 and 135.402, as interpreted by the board.

c. Practice harmful or detrimental to the public includes, but is not limited to the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable prudent physician acting in the same or similar circumstances in this state or when a physician is unable to practice medicine with reasonable skill and safety to patients as a result of a mental or physical impairment or chemical abuse.

135.204(4) Habitual intoxication or addiction to the use of drugs.

a. Habitual intoxication or addiction to the use of drugs includes, but is not limited to the inability of a physician to practice medicine and surgery, osteopathic medicine and surgery or osteopathy with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other type of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other type of material which may impair a physician's ability to practice his or her profession with reasonable skill and safety.

135.204(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect his or her ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

a. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect his or her ability to practice within a profession includes, but is not limited to the conviction of a physician who has committed a public offense in the practice of his profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon him as a physician in this state.

135.204(6) Fraud in representations as to skill or ability.

a. Fraud in representations as to skill or ability includes, but is not limited to a physician having made misleading, deceptive or untrue representations as to his competency to perform professional services for which he is not qualified to perform by training or experience.

135.204(7) Use of untruthful or improbable statements in advertisements.

a. Use of untruthful or improbable statements in advertisements includes, but is not limited to an action by a physician in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

(1) Inflated or unjustified expectations of favorable results.

(2) Self-laudatory claims that imply that the physician is a skilled physician engaged in a field or specialty of practice for which he is not qualified.

(3) Representations that are likely to cause the average person to misunderstand; or

(4) Extravagant claims or to proclaim extraordinary

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skills not recognized by the medical profession.

135.204(8) Willful or repeated violations of the provisions of this Act.

a. Willful or repeated violations of the provisions of this Act includes, but is not limited to a physician having intentionally or repeatedly violated a lawful rule or regulation promulgated by the board of medical examiners or the state department of health or violated a lawful order of the board or the state department of health in a disciplinary hearing or has violated the provisions of Title VIII (Practice Acts), Code of Iowa, as amended.

135.204(9) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine.

135.204(10) Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, territory or country.

135.204(11) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice medicine and surgery, osteopathic medicine and surgery or osteopathy.

135.204(12) Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice or good morals, whether the same is committed in the course of his practice or otherwise, and whether committed within or without this state.

135.204(13) Inability to practice medicine and surgery, osteopathic medicine and surgery or osteopathy with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

135.204(14) Willful or repeated violation of lawful rule or regulation promulgated by the board.

135.204(15) Violating a lawful order of the board, previously entered by the board in a disciplinary hearing.

135.204(16) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

135.204(17) Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

135.204(18) Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose.

135.204(19) Submission of a false report of continuing education or failure to submit the annual report of continuing education.

135.204(20) Failure to notify the board within thirty days after occurrence of any judgment or settlement of a malpractice claim or action.

135.204(21) Failure to comply with a subpoena issued by the board.

135.204(22) Failure to file the reports required by rule 135.212 concerning acts or omissions committed by another licensee.

135.204(23) Willful or repeated gross malpractice.

135.204(24) Willful or gross negligence.

135.204(25) Obtaining any fee by fraud or misrepresentation.

135.204(26) Negligence in failing to exercise due care in the delegation of medical services to or supervision of

nurses, physician's assistants, employees or other individuals, whether or not injury results.

135.204(27) Violating any of the grounds for the revocation or suspension of a license listed in sections 147.55 and 148.6 of the Code.

470—135.205(67GA,Ch95) Procedure for peer review. A complaint made to the board by any person relating to licensure or concerning the professional conduct of a licensee may be assigned to a peer review committee for review, investigation and report to the board.

470—135.206(67GA,Ch95) Peer review committees.

135.206(1) The board shall within thirty days after the effective date of these rules and on the first day of July of each year thereafter, establish and register two peer review committees in each Iowa Congressional District. Each committee shall consist of at least three licensees appointed by the board for a term of one year. The board may establish and register other peer review committees in an emergency or under unusual circumstances requiring the appointment of a three member committee by the board.

135.206(2) The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board. Each report shall contain the recommendations of the peer review committee relative to disciplinary action by the board.

135.206(3) The board may provide investigatory and related services to peer review committees upon request.

135.206(4) A peer review committee may determine the method to be used in making its investigation or that it is unable to investigate the report upon a complaint, and return the complaint together with an explanation to the board.

135.206(5) The peer review committees shall observe the requirements of confidentiality imposed by Acts of the Sixty-seventh general assembly, first session, 1977, chapter 95.

135.206(6) Members of the peer review committees shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

470—135.207(67GA,Ch95) Duties of peer review committees.

135.207(1) The peer review committees shall submit to the board for approval the procedures to be used for review, investigation and handling of all complaints.

135.207(2) The peer review committees shall thoroughly investigate all complaints and make written recommendation to the board.

a. Written recommendations shall contain a statement of facts, the recommendation for disposition, and the rationale supporting the recommendation.

b. The written recommendations shall be signed by the members of the peer review committees concurring in the report.

470—135.208(67GA,Ch95) Board review of recommendations. The board shall consider and act upon the recommendations of the peer review committees at the next board meeting held after submission of the written recommendations.

135.208(1) If the board finds that reasonable basis exists for further action, it shall notify the licensee who is the subject of the complaint and the complainant that

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further action will be taken and stating the reasons for its determination. Unless informal stipulation and settlement is arrived at, the board shall proceed to a hearing on the matter in accordance with the procedural process set out in subrule 135.301(9).

470-135.209(67GA,Ch95) Reporting of judgments or settlements. Each licensee shall report to the board every adverse judgment in a malpractice action to which he or she is a party, and every settlement of a claim against him or her alleging malpractice. The report together with a copy of the judgment or settlement must be filed with the board within thirty days from the date of said judgment or settlement.

470-135.210(67GA,Ch95) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers and licensees involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, which involve acts or omissions which constitute negligence, careless acts or omissions in the practice of medicine and surgery, osteopathic medicine and surgery and osteopathy, shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

470-135.211(67GA,Ch95) Reporting of acts or omissions. Each licensee, having first-hand knowledge of acts or omissions set forth in rule 135.204, shall report to the board those acts or omissions when committed by another person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, provided, however, no licensee shall be required to report information which is deemed to be a confidential communication as the result of a physician-patient relationship or which is prohibited by state or federal statute. The report shall include the name and address of the licensee and the date, time and place of the incident.

470-135.212(67GA,Ch95) Failure to report licensee. Upon obtaining information that a licensee failed to file a report required by rule 135.211 within thirty days from the date he or she initially acquired the information, the board may initiate a disciplinary proceeding against the licensee who failed to make the required report.

470-135.213(67GA,Ch95) Immunities. A person shall not be civilly liable as a result of filing a report or complaint with the board or peer review committee, or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of the board. However, such immunity from civil liability shall not apply if such act is done with malice.

470-135.214(67GA,Ch95) Doctor-patient privileged communications. The privilege of confidential communication between the recipient and the provider of health care services shall not extend to afford confidentiality to medical records maintained by or on behalf of the subject of an investigation by the board, or records maintained by any public or private agency or organization, which relate to a matter under investigation. No provisions of section 622.10 of the Code, except as it relates to an attorney of the licensee, or stenographer or confidential

clerk of the attorney, shall be interpreted to restrict access by the board, its staff or agents to information sought in an investigation being conducted by the board.

470-135.215(67GA,Ch95) Confidentiality of investigative files. Complaint files, and investigation files, and all other investigation reports and other investigative information in the possession of the board or peer review committee acting under the authority of the board or its employees or agents which relates to licensee discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the board, its employees and agents involved in licensee discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, a final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

DISCIPLINARY PROCEDURE

470-135.301(147,148,17A,67GA,Ch95) Disciplinary procedure.

135.301(1) Proceedings. The proceeding for the revocation or suspension of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or to discipline a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or the denial of a license, shall be substantially in accord with the following procedures which are an alternative to or in addition to the procedures stated in sections 147.58 to 147.71, 148.6 to 148.9 of the Code of Iowa.

135.301(2) Investigations. The board shall, upon receipt of a complaint in writing, or may upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitutes cause under applicable law or administrative rule for licensee discipline.

135.301(3) Form and content of the written complaint. The complaint shall be in writing and signed by at least one complainant or an authorized representative of the complainant. (Or an official form may be used. This form may be obtained from the board upon request.)

a. The complaint shall contain the following information:

(1) The full name and address of the complainant.

(2) The full name, address and telephone number, if known, of the respondent.

(3) A concise statement of the facts which clearly and accurately apprise the board of the allegations against the respondent.

135.301(4) Place and time of filing. The complaint may be delivered personally or by mail to the executive director of the board. The current office address is 910 Insurance Exchange Building, Des Moines, Iowa 50309.

a. Timely filing is required in order to insure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

135.301(5) Investigation of allegations. In order to determine if probable cause exists for a hearing on the complaint, the executive director or someone designated by the executive director shall cause an investigation to be made into the allegations of the complaint or the executive director may refer the complaint to a registered peer review committee for investigation, review and report to the board. In this regard, the person complained of may be

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furnished with information concerning the complaint and given the opportunity to informally present a position or defense respecting the allegations of the complaint prior to the commencement of a contested case. This position or defense may be submitted in writing but a personal conference with the executive director, investigator or peer review committee may be had as a matter of right upon request.

135.301(6) Investigation report. Upon completion of the investigation, the executive director or designee shall prepare a report for the board's consideration, which report shall contain the position or defense of the respondent, discuss jurisdiction and set forth any legal arguments and authorities that appear applicable to the case. The report shall be concluded with a recommendation as to whether probable cause exists for further proceedings.

135.301(7) Informal settlement. The executive director or the respondent may request that an informal conference be held to determine whether license discipline can be resolved in a just manner and in furtherance of the public interest. Neither the executive director nor respondent is required to use this informal procedure. If the executive director and respondent agree to negotiate a settlement, the various points of a proposed settlement, including a stipulated statement of facts, shall be set forth in writing. The proposed settlement shall be binding if approved by the board and signed by both the board chairperson (or a member designated by the chairperson) and the respondent.

135.301(8) Ruling on the initial inquiry.

a. Rejection. If a determination is made by the board to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the board shall be sent to the respondent.

b. Requirement of further inquiry. If determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

c. Acceptance of the case. If a determination is made by the board to initiate disciplinary action the board may enter into an informal settlement, issue a citation or warning or recommend formal disciplinary proceedings.

135.301(9) Order for hearing. The board may, upon its own motion or upon receipt of a complaint in writing, and shall, if such a complaint is filed by the commissioner of public health, issue an order fixing the time and place for hearing thereon, a written notice of hearing together with a statement of the charges, shall be served upon the licensee at least thirty days before said hearing in the manner required for the service of notice of the commencement of an ordinary action or by certified mail return receipt requested.

135.301(10) Notice by publication. If the licensee has absented or removed himself from the state, the notice and statement of the charges shall be so served at least thirty days before the date of the hearing, wherever he may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by said rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the board shall proceed with the hearing as hereinafter provided.

135.301(11) Statement of charges. The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, and shall be in sufficient detail to enable the efficient preparation of the respondent's defense. The statement of charges shall specify the statute(s) and any rule(s) which are alleged to have been violated, and may also include the additional information which the board deems appropriate to the proceeding.

135.301(12) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board.

135.301(13) Notice of hearing. The notice of hearing shall state:

- a. The date, time and place of hearing.
- b. A statement that the party may be represented by legal counsel at the hearing.
- c. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- d. A reference to the statutes and rules involved.
- e. A short and plain statement of the matter asserted.
- f. A statement that the respondent has the right to appear at a hearing and be heard.
- g. A statement requiring the respondent to submit an answer of the type specified in subrule 135.301(14) within twenty days after receipt of the notice of hearing.
- h. A statement requiring the respondent within a period of ten days after receipt of the notice of hearing to:
 - (1) Acknowledge receipt of the notice of hearing.
 - (2) State whether or not he will be present at the hearing.
 - (3) State whether he will require an adjustment of date and time of the hearing; and
 - (4) Furnish the board with a list of witnesses he intends to have called.

135.301(14) Form of answer. The answer shall show venue as "Before the Iowa State Board of Medical Examiners" and shall be captioned "Answer".

- a. The answer shall contain the following information:
- (1) The name, address and telephone number of the respondent.
 - (2) Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
 - (3) Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

135.301(15) Request for a more definitive statement. The respondent at any time request the board to make the statement of charges more definite and certain, by submitting to the board a written request indicating the matters concerning which a more definite statement is necessary in order to facilitate the preparation of the respondent's defense. The board will respond to a request for a more definite statement within ten days of receipt thereof.

135.301(16) Prehearing conferences. The presiding officer or hearing officer either on their own motion or at the request of either the executive director or the respondent may hold a prehearing conference which shall be scheduled not less than two days prior to the hearing. Notice by ordinary mail shall be given to each party of the date, time and place of the prehearing conference.

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135.301(17) Appearance. The licensee shall have the right to appear in person or by attorney before the board at the licensee's expense.

135.301(18) Subpoena powers. In connection with the initial inquiry set forth in 135.301(8), the board is authorized by law to subpoena books, papers, records and any other real evidence whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (hearing). After service of the notice of hearing contemplated by subrules 135.301(9) and 135.301(10), the following procedures are available to the parties in order to obtain relevant and material evidence:

a. Board subpoenas for books, papers, records and other real evidence will be issued to a party upon request. Application should be made to the executive director specifying the evidence sought. Subpoenas for witnesses may also be obtained. The executive director shall issue all subpoenas for both parties upon request.

b. Discovery procedures applicable to civil actions are available to the parties in a proceeding under these rules.

c. Evidence obtained by subpoena or through discovery shall be admissible at the hearing if it is otherwise admissible under subrule 135.301(24) or by statute.

d. The evidence outlined in section 17A.13(2) of the Code, where applicable and relevant shall be available to a party upon request.

135.301(19) Refusal to obey subpoena. In the event of a refusal to obey a subpoena, the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena, and if the person fails to obey the order of the court, he or she may be found guilty of contempt of court. The presiding officer of a hearing panel or a hearing officer may also administer oaths and affirmations, take or order that depositions be taken, and grant immunity to a witness from disciplinary proceedings initiated either by the board or by other state agencies which might otherwise result from the testimony to be given by the witness to the panel.

135.301(20) Failure by respondent to appear. If a respondent, upon whom a proper notice of hearing has been served, fails to appear either in person or by counsel at the hearing, the board or hearing panel shall proceed with the conduct of the hearing, and the respondent shall be bound by the results of such hearing to the same extent as if he were present.

135.301(21) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electrical means, or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained for at least five years from the date of decision. Any party to a proceeding may record, at his own expense, stenographically or electronically, any portion or all of the proceedings.

135.301(22) Hearings. A hearing may be conducted before the board or before a three member hearing panel appointed by the board chairperson. A hearing may also be conducted by an administrative hearing officer in accordance with section 17A.11 of the Code.

a. When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice of the profession when holding disciplinary hearings, the board may appoint a panel of not less than three

specialists not having a conflict of interest to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

b. When a hearing is held before the board or a three member hearing panel, the board chairperson or someone designated by the chairperson shall act as the presiding officer. The presiding officer or hearing officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections.

c. The presiding officer and other board members have the right to conduct a direct examination at the outset of a witness's testimony or at a later stage thereof. Direct examination and cross-examination by board members is subject to objections properly raised in accordance with the rules of evidence noted in subrule 135.301(24).

d. The hearing shall be open to the public unless the licensee or his attorney requests in writing that the hearing be closed to the public.

135.301(23) Order of proceedings. Before giving testimony, each witness shall be informed of the board membership present (hearing panel), of the identity of the primary parties or their representatives, and of the fact that all testimony is being recorded.

a. Hearings before the board or a panel of the board or before a hearing officer shall generally follow the order established by these rules, subject to modification at the discretion of the board or of the panel of the board conducting the proceedings.

(1) The presiding officer or his designee shall read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing.

(2) The assistant attorney general representing the public interest before the board shall make an opening statement.

(3) The respondent or respondents shall each be offered the opportunity to make an opening statement. A respondent may elect to reserve his opening statement until just prior to the representation of evidence by the respondent.

(4) The presentation of evidence on behalf of the public.

(5) The presentation of evidence on behalf of the respondent(s).

(6) Rebuttal evidence on behalf of the public.

(7) Rebuttal evidence on behalf of the respondent(s).

(8) Closing arguments first on behalf of the public, then on behalf of the respondent, and then on behalf of the public.

135.301(24) Rules of evidence-documentary, evidence-official notice.

a. Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.

b. Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

c. Subject to the above requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

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d. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy with the original, if available. Accurate copies of the document offered at the hearing shall be furnished to those members of the board sitting at the hearing and to opposing parties.

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

f. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the board. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the board determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

135.301(25) Final decision. When five or more members of the board preside over the reception of the evidence at the hearing, its decision is a final decision.

a. When a panel of three specialists preside over the reception of the evidence at the hearing, a transcript of the proceedings, together with exhibits presented and the findings of fact of the panel, shall be considered by the board at the earliest practicable time. The respondent and/or his attorney upon notice prescribed by the board, shall have the opportunity to appear personally to present the respondent's position and arguments to the board. The decision of the board is a final decision.

b. If the hearing is conducted by a three member hearing panel as specified in rule 135.301(22) or by an administrative hearing officer, the decision is a proposed decision and subject to the review provisions of 135.301(28).

c. A proposed or final decision shall be in writing and shall consist of the following parts:

(1) A concise statement of the facts which support the finding of fact.

(2) Findings of fact. A party may submit proposed findings of fact and where this is done, the decision shall include a ruling on each proposed finding.

d. Conclusions of law which shall be supported by cited authority or reasoned opinion.

e. The decision or order which sets forth the action to be taken or the disposition of the case.

f. The decision may include any of the following:

- (1) That the respondent be exonerated.
- (2) Revocation of license.
- (3) Suspension of license until further order of the board or for a specified period.
- (4) Nonrenewal of license.
- (5) Prohibit permanently, until further order of the board or for a specific period, the engaging in specified procedures, methods or acts.
- (6) Probation.
- (7) Require additional education or training.
- (8) Require re-examination.
- (9) Order a physical or mental examination.
- (10) Impose civil penalties not to exceed one thousand dollars.
- (11) Issue citation and warning.

(12) Such other sanctions allowed by law as may be appropriate.

135.301(26) Confidentiality. At no time prior to the release of the final decision by the board shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

135.301(27) Notification of decision. All parties to a proceeding hereunder shall be promptly furnished with a copy of any final or proposed decision or order either in person or by first class mail, or by phone if necessary to assure that the parties learn of the decision or order first.

135.301(28) Proposed decision-appeal to board-procedures and requirements. A proposed decision as defined in subrule 135.301(25) becomes a final decision unless appealed in accordance with the following procedure:

a. A proposed decision may be appealed to the board or a quorum thereof by a party to the decision who is adversely affected thereby. An appeal is commenced by serving on the executive director, either in person or by certified mail, a notice of appeal within seven days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellee.

b. Within seven days after service of the notice of appeal, the appellant shall serve ten copies of the exceptions, if any, together with the brief and argument on the executive director. The appellant shall also furnish copies to each appellee by first class mail. Any appellee to the appeal shall have fourteen days following service of exceptions and brief on the executive director to file a responsive brief and argument.

Except for the notice of appeal, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by a member of the board or executive director.

c. Oral argument of the appeal is discretionary but may be required by the board upon its own motion. At the times designated for filing briefs and arguments either party may request oral argument. If a request for oral argument is granted or such is required by the board on its own motion, the executive director shall notify all parties of the date, time and place. The board chairperson or a designated board member shall preside at the oral argument and determine the procedural order of the proceedings.

d. The record on appeal shall be the entire record made before the hearing panel or administrative hearing officer.

135.301(29) Motion for rehearing. Within twenty days after issuance of a final decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought and copies thereof shall be timely mailed to all other parties. The application shall be deemed denied if not granted within twenty days after service on the executive director.

a. Upon a rehearing, the board may consider facts not presented in the original proceeding if either:

(1) Such facts arose subsequent to the original proceedings; or

(2) The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or

(3) The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

b. The decision made upon a rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceeding.

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135.301(30) Commissioner's order. The final decision of the board, presiding officer or hearing officer shall be filed with the commissioner of public health who shall within ten days from such filing enter an order revoking or suspending the license issued to a physician licensed to practice medicine and surgery, osteopathic medicine and surgery, or discipline such physician as directed by such decision. A copy of the commissioner's order shall immediately be sent by registered mail to the licensee's last known post-office address accompanied by a copy of the board's findings of fact and decision.

135.301(31) Judicial review and appeal. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of the commissioner's order.

135.301(32) The board's decision and the commissioner's order revoking or suspending a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy or to discipline a licensee shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

135.301(33) Rules of general applicability. Ex parte communications, separation of functions, judicial review and appeals shall be in accordance with the terms of the Iowa administrative procedure Act.

135.301(34) Publication of decisions. Final decisions of the board relating to disciplinary procedures shall be transmitted to the appropriate professional association(s), Federation of State Medical Boards, and a newspaper(s) of general circulation to be selected by the board.

135.301(35) Reinstatement. Any person whose license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, has been revoked, or suspended by the board, may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

a. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the commissioner's order or the date of voluntary surrender.

b. All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of his or her license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board.

c. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

d. An order of reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law, and must be based upon the affirmative vote of not fewer than five members of the board. This order will be published as provided for in subrule 135.301(34).

135.301(36) License denial. Any request to have a hearing before the board concerning the denial of a license shall be submitted by the applicant in writing to the board

at the address in subrule 135.301(4), by certified mail, return receipt requested, within thirty days of a mailing of a notice of denial of license.

PRINCIPLES OF PROFESSIONAL ETHICS

470—135.401(147,148,67GA,Ch.95) Principles of medical ethics. The following principles of medical ethics prepared and approved by the judicial council of the American Medical Association, which are set out in a 1977 publication entitled "Opinions and Reports of the Judicial Council", published by the American Medical Association, 535 North Dearborn Street, Chicago, Illinois, 61610, are hereby adopted by the board relative to the practice of medicine and surgery in this state:

135.401(1) These principles are intended to aid physicians individually and collectively in maintaining a high level of ethical conduct. They are not laws but standards by which a physician may determine the propriety of his conduct in his relationship with patients, with colleagues, with members of allied professions, and with the public.

135.401(2) The principal objective of the medical profession is to render service to humanity with full respect for the dignity of man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

135.401(3) Physicians should strive continually to improve medical knowledge and skill, and should make available to their patients and colleagues the benefits of their professional attainments.

135.401(4) A physician should practice a method of healing founded on a scientific basis; and he should not voluntarily associate professionally with anyone who violates this principle.

135.401(5) The medical profession should safeguard the public and itself against physicians deficient in moral character or professional competence. Physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

135.401(6) A physician may choose whom he will serve. In an emergency, however, he should render service to the best of his ability. Having undertaken the case of a patient, he may not neglect him; and unless he has been discharged he may discontinue his services only after giving adequate notice. He should not solicit patients.

135.401(7) A physician should not dispose of his services under terms or conditions which tend to interfere with or impair the free and complete exercise of his medical judgment and skill or tend to cause a deterioration of the quality of medical care.

135.401(8) In the practice of medicine a physician should limit the source of his professional income to medical services actually rendered by him, or under his supervision, to his patients. His fee should be commensurate with the services rendered and the patient's ability to pay. He should neither pay nor receive a commission for referral of patients. Drugs, remedies or appliances may be dispensed or supplied by the physician provided it is in the best interests of the patient.

135.401(9) A physician should seek consultation upon request; in doubtful or difficult cases; or whenever it appears that the quality of medical service may be enhanced thereby.

135.401(10) A physician may not reveal the confidences entrusted to him in the course of medical attendance, or

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the deficiencies he may observe in the character of patients, unless he is required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.

135.401(11) The honored ideals of the medical profession imply that the responsibilities of the physician extend not only to the individual, but also to society where these responsibilities deserve his interest and participation in activities which have the purpose of improving both the health and well-being of the individual and the community.

470—135.402(147,148,67GA,Ch.95) **Code of ethics of osteopathic profession.** The following code of ethics published and approved by the American Osteopathic Association and published in a book entitled "1977 American Osteopathic Association Year Book and Directory of Osteopathic Physicians", is hereby adopted by the board relative to the practice of osteopathic medicine and surgery and osteopathy in this state:

135.402(1) The physician shall keep in confidence whatever he may learn about a patient in the discharge of professional duties. Information shall be divulged by the physician when required by law or when authorized by the patient.

135.402(2) The physician shall give a candid account of the patient's condition to the patient or to those responsible for the patient's care.

135.402(3) A physician-patient relationship must be founded on mutual trust, co-operation, and respect. The patient, therefore, must have complete freedom to choose his physician. The physician must have complete freedom to choose patients whom he will serve. In emergencies, a physician should make his services available.

135.402(4) The physician shall give due notice to the patient or to those responsible for the patient's care when he withdraws from a case so that another physician may be summoned.

135.402(5) A physician is never justified in abandoning a patient.

135.402(6) A physician shall practice in accordance with the body of systematized knowledge related to the healing arts and shall avoid professional association with individuals or organizations which do not practice or conduct organization affairs in accordance with such knowledge.

135.402(7) A physician shall not be identified in any manner with testimonials for proprietary products or devices advertised or sold directly to the public.

135.402(8) A physician shall not hold forth or indicate possession of any degree recognized as the basis for licensure to practice the healing arts unless he is actually licensed on the basis of that degree in the state in which he practices.

135.402(9) A physician shall obtain consultation whenever requested to do so by the patient. A physician should not hesitate to seek consultation whenever he himself believes it advisable.

135.402(10) Illegal, unethical, or incompetent conduct of physicians shall be revealed to the proper tribunals.

135.402(11) A physician shall not assume treatment of a patient under the care of another physician except in emergencies and only during the time that the attending physician is not available.

135.402(12) Any fee charged by a physician shall be reasonable and shall compensate the physician for services actually rendered.

135.402(13) A physician shall not pay or receive compensation for referral of patients.

135.402(14) The physician shall co-operate fully in complying with all laws and regulations pertaining to practice of the healing arts and protection of the public health.

CONTINUING EDUCATION

470—135.501(67GA,Ch.95) **Definitions.** For the purpose of these rules, the following definitions shall apply.

135.501(1) "Board" means the board of medical examiners, created pursuant to chapter one hundred forty-seven (147) of the Code.

135.501(2) "Licensee" means any person licensed to practice medicine and surgery, osteopathy and osteopathic medicine and surgery in the state of Iowa.

135.501(3) "Continuing education" means that education which is obtained by a person licensed to practice medicine and surgery, osteopathy and osteopathic medicine and surgery in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.

135.501(4) "Hour of continuing education" means a clock-hour spent after December 31, 1978, by a licensee in actual attendance at or completion of an approved continuing education activity.

135.501(5) "Category 1 activity" means any formal education program which is sponsored or cosponsored by an organization accredited for continuing medical education by the Liaison Committee on Continuing Medical Education, (an organization composed of the American Board of Medical Specialties, American Hospital Association, American Medical Association, Association for Hospital Medical Education, Association of American Medical Colleges, Council of Medical Specialty Societies, Federation of State Medical Boards, Inc., a public member and a federal government member) or by the Committee on Continuing Medical Education of the American Osteopathic Association and is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit, and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program.

135.501(6) "Accredited sponsor" means an institution or organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules.

135.501(7) "Approved program or activity" means a continuing education program activity meeting the standards set forth in these rules. All continuing education activities classified by the accredited sponsor as category 1 shall be deemed automatically approved.

135.501(8) "Active licensee" means any person licensed to practice medicine and surgery, osteopathy and osteopathic medicine and surgery in Iowa who has met all conditions of license renewal and maintains a current license to practice in this state.

135.501(9) "Inactive licensee" means any person licensed to practice medicine and surgery, osteopathy and osteopathic medicine and surgery in Iowa who has met all conditions of officially placing his or her license on inactive status and may not practice medicine and surgery, osteopathy, osteopathic medicine and surgery until the re-entry requirements as defined in these rules are met.

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470—135.502(67GA,Ch.95) Continuing education requirements.

135.502(1) Beginning January 1, 1979, each person licensed to practice medicine and surgery, osteopathy and osteopathic medicine and surgery in this state shall complete during each full calendar year a minimum of twenty hours of approved continuing education classified as category 1. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent license renewal year.

135.502(2) A licensee desiring to obtain credit for one or more succeeding calendar years, not exceeding three such years, for completing more than twenty hours of approved continuing education during any one calendar year shall report such carry-over credit at the time of filing the annual report to the board on or before June 1 of the year following the calendar year during which the claimed additional continuing education hours were completed.

135.502(3) Hours of continuing education credit may be obtained by attending a continuing education activity, which meets the requirement herein and is approved by the board pursuant to subrules 135.503 and 135.504 of these rules.

135.502(4) The continuing education compliance year shall extend from January 1 to December 31, during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent license renewal year beginning July 1 and expiring June 30.

135.502(5) In lieu of the continuing medical education requirements set forth herein, the board will accept a current physician's recognition award of the American Medical Association, the individual activity report of the American Osteopathic Association, or a current certificate of continuing education from medical organizations recognized by the American Medical Association for fulfilling the requirements of the American Medical Association Physician's Recognition Award.

135.502(6) It is the responsibility of each licensee to finance his or her costs of continuing education.

470—135.503(67GA,Ch.95) Standards for approval. A continuing education activity shall be qualified for approval if the board determines that:

135.503(1) It constitutes an organized program of learning which contributes directly to the professional competency of the licensee; and

135.503(2) It pertains to subject matter which integrally relates to the practice of medicine and surgery, osteopathy and osteopathic medicine and surgery; and

135.503(3) It is conducted by individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program.

470—135.504(67GA,Ch.95) Accreditation of sponsors. In addition to the standards for approval set forth in rule 135.503 of these rules, the board has adopted the standards and criteria established by either the liaison committee on continuing medical education or the standards and criteria established by the committee on continuing medical education of the American Osteopathic Association in accrediting organizations and institutions offering continuing medical education programs. Attendance at approved programs sponsored by an accredited organization and institution which have been classified by the accredi-

ted sponsor as a category 1 activity, will be accepted as credit towards the licensee's continuing medical education requirements for annual renewal of licensure.

470—135.505(67GA,Ch.95) Hearings. In the event of denial, in whole or part, of credit for continuing education activity, the applicant or licensee shall have the right, within ten days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within twenty days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified hearing officer designated by the board, in substantial compliance with the hearing procedure set forth in rule 135.301. If the hearing is conducted by a hearing officer, the hearing officer shall submit a transcript of the hearing including exhibits to the board after the hearing with the proposed decision of the hearing officer. The decision of the board or decision of the hearing officer after adoption by the board shall be final.

470—135.506(67GA,Ch.95) Reports and records. Each licensee shall file evidence of continuing medical education satisfactory to the board no later than June 1 of the year following the calendar year in which claimed continuing education hours were completed. A report of such continuing medical education on a form furnished by the board, shall be sent to the Executive Director, Iowa State Board of Medical Examiners, 910 Insurance Exchange Building, Des Moines, Iowa 50309, or to such other address as may be designated on the form.

135.506(1) The board relies upon each individual licensee's integrity in certifying to his or her compliance with the continuing medical education requirements herein provided. Nevertheless, the board reserves the right to require, if it so elects, any licensee to submit, in addition to such report, further evidence satisfactory to the board demonstrating compliance with the continuing medical education requirements herein provided. Accordingly, it is the responsibility of each licensee to retain or otherwise be able to have, or cause to be made, available at all times, reasonably satisfactory evidence of such compliance.

135.506(2) The licensee shall maintain a file in which records of the activities are kept, including dates, subjects, duration of programs, registration receipts where appropriate and other appropriate documentations for a period of three years after the date of the program.

470—135.507(67GA,Ch.95) Attendance record. The board shall monitor licensee attendance at approved programs by random inquiries of accredited sponsors.

470—135.508(67GA,Ch.95) Exemptions for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of medicine and surgery, osteopathy and osteopathic medicine and surgery in Iowa, without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

470—135.509(67GA,Ch.95) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of medicine and surgery, osteopathy and

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osteopathic medicine and surgery in the state of Iowa satisfy the following requirements for reinstatement:

135.509(1) Submit written application for reinstatement to the board upon forms provided by the board; and

135.509(2) Furnish in the application evidence of one of the following:

a. The practice of medicine and surgery, osteopathy and osteopathic medicine and surgery in another state of the United States, District of Columbia, territory or foreign country and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of hours of accredited continuing education computed by multiplying twenty by the number of years a certificate of exemption shall have been in effect for such applicant; or

c. Successful completion of the Iowa state license examination conducted within one year immediately prior to the submission of such application for reinstatement.

470—135.510(67GA,Ch95) Exemptions for active practitioners. A physician licensed to practice medicine and surgery, osteopathy and osteopathic medicine and surgery shall be deemed to have complied with the continuing education requirements of this state during period that the licensee serves honorably on active duty in the military services, or for periods that the licensee is a resident of another state or district having a continuing education requirement for the profession and meets all requirements of that state or district for practice therein, or for periods that the licensee is a government employee working in his or her licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the board.

470—135.511(67GA,Ch95) Physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and his or her attending physician. Waiver of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion of all of the minimum educational requirements waived by such methods as may be prescribed by the board.

470—135.512(67GA,Ch95) Noncompliance. A licensee who in the opinion of the board does not satisfy the requirements for license renewal stated in this chapter will be placed on probationary status and notified of the fact within thirty days after the renewal date. Within ninety days after such notification, the licensee must submit evidence to the board demonstrating that the deficiencies have been satisfied. If the deficiencies are not made up within the specified period of time, the licensee's license will be classified as lapsed without further hearing.

HEALTH DEPARTMENT[470]

MEDICAL EXAMINERS

NOTICE OF INTENDED ACTION

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

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

The board of medical examiners, pursuant to the authority of section 17A.4, Code of Iowa, 1977, and Chapter 95, Acts of the Sixty-seventh General Assembly, 1977 session, section 2, proposes to adopt the following new rules [136.101 to 136.112] relating to continuing education.

Interested persons, governmental agencies and associations may present written comments or statements concerning the proposal no later than 4:30 p.m. on Wednesday, December 20, 1978, to Ronald V. Saf, Executive Director, State Board of Medical Examiners, 910 Insurance Exchange Building, Des Moines, Iowa 50309.

PHYSICIAN ASSISTANTS CONTINUING EDUCATION

470—136.101(67GA,ch.95) Definitions. For the purpose of these rules, the following definitions shall apply:

136.101(1) "Board" means the board of medical examiners created pursuant to chapter 147 of the Code.

136.101(2) "Physician's Assistant" means any person certified to practice as a physician's assistant by the board.

136.101(3) "Continuing education" means that education which is obtained by a physician's assistant in order to maintain, improve, or expand skills and knowledge obtained prior to initial certification or develop new and relevant skills and knowledge.

136.101(4) "Category I continuing education" means any formal education program which is sponsored or cosponsored by an organization accredited for continuing medical education by the Liaison Committee on Continuing Medical Education, (an organization composed of the American Board of Medical Specialties, American Hospital Association, American Medical Association, Association for Hospital Medical Education, Association of American Medical Colleges, Council of Medical Specialty Societies, Federation of State Medical Boards, Inc., a public member and a federal government member) or by the Committee on Continuing Medical Education of the American Osteopathic Association and any other formal continuing medical education program which the Professional and Continuing Education Committee of the American Academy of Physician's Assistants deems in its sole discretion to be approved.

136.101(5) "Category II continuing education" means any educational programs with nonaccredited sponsorship, medical teaching experience, publications and presentations, and nonsupervised individual continuing medical education activities.

136.101(6) "Hour of continuing education" means a clock hour spent after December 31, 1978, by a physician's assistant in actual attendance at and completion of an approved continuing education activity.

136.101(7) "Approved program or activity" means a continuing education program activity meeting the

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standard set forth in these rules which has received advance approval by the board pursuant to these rules.

136.101(8) "Accredited sponsor" means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an accredited sponsor, all continuing education activities of such person or organization may be deemed automatically approved.

136.101(9) "Active practitioner" means a person who is currently certified as a physician's assistant by the board to perform medical services under the supervision of one or more physicians approved by the board.

136.101(10) "Inactive practitioner" means a person who is not currently certified by the board to perform medical services under the supervision of one or more physicians approved by the board and has been granted a certificate of exemption as provided in rule 136.108.

470—136.102(67GA,ch.95) Continuing education requirements.

136.102(1) Beginning January 1, 1979, each person certified to practice as a physician's assistant in this state shall complete a minimum of fifty hours of board approved continuing education each calendar year. Of these fifty hours a minimum of twenty hours shall be earned in category I, and the remaining thirty hours may be obtained in category II or a combination of category I and II.

136.102(2) The continuing education compliance year shall extend from January 1 to December 31, during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the recertification of the physician's assistant on the anniversary date of their initial certification.

136.102(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, either previously accredited by the board or which otherwise meets the requirements herein and is approved by the board.

136.102(4) If a report of fifty hours of approved continuing education is not received by the board from the physician's assistant by the certification date following the calendar year the continuing education was accrued, the physician's assistant will be allowed an additional twelve months to complete one hundred hours with forty hours in category I and the remaining sixty hours in category II or a combination of category I and II. If satisfactory completion of one hundred hours is not reported by the second certification date, the board will notify the physician's assistant of the deficiency and allow ninety days for satisfactory completion before the certification is revoked.

136.102(5) In lieu of the continuing medical education requirements set forth herein, the board will accept a current certificate of continuing education from the American Academy of Physician's Assistants or the American Academy of Family Practice or the American College of Obstetricians and Gynecologists and will consider approval of other programs as they are developed. The board will also accept current recertification by a specialty board as the equivalent of the continuing medical education requirements set forth herein.

136.102(6) It is the responsibility of each physician's assistant to finance his or her costs of continuing education.

470—136.103(67GA,ch.95) Standards for approval of category I activity. A category I continuing education activity shall be qualified for approval if the board deems that:

136.103(1) It constitutes an organized program of learning which contributes directly to the professional competency of the physician's assistant; and

136.103(2) It pertains to subject matter which integrally relate to the practice of medicine and surgery, osteopathy and osteopathic medicine and surgery; and

136.103(3) It is conducted by individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program.

470—136.104(67GA,ch.95) Approval of sponsors, programs, and activities. In addition to the standards of approval set forth in rule 136.103 of these rules, the board has adopted the standards and criteria established by either the Liaison Committee on Continuing Medical Education or the standards and criteria established by the Committee on Continuing Medical Education of the American Osteopathic Association or the Professional and Continuing Education Committee of the American Academy of Physician's Assistants in accrediting organizations and institutions offering continuing medical education programs. Attendance at approved programs sponsored by an accredited organization and institution which have been classified by the accredited sponsor as a category I activity, will be accepted as credit toward the physician's assistants continuing medical education requirements for annual recertification.

470—136.105(67GA,ch.95) Standards for approval of category II activity. The board has adopted the standards and criteria established by either the Liaison Committee on Continuing Medical Education or the Committee on Continuing Education of the American Osteopathic Association or the standards and criteria established by the Professional and Continuing Education Committee of the American Academy of Physicians Assistants in accrediting category II continuing education. The completion of a continuing education activity which has been classified as a category II activity by one or more of these three organizations will be accepted as credit toward the physician's assistants category II continuing medical education requirements as a condition precedent to annual recertification in this state.

470—136.106(67GA,ch.95) Hearings. In the event of denial, in whole or part, of credit for continuing education activity, the physician's assistant shall have the right, within ten days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within twenty days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified hearing officer, designated by the board. The hearing shall be conducted in substantial compliance with the hearing procedure set forth in rule 135.301. If the hearing is conducted by a hearing officer, the hearing officer shall submit a transcript of the hearing including exhibits to the board with the proposed decision of the hearing officer. The decision of the board or decision of

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the hearing officer after adoption by the board shall be final.

470—136.107(67GA,ch.95) Report of the physician's assistant. Each physician's assistant shall file a signed report not less than thirty days prior to the anniversary date of their initial certification following the calendar year in which claimed continuing education hours were completed. The report shall be sent to the Iowa State Board of Medical Examiners, 910 Insurance Exchange Building, Des Moines, Iowa 50309.

136.107(1) The board relies upon the integrity of each physician's assistant in certifying to his or her compliance with the continuing medical education requirement herein, provided. Nevertheless, the board reserves the right to require, if it so elects, any physician's assistant to submit, in addition to such report, further evidence satisfactory to the board demonstrating compliance with the continuing medical education requirements herein provided. Accordingly, it is the responsibility of each physician's assistant to retain or otherwise be able to produce at all times, reasonable satisfactory evidence of such compliance.

136.107(2) Each physician's assistant shall maintain a file in which records of the activities are kept, including dates, subjects, duration of programs, registration receipts where appropriate and other appropriate documentation, for a period of three years after the date of the program.

470—136.108(67GA,ch.95) Attendance record. The board shall monitor attendance at approved programs by random inquiries of accredited sponsors.

470—136.109(67GA,ch.95) Exemptions for inactive practitioners. A physician's assistant who is not engaged in practice in the state of Iowa but still residing within the state may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not practice as a physician's assistant in Iowa without first complying with all regulations governing reinstatement after exemption.

470—136.110(67GA,ch.95) Reinstatement of inactive practitioners. Inactive physician's assistants shall satisfy the following requirements for reinstatement:

a. Submit with supervising physician a written application for reinstatement to the board upon forms provided by the board.

b. Furnish in application evidence of one of the following:

(1) Completion of a total number of hours of accredited continuing education computed by multiplying fifty by the number of years a certificate of exemption shall have been in effect.

(2) Successful completion of the National Commission for Certification of Physician's Assistants certification or recertification, conducted within one year immediately prior to the submission of such application for reinstatement.

470—136.111(67GA,ch.95) Exemptions for active practitioners. A physician's assistant shall be deemed to have complied with the continuing education requirements of this state during periods that he or she serves honorably on active duty in the military services, or for periods that he or she is a resident of another state

or district having a continuing education requirement for the profession and meets all requirements of that state or district for practice therein, or for periods that the physician's assistant is a government employee working in his or her profession and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the board.

470—136.112(67GA,ch.95) Physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the physician's assistant and his or her attending physician. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of waiver, the physician's assistant must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waiver by such methods as may be prescribed by the board.

LABOR, BUREAU OF[530] NOTICE OF INTENDED ACTION

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

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

Pursuant to chapter 17A and section 88.9(3), Code of Iowa, the Bureau of Labor gives notice of the intent to adopt the following rules relative to the procedures and interpretative guidelines in handling cases of alleged discrimination under section 88.9(3), Code of Iowa. The rules relate to the determination as to who can be considered to be discriminating, what types of discrimination complaints will be processed, and what types of employee actions are protected. These rules are based upon similar federal rules published at 29 C.F.R. 1977.

The public may submit written comments on the proposed rules. All comments shall be submitted to Allen J. Meier, Commissioner of Labor, 307 East 7th Street, Des Moines, Iowa 50319, telephone (515) 281-3606, by December 22, 1978. Request for an opportunity to present oral comments shall be submitted in writing to the commissioner of labor at the address stated above by December 22, 1978.

CHAPTER 8

530—8.1(88) Introductory statement.

8.1(1) The Occupational Safety and Health Act of 1972 (Chapter 88, Code), hereinafter referred to as the Act, is designed to regulate employment conditions relating to occupational safety and health and to achieve safer and healthier workplaces throughout the state. By terms of the Act, every person engaged in a business, the

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state of Iowa and its various departments and agencies and any political subdivision of the state, who have employees is required to furnish each of his employees and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm, and, further, to comply with occupational safety and health standards promulgated under the Act.

8.1(2) Employees and representatives of employees are afforded a wide range of substantive and procedural rights under the Act. Moreover, effective implementation of the Act and achievement of its goals depend in large part upon the active but orderly participation of employees, individually and through their representatives, at every level of safety and health activity.

8.1(3) This part deals essentially with the rights of employees afforded under section 88.9(3). Section 88.9(3) prohibits reprisals, in any form, against employees who exercise rights under the Act.

530—8.2(88) Purpose of this chapter. The purpose of this chapter is to make available in one place interpretations of the various provisions of section 88.9(3), which will guide the commissioner of labor in the performance of his duties thereunder.

530—8.3(88) General requirements of section 88.9(3). Section 88.9(3) provides in general that no person shall discharge or in any manner discriminate against any employee because the employee has:

1. Filed any complaint under or related to the Act;
2. Instituted or caused to be instituted any proceeding under or related to the Act;
3. Testified or is about to testify in any proceeding under the Act or related to the Act; or
4. Exercised on his own behalf or on behalf of others any right afforded by the Act.

Any employee who believes that he has been discriminated against in violation of section 88.9(3) may, within thirty days after such violation occurs, lodge a complaint with the commissioner of labor alleging such violation. The commissioner shall then cause an appropriate investigation to be made. If, as a result of such investigation, the commissioner determines that the provisions of section 88.9(3) have been violated civil action may be instituted in any appropriate district court, to restrain violations of section 88.9(3) and to obtain other appropriate relief, including rehiring or reinstatement of the employee to his former position with backpay. Section 88.9(3) further provides for notification of complainants by the commissioner of determinations made pursuant to their complaints.

530—8.4(88) Persons prohibited from discriminating. Section 88.9(3) specifically states that "no person shall discharge or in any manner discriminate against any employee" because the employee has exercised rights under the Act. Section 88.3(3) defines "person" as "one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons." Consequently, the prohibitions of section 88.9(3) are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 88.9(3) would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee.

530—8.5(88) Persons protected by section 88.9(3).

8.5(1) All employees are afforded the full protection of section 88.9(3). For purposes of the Act, an employee is defined as "an employee of an employer who is employed in a business of his employer." The Act does not define the term "employ." However, the broad remedial nature of this legislation demonstrates a legislative intent that the existence of an employment relationship, for purposes of section 88.9(3), is to be based upon economic realities rather than upon common law doctrines and concepts.

8.5(2) For purposes of section 88.9(3), even an applicant for employment could be considered an employee. Further, because section 88.9(3) speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

530—8.6(88) Unprotected activities distinguished.

8.6(1) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of section 88.9(3) apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

8.6(2) At the same time, to establish a violation of section 88.9(3), the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, section 88.9(3) has been violated. Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

8.7 Reserved.

8.8 Reserved.

530—8.9(88) Complaints under or related to the Act.

8.9(1) Discharge of, or discrimination against, an employee because the employee has filed "any complaint . . . under or related to this Act . . ." is prohibited by section 88.9(3). An example of a complaint made "under" the Act would be an employee request for inspection pursuant to section 88.6(5). However, this would not be the only type of complaint protected by section 88.9(3). The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application.

8.9(2) Complaints registered with other governmental agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

8.9(3) Further, the salutary principals of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be

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protected against discharge or discrimination caused by a complaint to the employer.

530—8.10(88) Proceedings under or related to the Act.

8.10(1) Discharge of, or discrimination against, any employee because the employee has "instituted or caused to be instituted any proceeding under or related to this Act" is also prohibited by section 88.9(3). Examples of proceedings which could arise specifically under the Act would be inspections of workplaces under section 88.6, an employee contest of an abatement date under section 88.8(3), an employee application for modification or revocation of a variance under section 88.5 and an employee appeal of an Occupational Safety and Health Review Commission order under section 88.9(1). In determining whether a "proceeding" is "related to" the Act, the considerations discussed in rule 8.9 would also be applicable.

8.10(2) An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

530—8.11(88) Testimony. Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify in proceedings under or related to the Act is also prohibited by section 88.9(3). This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rule making or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

530—8.12(88) Exercise of any right afforded by the Act.

8.12(1) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, section 88.9(3) also protects employees from discrimination occurring because of the exercise "of any right afforded by this chapter." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings. Certain other rights exist by necessary implication. For example, employees may request information from the IOSH Enforcement Division of the Iowa Bureau of Labor; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the commissioner in the course of inspections or investigations could not subsequently be discriminated against because of their co-operation.

8.12(2) On the other hand, review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to section

88.6(5), or to seek assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of section 88.9(3) by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

8.12(3) However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

8.13 Reserved.

8.14 Reserved.

530—8.15(88) Filing of complaint for discrimination.

8.15(1) A complaint of section 88.9(3) discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf. No particular form of complaint is required. A complaint should be filed with the commissioner of labor.

8.15(2) Section 88.9(3) provides that an employee who believes he has been discriminated against in violation of section 88.9(3) "may, within thirty days after such violation occurs," file a complaint with the commissioner of labor. The major purpose of the thirty-day period in this provision is to allow the commissioner to decline to entertain complaints which have become stale. Accordingly, complaints not filed within thirty days of an alleged violation will ordinarily be presumed to be untimely. However, there may be circumstances which would justify tolling of the thirty-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the thirty-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the thirty-day period, untimely complaints will not be processed.

530—8.16(88) Notifications of commissioner of labor's determination. Section 88.9(3) provides that the commissioner is to notify a complainant within ninety days of the complaint of his determination whether prohibited discrimination has occurred. This ninety-day provision is considered directory in nature. While every effort will be made to notify complainants of the commissioner's determination within ninety days, there

LABOR[530] (cont'd)

may be instances when it is not possible to meet the directory period set forth in section 88.9(3).

530—8.17(88) Withdrawal of complaint. Enforcement of the provisions of section 88.9(3) is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the commissioner's investigation. The commissioner's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

530—8.18(88) Arbitration or other agency proceedings.

8.18(1) An employee who files a complaint under section 88.9(3) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board or the Iowa Merit Employment Department. The commissioner's jurisdiction to entertain section 88.9(3) complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of the other agencies or bodies. The commissioner may file action in district court regardless of the pendency of other proceedings. However, the commissioner also recognizes the policy favoring voluntary resolution of disputes under proceedings in collective bargaining agreements. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 88.9(3) complaints. Where a complainant is in fact pursuing remedies other than those provided by section 88.9(3), postponement of the commissioner's determination and deferral to the results of such proceedings may be in order.

8.18(2) Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under section 88.9(3) and those proceedings are not likely to violate the rights guaranteed by section 88.9(3). The factual issues in such proceedings must be substantially the same as those raised by section 88.9(3) complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

8.18(3) A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the section 88.9(3) complaint.

8.19 Reserved.

8.20 Reserved.

530—8.21(88) Walkaround pay disputes. The commissioner recognizes the essential nature of employee participation in walkaround inspections under section 88.6(4). Employees constitute a vital source of information to representatives of the commissioner concerning the presence of workplace hazards. Employees should be able to freely exercise their statutory right to participate in walkarounds without fear of economic loss, such as the denial of pay for the time spent assisting IOSH enforcement compliance personnel during workplace inspections. Therefore, in order to insure the unimpeded flow of information to the commissioner's inspectors, as well as the unfettered statutory right of employees to participate in walkaround inspections, an employer's failure to pay employees for time during which they are engaged in walkaround inspections, is discriminatory under section 88.9(3). In addition, where employees participate in other inspection related activities, such as responding to questions of compliance officers, or participating in the opening and closing conferences, an employer's failure to pay employees for time engaged in these activities, is discriminatory under section 88.9(3).

530—8.22(88) Employee refusal to comply with safety rules. Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by section 88.9(3). This situation should be distinguished from refusals to work, as discussed in rule 8.12(88).

These rules are intended to implement sections 17A.3 and 88.9(3), Code of Iowa.

PHARMACY EXAMINERS[620] NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of section 155.19 and 17A.4(1) of the Code, the Board of Pharmacy Examiners proposes to amend chapter 6 of its rules by adding the following:

Any interested party may submit data, views and arguments in writing on this proposed rule on or before December 20, 1978, to: Norman C. Johnson, Executive Secretary, Board of Pharmacy Examiners, 217 Jewett Building, Des Moines, Iowa 50319.

ITEM 1.

620—6.9(155) Nuclear pharmacy - purpose and scope. It is unlawful to receive, possess or transfer radioactive drugs, except in accordance with the provisions of chapter 155 of the Code. It is also unlawful for any person to provide radiopharmaceutical services unless he is a pharmacist or a person acting under the direct supervision of a pharmacist acting in accordance with the provisions of chapter 155 of the Code and the Board of Pharmacy Examiners regulations, and

PHARMACY[620] (cont'd)

regulations of the Department of Environmental Quality, with the exception of a medical practitioner for administration to his patients as provided in chapter 148 of the Code. No person may receive, acquire, possess, use, transfer or dispose of any radioactive material except in accordance with the conditions set forth by the Department of Environmental Quality, pursuant to the provisions of chapter 455B of the Code. The requirements of these Nuclear Pharmacy Regulations are in addition to and not in substitution for other applicable provisions of regulations of the Board of Pharmacy Examiners and the Department of Environmental Quality or the Department of Health.

6.9(1) Definitions.

a. "A nuclear pharmacy" is a pharmacy providing radiopharmaceutical services.

b. "Radiopharmaceutical service" shall mean, but shall not be limited to, the compounding, dispensing, labeling and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management and control of a nuclear pharmacy.

c. "Radiopharmaceutical quality assurance" means, but is not limited to, the performance of appropriate chemical, biological and physical tests on potential radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment authentication of product history and the keeping of proper records.

d. "Internal test assessment" means, but is not limited to, conducting those tests of a quality assurance necessary to insure the integrity of the test.

e. "Authentication of product history" means, but is not limited to, identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.

6.9(2) General requirements for pharmacies providing radiopharmaceutical services.

a. The application for a license to operate a pharmacy providing radiopharmaceutical services shall only be issued to a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct personal supervision of a nuclear pharmacist. A nuclear pharmacist is responsible for all operations of the licensed area and shall be in personal attendance at all times that the pharmacy is open for business.

b. Nuclear pharmacies shall have adequate space, commensurate with the scope of services required and provided, meeting minimal space requirements established for all pharmacies in the state. The nuclear pharmacy area shall be separate from the pharmacy areas for nonradioactive drugs and shall be secured from unauthorized personnel. All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area, occupying at least twenty-five square feet of space, separate from and exclusive of the hot laboratory, compounding, dispensing, quality

assurance and office area. A nuclear pharmacy handling radioactive drugs exclusively may be exempted from the general space requirements for pharmacies by obtaining a waiver from the Board of Pharmacy Examiners. Detailed floor plans shall be submitted to the Board of Pharmacy Examiners and the Department of Health before approval of the license.

c. Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with acceptable professional standards of radiopharmaceutical quality assurance.

d. Nuclear pharmacies shall maintain records of acquisition and disposition of all radioactive drugs in accordance with the Board of Pharmacy Examiners and the Department of Environmental Quality.

e. Nuclear pharmacies shall comply with all applicable laws and regulations of federal and state agencies, including those laws and regulations governing nonradioactive drugs.

f. Radioactive drugs are to be dispensed only upon a prescription order from a licensed medical practitioner, authorized to possess, use and administer radiopharmaceuticals. A nuclear pharmacy may also furnish radiopharmaceuticals for office use only to these practitioners for individual patient use.

g. In addition to any labeling requirements of the Board of Pharmacy Examiners for nonradioactive drugs, the immediate outer container of a radioactive drug to be dispensed shall also be labeled with:

- (1) The standard radiation symbol;
- (2) The words "Caution - Radioactive Material";
- (3) The radionuclide;
- (4) The chemical form;
- (5) The amount of radioactive material contained, in millicuries or microcuries;
- (6) If a liquid, the volume in cubic centimeters;
- (7) The requested calibration time for the amount of radioactivity contained.

h. The immediate container shall be labeled with:

- (1) Standard radiation symbol;
- (2) The words "Caution - Radioactive Material";
- (3) The name, address and telephone number of the pharmacy and
- (4) The prescription number.

i. The amount of radioactivity shall be determined by radiometric methods for each individual preparation immediately prior to dispensing.

j. Nuclear pharmacies may redistribute NDA approved radioactive drugs if the pharmacy does not process the radioactive drugs in any manner nor violate the product packaging.

6.9(3) General requirements - nuclear pharmacists. General requirements for nuclear pharmacists to obtain a nuclear pharmacy license. A qualified nuclear pharmacist shall:

a. Meet minimal standards of training for medical uses of radioactive material.

b. Be a currently licensed pharmacist in the state.

c. Have received a minimum of ninety contact hours of didactic instruction in nuclear pharmacy from an accredited college of pharmacy.

d. Attain a minimum of one hundred sixty hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an accredited college of pharmacy.

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e. Submit an affidavit of experience and training to the Board of Pharmacy Examiners.

6.9(4) Library. Each nuclear pharmacy shall have access to the following reference books. All books must be current editions or revisions:

- a. United States Pharmacopeia, with supplements
- b. National Formulary, with supplements
- c. State laws and regulations relating to pharmacy
- d. State and/or federal regulations governing the use of applicable radioactive materials
- e. United States Public Health Service, Radiological Health Handbook

6.9(5) Minimum equipment requirements.

- a. Laminar flow hood
- b. Dose calibrator
- c. Refrigerator
- d. Class A prescription balance or balance of greater sensitivity
- e. Single channel scintillation counter
- f. Microscope
- g. Autoclave, or access to one
- h. Oven capable of 250°C for forty-five minutes, or access to one
- i. Portable radiation survey meter capable of detecting 0.005 microcuries of the radionuclides in question
- j. Other equipment necessary for radio pharmaceutical services provided as required by the Board of Pharmacy Examiners.

REVENUE DEPARTMENT[730]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the Iowa Department of Revenue hereby gives Notice of Intended Action to amend rules relating to sales and use tax. Any interested persons may make written suggestions or comments on these proposed rules prior to December 29, 1978. Such written materials should be directed to the Director, Excise Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact the Director, Excise Tax Division, at 515/281-5476 or in the Excise Tax offices on the fourth floor of the Hoover State Office Building. There will also be a public hearing on December 19, 1978, at 1:30 p.m., in the south end of the Grimes Conference Room on the first floor of the Grimes State Office Building. Persons may present their views at this public hearing orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Director of the Excise Tax Division at least one day prior to the date of the public hearing.

Here follows the substance of the intended action.

Pursuant to the authority of section 421.14 and 422.68(1) of the Code, the department hereby amends the following sales and use tax rules.

ITEM 1. Amend rule 11.4(422,423) by adding the following new paragraph:

6. Exemption certificates which are evidence of exempt sales. See subrule 15.3(2).

This amendment is intended to implement section 422.47 of the Code.

ITEM 2. Amend rule 12.11(422,423) by changing numbered paragraphs 1., 2., 3., 4., 5., 6., 7. to lettered paragraphs "a., b., c., d., e., f., and h.," and by adding the following example:

g. The department will allow without penalty one late return or monthly deposit, or one timely filed return containing a mathematical error if the taxpayer has had no reported delinquencies in the past 36 months. (Not applicable to penalty established by audit.)

This amendment is intended to implement sections 422.58 and 423.18 of the Iowa Code.

ITEM 3. Delete rule 15.3(422,423) in its entirety and in lieu thereof add the following new rule:

730—15.3(422,423) Certificates of resale or processing prior to and subsequent to January 1, 1979.

15.3(1) Prior to January 1, 1979: The gross receipts from the sale of tangible personal property for the purpose of resale or processing by the purchaser are not subject to tax. However, the following are considerations to the exemption:

a. The Iowa sales tax is a consumers tax in the sense that the burden of the tax must be passed on to the consumer, however, the responsibility is upon the seller to collect from the purchaser the amount of tax due on a sale and the state looks to the seller for the tax.

b. While it is not the duty of the seller in selling to follow up the transaction to see to it that none of the goods sold under a certificate of resale or processing are used or consumed, it is the seller's duty to know the general nature of the business conducted by the purchaser in respect to resales and consumption of goods.

If the purchaser operates a retail business and is engaged in the business of reselling the goods or service purchased, there is no tax on the sale by the seller to such purchaser although the purchase may thereafter infrequently, take from stock certain of the goods for his or her own use or consumption.

The question of whether the seller should collect tax from a purchaser depends upon the general course of business of the purchaser, and not whether the purchaser might sell or consume the goods in an isolated instance. The seller is bound by his or her peril when he or she sells to a purchaser to know whether the purchaser is engaged in consuming said goods as a part of the purchaser's business.

c. When a permit holder purchases tangible personal property or services for the purpose of resale, he or she may furnish a certificate of resale to the seller indicating that the property or service is being purchased for resale. The certificate when requested should be completed at the time of sale, it should be signed by and bear the name and address of the purchaser, it should indicate the general character of the tangible personal property or service sold by the purchaser and the type of business of the purchaser, it should contain a general description of the property or service purchased, and it should have the purchaser's sales tax permit number, when it is available. Any person repeatedly selling the same type of property or service to the same purchaser for resale or for processing may, at his or her own risk, accept a blanket certificate covering more than one transaction.

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d. A person who is selling tangible personal property or services in Iowa for delivery in Iowa, but who is not making sales at retail, shall not be required to hold a permit. When this person purchases tangible personal property or services for resale, he or she may furnish a certificate of resale to the supplier stating that the property or service was purchased for the purpose of resale.

e. A processor or fabricator purchasing tangible personal property or services to be used in processing as set forth in sections 422.42 and 423.1(1) of the Iowa Code, can purchase such property or services without payment of tax. In such instances, the purchaser may furnish a certificate of processing to the supplier stating the property or service shall be used in processing. If the purchaser furnishes such certificates, he or she shall indicate the information set forth in subrule 15.3(1)"c".

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for the purchaser's own use or consumption, then the tax shall be reported in the period when such tangible personal property was withdrawn from inventory.

f. Certificates of resale or processing may be obtained upon request from the department. While Iowa law does not require such certificates, their use is evidence of the nature of the transactions, i.e., purchases for resale or for processing.

15.3(2) On and after January 1, 1979. The gross receipts from the sale of tangible personal property for the purpose of resale or processing by the purchaser are not subject to tax as provided by the Iowa sales and use tax statutes. However, the following are requirements for the exemption:

a. The sales tax liability for all sales of tangible personal property shall be upon the seller unless the seller takes in good faith from the purchaser a valid exemption certificate stating that the purchase is for resale or for processing. Where tangible personal property or services are purchased tax free pursuant to a valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser shall be solely liable for the taxes and shall remit the taxes directly to the department.

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for his or her own use or consumption, the tax shall be reported in the period when such tangible personal property was withdrawn from inventory.

b. The director is required to provide exemption certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to buyers for purposes of resale or for processing. Since section 422.47 of the Code defines a "valid exemption certificate" as one supplied by the director, the director cannot recognize an exemption certificate other than his or her own. This exemption certificate must be completed as to the information required on the form in order to be valid.

An exemption certificate or blanket exemption certificate as referred to in paragraph "c" section c cannot be used to make a tax free purchase of any tangible personal property or service not covered by the certificate. For example, the certificate used to purchase

a chemical consumed in processing cannot be used to purchase a generator which is going to become an integral part of other tangible personal property which will be ultimately sold at retail.

c. Any person repeatedly selling the same type of property or service to the same purchaser for resale or for processing may accept a blanket certificate covering more than one transaction. A seller who accepts a blanket certificate is required periodically to inquire of the purchaser to determine if the information on the blanket certificate is accurate and complete. Such an inquiry by the seller shall be deemed evidence of good faith on the part of the seller.

d. When due to extraordinary circumstances in the nature of fire, flood, or other cases of destruction beyond the taxpayer's control, a seller does not have an exemption certificate on file, he or she may show by other evidence, such as a signed affidavit by the purchaser, that the property or services was purchased for resale or for processing.

e. The liability for the tax does not shift from the seller to the purchaser if the seller has not accepted a valid exemption certificate in good faith. If the seller has actual knowledge of information or circumstances indicating that it is unlikely that the property or services will be resold or used in processing, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the valid exemption certificate. In addition, if the nature of the business of the purchaser, as shown by the valid exemption certificate, indicates that it is unlikely that the property or services will be resold or used in processing, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the valid exemption certificate.

EXAMPLE 1. A seller is expected to inquire to discover the facts supporting the claimed exemption if he or she knows that the property or services will not be, or it is unlikely that the property or services will be, resold or used in processing by that purchaser. This further inquiry is expected even where there is nothing in the nature of the business as shown on the valid exemption certificate to cause the seller to make further inquiry.

EXAMPLE 2. A seller is expected to inquire to discover the facts supporting the claimed exemption of the sale of sawdust or a tool chest purchased by a gas station since such items are rarely resold by a gas station.

EXAMPLE 3. A seller is not expected to make further inquiry, in the absence of actual knowledge, to determine which light bulbs bought by a hardware store are for use in the store or those purchased for resale.

If the seller has met the requirements set forth above in accepting a valid exemption certificate, the seller shall be deemed to have acted in good faith and the liability for the tax shifts to the purchaser who becomes solely liable for the taxes.

f. A seller is relieved from liability for sales tax if (1) a purchaser deletes the tax reimbursement from the payment to the seller or if the purchaser makes a notation on an invoice such as "not subject to tax" or "resale" and (2) if the seller can produce written evidence to show that an attempt was made to obtain an exemption certificate to show that the transaction was exempt from tax but was unable to obtain said certificate from the purchaser.

g. The failure of a permit holder to act in good faith while giving or receiving exemption certificates may

REVENUE[730] (cont'd)

result in the revocation of the sales tax permit. Such revocation is authorized under the provisions of section 422.53(5) of the Iowa Code.

h. The purchase of tangible personal property or services which are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support such transactions, they do not relieve the seller of the responsibility for tax if at some later time the transaction is determined to be taxable.

i. A person who is selling tangible personal property or services, but who is not making taxable sales at retail, shall not be required to hold a permit. When this person purchases tangible personal property or services for resale, he or she shall furnish a certificate in accordance with these rules to the supplier stating that the property or service was purchased for the purpose of resale.

j. For information regarding the use of exemption certificates for contractors, see chapter 19 of the rules.

This rule is intended to implement sections 422.42(3), 422.42(13), 422.42(16), 422.47, 422.53, and 423.1(1) of the Code.

ITEM 4. Amend rule 16.26(422) by deleting it in its entirety and inserting in lieu thereof the following:

730—16.26(422) Admissions prior to and subsequent to July 1, 1978.

1. For periods prior to and subsequent to July 1, 1978, tax is imposed upon the gross receipts from the sale of admissions to places of amusement, athletic events, and fairs (whether by single, season, or subscription tickets) at which amusement, entertainment, or recreation is provided. The term "admission" includes that part of private club membership fees paid for the privilege of participating in various sports provided club members. Admissions also include, but are not limited to, cover charges or any other charges for admittance to taverns, lounges, bars, or other places which provide amusement, entertainment, or recreation.

The charge for a booth reservation is an admission to a particular booth in the same manner that a reserved seat is a special admission to a particular place in a circus, theater, or like place of amusement, and therefore, is subject to tax.

2. For periods on and after June 30, 1978, the gross receipts from sales of admissions to amusements, fairs, and/or athletic events of elementary and secondary educational institutions are exempt from tax. For the purpose of this rule, elementary and secondary educational institutions are defined to encompass kindergarten through twelfth grade as recognized by the Iowa Department of Public Instruction.

This rule is intended to implement sections 422.42(5) and 423.3 of the Code.

ITEM 5. Amend rule 16.47(422,423) by deleting it in its entirety and inserting in lieu thereof the following:

730—16.47(422,423) Conditional sales contracts. Section 422.42(2) of the Iowa Code defines sales to include "conditional sales." A conditional sale is a sale in which the vendee receives the right to, the use of, the goods which are the subject matter of the sale, but the transfer of title to him or her is conditional on the performance of some condition by the vendee, usually the full payment of the purchase price.

Conditional sales in most cases are evidenced by the facts supporting the nature of the vendor's business, intent of the parties, and the facts supporting the control

over the tangible personal property by the vendee. A conditional sales contract would exist where: The vendee/lessee has total control over the property, is responsible for all losses or damages; the transfer of the property is complete except to title which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor's "lease" agreements, except in cases of default; and, the vendor has no intent of retaining control over the property except for purposes of selling or financing it for sale. In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

When a conditional sale exists, the tax is due on the full contract price at the time the contract is entered into. No further tax is due on the periodic payments. Interest and finance charges shall not be considered part of the selling price if they are separately stated and reasonable in amount and are, therefore, not subject to tax. State ex rel Turner v. Younker Bros. Inc., 210 N.W.2d, 550,562. See rule 15.1(422,423).

This rule is intended to implement sections 422.42(2), 422.42(3), 422.43, 423.1, 423.2, and 423.9 of the Code.

ITEM 6. Amend rule 17.11(422,423) by removing the comma after the word "private" in line 2, line 11, and line 14.

This rule is intended to implement section 422.45(8) of the Code.

ITEM 7. Amend chapter 17 by adding the following new rule:

730—17.16(422,423) Sale of a draft horse. The gross receipts from the sale of draft horses, when purchased for use and so used as a draft horse, shall not be subject to tax. For the purposes of this rule, horses commonly known as Clydesdale, Belgian, Shire, and Percheron will be considered draft horses. These breeds are used as a draft horse when they are used to pull a load. It is not required that the load be of a commercial nature. Such horses used to pull loads in shows or for the conveyance of persons or property are being so used as draft horses.

The effective date of this rule is for periods beginning on or after July 1, 1978.

This rule is intended to implement sections 422.45(5) and 423.4(4) of the Code 1977.

ITEM 8. Amend subrules 18.5(2) and 18.5(3) by deleting them in their entirety and inserting in lieu thereof:

18.5(2) The gross receipts from sales to the United States government, state of Iowa, or federal bureau, departments, or instrumentalities are not taxable.

18.5(3) Prior to July 1, 1978, the gross receipts from the sale of goods, wares, merchandise, or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, and all divisions, boards, commissions, agencies, or instrumentalities of the state, federal, county, or municipal government which derive disburseable funds from appropriations or allotments of funds raised by the levying and collecting of taxes, except sale of goods, wares, or merchandise sold by or in connection with the operation of any municipally-owned public utility engaged in selling gas, electricity, or heat to the general public, shall be exempt from sales and use tax.

REVENUE[730] (cont'd)

This tax exemption does not apply to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors, therefore, shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor.

18.5(4) Starting July 1, 1978, the gross receipts from the sale of goods, wares, merchandise, or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state Board of Regents, state Department of Social Services, state Department of Transportation, and all divisions, boards, commissions, agencies, or instrumentalities of the state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except the sale of goods, wares, or merchandise used by or in connection with the operation of any municipally-owned public utility engaged in selling gas, electricity, or heat to the general public, shall be exempt. Goods, wares, merchandise, or services used for public purposes and sold to any municipally-owned solid waste facility which sells all or part of its processed waste as a fuel to a municipally-owned public utility shall be exempt.

EXAMPLES:

a. A group of exempt instrumentalities, such as cities, issues bonds to finance the construction of a sewage disposal facility. X, a corporation, purchases the bonds but is not involved in the project in any other way. Since X does not enjoy the benefits of earnings of the solid waste facility, the exemption provided the instrumentalities is applicable.

b. Corporation Y, which is an instrumentality of the federal government and which Congress has allowed by statute to be subject to state sales and use taxes, purchases tangible personal property. Said purchases are subject to tax because the profits of the corporation are distributed to the stockholders thereof.

This tax exemption does not apply to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors, therefore, shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor. See chapter 19 of the rules.

This rule is intended to implement chapters 422 and 423 of the Code.

ITEM 9. Amend rule 18.24(422.23) to read as follows: 730—18.24(422,423) Hospitals, infirmaries and ~~sanatoriums~~. *sanitariums*. Hospitals, infirmaries, ~~sanatoriums~~ *sanitariums* and like institutions are engaged primarily in the business of rendering services. Such facilities shall not be subject to tax on their purchases of items of tangible personal property exempt under rules of chapter 20 when such items would be exempt if purchased by the individual and if the item is used generally for the tax exempt purpose.

Unless otherwise exempt from tax, hospitals, infirmaries, and ~~sanatoriums~~ *sanitariums* are deemed to be the purchasers for use or consumption of such tangible personal property that is used in furnishing services. *Modern Dairy Co. v. Department of Revenue, 1952, 413 ILL. 55, 108 N.E.2d 8.*

Such facilities shall not be liable for sales tax on their gross receipts from meals or other tangible personal

property, when such items are used in rendering hospital service.

This rule is intended to implement chapters 422 and 423 of the Code.

ITEM 10. Delete rule 18.28(422) in its entirety and insert in lieu thereof the following new rule: 730—18.28(422,423) Casual sales.

18.28(1) Casual sales occurring prior to, on, and subsequent to January 1, 1979. Casual sales of tangible personal property are exempt from the Iowa sales and use taxes. In order for a casual sale to qualify for exemption, two conditions must be present (a) the sale of tangible personal property must be of a nonrecurring nature, and (b) the seller, at the time of the sale, must not be engaged for profit in the business of selling tangible goods or services taxed under section 422.43.

If any of the conditions above are lacking, no casual sale occurs. Moreover, the casual sale exemption is limited to sales of tangible personal property, and casual enumerated taxable services do not qualify for the exemption. *KTVO, Inc. v. Bair, Equity No. 385 Linn County District Court, September 5, 1975.*

The casual sale exemption applies to (a) a sale of a non-recurring nature when the seller does not own or operate a retail business or (b) when a seller is making retail sales but makes a sale of a nonrecurring nature of tangible personal property outside the regular course of business and the sale so made is unrelated to the business. (*Order of State Board of Tax Review, Martin Development Corporation, Docket No. 136, December 1, 1976, incorporating by reference Order of Department of Revenue Hearing Officer in Docket No. 75-28-6A-A, July 9, 1976.*)

Sales of capital assets such as equipment, machinery, and furnishings which are not sold as inventory shall be deemed outside the regular course of business and the casual sales exemption shall apply as long as such sales are nonrecurring. This will include transactions exempted from state and federal income tax under §351 of the Internal Revenue Code.

Two separate selling events outside the regular course of business within a twelve-month period shall be considered nonrecurring. Three such separate selling events within a twelve-month period shall be considered as recurring. Tax shall only apply commencing with the third separate selling event. However, in the event that a sale event occurs consistently over a span of years, such sale is recurring and not casual, even though only one sales event occurs each year. *Des Moines Police Department v. Bair, Equity No. CE3-1591, Polk County District Court, November 1, 1976.*

EXAMPLE: Corporation A sells the company airplane at retail to B. At the time of this sale, Corporation A is engaged in the business for profit of selling clothes at retail. Assuming that the sale of the airplane constitutes a sale of a nonrecurring nature, there is a casual sale because the sale is outside the regular course of Corporation A's business.

EXAMPLE: Corporation C is engaged in the business of lending money secured by collateral. In the course of such business, Corporation C must repossess some collateral and sell it at retail for purposes of payment of loans. Such sales recur from time to time. Notwithstanding that Corporation C is presumably not engaged in the business of selling tangible goods or services for a profit, since the

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sales are recurring, there is no casual sale. *S & M Finance Co., Fort Dodge v. Iowa State Tax Commission, 1968, Iowa 162 N.W.2d 505.*

EXAMPLE: Corporation D rents a piece of equipment from E. E does not otherwise rent equipment and is not engaged in the business for profit of selling tangible goods or services taxed under section 422.43 of the Iowa Code. There is no casual sale qualifying for the exemption because the rendition of an otherwise taxable service, i.e. equipment rental, can never qualify as a casual sale of tangible personal property.

EXAMPLE: F, a farmer, does not sell tangible personal property at retail or engage in any taxable services. F liquidates the farming business and hires a professional auctioneer to auction off many items of tangible personal property. Assuming this liquidation event is casual, all items sold by the auctioneer at retail are casual sales notwithstanding that many different sales to numerous different buyers may occur. See rule 18.8(422) - auctioneers.

EXAMPLE: H, an insurance agency, holds a semiannual event to sell its used office furniture. Even though H does not regularly sell tangible personal property at retail, the casual sale exemption does not apply because the selling events are recurring. *Des Moines Police Department v. Bair, Equity No. CE3-1591, Polk County District Court, November 1, 1976.*

EXAMPLE: I, a corporation, has one sales event every year whereby it auctions off capital assets which it has no use for or desires to replace. This event has been a planned function of I and is conducted regularly and consistently over a span of years. Even though this sale event occurs only once a year, it is of a recurring nature because of the pattern of repetitiveness present and, therefore, the casual sale exemption would not apply, regardless of the number of items sold at such sale event each year.

EXAMPLE: J, a corporation engaged in the sale for resale of tangible personal property, sells three capital assets used in J's trade or business consisting of an airplane, a desk, and a computer. Each sale is made to different buyers and is unrelated to the other sales. The three sales occur in January, June, and October of the same year. The sale made in October consists of a desk. J has not established a pattern of recurring sales of capital assets prior to aforementioned sales of capital assets. Under these circumstances, the sale of the desk is not a casual sale, but the sales of the airplane and the computer are casual and exempt.

EXAMPLE: K, a sole proprietorship, engaged in selling automobile parts at retail, incorporated. The assets of K are sold to the new corporation in exchange for stock and the new corporation now engages in selling automobile parts at retail. The casual sale exemption would apply.

Above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

18.28(2) Special rules for casual sales occurring before January 1, 1979.

Bulk sales and the sale of all or substantially all of the tangible personal property held or used in a trade or business will qualify for the casual sales exemption as long as the two conditions set forth in the first paragraph of subrule 18.28(1) exist.

EXAMPLE: G, a hardware store, desires to liquidate the business. G had been selling tangible personal property at retail and was required to have an Iowa retail sales tax permit. G hires a professional auctioneer and all items of inventory, equipment, and fixtures are sold. The non-recurring sale of the equipment and fixtures qualify as casual sales since these items are not normally sold at retail in the regular course of G's business. Had G made a bulk sale, the casual sale exemption would still have been applicable. If G had conducted a series of sales over a period of time with the intent to liquidate the business, the sales would be considered nonrecurring and the casual sales exemption would apply.

18.28(3) Special rules for casual sales occurring on or after January 1, 1979. When retailers sell all or substantially all of the tangible personal property held or used in the course of the trade or business for which retailers are required to hold a sales tax permit, the casual sale exemption will apply to exempt such sales only when the following circumstances exist:

a. The trade or business must be transferred to another person, and

b. The transferee must engage in a similar trade or business. The trade or business transferred refers to the place where the business is located since each taxable retail business must have a sales tax permit at each location thereof. For purposes of this casual sale circumstance, it is irrelevant whether the retailer actually has a sales tax permit or not; rather, the relevant circumstance is that the retailer was required to have a sales tax permit.

EXAMPLE: L, a hardware store, desires to liquidate his business. L had been selling tangible personal property at retail and was required to have an Iowa retail sales tax permit. L hires a professional auctioneer and all items of inventory, equipment, and fixtures are sold to various purchasers. These items consist of all or substantially all of the tangible personal property held or used by L in the course of the business for which he or she was required to hold a sales tax permit. L, however, does not transfer the trade or business to anyone else. Under these -the casual sales exemption does not apply to the sale of the equipment and fixtures.

EXAMPLE: M, a sole proprietorship, incorporated. The assets of M are sold to the new corporation for stock. The new corporation engaged in a similar business. The casual sale exemption would apply.

EXAMPLE: N, an oil company, sells all or substantially all of the tangible personal property of ten company owned service stations which were held or used in the course of its business, for which N was required to hold a sales tax permit, by bulk sales or otherwise. The sales were made to O, P, and Q and occurred at different times during the same year, each sale being unrelated. N was required to have a sales tax permit for each service station. N transferred its trade or business (each service station) to O, P, and Q, each of whom will engage in the same business N did, i.e. operation of service stations. Even though under these circumstances, the sales by N are recurring, the casual sales exemption would apply since each trade or business was transferred to another person who did engage in a similar trade or business.

EXAMPLE: R, an operator of a restaurant, auctions off to various purchasers who are not engaged in the restaurant business all or substantially all of the tangible personal property held or used in the business for which R was

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required to hold a retail sales tax permit. R transfers the trade or business to S who then operates a restaurant at the same location R did. Even if S did not purchase any of the tangible personal property, under these circumstances, the casual sales exemption applies.

EXAMPLE: T, a restaurant, sells all of its tangible personal property held or used in the course of its business for which it was required to hold a sales tax permit to U. T also sells its trade or business to U. U engages in the business of operation of a dance hall and does not continue to operate the restaurant. The casual sales exemption will not apply.

The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

This rule is intended to implement sections 422.42(12), 422.45(6), and 423.4 of the Code.

ITEM 11. Amend chapter 18 by adding the following new rule:

730—18.36(422,423) True leases and purchases of tangible personal property by lessors.

18.36(1) True leases and purchases by lessors prior to, on, and subsequent to July 1, 1978. The definition of a sale specified in section 422.42(2) of the Code does not include leases. Hence, the exemption from tax on sales for resale is inapplicable to the purchase of tangible personal property for the purpose of leasing such property to others, but not for the purpose of reselling such property. However, even though the general rule is that the acquisition cost of tangible personal property purchased for the purpose of leasing it to others is subject to the Iowa sales or use tax, certain transactions are exempted from tax by statute. (See subrule 18.36(4).)

18.36(2) General. Tax is due on the lease or rental payments derived from the service of equipment rental. See rule 26.18(422, 423). Tax would also be due on the gross receipts received on the disposal of the tangible personal property providing no exemption exists. When property is purchased for the purpose of financing under a conditional sales contract, the property is purchased for resale, and the acquisition of the property is not subject to Iowa tax. (See rule 16.47(422,423).)

The gross receipts from the leasing of property for subletting purposes is exempt from tax as a resale of a service, but the lessee must collect tax on the gross receipts from subletting unless such subletting is otherwise exempt from tax.

a. Where a resident or nonresident lessor leases equipment to a resident or nonresident lessee and the lease contract is executed in Iowa and the equipment is delivered to the lessee in Iowa, the rental payments are subject to Iowa sales tax, even if the equipment is taken by the lessee to another state. *Williams Rentals, Inc. v. Tidwell*, 1974, Tenn., 516 S.W. 2d 614.

b. Where a nonresident lessor leases equipment to a resident or nonresident lessee and the lessee uses the equipment in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments, provided the lessor maintains a place of business in Iowa as provided in sections 423.1(6) and 423.9 of the Iowa Code. Whether the lease agreement is executed in Iowa or not is irrelevant. *State Tax Commission vs. General Trading Co.*, 322 U.S. 835, 64 S.Ct. 1028, 88 L.Ed 1309, 1944.

c. Where a lessee is the recipient of equipment rental services as defined in "a" and "b" above and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the Department of Revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee is the recipient of equipment rental services, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to section 423.10 of the Iowa Code, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside of Iowa, and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa and uses it in Iowa, Iowa use tax applies to rental payments, but see "g" below.

e. Where a resident or nonresident lessor purchases tangible personal property in Iowa for subsequent lease in or out of Iowa and takes delivery of the equipment in Iowa, the lessor's purchase is subject to Iowa sales tax. *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 1968, Iowa 160 N.W.2d 289.

f. When a resident or nonresident lessor purchases tangible personal property outside of Iowa for the purpose of leasing it in Iowa and the equipment is brought into Iowa and used by the resident or nonresident lessee in this state, the lessor is considered as having a "use" of the property in Iowa and Iowa use tax will apply to the lessor's purchase price of the property, regardless whether or not the lessor makes any physical use of the property in Iowa. *Union Oil Company of California v. State Board of Equalization*, 1963, 34 Cal. Rpts. 872, 386 P.2d 496.

g. If a sales or use tax has already been paid to another state on the purchase price of equipment prior to the use of that equipment in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if a sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given. *Henneford v. Silas Mason Co.*, 1937, 300 U.S.577, 57 S.Ct. 524, 81 L.Ed. 814.

18.36(3) Leases relating to vehicles subject to registration.

a. Vehicles as defined in section 321.1(4), (6), (8), (9), and (10) of the Iowa Code, (motor trucks, truck tractors, road tractors, trailers, and semitrailers), except when designed primarily for carrying persons, can be purchased free of use tax when purchased for lease and actually leased for use outside Iowa if the subsequent sole use in Iowa is in interstate commerce or interstate transportation.

b. Tangible personal property which by means of fabrication, compounding, or manufacturing becomes an integral part of vehicles as defined in 18.36(3)"a" when manufactured for lease and actually leased to a lessee for use outside the state of Iowa, can be purchased free of use tax provided the sole subsequent use of the vehicle in Iowa is in interstate commerce or interstate transportation. (Iowa purchases which would be subject to Iowa sales tax do not qualify for this exemption.) (See rule 33.7(423).)

The provisions of "a" and "b" are effective for periods

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beginning on January 1, 1973. Also see chapter 34 of the rules relating to vehicles subject to registration.

18.36(4) Special rules for lessors on or after July 1, 1978.

If tangible personal property is purchased for leasing, the purchase of the property is exempt from tax if the following conditions are met:

- a. The person (lessor) purchasing the property is regularly engaged in the business of leasing.
- b. The period of the lease is for more than one year, and
- c. The lease or rental receipts must be subject to tax under the service of equipment rental.

All three conditions must be met before the exemption applies.

If the exemption is properly claimed, it is lost when the property is made use of for any purpose other than leasing and the person claiming the exemption is liable for the tax based on the original purchase price. Tax paid on the leasing or rental payments would be allowed as a credit against the tax due on the purchase price.

In the following examples, assume, unless stated to the contrary, that the lease or rental receipts are subject to tax:

EXAMPLE: A restaurant makes a one time purchase of office furniture which it leases to an insurance company for a period of four years. The purchase of office furniture by the restaurant would be subject to tax because the restaurant is not regularly engaged in the business of leasing. However, if the restaurant established a pattern of regularly purchasing office furniture or other tangible personal property for lease, the exemption would apply.

EXAMPLE: A company purchases a computer which will be leased for a period of three years, at which time the computer is returned to the company. The sole business of the company is to purchase this one computer for lease. The purchase of the computer is exempt from tax because the company is regularly engaged in the business of leasing.

EXAMPLE: A leasing company purchases three lawn mowers which will be leased to individuals for periods of time less than one year. The purchase of the lawn mowers by the leasing company would be subject to tax because the periods of the leases are for less than one year.

EXAMPLE: A leasing company purchases a computer which will be leased for a period of three years. The purchase of the computer is exempt from tax because the period of the lease is for more than one year.

EXAMPLE: A leasing company buys a computer. The company claims the exemption from tax, but the company uses the computer in its own operations. Tax is due on the original purchase price and the leasing company is liable for the tax due.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After nine months, the machine is returned to the leasing company and then the machine is immediately re-leased without being used by the leasing company for any other purpose. The exemption would apply because it was properly claimed and nothing occurred to cause loss of the exemption.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After six months, the machine is returned and the leasing company then uses the machine in its own business. The

exemption would no longer apply and the leasing company would be liable for the tax based on the original purchase price. Credit would be allowed against the tax due on the purchase price for any tax paid on the lease or rental payments. Assume the leasing company paid \$2,000 for the copying machine and charged \$200 per month plus \$6 in tax per month. Since the machine is returned and the exemption is not applicable, the leasing company would owe \$60 on the \$2,000 acquisition cost. However, the leasing company collected \$36 (six months \times \$6) tax on the monthly rental charges. Allowing the credit for tax collected of \$36 against the total tax liability of \$60 leaves a net tax liability of \$24 owed by the leasing company.

EXAMPLE: A manufacturer and seller of office furniture also leases office furniture. The leases always run for a period longer than one year and the company usually has only two leases per year. The leasing operation only accounts for one percent of the company's total business. The company still qualifies for the exemption because it is regularly engaged in the business of leasing and the period of the lease is for more than one year.

EXAMPLE: A leasing company purchases an airplane from an aircraft dealer and leases it for a period of three years. The lease or rental payments are not taxed because of the exemption for transportation services. The leasing company would owe tax based on the acquisition cost because the lease or rental payments are not subject to tax under the service of equipment rental.

EXAMPLE: A leasing company purchases equipment and leases it to a lessee for a period of 18 months. For the first six months, the equipment is used by the lessee in making repairs to existing structures and the lease receipts are taxable. For the remainder of the lease period, the equipment is used in new construction of buildings and structures and the lease receipts are exempt from tax. The acquisition cost of the equipment is exempt because the exemption was properly claimed and was not subsequently lost by a use other than leasing.

EXAMPLE: A leasing company purchases from an Iowa retailer equipment on June 30, 1978, for the purpose of leasing it for a period of two years. The lease receipts will be taxable. The sales tax exemption on the acquisition cost to the lessor cannot be claimed because the sale occurred before July 1, 1978 and, at the time of the sale, no sales tax exemption applied to such acquisition cost. The exemption for acquisition cost should not be given a retroactive effect. *Jones v. Gordy*, 1935, 169 Md. 173, 180 AtL. 272.

EXAMPLE: A leasing company purchases equipment outside of Iowa on June 15, 1978. The lessee brings the equipment into Iowa on July 10, 1978, and uses it in Iowa. The lease period is two years and the lessee's use in Iowa is subject to Iowa use tax on the lease payments. Under these circumstances, the Iowa use tax exemption on the lessor's acquisition cost applies because it is the law in effect at the time of use in Iowa, not at the time of sale, which determines whether a use tax exemption applies. *City of Ames v. Iowa State Tax Commission*, 1955, 246 Iowa 1016, 71 N.W.2d 15; *Allis-Chalmers Mfg. Co. v. Iowa State Tax Commission*, 1958, 250 Iowa 193, 92 N.W.2d 129.

EXAMPLE: A leasing company purchases equipment not for resale and leases it to the lessee for a period of more

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than one year. After nine months, the equipment is returned to the leasing company which then sells the equipment. Such sale is not part of the regular course of the leasing company's business. The exemption, though properly claimed, is lost because, by reason of such sale, the leasing company made use of the property for a purpose other than leasing or renting. Had the equipment been returned to the leasing company on or after one year and one day from the commencement of the lease period, and the leasing company then sold the equipment outside the regular course of its business or used the equipment in its business, the exemption for acquisition cost would not be lost. Had the equipment been purchased for resale and leased prior to such resale, the acquisition cost to the leasing company would be exempt from tax. *Herman M. Brown Co. v. Johnson*, 1957, 248 Iowa 1143, 82 N.W.2d 134. If the equipment is traded in toward the purchase price of other equipment by the leasing company, or if the leasing company disposes of the equipment after it is fully depreciated, the exemption for acquisition cost is not lost. Where sale of equipment outside the regular course of business is made by the leasing company, see also rule 18.28(422,423) to determine whether the casual sale exemption applies to the receipts from such sale.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee. Assume that the exemption for acquisition cost of the equipment was properly claimed. Thereafter, the lessee makes an assignment of the lease. The exemption is not lost since the assignee stands in the same position as the original lessee and such an assignment does not change the nature of the original lease period. *Berg v. Ridgway*, 1966, 258 Iowa 640, 140 N.W.2d 95.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. The leasing company sells the lease contracts, as commercial paper, to others. The exemption for acquisition cost can still be claimed and such sales of lease contracts does not cause loss of the exemption.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lease can no longer be performed because the property is destroyed by an act of God. The acquisition cost exemption is not lost.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lessee is adjudged a bankrupt and the equipment is returned to the leasing company and is released without being used by the leasing company for any other purpose. The acquisition cost exemption is not lost since the leasing company makes no use for any purpose other than leasing or renting.

EXAMPLE: A leasing company purchases equipment which is leased to a lessee. The criteria for the acquisition cost exemption are present. The lessee then sublets the equipment to another for a period less than one year. The acquisition cost exemption is not lost.

This rule is intended to implement sections 422.42(2), 422.43, 422.45, 423.1 and 423.4 of the Code.

ITEM 12. Amend subrule 20.7(1) by inserting the following new paragraph after subparagraph "c".

For purposes of this rule, any drug prescribed in

writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, for human use or consumption, shall be deemed a prescription drug and exempt from tax.

This rule is intended to implement section 422.45(13) of the Code

ITEM 13. Rule 20.9(422,423), subrules 1 and 2, are amended as follows:

20.9(1) Prosthetic devices. Sales or rental of prosthetic devices designed, manufactured or adjusted to fit a particular individual shall be exempt from sales tax. *The exemption relating to the rental of prosthetic devices for human use became effective for tax periods beginning on or after July 1, 1978. Prior to that date, from the rental of prosthetic devices were subject to tax.*

20.9(2) Orthotic and orthopedic devices. Sales or rental of orthotic and orthopedic devices prescribed for human use which meet the provisions of 20.9(3) and 20.9(4) shall be exempt from sales tax. *The exemption relating to the rental of prosthetic, orthotic and orthopedic devices for human use became effective for tax periods beginning on or after July 1, 1978. Prior to that date, receipts from the rental of prosthetic, orthotic, and orthopedic devices were subject to tax.*

This rule is intended to implement sections 422.45(15) and 423.4(4) of the Code.

ITEM 14. Delete rule 26.8(422) in its entirety and in lieu thereof insert the following new rule:

730—26.8(422) Bank service charges. The gross receipts from banking services rendered, furnished, or performed by banks and charges to customers as herein provided are receipts which are subject to tax.

"Bank service charges" are charges assessed by a bank against the expense of maintaining a customer's demand deposit or checking account and which are calculated on the basis of a formula whereby the bank's cost of maintaining the account for the customer is determined. *United States v. First National Bank of Jackson*, 301 F.Supp. 1161 (1969).

The gross receipts from all bank services which relate to a depositor's checking account are the only services subject to tax under this rule. This would include money transfer fees and fees charged to depositors for stopping payment on checks, but would not include charges for overdrafts and returned item charges since these charges are considered penalties. The following is a nonexclusive list of bank services exempt from tax under this rule:

1. Charges for travelers or similar type checks, bank drafts or money orders when such checks have no relation to a customer's demand deposit account.
2. Safe deposit box fees for safe deposit box rentals.
3. Mortgage and loan fees.
4. Fees charged by trust departments for probating estates or administering trusts, for administering agency accounts, for administering pension and profit sharing plans, for serving as a stock transfer agent or registrar, for serving as a farm manager, and fees or commissions charged to customers for handling security transactions.
5. Real estate appraisal fees.
6. Fees collected for servicing real estate loans.
7. Exchange fees for all check exchanges, fees charged for contract collections and other collections not related to the maintenance of a checking account.
8. Special lock box handling charges.
9. Escrow agent fees.
10. Charges made to customers for handling and

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cashing coupons or certificates kept in the bank's possession (safe-keeping charges).

11. Finance charges including credit card charges.
12. Penalty charges (interest forfeiture) on early withdrawal from savings certificates.
13. Charges for purchasing or selling securities for customers.
14. Fees charged for collecting and transferring mortgage payments for a customer (real estate collection exchange).

See declaratory ruling issued to the Iowa Bankers Association by the Department of Revenue on October, 1978.

A "bank" is an institution empowered to do all banking business, such as power and right to issue negotiable notes, discount notes, and receive deposits, and "bank business" consists of receiving deposits payable on demand and buying and selling bills of exchange. Savings and loan associations and other institutions not commonly considered a bank are not considered a bank or in the bank business for the purposes of this rule.

This rule is intended to implement section 422.43 of the Code.

ITEM 15. Amend rule 26.28(422,423) as follows:

730—26.28(422) Machine operators. Persons engaged in the business of operating machines of all kinds, *belonging to other persons*, where a fee is charged, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Machine operator" is a person who exercises the privilege of managing, controlling and conducting a mechanical device or a combination of mechanical powers and devices used to perform some function and produce a certain effect or result.

This rule is intended to implement section 422.43 of the Code.

ITEM 16. Amend rule 26.35 by deleting it in its entirety and inserting in lieu thereof the following new rule:

730—26.35(422) Parking lots. Persons engaged in the business of operating a parking lot for a fee are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. For the purpose of this rule, a "parking lot" is an outdoor lot for parking vehicles where a charge is imposed, at the premises and on the vehicle's driver for the privilege of parking a vehicle for a fixed interval. *N.F. Sorg v. Iowa Department of Revenue, 269, N.W.2d 129 (1978). Iowa Supreme Court August 30, 1978.* Outdoor parking ramps are taxable under this rule.

This rule is intended to implement section 422.43 of the Iowa Code.

ITEM 17. Amend rule 26.42(422) by deleting it in its entirety and inserting in lieu thereof the following:

730—26.42(422) Storage warehousing, storage locker, and storage warehousing of raw agricultural products prior to and subsequent to July 1, 1978.

26.42(1) Storage warehouse and storage locker prior to July 1, 1978. Persons providing facilities for storing any type of tangible personal property are rendering, furnishing, or performing a service—the gross receipts from which are subject to tax. "Storage warehouses and storage lockers" shall include, but are not limited to, any facility provided for the purpose of storing household or building furnishings, foods, clothes, furs, luggage, automobiles, airplanes, raw agricultural products, or any

other tangible personal property. The rental of real property for use as a storage facility will not be subject to tax. (See "Warehouses," 26.49(422).)

26.42(2) Storage warehousing of raw agricultural products on and after July 1, 1978. The storage warehousing of raw agricultural products is subject to tax:

a. For the purpose of this rule, raw agricultural products include, but are not limited to, corn, beans, oats, milo, fruits, vegetables, animal semen, and like items that have not been subjected to any type of processing. Grain drying is not processing.

b. A "warehouse" is defined as an enclosure not readily accessible to the public, which would normally require a roof of some sort or some type of structure designed to afford protection to the products. Placing the products on the ground, even though surrounded by a fence, would not constitute a warehouse. *Lynch v. State, 1889, 89 Ala. 7 So. 829.*

26.42(3) For the purpose of this rule, the term "principal" shall refer to the person who ships raw agricultural products to the warehouse, or the person who is billed by the warehouse for service performed. The term "purchaser" shall refer to the person who purchases the goods from the principal.

26.42(4) Storage and delivery.

a. Raw agricultural products originating inside the state and delivered inside the state. Assuming the raw agricultural products originate in Iowa, are stored in an Iowa warehouse, and after storage, are delivered to a destination in Iowa; the tax is imposed on storage pursuant to section 422.43 of the Iowa Code. The interstate commerce exemption in Code sections 422.42(13) and 422.42(16) is not applicable.

b. Raw agricultural products originating outside the state and delivered inside the state. Assuming the raw agricultural products originate from a principal outside the state of Iowa, are sent to an Iowa warehouse, and after storage, are delivered to a destination in Iowa; tax on these warehouse services has been imposed since October 1, 1967, and there is no interstate commerce exemption, either under the United States Constitution, or under the statutory exemption for services performed on tangible personal property delivered into interstate commerce. The delivery, in this example, is clearly intrastate and the storage is subject to tax. *Iowa Movers and Warehousemen's Association v. Briggs, 1976, Iowa, 237 N.W. 2d 759.*

c. Raw agricultural products originating inside or outside of the state and shipped by the warehouse out of Iowa. Assuming the raw agricultural products originated either in Iowa or outside of Iowa, are shipped to an Iowa warehouse, and after storage, are sent by the warehouse directly out of Iowa or are given to a common carrier to be shipped out of Iowa, with destination being out of Iowa; the storage of the raw agricultural products would have been subject to Iowa tax from October 1, 1967, to May 8, 1969, and would be exempt after May 8, 1969, with the passage of Acts of the Sixty-third General Assembly, First Session, 1969, chapter 247, which enacted the interstate commerce exemption on services contained in Code sections 422.42(13) and 422.42(16).

d. Raw agricultural products originating either inside the state or outside the state and the principal or purchaser of the raw agricultural products picks them up at the Iowa warehouse. Assuming the raw agricultural products originated either in Iowa or out of Iowa, and are

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sent to an Iowa warehouse for storage, and upon the completion of the storage, the principal directs the warehousemen to allow the purchaser of the raw agricultural products to pick them up at the Iowa warehouse; the warehouse service would be subject to Iowa sales tax.

This example involves a situation similar to the one found in *Dodgen Industries, Inc., v. Iowa State Tax Commission*, 160 N.W.2d 289 (Ia 1968).

In that case, the court held that where the sale of goods is made by an Iowa principal, delivery of the goods physically made to the purchaser in Iowa constitutes an intrastate delivery, and the Iowa sales tax applies. Therefore, where physical delivery of goods in the form of transfer of possession is made from the Iowa warehouse directly to the principal or the purchaser, such direct delivery constitutes a delivery into intrastate commerce and the warehouse services performed on these goods would be subject to Iowa sales tax.

26.42(5) Other charges invoiced separately.

a. **Transportation.** The gross receipts from the sale, furnishing, or service of transportation services are exempt from the Iowa sales and use taxes under section 422.45(2) of the Iowa Code. This would include delivery charges which are itemized or shown separately on the customer's invoice.

b. **Handling.** A charge assessed for labor and equipment used to unload rail cars, trucks, or other vehicles, place the raw agricultural products in storage and remove from storage and load rail cars, trucks, or other vehicles. Handling charges billed after October 1, 1967, are exempt as transportation charges if they are itemized or shown separately on the customer's invoice. If handling charges are not ascertainable on the invoice, the total amount thereon is deemed to be storage and, therefore, taxable.

c. **Clerical.** A charge assessed for special services such as, but not limited to, compiling stock reports and statements, reporting serial numbers, physical checking of raw agricultural products, and reporting by special report of receipt transactions and shipments. If such charges are predominately related to storage, they are subject to tax. If clerical charges are predominately related to transportation activities, they are exempt from tax.

d. **Communications.** A charge assessed for postage, telephone, teletype, or telegram, and for other than normal communication at the request of the customer. If such charges are predominately related to storage, they are subject to tax. If communication charges are predominately related to transportation activities, they are exempt from tax.

e. **Car cleaning.** A charge assessed for cleaning rail cars of bracing and debris as required by the Interstate Commerce Commission. This is related to transportation activities and not subject to tax.

f. **Recoupering.** A charge assessed for handling merchandise damaged in transit so as to prevent further loss due to transit damage. This is predominately a charge for storage and is subject to tax unless it can be shown that it is predominately related to transportation.

g. **Dunnage and bracing.** A charge assessed for labor and material used in blocking and bracing in rail cars and trucks; blocking and bracing are necessary to protect or prevent movement of raw agricultural products while in transit. This charge is separate from the storage charge and is related to transportation. Therefore, it is not subject to tax.

h. **Extra labor.** A charge assessed for other-than-normal handling, such as shipping or receiving, during other-than-usual business hours. This charge is predominately related to transportation, and when separately listed from storage, is not subject to tax.

i. **Bonded custom charges.** A charge assessed in addition to regular rates for merchandise being held under United States Custom Bond. This is considered a tariff on foreign goods entering the country and is not subject to tax.

j. **Trash disposal.** A charge assessed for removal and disposal of waste dunnage or damaged material. This usually invoices transportation to landfill or other disposal area. This is considered a nontaxable enumerated service, and is not subject to tax.

k. **Cartage.** A charge assessed for transporting raw agricultural products from the storage facility to the customer's place of business or residence, or from the customer's place of business or residence to the storage facility, or from one place of business to another, or from one residence to another. This is a transportation charge and is not subject to tax.

l. **Crating.** This is a charge for packing and wrapping. If predominately related to storage, it is taxable; if it is predominately related to transportation, it is exempt.

m. **Canning and bagging.** A charge assessed for receiving raw agricultural products in bulk, unloading, and placing in containers, such as bottles, bags, cans, or drums. If this service is predominately related to storage, it is subject to tax. If this service is predominately related to transportation, it is exempt from tax.

n. **Unpacking.** This would be predominately related to storage and subject to tax, unless it can be shown to be predominately related to transportation.

26.42(6) Wrapping and packaging.

a. **Wrapping and packaging services performed on raw agricultural products** are taxable or exempt, depending upon whether the predominate service is storage or transportation. Iowa Movers and Warehousemen's Association, *supra*.

b. **Wrapping, packing, and packaging predominately for storage of merchandise** is subject to tax unless the interstate commerce exemption is applicable.

c. **Warehousemen who sell packing materials to their customers** are considered retailers of such materials and should collect sales tax. When the packaging materials are not billed separately to the customer, the warehousemen will be subject to the standards set forth in rule 18.31(422,423) regarding tangible personal property purchased for use in performing services.

26.42(7) Transit warehouses.

The department recognizes that the operations of transit warehouses present some administrative difficulties in the collection of sales taxes. Raw agricultural products are shipped to transit warehouses in bulk quantities and shipped to different locations at different times. Storage of raw agricultural products delivered in Iowa would be subject to tax, while storage of raw agricultural products placed into interstate commerce would be exempt from tax. Since it is extremely difficult under these circumstances to determine the cost of storage on raw agricultural products delivered in Iowa, the department will allow transit warehouses to compute tax on storage fees on the basis of a formula, the numerator of which is the quantity of raw agricultural products stored in the warehouse with intrastate delivery in Iowa, and the denominator of which is the total quantity of goods stored in the

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warehouse. This information, in most cases, must be supplied by principals storing goods in the warehouse. However, it is the responsibility of the warehouse to acquire the information needed to compute the Iowa sales tax under the formula. This information should be verified with the principal at least once every ninety days. Included in the numerator of the formula will be raw agricultural products picked up at an Iowa warehouse by a principal or purchaser, or raw agricultural products delivered to a principal or purchaser in Iowa even though the principal or purchaser may subsequently deliver the raw agricultural products to a common carrier for shipment outside Iowa.

26.42(8) Government storage.

Storage of raw agricultural products is exempt from tax if the storage contract is with a tax-certifying or tax-levying body of the state of Iowa or to any instrumentality of the state, county, or municipal government, or with the federal government or its instrumentalities.

Also refer to Iowa Movers and Warehousemen's Association v. Briggs, Equity No. 75910, Polk County District Court, May 8, 1974, and 237 N.W.2d 759.

This rule is intended to implement sections 422.43 and 423.2 of the Code.

ITEM 18. Amend rule 26.49(422) as follows:

730—26.49(422) Warehouses for the periods prior to July 1, 1978, the following rule was in effect. For periods after June 30, 1978, see rule 26.42(422). Persons engaged in the business of warehousing goods for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. A "warehouse" is a building or place adapted to the reception and storage of goods and merchandise and, in a more limited sense, is a building or place in which a warehouseman deposits the goods of others in the course of his business. A "warehouse" is defined as an enclosure not readily accessible to the public, which would normally require a roof of some sort or some type of structure designed to afford protection to the products. Placing the products on the ground, even though surrounded by a fence, would not constitute a warehouse. *Lynch v. State, 1889, 89 Ala. 18, 7 So. 829.*

Amend 26.49(2)"d" by adding after unnumbered paragraph three a new paragraph as follows:

Also refer to Iowa Movers and Warehousemen's Association v. Briggs, Equity No. 75910, Polk County District Court, May 8, 1974, and 237 N.W.2d 759.

This rule is intended to implement section 422.43 of the Code.

ITEM 19. Amend rule 32.2(422) as follows:

730—32.2(423) Sales tax exemptions applicable to use tax. When an exemption is allowed for sales tax purposes the same shall apply for use tax, except exemptions for casual sales of vehicles subject to registration for the exemptions provided in sections 422.45(4) and (6) as they relate to vehicles subject to registration.

This rule is intended to implement section 423.4(4) of the Code.

ITEM 20. Amend chapter 33 by adding the following new rule:

730—33.6(422,423) Taxable moment. Except where otherwise exempted by statute, a taxable moment shall occur when the purchaser of tangible personal property exercises any right to or power over tangible personal property incident to the ownership of that property

within Iowa. A taxable moment shall not occur while tangible personal property is used in the flow of interstate commerce.

33.6(1) Examples of taxable moment. The following are nonexclusive examples of taxable moment:

a. A person purchases a vehicle from a dealer. The vehicle is delivered by the dealer to the person in Iowa prior to the commencement of the taxpayer's use in interstate commerce. There is a taxable moment except where the purchaser is purchasing a vehicle defined in sections 321.1(4), (6), (8), (9), and (10) of the Code, for lease to a lessee for use outside the state of Iowa and the sole subsequent use in Iowa is in interstate commerce or interstate transportation. The exemption provided by the exception stated herein is retroactive to January 1, 1973.

b. A taxpayer purchases tangible personal property with the intent to use it in Iowa and first uses it in interstate commerce. Subsequently, the taxpayer moves the tangible personal property into Iowa with the intent to further use it in interstate commerce. There is a period of time when the taxpayer uses the tangible personal property in intrastate commerce after the property enters Iowa and prior to its consumption in interstate commerce. This constitutes a taxable moment and the property is subject to tax. See *Southern Pacific Co. v. Gallagher, 306 U.S.167 (1939)*; *Atchison, Topeka and Santa Fe R. Co. v. State Board of Equalization, 129 Cal.2d 411, 294 P.2d 181 (1956)*.

c. A taxpayer purchases fuel outside Iowa and stores the fuel in this state. Thereafter, the fuel is consumed in a instrumentality of interstate commerce. The storage of this fuel constitutes a taxable moment and it is subject to Iowa tax. See *United Airlines v. Mahin, 410 U.S. 623 (1973)* and *Chicago, Burlington & Quincy Railroad Co. v. Iowa State Tax Commission, 259 Iowa 178, 142 N.W.2d 409 (1966)*.

d. A corporation whose principal office is located within the taxing state, purchases an airplane from a dealer, outside the taxing state for use in Iowa. The plane was delivered to the corporation outside the taxing state and it is used 97 percent of the time in interstate commerce, including enplaning and deplaning of passengers in Iowa. The plane is subsequently flown into Iowa for installation of equipment which is not required by statute or indispensable to interstate flight. The installing of the equipment would constitute a taxable moment. See *In re Woods, 531 P.2d 1381 (Okla. 1975)*; *Aspen Airlines, Inc. v. Heckers, 499 P.2d 636 (Colo. App. 1972)*.

It is the position of the department that if the repairs or addition of equipment in example "d" were done in order to conform to state or federal regulations, the property has not left the flow of interstate commerce and no taxable moment has occurred, provided no other intrastate use of the airplane in Iowa occurs. *Louisville Title Agency for N.W. Ohio, Inc. v. Kosydar, 330 N.E.2d 899 (Ohio 1975)*; *Skelton v. Federal Express Corporation, 531 S.W.2d 941 (Arkansas 1976)*.

e. A corporation, whose principal office is located outside Iowa, conducts an interstate trucking business. While in route from Illinois to Nebraska, the truck stops for gas and the driver rests for several hours at the truck stop. The temporary stop would not constitute a taxable moment since the rest constitutes a break for the convenience of transportation. *Consolidated Coal Co. v. Porterfield, 25 Ohio St. 2d 154, 267 N.E.2d 304 (1972)*. *Champlin Realty Co. v. Town of Brattleboro, 260 U.S. 366, 43 S. Ct. 146, 67 L. Ed. 309 (1922)*.

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Nothing in this rule is intended to be inconsistent with the rulings of the Iowa Supreme Court in *Western Contracting Corp. v. Iowa State Tax Commission*, 1962, 253 Iowa 365, 112 N.W.2d 326, or *Morrison-Knudsen Co. v. State Tax Commission*, 1950, 242 Iowa 33, 44 N.W.2d 449.

This rule is intended to implement sections 422.42(3), 423.1(1), 423.2, 423.4, and 423.7 of the Code.

ITEM 21. Amend chapter 33 by adding the following new rule:

730—33.7(423) Property used to manufacture certain vehicles to be leased. Tangible personal property which by means of fabrication, compounding, or manufacturing becomes an integral part of vehicles defined in section 321.1, subsections 4, 6, 8, 9, and 10, Code 1977, are exempt from use tax provided the vehicle is manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Such vehicles are commonly known as "motor trucks, truck tractors, road tractors, trailers, and semitrailers."

The exemption provided in this rule shall not be applicable to any vehicle designed primarily for the purpose of carrying persons.

Should a vehicle, which has been manufactured for lease and actually leased to a lessee for use outside the state of Iowa, have a "taxable moment" as set forth in rule 730—33.6(422,423) subsequent to the lease, tax would be owing and computed at the rate of three percent of the cost of the materials used in the manufacture of the vehicle.

The tax shall be paid on or before the last day of the month following the close of the quarter in which a taxable moment took place.

Sales of tangible personal property used as described in this rule and otherwise subject to Iowa retail sales tax imposed pursuant to section 422.43, the Code, are not exempt from the sales tax under the provisions of this rule.

The exemption provided in this rule shall be retroactive to January 1, 1973.

This rule is intended to implement section 423.4 of the Code.

ITEM 22. Amend subrule 34.1(4) as follows:

34.1(4) Taxable moment. Except where otherwise exempted by statute, a taxable moment shall occur when the purchaser of tangible personal property exercises any right to or power over tangible personal property incident to the ownership of that property within Iowa. A taxable moment shall not occur while tangible personal property is used in the flow of interstate commerce. See rule 33.6(422,423) for application and examples of the taxable moment doctrine.

This rule is intended to implement sections 422.42, 422.43, 423.1(1), 423.2, 423.4(4), 423.7 of the Iowa Code.

ITEM 23. Amend rule 34.5(423) by adding the following new subrule:

34.5(8) Vehicles purchased for lease and used outside the state of Iowa. When certain vehicles defined as "motor trucks, truck tractors, road tractors, trailers, or semitrailers" in section 321.1, Code 1977, except vehicles designed primarily for carrying persons, are purchased for the purpose of leasing to a lessee for use outside the state of Iowa, and actually leased to a lessee for use outside

Iowa, such vehicles shall be exempt from use tax provided the subsequent sole use in Iowa is in interstate transportation or interstate commerce.

Should a "use", as defined in section 423.1(1), of the Code of Iowa occur in Iowa, subsequent to the leasing to a lessee outside the flow of interstate transportation or interstate commerce, use tax would be owing. The tax, if found to be due, shall be computed at the rate of three percent of the purchase price.

The tax, if due, shall be paid on or before the last day of the month following the close of the quarter in which a "use" in Iowa, outside the flow of interstate transportation or interstate commerce, did occur. The tax should be paid directly to the Iowa Department of Revenue.

This rule is intended to implement section 423.4 of the Code.

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of sections 217.6 and 17A.3 of the Code, proposes the adoption of the following rules relating to departmental organization and procedures.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319 on or before December 22, 1978.

Pursuant to the authority of sections 217.6 and 17A.3 of the Code, rules of the department of social services appearing in the IAC relating to departmental organization and procedures (chapter 1) is hereby amended.

Rule 770—1.2(17A) is amended by adding the following subrule:

1.2(8) *The office of appeals and fair hearings shall be the authorized representative to conduct hearings and appeals for the council on social services.*

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NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 239.18 of the Code, proposes the adoption of the following rules relating to aid to dependent children.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit,

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Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319 on or before December 22, 1978.

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 40) are hereby amended.

Subrule 40.7(5) is amended to read as follows:

40.7(5) After assistance has been approved, eligibility for continued assistance and the amount of the grant shall be determined effective as of the first of each month. Any change reported during a month shall be effective the first day of the next calendar month except:

a. *Payment shall be made for the month of report when the recipient timely reports, as defined in 40.7(4), a change and such change occurred prior to the month of report.*

b. *Payment is later in those cases where issuance of a timely notice, as required by the department's rule 7.6(217), necessitates postponement of the action to the first day of the second calendar month.*

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NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 239.18 of the Code, proposes the adoption of the following rules relating to aid to dependent children.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319 on or before December 22, 1978.

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 41) are hereby amended.

ITEM 1. Subrule 41.1(4) is amended to read as follows and new paragraph "c" added:

41.1(4) School attendance. A child is considered regularly attending school when carrying a program of supervised education or vocational training consistent with the standards of an appropriate educational or vocational education authority, either as a part of a regular school program or under special arrangements adapted to the individual child's educational needs. The child shall also be considered in regular attendance in months in which such child is not attending because of official school or training program vocation, illness, convalescence, or family emergency. *A child meets the definition of regular school attendance until such child has been officially dropped from the school rolls.*

c. *A child shall be considered a student regularly attending a school or training course:*

(1) *When such child is enrolled in and physically attending a full-time, as certified by the school or institute attended, program of study or training leading to a*

certificate, diploma, or degree; or

(2) *When such child is enrolled in and physically attending at least half-time, as certified by the school or institute attended, a program of study or training leading to a certificate, diploma, or degree and is regularly employed in or available for and actively seeking part-time employment; or*

(3) *When such child is enrolled in and physically attending at least half-time, as certified by the school or institute attended, a program of study or training leading to a certificate, diploma, or degree and is precluded from full-time attendance or part-time employment because of a verified physical handicap.*

ITEM 2. Subrule 41.1(5) is amended by striking paragraph "a", including the subparagraphs, and inserting the following in lieu thereof.

a. *A child shall be considered as deprived of parental support or care when the parent is out of the home in which the child lives under the following conditions. When these conditions exist, the parent may be absent for any reason, and such parent may have left only recently or some time previously.*

(1) *The nature of the absence is such as either to interrupt or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and*

(2) *The known or indefinite duration of the absence precludes relying on the parent to plan for the present support or care of the child.*

ITEM 3. Subrule 41.1(5), paragraph "c", is amended by adding new subparagraphs.

(4) *Any recipient participating in a vocational rehabilitation program under the department of public instruction, rehabilitation education and services branch, shall be considered incapacitated and no other determination of disability shall be made.*

(5) *A parent who is considered incapacitated shall be referred to the department of public instruction, rehabilitation education and services branch, for evaluation and services. Acceptance of these services is optional.*

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NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 239.18 of the Code, proposes the adoption of the following rules relating to aid to dependent children.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319 on or before December 22, 1978.

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 41) are hereby amended.

ITEM 1. Subrule 41.8(2), paragraph "d" and "j" are amended to read as follows and paragraph "e" is deleted and reserved for future use.

d. When ~~an~~ the unmarried mother payee under the age of eighteen is living with her a parent or parents who ~~are not on public assistance does not receive aid to dependent children, the needs of the unmarried mother shall not only the needs of the eligible children shall be included in the assistance grant. When the payee under the age of eighteen lives with a parent or parents who receives aid to dependent children, the needs of the payee, when eligible, shall be included in the same eligible group with the parent or parents. The needs of the eligible children for whom such payee is caretaker shall be considered a separate eligible group.~~

j. When a member of the eligible group is temporarily out of the home to receive nursing or ~~eustodial~~ care, payment for such care shall be made under rules established for such programs. The aid to dependent children grant shall be figured as if the person were in the home; the allowances, as determined by the chart for determining income in kind, for food, clothing, personal care and supplies, medicine chest supplies, and communications, subtracted; and the personal allowance for the ~~appropriate nursing care~~ program added.

ITEM 2. Subrule 41.8(3), paragraphs "a", "e", and "f" is amended to read as follows:

a. Property repair. When the department agrees that ~~expensive~~ repairs or improvements ~~exceeding \$10~~ are necessary to make or keep the recipient's homestead habitable, an allowance shall be ~~included in the grant approved. In order to be approved, the following conditions shall be met:~~

(1) *The homestead shall be owned in whole or in part by a member or members of the eligible group; or be owned in whole or in part by the parent with whom the child is living, when such parent would be a member of the eligible group, but the only reason the parent is excluded from the eligible group is because the parent receives supplemental security income benefits, or the parent refuses to co-operate with the department in the work incentive program, or the parent refuses to co-operate in establishing paternity or securing support payments.*

(2) *The recipient shall apply for available benefits from local housing programs before consideration is given to approving a special allowance. Any assistance from such programs shall be deducted from the special allowance.*

(3) *A special allowance for property repair shall be approved only when the recipient is able to and intends to continue living in the homestead property.*

(4) *When the shelter expense allowed in the recipient's assistance grant, as determined by the chart for determining income in kind, exceeds the recipients actual expense for mortgage or contract payments, taxes, and insurance, the recipient shall be required to contribute the difference toward the cost of the property repair for a period of two months.*

(5) *An allowance shall be approved only when the recipient's equity in the property is equal to or more than the total of the cost of the repair requested, the cost of any other repairs currently needed, and the amount of any previous special allowances for property repair of the current homestead.*

(6) *When repairs are needed as a result of fire, water damage, or windstorm, an allowance shall be approved only after the availability of insurance or other resources is determined.*

(7) *The recipient shall obtain a minimum of two competitive bids when the cost of the property repair will exceed \$200.*

(8) *When a loan is available to meet the cost of the property repair, the monthly installments for repayment of the loan (amortization payments) shall be approved.*

e. Child care. When a need is established for child care by reason of a caretaker's health, enforced absence from the home, or for some other emergent and compelling reason beyond the control of the child's caretaker, other than for reasons for employment, an allowance for child care not to exceed the going rate in the community shall be made. *The actual cost of the child care shall be allowed when the going rate in the community has not been determined. Need for the child care allowance shall be established only under the following conditions:*

(1) *When the condition or absence of the caretaker precludes adequate care of the child, and*

(2) *When there is an absence or inability of any other household member to care for the child.*

f. Personal services. An allowance for personal services may be ~~included in the assistance grant~~ allowed only when the physical or mental condition of the adult recipient prevents the performance of those tasks necessary to daily living or because of lack of skill needs assistance in household maintenance or management. No allowance shall be made for those services only indirectly related to the individual's welfare such as yard work, snow shoveling, errands, and seasonal or irregular housecleaning. No payment shall be made to a member of the eligible group to provide such services. When required, an allowance may be also be made to cover the employer's share of the social security tax. *The payment for personal services shall be the actual charge, not to exceed sixty-nine dollars a month for each member of the eligible group or a grant total of two hundred seventy-six dollars. Need for the personal services allowance shall be established only under the following conditions:*

(1) *The condition or absence of the adult recipient precludes such adult performing those tasks necessary to daily living, and*

(2) *There is an absence or inability of any other household member to perform the tasks.*

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ITEM 3. Subrule 41.8(5) is amended by adding the following paragraph:

c. *When the transportation between the foster care facility and the child's home is not included in the service payment to the foster home, the actual cost, not to exceed fifteen cents per mile, shall be allowed in the aid to dependent children grant.*

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 239.18 of the Code, proposes the adoption of the following rules relating to aid to dependent children.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319 on or before December 22, 1978.

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 43) are hereby amended.

ITEM 1. Subrule 43.1(2) is amended to read as follows:
43.1(2) The local office may require, as a condition for granting assistance, the appointment of a conservator or guardian when it is felt the parent or other adult is unable to manage the expenditure of assistance in the best interest of the dependent child or that it is necessary to protect the assistance funds provided for the support of the child.

a. 43.1(3) When the conservatorship or guardianship is for the parent or other adult, the conservator or guardian need not live with or be related to the dependent child.

b. When the conservatorship or guardianship is for the dependent child, the conservator or guardian shall be of the required relationship as specified in rule 41.5(239), and be living with the child.

ITEM 2. Subrule 43.2(1) and subrule 43.2(1), paragraph "c", are amended to read as follows:

43.2(1) Protective payments shall be made to a protective payee when a recipient has demonstrated severe difficulties in managing money, but has the capacity to learn, in a relatively short time, to manage funds in a reasonably adequate manner. Protective payments may shall be utilized in the following instances:

c. When a parent or other adult fails to co-operate in establishing paternity, or securing support without good cause or completing the assignment of support for a child for whom assistance is being applied or received.

ITEM 3. Subrule 43.2(6) is amended to read as follows:
43.2(6) A protective payment arrangement for persons specified in subrule 43.2(1)"a" shall be limited to twelve months two years.

ITEM 4. Subrule 43.2(7) and subrule 43.2(7), paragraph "c", are amended to read as follows:

43.2(7) *All protective payment arrangements shall be evaluated at least every three months to determine whether the protective payee is carrying out the responsibilities in the best interests of the child or children. Each In addition, a decision shall be made for each protective payment arrangement for persons specified in subrule 43.2(1)"a" shall be evaluated at least every three months. A decision shall be made whether to:*

c. Arrange for the appointment of a conservator or guardian when it appears that the recipient is unable to respond to the beneficial effects of the protective payment plan or progress is so slow as to require continuation of the plan beyond the time limitation on protective payments.

ITEM 5. Subrule 43.3(4) is amended to read as follows:

43.3(4) The local office shall send the vendor two copies of form F&CS 3157-5 PA-3157-5, Authorization for Vendor Payment. The vendor shall complete and return one copy of the form to the local office along with a copy of the billing, invoice or statement.

ITEM 6. Add the following new rule:
770-43.4(239) **Emergency Payee.** *Payments may be made to persons acting for relatives who have been receiving assistance for a child in emergency situations that deprive the child of the relatives' care. These payments shall be made for a temporary period, not to exceed three months, to allow time to make and implement plans for the child's continuing care and support.*

This rule is intended to implement section 239.5 of the Code.

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 239.18 of the Code, proposes the adoption of the following rules relating to aid to dependent children.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319 on or before December 22, 1978.

Pursuant to the authority of section 239.18 of the Code, the following rules are adopted.

TITLE IV AID TO DEPENDENT CHILDREN

CHAPTER 45 PAYMENT

770-45.1(239) **Address.** Assistance warrants shall be mailed to the recipient's current address or, upon request to a post-office box, bank, or to any other address for which the recipient has good reason for the request. Assistance warrants shall be mailed to the protective payee, conservator, or guardian (if applicable) in cases involving said persons.

770-45.2(239) **Return.** Assistance warrants are not forwardable. When they cannot be delivered by the post

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office, they shall be returned to either the local office or to the central office.

770—45.3(239) Held warrants. A warrant may be held by the department only in the following instances:

- 45.3(1)** The recipient's whereabouts is unknown.
45.3(2) The recipient is not in the home due to an emergency and it is not known who will be serving as emergency payee.

770—45.4(239) Underpayments. When the recipient receives a payment in an amount less than that for which the recipient was eligible due to an administrative error, a corrective payment shall be made.

45.4(1) An underpayment may be attributed to the local office as a result of one of the following circumstances:

- Misfiling or loss of forms or documents.
- Errors in typing or copying.
- Computer input errors.
- Mathematical errors.
- Failure to certify assistance in the correct amount when all essential information was available to the local office.
- Failure to make prompt revisions in grants following changes in policies requiring such changes as of a specific date.

45.4(2) Retroactive corrective payments shall be made only for the twelve months preceding the month in which the underpayment is discovered.

45.4(3) A retroactive corrective payment is:

- Exempt for consideration as income.
- Exempt from consideration as a resource in the month received and the following month.

770—45.5(230) Deceased or canceled cases. A retroactive corrective payment or a special allowance shall be made for deceased or canceled cases only when the payment was approved by the local office prior to the recipient's death or cancellation.

These rules are intended to implement section 239.5 of the Code.

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 249A.4 of the Code, proposes the adoption of the following rules relating to medical assistance.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319, on or before December 22, 1978.

Pursuant to the authority of section 249A.4 of the Code, rules of the department of social services appearing in the IAC relating to medical assistance (chapter 78) are hereby amended.

ITEM 1. Subrule 78.6(13) is amended to read as follows:

78.6(13) Actual laboratory cost, not to exceed ~~nine~~ *eleven* dollars, of frames. An invoice must accompany the claim.

ITEM 2. Subrule 78.7(4) is amended to read as follows:

78.7(4) Repairs or replacement of frames, lenses or component parts. A charge will be approved for service in addition to the actual laboratory cost of materials as evidenced by an invoice attached to the claim, providing no charge is made for any other professional service. Payment will be approved for replacement of glasses when the original glasses have been lost or damaged beyond repair. When the glasses no longer adequately correct the recipient's vision, payment will be approved for lenses only.

The actual laboratory cost, not to exceed ~~nine~~ *eleven* dollars, for frames. An invoice must accompany the claim.

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 218.4 of the Code, proposes the adoption of the following rules relating to the Iowa training school for girls.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319 on or before December 22, 1978.

Pursuant to the authority of section 218.4 of the Code, rules of the department of social services appearing in the IAC relating to the Iowa training school for girls (chapter 102) are hereby amended.

Subrule 102.1(1) is amended to read as follows:

102.1(1) Resident. Whenever "resident" is used in these rules, it shall mean a ~~girls child~~ *girls child* committed to the state director and placed in the Iowa training school for girls.

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 218.4 of the Code, proposes the adoption of the

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following rules relating to the Iowa training school for boys.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319 on or before December 22, 1978.

Pursuant to the authority of section 218.4 of the Code, rules of the department of social services appearing in the IAC relating to the Iowa training school for boys (chapter 103) is hereby amended.

Subrule 103.1(1) is amended to read as follows:

103.1(1) Resident. Whenever "resident" is used in these rules, it shall mean a *boy child* committed to the state director and placed in the Iowa training school for boys.

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 237A.12 of the Code, proposes the adoption of the following rules relating to child care center.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319 on or before December 22, 1978.

Pursuant to the authority of section 237A.12 of the Code, rules of the department of social services appearing in the IAC relating to child care centers (chapter 109) are hereby amended.

ITEM 1. Subrules 109.1(1), 109.1(2), 109.1(3), and 109.1(4) are amended to read as follows and new subrules 109.1(10) and 109.1(11) are added:

109.1(1) When a child care center is incorporated, a copy of ~~said articles of incorporation~~ *the Certificate of Incorporation and bylaws relating to the child care center* shall be submitted to the Iowa department of social services. In the event any amendments to the original ~~articles or~~ bylaws are ~~filed adopted~~, a copy of said amendments shall be transmitted to the department of social services. Incorporated centers ~~whose articles of incorporation are not definitive as to objectives and purposes~~, shall submit a statement of purpose ~~and objectives~~. *The plan and practices of operation shall be consistent with this statement.*

109.1(2) Unincorporated child care centers shall submit a written statement of ~~objectives purposes and purposes objectives~~ to the department of social services. The plan and practices of operation shall be consistent with this statement.

109.1(3) A nonprofit child care center shall have a governing board *which meets at least quarterly and has parent representation*. The board of operating body shall formulate *administrative* rules and policies within the objectives and purposes of the center.

109.1(4) The board or operating body of a nonprofit child care center shall provide for the operation of the center with staff which meets the minimum requirements established by the department of social services, ~~and shall provide for revenue for financing of the center, job descriptions, and shall develop personnel policies and benefits.~~

109.1(10) Requirements and procedures for mandatory reporting of suspected child abuse and neglect shall be posted where they can be read by parents and staff. Methods of identifying and reporting suspected child abuse and neglect shall be discussed with all staff.

109.1(11) Centers serving twelve or fewer children need not comply with 109.1(1), 109.1(3), 109.1(4), 109.1(5), and 109.1(8).

ITEM 2. Rule 770—109.2(237A, 66GA; Ch 144) is amended by striking the entire rule and inserting the following in lieu thereof.

770—109.2(237A, 66GA, Ch 144) Records. The child care center shall keep records and reports on the staff, including all those persons counted in the child/staff ratio; the children; center finances; and attendance.

109.2(1) Personnel records shall contain information on:

a. Employment application, including age, education, and previous work history.

b. A statement signed by each individual that there has been no conviction by any law of any state involving lascivious acts with a child, child neglect, or child abuse.

c. The status of any current treatment of alcoholism, drug abuse, or child abuse.

d. Physical examination report or religious exemption waiver.

e. Professional growth and development showing a minimum attendance of six hours of in-service training annually for each child care staff person, and minimum attendance of one staff person annually at a workshop, conference, or college course for outside professional training.

f. Salary and benefit records.

109.2(2) An individual file for each child shall be maintained in the center and shall contain:

a. Enrollment information including an emergency telephone number, next of kin, and who has permission to pick up the child.

b. Name, address, and telephone number of the child's regular source of health care.

c. Physical examination report which shall include allergies and restrictive conditions.

d. Signed immunization cards from the state department of health.

e. Parent permission for center-sponsored field visits.

f. Permission to secure emergency care and written plan of procedure signed by the parent.

g. Accident and incident reports for the child.

109.2(3) A separate file or listing of emergency telephone numbers for each child shall be maintained near the telephone.

109.2(4) A bookkeeping system shall be maintained, including necessary fiscal files.

109.2(5) Centers serving twelve or fewer children need not comply with 109.2(1)"a", 109.2(1)"e" and 109.2(4).

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ITEM 3. Subrules 109.3(1), 109.3(2), and 109.3(6) are amended to read as follows:

109.3(1) The child care center shall require each preschool age child to have an admission physical examination report signed by a licensed physician or designee in a clinic supervised by a licensed physician. The report shall include an immunization record and recommendations for immunization and booster shots to bring the record into compliance with state health department schedule that is in compliance with the Iowa state health department regulations. This written report shall include past health history, status of present health and recommendations for continued care when necessary. A new physical examination and report including immunization records shall be obtained annually. For the school age child, a copy of the most recent school physical examination and immunization record shall be acceptable.

Nothing in this rule shall be construed to require medical treatment or immunization for staff or the minor child of any person who is a member of a church or religious organization which is against medical treatment for disease. In such instances, an official statement from the organization shall be incorporated in the record.

109.3(2) The child care center shall have a written plan for medical emergencies and written consent of the parent or guardian for emergency care of the children and shall administer no medication including nonprescription drugs to any child without the parents or guardian's written authorization. Parent authorization for administering prescription drugs accompanied by a physician's direction shall be on file for each medication administered shall be on file for each prescribed medication. Each prescription drug shall be accompanied by a physician's/pharmacist's direction.

a. The director or administrator shall designate one person at one time in each assigned group to administer all medications. When medications are administered, it shall be recorded in the child's record and retained on file.

b. Medications shall be kept in a locked cabinet. The medicine cabinet key shall be in the possession of the person designated to administer medications. Medications requiring refrigeration shall be kept in a refrigerator stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. All medication shall be kept under lock and key, or stored in a refrigerator in a separate compartment with proper security.

109.3(6) Disaster, such as tornado, flood and fire, escape procedures shall be developed, posted, and practiced a minimum of quarterly monthly.

ITEM 4. Subrules 109.4(1), 109.4(2) and the paragraphs, and subrule 109.4(3), paragraphs "b" and "c" are amended to read as follows and new subrule 109.4(4) added.

109.4(1) The on site director or administrator shall:

109.4(2) Persons considered counted as part of the staff ratio, who have direct contact with the children including the director or administrator, must be involved with children in programming activities and shall meet the following requirements:

a. Demonstrate competence in working independently with children.

b. Be at least sixteen years of age, except the director who must be at least eighteen years old.

c. At least one staff member on duty shall have a valid certificate in standard first aid or documentation of equivalent training.

109.4(3)

b. Every child-occupied program and nap room shall have adult supervision present in the room. The minimum staff ratio shall be maintained in the center during nap time.

c. In transporting six seven or more preschool children, any child care vehicle shall have a minimum of two staff members or other adults present.

109.4(4) Centers serving twelve or fewer children need not comply with 109.4(1)"a" and 109.4(3)"b".

ITEM 5. Subrule 109.5(2), 109.5(5), 109.5(6) and 109.5(7) are amended to read as follows and new subrules added:

109.5(2) The child care center shall have thirty-five square feet per child in indoor area and of usable indoor floor space maintained in a clean and sanitary manner.

Usable floor spaces does not include space used by cribs. There shall be seventy-five square feet in outdoor recreation area per child using the space at any given time. Kitchens, bathrooms, and halls may not be counted in the square footage per child or used as regular program space. Stoves shall not be placed in the program area. For programs of two and one-half hours or less, outdoor space may be waived with the approval of the department providing there is suitable substitute space and equipment.

109.5(5) Premises used for outdoor play by the center shall be maintained in good condition through the year; shall be kept free from litter, rubbish, and flammable material at all times; shall be fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child; and shall provide both sunshine and shade areas. Hard surfaced areas, including gravel, shall not be used under anchored play equipment. The premises shall be kept free from litter, rubbish and flammable materials at all times; and shall be free from contamination by drainage or ponding of sewage, household waste, or storm water.

109.5(6) The facility and premises shall be maintained in a clean, sanitary, and safe manner.

109.5(6) 109.5(7) An area shall be provided properly and safely equipped for the use of infants and free from the intrusion of children over two years of age.

109.5(7) 109.5(8) One functioning toilet and lavatory for each fifteen children or fraction thereof, shall be provided in a room with natural or artificial ventilation. The facility shall be maintained in a clean and sanitary manner. Training seats or chairs shall be allowed for children under two years of age. For children six years of age and older, the ratio shall be one toilet and lavatory for each fifteen children. There shall be handwashing facilities with hot and cold running water for child care personnel in rooms where infants are housed or in an adjacent area.

109.5(9) A telephone in working order shall be available in the center with emergency phone numbers posted adjacent to the phone.

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ITEM 6. Subrules 109.6(2) through 109.6(5) are amended to read as follows:

109.6(2) Snack and meal time supervision. A staff member shall sit with the children at meal time and when snacks are served.

109.6(2) 109.6(3) Menu planning. Menus shall be planned at least one week in advance. Such menus shall be dated, posted, and kept on file at the center. Notations shall be made for special dietary needs of the children.

a. Menu planning shall include a variety of foods and varying textures, flavors, and colors that will provide children with many different food experiences, and help stimulate their interests in foods.

b. Each noon or evening meal menu shall include a bread or cereal type food, a meat or meat substitute, a vegetable, a ~~salad~~ fruit and milk. Children remaining at the center ~~longer than two hours~~ two hours or longer shall receive midmorning and midafternoon nourishment. Meals shall consist of a variety of foods each day based on the following:

Breakfast - ½ cup of milk; ¼ cup of juice or fruit; ½ slice of bread or ¼ cup of cereal or equivalent.

Lunch or supper - ½ cup of milk; 1 ounce (edible portion as served) of lean meat or an equivalent quantity of protein food; ¼ cup of vegetables; ¼ cup of fruit; ½ slice of bread or equivalent; ½ teaspoon of butter or fortified margarine.

109.6(3) 109.6(4) Feeding of children under two years of age.

a. All children under six months of age are to be held during feeding. No bottles are to be propped for children of any age.

b. Single service ready-to-feed formulas shall be used for children three months and younger unless otherwise ordered by a parent or physician.

c. Grade A pasteurized milk shall be used for children not on formula unless otherwise directed by a physician.

d. Special formulas prescribed by a physician shall be made available for the child who has a feeding problem.

e. ~~Aseptic techniques shall be used in the preparation of all milk mixtures and other foods prepared in the center.~~

f. e. Spoon feeding shall be adapted to the developmental need of the child.

109.6(4) 109.6(5) Food preparation and storage.

a. Sufficient refrigeration space shall be provided for holding perishable foods at a maximum of 40 degrees F., and thermometers shall be maintained in the refrigerator.

b. Kitchens shall be clean, well lighted and ventilated, and free of rodents and insects.

c. ~~Aseptic techniques shall be used in the preparation of all milk mixtures and other foods prepared in the center.~~

e. d. Food service personnel must maintain good personal hygiene and appropriately ~~contained~~ covered hair while preparing and serving food. Food shall not be handled by cooks with open sores or bandages on their hands unless wearing protective gloves.

d. e. A sufficient number of flytight, watertight garbage and rubbish containers shall be provided to properly store all material between collections. Containers must be maintained in a sanitary condition outside the building and away from the play area.

e. f. No chipped or cracked dishes shall be used.

f. g. Nondisposable dishes and silverware shall be properly cleaned by prerinsing or scraping, washing, sterilizing and air-drying. A dishwashing machine must provide a minimum of wash temperature of 140 degrees F. For hand dishwashing at least a two compartment sink or comparable facility must be available. Tableware shall be either rinsed in water of a minimum of 180 degrees F. or rinsed in a chemical sanitizing agent and air dried. No tableware shall be towel dried.

109.6(5) 109.6(6) Water supply.

a. Water for drinking and culinary purposes shall be from a public water system when available.

b. Private water supplies for drinking and culinary purposes shall be located and constructed in accordance with recommendation outlined in the Iowa state department of health bulletin, "Sanitary Standards for Water Wells." Water shall be of satisfactory bacteriological quality as shown by annual laboratory analysis. When the facility provides care for children under two years of age, a nitrate analysis shall also be obtained.

c. Drinking fountains shall be of the sanitary type with ~~guarded angular stream drinking fountain head~~ maintained in a clean and sanitary manner and shall be so constructed and located as to be accessible for use by the children at all times.

d. If drinking fountains are not available, individual single service cups shall be provided in a sanitary dispenser and used only once. When individual drinking cups are used they shall be kept in a sanitary manner.

ITEM 7. New subrule 109.7(2) is added, current subrule 109.7(2) is amended to read as follows, and subrules 109.7(3) and 109.7(4) are renumbered as 109.7(4) and 109.7(5) respectively.

109.7(2) Discipline.

a. Corporal punishment including spanking, shaking and slapping shall not be used.

b. Punishment which is humiliating or frightening shall not be used.

c. Punishment or threat of punishment shall not be associated with food, rest, illness or toilet training.

d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about such child or such child's family.

109.7(2) 109.7(3) Play material and equipment for both indoor and outdoor play shall be in sufficient variety and quantity to meet the interests and needs of the children. Equipment and materials shall be suitable for the age range served, and shall be selected to the type of supervision required. All equipment shall be kept in good condition, free of sharp, loose, or pointed parts, and if painted, only lead free paint shall be used. Permanent outdoor play equipment must be firmly anchored.

a. Materials and equipment shall be provided to encourage muscular activity, social and dramatic play, intellectual growth, creative expression and shall be of safe construction and materials that are easily cleaned. When a child is eating or participating in programming activities at the table there shall be eighteen or more inches of table space per child.

b. The program shall provide for a nap or quiet time for all preschool age children present at the center for five or more hours.

c. A clean washable individual cot, bed, or crib and bedding to cover both cot, bed or crib and child shall be

SOCIAL SERVICES[770] (cont'd)

provided for each child who naps. Mats may be substituted for physically handicapped children.

d. There shall be at least two feet of space on all sides of the cot, bed, or crib except where the cot, bed, or crib touches the wall.

ITEM 8. Subrule 109.7(3), renumbered as 109.7(4), paragraph "e" is amended to read as follows and new paragraph "g" added.

e. A crib shall be provided for each infant. Each crib shall be of sturdy construction with bars closely spaced so a child's head cannot be caught, and have clean, individual bedding, including sheets and blankets. *Crib railings shall be fully raised and secured when the child is in the crib.* Each mattress shall be completely and securely covered with waterproof material. When plastic materials are used, they shall be heavy, durable and not dangerous to children. A child shall not be placed directly on the waterproof cover. A crib shall be provided for the number of children present at any one time and shall be kept in a clean and sanitary manner and always cleaned and changed upon the change of an occupant. There shall be no restraining devices of any type used in cribs. The minimum spacing between cribs shall be two feet on any side except that which is next to the wall.

g. *Centers serving twelve or fewer children may substitute a play pen for a crib in 109.7(4)"e" providing all other requirements within that paragraph are met.*

ITEM 9. Subrule 109.8(2) is amended to read as follows:

109.8(2) Whenever a nonprofit child care center provides a day care for forty or more children, there shall be a policy advisory committee or its equivalent at the policy making level. Committee membership shall include not less than fifty percent parents or parent representatives, selected by the parents themselves in a democratic fashion. The committee shall perform productive functions which may include, but are not limited to:

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of sections 217.6 and 234.6 of the Code, proposes the adoption of the following rules relating to Social Security Act-Title XX implemented.

Consideration will be given to written data, views, or arguments thereto, received by the Act Unit, Department of Social Services, Lucas State Office Building, Des Moines, Iowa 50319 on or before December 22, 1978.

Pursuant to the authority of sections 217.6 and 234.6 of the Code, rules of the department of social services

appearing in the IAC relating to Social Security ACT-Title XX implemented (chapter 131) are hereby amended.

Subrule 131.1(2) is amended to read as follows:

131.1(2) Advisory committees may be established and selected by the district administrator. Persons interested in participating in such advisory committees may contact the district administrator. An advisory committee at the state level may be established. This committee shall consist of two members of each district level title XX committee. *Actual cost for lodging and meals for the state level advisory committee shall be paid by the department of social services. For a one day meeting only one overnight expenditure will be allowed. Expenses for travel will be reimbursed at \$.15 per mile.*

SOCIAL SERVICES DEPARTMENT[770]

ECONOMIC IMPACT STATEMENT

Pursuant to the authority of section 17A.4(1)"c" of the Code, an economic impact statement was requested on the proposed rules for sheltered work/work activity services (chapter 155) published in the IAB June 28, 1978.

In a survey of the fifty facilities now providing services to the department, it was found that the average cost for the eight accredited facilities was \$13.00 per month while the non-accredited facilities averaged \$12.30 per month. Thus, requiring accreditation of all facilities would probably result in a slight rise in costs. However, with such a small number now accredited, it is difficult to get a valid assessment of exactly how the costs will be affected.

Average cost of a survey in 1977 was \$397 per surveyor per day. Usually two surveyors work two to two and one-half days per facility, which would cost a facility approximately \$2,000. The approximate cost to the forty-two non-accredited facilities serving the department will be about \$84,000 for the site surveys.

The survey costs are the only costs that can be specifically identified. The cost of complying with the standards cannot be specifically identified except on an individual basis over a period of years. The non-accredited facilities will be at different places in the process. Not one of the facilities can validly estimate the cost of compliance without the survey process.

CONSERVATION COMMISSION[290]

The state conservation commission under the authority of sections 107.24 and 17A.4 of the Code, amends chapter 110, Inland Commercial Fishing in Iowa Administrative Code.

Rule 290—110.3(109) is amended to read as follows:
290—110.3(109) Methods and attendance. Inland commercial fishing will be limited to the use of trammel and gill nets at Lake Odessa, Sabula Lake, Red Rock Reservoir, and Roberts Creek Lake. Each net must be at least one hundred feet long with a mesh bar measure of three inches or more. Inland commercial fishing at Lost Island Lake will be limited to the use of seines at least 500 feet long with a mesh bar measure of two inches or more. All commercial fishing gear must be attended at least once during each forty-eight hour period, unless otherwise specified. Commercial fishing nets set in Red Rock Reservoir during the period from May 28 through September 6 shall be constantly attended or set at least three feet beneath the surface of the water. Commercial fishing nets not in use, fish boxes, and fish taken by commercial fishing shall be removed from public property at the close of each day's operation. Commercial

fishing nets, fish boxes and fish shall not be left at public boat landings unless such items are stored in a vehicle properly parked in a parking lot. Commercial fishing buoys shall be subject to the provisions of departmental rule chapter 31 which relates to navigation aids.

[Filed emergency 11/7/78, effective 11/7/78]

The notice of intended action relative to chapter 110 was published July 26, 1978. A public hearing was held August 30, 1978. No interested citizens attended and no written comments were received.

The Administrative Rules Review Committee in their action October 11, 1978, ruled that this amendment be filed under emergency action. A public hearing is unnecessary because of the previous public meeting.

Since the commission has complied with all of the rules of chapter 17A in formulating the rule, this amendment shall become effective immediately upon filing with the office of administrative rules co-ordinator as provided for in section 17A.5(2)"b" of the Code of Iowa 1977, as amended by Sixty-seventh General Assembly, S.F. 244.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

COMMERCE COMMISSION[250]

Pursuant to the authority of chapter 476, The Code 1977, and specifically Sections 476.1 and 476.2, Code 1977, the commission hereby adopts the following amendments to its rules in chapter 20 appearing in the Iowa Administrative Code.

ITEM 1. 20.1(3) is amended by adding definitions of the following words and terms:

n. "Power" means electric power measured in kilowatts.

o. "Energy" means electric energy measured in kilowatthours.

p. "Economy energy" is energy bought or sold in a transaction wherein the supplier's incremental cost is less than the buyer's decremental cost, and the differential in cost is shared in an equitable manner by the supplier and buyer.

q. "Firm power" is power and associated energy intended to be available at all times during the period covered by the commitment and includes required reserve capacity.

r. "Operational control energy" is energy supplied by a selling utility to a buying utility for the improvement of electric system operation.

s. "Operating reserve" is reserve generating capacity required to insure reliability of generation resources.

t. "Outage energy" is energy purchased during emergency or scheduled maintenance outages of generation or transmission facilities, or both.

u. "Participation power" means power and associated energy or energy which is purchased or sold from a specified unit or units on the basis that its availability is subject to prorate or other specified reduction if the units are not operated at full capacity.

v. "Peaking power" is power and associated energy intended to be available at all times during the commitment and which is anticipated to have low load factor use. The power includes required reserve capacity.

w. "Wheeling service" is the service provided by a utility in consenting to the use of its transmission facilities by another party for the purpose of scheduling delivery of power or energy, or both.

ITEM 2. 20.2(4) is amended by adding the following tariff content requirement:

y. If a sliding scale or automatic adjustment is applicable to regulated rates and charges of billed customers, the manner and method of such adjustment calculation shall be covered through a detailed explanation.

ITEM 3. 20.2(5) is amended by adding the following report to be filed with this commission:

h. A copy of the adjustment calculation shall be provided the commission prior to each billing cycle on the forms adopted by the commission.

ITEM 4. Amend 20.4(10)"i", lines 2 and 3, by striking the words "fuel cost" and inserting the words "sliding scale or automatic adjustment."

ITEM 5. Rescind 20.4(11) in its entirety and in lieu thereof insert the following:

20.4(11) *Customer billing information alternative.* A utility serving less than five thousand electric customers may provide the information in 20.4(10) on bill form or otherwise. If the utility elects not to provide the information

of 20.4(10), it shall advise the customer, on bill form or by bill insert, that such information can be obtained by contacting the utility's local office.

ITEM 6. Add a new rule.

250—20.9(476) *Electric energy sliding scale or automatic adjustment.* A rate regulated utility's sliding scale or automatic adjustment of the unit charge for electric energy shall be an energy clause.

20.9(1) *Applicability.* A rate regulated utility's sliding scale or automatic adjustment of electric utility energy rates shall recover from consumers only those costs which:

1. Are incurred in supplying energy;
2. Are beyond direct control of management;
3. Are subject to sudden important change in level;
4. Are an important factor in determining the total cost to serve; and,
5. Are readily, precisely, and continuously segregated in the accounts of the utility.

20.9(2) *Energy clause for rate regulated utility.* Prior to each billing cycle, a rate regulated utility shall determine the adjustment amount to be charged for each energy unit consumed under rates set by the commission.

a. The energy adjustment shall provide for change of the price per kilowatthour consumed under rates set by the commission based upon the formulas provided below. The calculation shall be:

$$E_0 = \frac{EC_0 + EC_1}{EQ_0 + EQ_1} + \frac{A_1}{EJ_0 + EJ_1} - B$$

E_0 is the energy adjustment charge to be used in the next customer billing cycle rounded on a consistent basis to either the nearest 0.01¢/kWh or 0.001¢/kWh. For deliveries at voltages higher than secondary line voltages, appropriate factors should be applied to the adjustment charge to recognize the lower losses associated with these deliveries.

EC_0 is the estimated expense for energy in the month during which E_0 will be used.

EC_1 is the estimated expense for energy in the month prior to the month of EC_0 .

EQ_0 is the estimated electric energy to be consumed or delivered and entered in accounts 440, 442, 444-7, including intrautility energy service as included in accounts 448 and 929 of the Uniform System of Accounts during the month in which E_0 will be used.

EQ_1 is the estimated electric energy to be consumed or delivered and entered in accounts 440, 442, 444-7, and including intrautility energy service as included in accounts 448 and 929 of the Uniform System of Accounts during the month prior to EQ_0 .

EJ_0 is the estimated electric energy to be consumed under rates set by the commission in the month during which the energy adjustment charge (E_0) will be used in bill calculations.

EJ_1 is the estimated electric energy to be consumed under rates set by the commission in the month prior to the month of EJ_0 .

A_1 is the beginning of the month energy cost adjustment account balance for the month of estimated consumption EJ_1 . This would be the most recent month's balance available from actual accounting data.

B is the amount of the electric energy cost included in the base rates of a utility's rate schedules.

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b. The estimated energy cost ($EC_0 + EC_1$) shall be the estimated cost associated with EQ_0 and EQ_1 determined as the cost of:

(1) Fossil and nuclear fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants. Fossil fuel shall include natural gas used for electric generation and the cost of fossil fuel transferred from account 151 to account 501 or 547 of the Uniform System of Accounts for Electric Utilities. Nuclear fuel shall be that shown in account 518 of the Uniform System of Accounts except that if account 518 contains any expense for fossil fuel which has already been included in the cost of fossil fuel, it shall be deducted from the account. (Paragraph C of account 518 includes the cost of other fuels used for ancillary steam facilities).

(2) The cost of steam purchased, or transferred from another department of the utility or from others under a joint facility operating agreement, for use in prime movers producing electric energy (accounts 503 and 521).

(3) A deduction shall be made of the expenses of producing steam, chargeable to others, to other utility departments under a joint operating agreement; or, for other electric accounts outside the steam generation group of accounts (accounts 504 and 522).

(4) The cost of water used for hydraulic power generation. Water cost shall be limited to items of account 536 of the Uniform System of Accounts. For pumped storage projects the energy cost of pumping is included. Pumping energy cost shall be determined from the applicable costs of subparagraphs of paragraph 20.9(2)"b".

(5) The energy costs paid for energy purchased under arrangements or contracts for firm power, operational control energy, outage energy, participation power, peaking power, and economy energy, less the energy revenues to be recovered from corresponding sales, where energy costs less energy revenues are those entered in account 555 of the Uniform System of Accounts.

c. The energy cost adjustment account balance (a) shall be the cumulative balance of any excess or deficiency which arises out of the difference between commission recognized energy cost recovery and the amount recovered through application of energy charges to consumption under rates set by the Commission. Each monthly entry (D) into the energy cost adjustment account shall be the dollar amount determined from solution of the following equation (with proper adjustment for those deliveries at high voltage which for billing purposes recognized the lower losses associated with the high voltage deliveries).

$$D = \left[C_2 \times J_2 \right] - \left[\frac{J_2}{Q_2} \times (E_2 + B) \right]$$

C_2 is the actual expense for energy, calculated as set forth in 20.9(2)"b", in the month prior to EJ_1 of 20.9(2)"a".

J_2 is the actual energy consumed in the prior month under rates set by the commission and recorded in accounts 440, 442 and 444-6 of the Uniform System of Accounts.

Q_2 is the actual total energy consumed or delivered in the prior month and recorded in accounts 440, 442, 444-7, and including intrautility energy service as included in accounts 448 and 929 of the Uniform System of Accounts.

E_2 is the energy adjustment charge used for billing in the prior month.

B is the amount of the electric energy cost included in the base rates of a utility's rate schedules.

d. Reserve account for nuclear generation. A rate regulated utility owning nuclear generation or purchasing energy under a participation power agreement on nuclear generation may establish a reserve account. The reserve account will spread the higher cost of energy used to replace that normally received from nuclear sources. A surcharge would be added to each kilowatthour from the nuclear source. The surcharges collected are credited to the reserve account. During an outage or reduced level of operation, replacement energy cost would be offset through debit to the reserve account. The debit would be based upon the cost differential between replacement energy cost and the average cost (including the surcharge) of energy from the nuclear capacity. A reserve account shall have credit and debit limitations equal in dollar amounts to the total cost differential for replacement energy during a normal refueling outage.

e. A rate regulated utility which proposes a new sliding scale or automatic adjustment clause of electric utility energy rates shall conform such clause with the rules. By January 1, 1980, all rate regulated electric utilities with tariffs that contain clauses providing sliding scale or automatic adjustment of electric energy rates shall conform such clauses with the rules. The change to conform with the rules may be accomplished as part of the next filing for a general change in rates or as a separate filing.

20.9(3) Optional energy clause for a rate regulated utility which does not own generation. A rate regulated utility which does not own generation may adopt the energy adjustment clause of this subrule in lieu of that set forth in subrule 20.9(2). Prior to each billing cycle it shall determine the adjustment amount to be charged for each energy unit consumed under rates set by the commission.

a. The energy adjustment charge shall provide for change of the price per kilowatthour consumed to equal the average cost per kilowatthour delivered by the utility's system. The calculation shall be:

$$E_0 = \frac{C_2 + C_3 + C_4}{Q_2 + Q_3 + Q_4} - B$$

E_0 is the energy adjustment charge to be used in the next customer billing cycle rounded on a consistent basis to either the nearest 0.01¢/kWh or 0.001¢/kWh. For deliveries at voltages higher than secondary line voltages, appropriate factors should be applied to the adjustment charge to recognize the lower losses associated with these deliveries.

C_2 , C_3 and C_4 are the charges by the wholesale suppliers as recorded in account 555 of the Uniform System of Accounts for the first three of the four months prior to the month in which E_0 will be used.

Q_2 , Q_3 and Q_4 are the total electric energy delivered by the utility system during each of the months in which the expenses C_2 , C_3 and C_4 were incurred.

B is the amount of the electric energy cost included in the base rates of a utility's rate schedules.

b. A utility purchasing its total electric energy requirements may establish an energy cost adjustment account for which the cumulative balance is the excess or deficiency arising from the difference between commission recognized energy cost recovery and the amount recovered through application of energy charges on jurisdictional consumption.

For a utility electing to use an energy cost adjustment account the calculation shall be:

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$$E_0 = \frac{C_2 + C_3 + C_4}{Q_2 + Q_3 + Q_4} + \frac{A_2}{J_2 + J_3 + J_4} - B$$

E_0 is the energy adjustment charge to be used in the next customer billing cycle rounded on a consistent basis to either the nearest 0.01¢/kWh or 0.001¢/kWh. For deliveries at voltages higher than secondary line voltages, appropriate factors should be applied to the adjustment charge to recognize the lower losses associated with these deliveries.

C_2 , C_3 and C_4 are the charges by the wholesale suppliers as recorded in account 555 of the Uniform System of Accounts for the first three of the four months prior to the month in which E_0 will be used.

Q_2 , Q_3 and Q_4 are the total electric energy delivered by the utility system during each of the months in which the expenses C_2 , C_3 and C_4 were incurred.

A_2 is the end of the month energy cost adjustment account balance for the month of consumption J_2 . This would be the most recent month's balance available from actual accounting data.

J_2 , J_3 and J_4 are electric energy consumed under rates set by the commission in the months corresponding to C_2 , C_3 and C_4 .

B is the amount of the electric energy cost included in the base rates of a utility's rate schedules.

c. The end of the month energy cost adjustment account balance (A) shall be the cumulative balance of any excess or deficiency which arises out of the difference between commission recognized energy cost recovery and the amount recovered through application of energy charges to consumption under rates set by the commission.

Each monthly entry (D) into the energy cost adjustment account shall be the dollar amount determined from solution of the following equation (with proper adjustment for those deliveries at high voltage which for billing purposes recognized the lower losses associated with the high voltage deliveries).

$$D = \left[C_2 \times \frac{J_2}{Q_2} \right] - \left[J_2 \times (E_2 + B) \right]$$

C_2 is the prior month charges by the wholesale suppliers as recorded in account 555 of the Uniform System of Accounts.

J_2 is the electric energy consumed under jurisdictional rates in the prior month.

Q_2 is the electric energy delivered by the utility system in the prior month.

E_2 is the energy adjustment charge used for billing in the prior month.

B is the amount of the electric energy cost included in the base rates of a utility's rate schedules.

d. A utility with special conditions may petition the commission for a waiver which would recognize its unique circumstances.

e. A utility which does not own generation and proposes a new sliding scale or automatic adjustment clause of electric utility rates shall conform such clause with the rules. By January 1, 1980, all electric utilities not owning generation with tariffs that contain clauses providing sliding scale or automatic adjustment of electric energy rates, shall conform such clauses with the rules. The change to conform with the rules may be accomplished as

part of the next filing for a general change in rates or as a separate filing.

[Filed 11/9/78, effective 1/3/79]

Notice of the commission's intended action to adopt rules relating to electric utility fuel or energy adjustment clauses was published on November 2, 1977, in the Iowa Administrative Code Supplement. In most pertinent respects, the rules adopted here are the same as those originally proposed. All significant modifications are identified as rules 20.4(11), 20.9(2)"a", and 20.9(2)"b", 20.9(6) and 20.9(7) discussed in our order adopting the rules. Other modifications of a minor nature are founded upon suggestions received in written comments and at the May 22, 1978 oral presentation.

These rules shall become effective thirty-five days after filing, indexing and publication. [January 3, 1979]

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

CONSERVATION COMMISSION[290]

Pursuant to the authority of section 107.24 and 111.4 of the Code, rules appearing in the Iowa Administrative Code, Division of Lands and Waters, chapter 33 relating to Docks are amended.

ITEM 1. Subrule 33.3(2) is amended to read as follows:
33.3(2) On "L" or "T" shaped docks, that portion of the "L" or "T" at right angles to the dock extending from shore shall not be greater than sixteen feet in length nor more than six feet in width. Permits for special purpose "L" or "T" docks may be granted by the commission only upon submission by the applicant of clear proof of need therefor. The width limitations contained in subrule 33.3(2) shall not apply to the docks constructed under permits issued prior to November 10, 1978.

ITEM 2. Subrule 33.3(8) is amended to read as follows:
33.3(8) All docks must be at least three feet wide and constructed of sound strong material approved by the commission for use in that area. On the inland lakes of the state, the width of the dock shall be limited to six feet maximum.

ITEM 3. Rule 33.3(111.6) is amended by adding the following new subrule:

33.3(9) That which is commonly called a "catwalk" shall be at least two feet wide and considered a part of the dock. Catwalks shall be limited in length as an "L" or "T" portion of the dock construction and used to provide access to not more than two vessels or mooring facilities.

[Filed 11/9/78, effective 1/3/79]

The notice of intended action was published in the Iowa Administrative Bulletin on July 26, 1978.

Minor changes were made in the rule pursuant to comments received.

This rule is intended to implement section 111.4 of the Code. These rules shall become effective thirty-five days

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after filing and publishing as provided in section 17A.5 of the Code. [January 3, 1979]

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

HEALTH DEPARTMENT[470]

Pursuant to the authority of chapter 17A and section 135C.14 of the Code of Iowa (1977), the Health Department adopts the following amendments to chapters 57, 58, 59, 60, 61, 63, and 64 of the rules for health care facilities.

ITEM 1. Subrule 470—57.3(1) is amended to read as follows:

57.3(1) Initial application and licensing. In order to obtain an initial residential care facility license, for a residential care facility which is currently licensed, the applicant must:

ITEM 2. Strike all of paragraph 470—57.3(1)“a” and insert in lieu thereof the following.

a. Meet all of the rules, regulations, and standards contained in chapters 57(135C) and 60(135C) of the Iowa Administrative Code;

ITEM 3. Paragraph 470—57.3(1)“c” is amended to read as follows:

c. Make application at least thirty days prior to the change of ownership of the facility on forms provided by the department;

ITEM 4. Strike all of paragraph 470—57.3(1)“g” and reletter the following paragraphs accordingly.

ITEM 5. Subrule 470—57.3(2) is amended by renumbering the subrule as 470—57.3(3) and inserting a new subrule 470—57.3(2) which reads as follows:

57.3(2) In order to obtain an initial residential care facility license for a facility not currently licensed as a residential care facility, the applicant must:

a. Meet all of the rules, regulations, and standards contained in chapters 57(135C) and 60(135C) of the Iowa Administrative Code. Exceptions noted in subrule 60.3(2) shall not apply;

b. Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;

c. Make application at least thirty days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the residential care facility, drawn on 8½ × 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door locations;

e. Submit a photograph of the front and side of the residential care facility;

f. Submit the statutory fee for a residential care facility license;

g. Comply with all other local statutes and ordinances in existence at the time of licensure;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

ITEM 6. Subrule 470—57.11(1) is amended to read as follows:

57.11(1) There shall be written personnel policies in facilities of more than fifteen beds to include hours of work and attendance at educational programs. (III)

ITEM 7. Paragraph 470—57.23(2)“b” is amended to read as follows:

b. Staffing for the activity program shall be provided on the minimum basis of forty-five minutes per licensed bed per week. Twenty-five percent of the staffing may be provided by qualified volunteers. This time shall be spent in working with the organized activity program. (II, III)

ITEM 8. Paragraph 470—57.24(3)“b” is amended to read as follows:

b. The committee shall not have access to the medical or financial records of the resident. (III)

ITEM 9. Strike all of paragraph 470—57.30(7)“f” and reletter the following paragraph accordingly.

ITEM 10. Subrule 470—58.3(1) is amended to read as follows:

58.3(1) Initial application and licensing. In order to obtain an initial intermediate care facility license for an intermediate care facility which is currently licensed, the applicant must:

ITEM 11. Strike all of paragraph 470—58.3(1)“a” and insert in lieu thereof the following:

a. Meet all of the rules, regulations, and standards contained in chapters 58(135C) and 61(135C) of the Iowa Administrative Code. Applicable exceptions found in rule 61.2(135C) shall apply based on the construction date of the facility.

ITEM 12. Paragraph 470—58.3(1)“c” is amended to read as follows:

c. Make application at least thirty days prior to the change of ownership of the facility on forms provided by the department;

ITEM 13. Strike all of paragraph 470—58.3(1)“g” and reletter the following paragraphs accordingly.

ITEM 14. Subrule 470—58.3(2) is amended by renumbering the subrule as 470—58.3(3) and inserting a new subrule 470—58.3(2) which reads as follows:

58.3(2) In order to obtain an initial intermediate care facility license for a facility not currently licensed as an intermediate care facility, the applicant must:

a. Meet all of the rules, regulations, and standards contained in chapters 58(135C) and 61(135C) of the Iowa Administrative Code. Exceptions noted in subrule 61.1(2) shall not apply;

b. Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;

c. Make application at least thirty days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the intermediate care facility, drawn on 8½ × 11 paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the intermediate care facility;

f. Submit the statutory fee for an intermediate care facility license;

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g. Comply with all other local statutes and ordinances in existence at the time of licensure;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

ITEM 15. Subrule 470—58.10(1) is amended to read as follows:

58.10(1) There shall be written personnel policies in facilities of more than fifteen beds to include hours of work and attendance at educational programs. (III)

ITEM 16. Paragraph 470—58.11(1)"f" is amended to read as follows:

f. Persons employed in all departments, except the nursing department, of an intermediate care facility shall be qualified through formal training or through prior experience to perform the type of work for which they have been employed. Prior experience means at least two hundred forty hours of full-time employment in a field related to their duties. Persons may be hired in laundry, housekeeping, activities and dietary without experience or training if the facility institutes a formal in-service training program to fit the job description in question and documents such as having taken place within thirty days after the initial hiring of such untrained employees.

ITEM 17. Subrule 470—58.14(8) is amended to read as follows:

58.14(8) Each resident shall be visited by or shall visit his or her physician at least twice a year. The year period shall be measured by the date of admission and is not to include preadmission physicals.

ITEM 18. Paragraph 470—58.26(2)"b" is amended to read as follows:

b. Staffing for the activity program shall be provided on the minimum basis of thirty-five minutes per licensed bed per week. Twenty-five percent of the staffing may be provided by qualified volunteers. This time shall be spent in working with the organized activity program. (II, III)

ITEM 19. Paragraph 470—58.27(3)"b" is amended to read as follows:

b. The committee shall not have access to the medical or financial records of the resident. (III)

ITEM 20. Subrule 470—59.3(1) is amended to read as follows:

59.3(1) Initial application and licensing. In order to obtain an initial skilled nursing facility license for a skilled nursing facility which is currently licensed, the applicant must:

Further amend subrule 59.3(1) by striking paragraph "a" and inserting in lieu thereof the following:

a. Meet all of the rules, regulations, and standards contained in chapters 59(135C) and 61(135C) of the Iowa Administrative Code. Applicable exceptions found in rule 61.2 shall apply based on the construction date of the facility;

ITEM 21. Paragraph 470—59.3(1)"c" is amended to read as follows:

c. Make application at least thirty days prior to the change of ownership of the facility on forms provided by the department;

ITEM 22. Further amend subrule 470—59.3(1) by striking all of paragraph "g" and relettering the following paragraphs accordingly.

ITEM 23. Subrule 470—59.3(2) is amended by renumbering the subrule as 470—59.3(3) and inserting a new subrule 470—59.3(2) which reads as follows:

59.3(2) In order to obtain an initial skilled nursing facility license for a facility not currently licensed as a skilled nursing facility, the applicant must:

a. Meet all of the rules, regulations, and standards contained in chapters 59(135C) and 61(135C) of the Iowa Administrative Code. Exceptions noted in subrule 61.1(2) shall not apply;

b. Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;

c. Make application at least thirty days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the skilled nursing facility, drawn on 8½ × 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the skilled nursing facility;

f. Submit the statutory fee for a skilled nursing facility license;

g. Comply with all other local statutes and ordinances in existence at the time of licensure;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

ITEM 24. Subrule 470—59.12(1) is amended to read as follows:

59.12(1) There shall be written personnel policies in facilities of more than fifteen beds to include hours of work and attendance at educational programs. (III)

ITEM 25. Paragraph 470—59.13(1)"f" is amended to read as follows:

f. Persons employed in all departments, except the nursing department, of a skilled nursing facility shall be qualified through formal training or through prior experience to perform the type of work for which they have been employed. Prior experience means at least two hundred forty hours of full-time employment in a field related to their duties. Persons may be hired in laundry, housekeeping, activities and dietary without experience or training if the facility institutes a formal in-service training program to fit the job description in question and documents such as having taken place within thirty days after the initial hiring of such untrained employees.

ITEM 26. Paragraph 470—59.31(2)"b" is amended to read as follows:

b. Staffing for the activity program shall be provided on the minimum basis of thirty-five minutes per licensed bed per week. Twenty-five percent of the staffing may be provided by qualified volunteers. This time shall be spent in working with the organized activity program. (II, III)

ITEM 27. Paragraph 470—59.32(3)"b" is amended to read as follows:

b. The committee shall not have access to the medical or financial records of the resident. (III)

ITEM 28. Add new paragraph 470—60.18(4)"d" which reads as follows:

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d. The temperature of the hot water to the resident lavatories, baths, and showers shall range between 110° F (43° C) and 120° F (49° C). (III)

ITEM 29. Paragraph 470—61.4(4)"d" is amended to read as follows:

d. The physical therapy room shall contain a lavatory or sink, a full length mirror, storage facilities, a work counter, and have a minimum floor area of one hundred eighty square feet (16.75 square meters). This room may be combined with the examination and treatment room, 61.4(4)"c" above, if the floor area is no less than one hundred eighty square feet (16.75 square meters); (Exception No. 3) (III)

ITEM 30. Subrule 470—61.9(16) is amended to read as follows:

61.9(16) The food service area shall not be less than eight square feet (0.74 square meters) per resident bed. (Exception No. 3) (III)

ITEM 31. Amend subrule 61.16(6), paragraph "b" by striking subparagraph (8) and inserting in lieu thereof the following:

(8) The temperature of the hot water to the resident lavatories, baths, and showers shall range between 110° F (43° C) and 120° F (49° C). (III)

ITEM 32. Subrule 470—63.3(1) is amended to read as follows:

63.3(1) Initial application and licensing. In order to obtain an initial residential care facility for the mentally retarded license for a residential care facility for the mentally retarded which is currently licensed, the applicant must:

ITEM 33. Amend subrule 63.3(1) by striking paragraph "a" and inserting in lieu thereof the following:

a. Meet all of the rules, regulations, and standards contained in chapters 63(135C) and 60(135C) of the Iowa Administrative Code;

ITEM 34. Amend subrule 63.3(1), paragraph "c" to read as follows:

c. Make application at least thirty days prior to the change of ownership of the facility on forms provided by the department;

ITEM 35. Further amend subrule 63.3(1) by striking paragraph "g" and relettering the following paragraphs accordingly.

ITEM 36. Subrule 470—63.3(2) is amended by renumbering the subrule as 470—63.3(3) and inserting a new subrule 470—63.3(2) which reads as follows:

63.3(2) In order to obtain an initial residential care facility for the mentally retarded license for a facility not currently licensed as a residential care facility for the mentally retarded, the applicant must:

a. Meet all of the rules, regulations, and standards contained in chapters 63(135C) and 60(135C) of the Iowa Administrative Code; Exceptions noted in 60.3(2) shall not apply;

b. Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;

c. Make application at least thirty days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the residential care facility for the mentally retarded, drawn on 8½ × 11

inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which the room will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the residential care facility for the mentally retarded;

f. Submit the statutory fee for a residential care facility for the mentally retarded;

g. Comply with all other local statutes and ordinances in existence at the time of licensure;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

ITEM 37. Subrule 470—63.9(1) is amended to read as follows:

63.9(1) There shall be written personnel policies in facilities of more than fifteen beds to include hours of work and attendance at educational programs. (III)

ITEM 38. Subrule 63.21(3), paragraph "b" is amended to read as follows:

b. Staffing for the activity program shall be provided on the minimum basis of forty-five minutes per licensed bed per week. Twenty-five percent of the staffing may be provided by qualified volunteers. This time shall be spent in working with the organized activity program. (II, III)

ITEM 39. Subrule 63.22(3), paragraph "b" is amended to read as follows:

b. The committee shall not have access to the medical or financial records of the resident. (III)

ITEM 40. Amend subrule 63.28(7) by striking all of paragraph "f" and relettering the following paragraph accordingly.

ITEM 41. Subrule 64.3(1) is amended to read as follows:

64.3(1) Initial application. In order to obtain an initial intermediate care facility for the mentally retarded license for an intermediate care facility for the mentally retarded which is currently licensed, the applicant must:

ITEM 42. Further amend subrule 64.3(1) by striking paragraph "f" and inserting in lieu thereof the following:

f. Meet all of the rules, regulations, and standards contained in chapters 64(135C) and 61(135C) of the Iowa Administrative Code;

ITEM 43. Subrule 64.3(1), paragraph "b" is amended to read as follows:

b. Make application at least thirty days prior to the change of ownership of the facility on forms provided by the department;

ITEM 44. Subrule 470—64.3(2) is amended by renumbering the subrule as 470—64.3(3) and inserting a new subrule 470—64.3(2) which reads as follows:

64.3(2) In order to obtain an initial intermediate care facility for the mentally retarded license for a facility not currently licensed as an intermediate care facility for the mentally retarded, the applicant must:

a. Meet all of the rules, regulations, and standards contained in chapters 64(135C) and 61(135C) of the Iowa Administrative Code; Exceptions noted in subrule 61.1(2) shall not apply;

b. Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;

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c. Make application at least thirty days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the intermediate care facility for the mentally retarded, drawn on 8½ × 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which the rooms will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the intermediate care facility for the mentally retarded;

f. Submit the statutory fee for an intermediate care facility for the mentally retarded;

g. Comply with federal, state, and local laws, codes, and regulations pertaining to health and safety, including procurement, dispensing, administration, safeguarding and disposal of medications and controlled substances; building, construction, maintenance and equipment standards; sanitation; communicable and reportable diseases; and postmortem procedures;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

ITEM 45. Subrule 64.35(3), paragraph "b" is amended to read as follows:

b. The committee shall not have access to the medical or financial records of the resident. (III)

[Filed 11/9/78, effective 1/3/79]

A notice of intended action was published in the Iowa Administrative Code Supplement dated June 28, 1978, that the Health Department intended to amend chapters 57-61, 63, and 64. These amendments are identical to those published in the IAC Supplement of June 28, 1978, with the exception of Item 5 under chapter 57, "Rules for Residential Care Facilities", in which the word "elevation" has been omitted from paragraph "e" and also with the exception of Item 1 under chapter 61, Minimum Physical Standards for Intermediate Care Facilities and Skilled Nursing Facilities, in which the words "space for the appropriate equipment" have been omitted.

These amendments are intended to further the accomplishment of the purposes of chapter 135C of the Code of Iowa (1977). These amendments shall become effective on January 3, 1979.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

LABOR, BUREAU OF[530]

Pursuant to the authority of section 88.5 of the Code, rule 530-10.21(88) appearing in IAC relating to Occupational Safety and Health Standards are hereby amended as follows:

Amend rule 530-10.21(88) by inserting at the end thereof the words:

"42 Fed. Reg. 37668 (July 22, 1977)
43 Fed. Reg. 11527 (March 17, 1978).
43 Fed. Reg. 19624 (May 5, 1978)
43 Fed. Reg. 27394 (June 23, 1978)
43 Fed. Reg. 27434 (June 23, 1978)
43 Fed. Reg. 28472 (June 30, 1978)
43 Fed. Reg. 28473 (June 30, 1978)
43 Fed. Reg. 31330 (July 21, 1978)
43 Fed. Reg. 35032 (August 8, 1978)"

[Filed 11/3/78, effective 1/10/79]

Notice of Intended Action was published in the September 20, 1978, Iowa Administrative Bulletin. This amendment shall become effective on January 10, 1979, pursuant to chapter 17A, Code of Iowa.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

LABOR, BUREAU OF[530]

Pursuant to the authority of section 88.5 of the Code, rule 530-26.1(88) appearing in IAC relating to Occupational Safety and Health Standards are hereby amended as follows:

Amend rule 530-26.1(88) by inserting at the end thereof the words:

"42 Fed. Reg. 37668 (July 22, 1977)"

[Filed 11/3/78, effective 1/10/79]

Notice of Intended Action was published in the September 20, 1978, Iowa Administrative Bulletin. This amendment shall become effective on January 10, 1979, pursuant to chapter 17A, Code of Iowa.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

LABOR, BUREAU OF[530]

Pursuant to the authority of section 88.5 of the Code, rule 530-28.1(88) appearing in IAC relating to Occupational Safety and Health Standards are hereby amended as follows:

Amend rule 530-28.1(88) by inserting at the end thereof the words:

"42 Fed. Reg. 37668 (July 22, 1977)
42 Fed. Reg. 38569 (July 29, 1977)
43 Fed. Reg. 27463 (June 23, 1978)
43 Fed. Reg. 28474 (June 30, 1978)
43 Fed. Reg. 35036 (August 8, 1978)"

[Filed 11/3/78, effective 1/10/79]

Notice of Intended Action was published in the September 20, 1978, Iowa Administrative Bulletin. This amendment shall become effective on January 10, 1979, pursuant to chapter 17A, Code of Iowa.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

LANDSCAPE ARCHITECTURAL EXAMINERS BOARD[540]

Pursuant to authority of sections 118A.5 and 17A.3 of the Code, the Board of Landscape Architectural Examiners Board hereby adopts two new chapters entitled Continuing Education and Disciplinary Action.

CHAPTER 3 CONTINUING EDUCATION

540—3.1(118A,17A) Definitions. As used in these rules of the board, the following definitions of words and terms shall apply.

1. "Hour" of continuing education means a clock-hour spent after December 31, 1978, by a registrant in actual attendance at and completion of an approved continuing education. One Continuing Education Unit (C.E.U.) offered by an accredited sponsor shall be considered equivalent to ten hours of continuing education.

2. "Approved program or activity" means a continuing education program activity meeting the standards set forth in these rules which has received advance approval by the board pursuant to these rules.

3. "Accredited sponsor" means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an accredited sponsor, all continuing education activities relating to the profession of landscape architecture of such person or organization may be deemed automatically approved.

540—3.2(118A,17A) Continuing education requirements.

3.2(1) Hours required. Beginning January 1, 1979, each registrant shall complete during each calendar year a minimum of twenty hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for registration renewal in each subsequent registration renewal year.

3.2(2) Continuing education compliance year. The continuing education compliance year shall extend from January 1 to December 31, during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent registration renewal year beginning July 1 and expiring June 30.

3.2(3) Sources of continuing education. Hours of continuing education credit may be obtained by attending or participating in a continuing education activity, either previously accredited by the board or which otherwise meets the requirement herein and is approved by the board pursuant to 540—3.4(118A,17A).

3.2(4) Carryover hours. No carryover credit to one or more succeeding calendar years will be allowed for completing more than twenty hours of approved continuing education during any one calendar year.

3.2(5) Financing. It is the responsibility of each registrant to finance his or her costs for continuing education.

540—3.3(118A,17A) Standards for approval. A continuing education activity shall be qualified for approval if the board determines the following:

3.3(1) Organized program. It constitutes an organized program of learning (including a workshop or symposium) which contributed directly to the professional competency of the registrant; and

3.3(2) Related to landscape architecture. It pertains to common subjects or other subject matter which integrally relate to the practice of landscape architecture; and

3.3(3) Conducted by qualified individuals. It is conducted by individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and is accompanied by a paper, manual or written outline which substantively pertains to the subject matter of the program.

3.3(4) Self-study. Except as may be allowed pursuant to 3.7(118A,17A) hereof, no registrant shall receive credit exceeding ten percent of the annual total required hours for self-study, video or sound-recorded programs, or correspondence work, or by other similar means as authorized by the board.

540—3.4(118A,17A) Approval of sponsors, programs, and activities.

3.4(1) Accreditation of sponsors. An organization or person not previously accredited by the board, which desires accreditation as a sponsor of courses, programs, or other continuing education activities, shall apply for accreditation to the board. Application for accreditation of a sponsor shall include the following information:

a. Education history of the sponsor for the preceding two years.

b. Approximate date of courses, programs, or other continuing education activities.

c. Landscape architecture subjects offered by the sponsor.

d. Total hours of instruction to be offered.

e. Names and qualifications of instructors.

The board may at any time re-evaluate an accredited sponsor. If the board finds there is basis for consideration of revocation of the accreditation of an accredited sponsor, the board shall give notice by ordinary mail to that sponsor of a hearing on such possible revocation at least thirty days prior to said hearing. The decision of the board after such hearing shall be final.

3.4(2) Registrant request for prior approval of activities. A registrant seeking credit for attendance and participation in a course, program or other continuing education activity which is to be conducted by a sponsor not accredited nor otherwise approved by the board shall apply for approval to the board at least ninety days in advance of the commencement of the activity. The board shall approve or deny such application in writing within sixty days of receipt of such application. Application for prior approval of a continuing education activity shall include the following information:

a. School, firm, organization or person conducting the activity.

b. Location of the activity.

c. Title of activity and description of activity.

d. Principal instructor(s).

e. Dates of activity.

f. Hours requested for approval.

3.4(3) Registrant request for post approval of activities. A registrant seeking credit for attendance and participation in a course, program, or other continuing education activity which was not conducted by an accredited sponsor nor otherwise approved shall submit to the board an application for credit within thirty days after completion of such activity. Within ninety days after receipt of such application the board shall advise the

LANDSCAPE ARCHITECTURAL EXAMINERS[540] (cont'd)

registrant in writing by ordinary mail whether the activity is approved and the number of hours allowed therefor. A registrant not complying with the requirements of this subparagraph may be denied credit for such activity. Application for post approval of a continuing education activity shall include the following information:

- a. School, firm, organization or person conducting the activity.
- b. Location of the activity.
- c. Title of activity and description of activity.
- d. Principal instructor(s).
- e. Dates of activity.
- f. Hours requested for approval.

540—3.5(118A,17A) Reporting.

3.5(1) Report of continuing education completed by registrant. Each registrant shall file with the board a signed report, under penalty of perjury, on forms provided by the board, setting forth the continuing education in which the registrant has participated and request approval of completed continuing education activities. The report shall be filed no later than February 1 of the year following the calendar year in which claimed continuing education hours were completed. The information in the report shall include:

- a. School, firm, organization or person conducting the course.
- b. Location of the course.
- c. Title of course and description of the content.
- d. Principal instructor(s).
- e. Dates attended.
- f. Hours claimed.

The board shall act to approve or deny the request for approval of completed continuing education activities. If a report of continuing education is denied, in whole or part, the registrant will be so notified and may be granted a period of time by the board in which to correct the deficiencies noted. The board may seek verification from registrant of information submitted by the registrant in his/her report of completed continuing education.

3.5(2) Information provided by sponsors. The board may request sponsors of continuing education programs to furnish an attendance list or any other information the board deems essential for administration of these continuing education rules.

540—3.6(118A,17A) Hearings. In the event of denial, in whole or part, of any application for approval of credit for continuing education activity, the registrant shall have the right, within twenty days after the sending of the notification of the denial by mail, to request a hearing by the board which shall be held within sixty days after receipt of the request for the hearing. The decision of the board shall be final.

540—3.7(118A,17A) Physical disability, illness, hardships or extenuating circumstances. The board may, in individual cases involving physical disability, illness, hardships or extenuating circumstances, grant waivers of the continuing education requirements for a period of time not to exceed one year. No waiver or extension of time shall be granted unless the registrant makes a written request to the board for such action.

540—3.8(118A,17A) Exemptions. A registrant will be considered to have complied with the foregoing continuing education requirements if during the continuing education compliance year:

1. The registrant served honorably on active duty in the military service.
2. The registrant was registered in another state or district having continuing education requirements for landscape architects substantially equal to the requirements of these rules and has met all requirements of that state or district.
3. The registrant was an employee working as a landscape architect and assigned to duty outside of the United States.
4. The registrant was not engaged in active practice as a landscape architect and will maintain inactive status during the period for which renewal is requested. No exemption shall be granted unless the registrant makes a written request to the board for such action.

540—3.9(118A,17A) Ground for denial of registration renewal. Failure of a registrant to complete the continuing education requirements as set forth in this chapter or failure to file a report of completed continuing education, or failure to submit a written request for waiver or exemption shall be grounds for the board to deny renewal of the registration.

CHAPTER 4 DISCIPLINARY ACTION

540—4.1(118A,17A) Acts or omissions which are grounds for revocation or suspension of a registration. The board shall consider the following acts or omissions to be grounds to revoke or suspend a certificate of registration or to impose other licensee discipline to a registrant:

1. Fraud in procuring a certificate of registration.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of landscape architecture or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession of the registrant that would affect his or her ability to practice professional landscape architecture. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representation as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Failure of a registrant to comply with the Acts of the Sixty-seventh General Assembly, 1977 session, chapter 95, section 9, subsections 2 and 3.
9. Failure of a registrant to complete continuing education requirements in accordance with chapter 3 of these rules.

540—4.2(118A,17A) Receipt of complaints. The board shall receive and review all complaints directed to the board which the board reasonably believes to indicate that a registrant may have committed an act that is cause for disciplinary action.

4.2(1) Complaints. Any person may file a complaint with the board charging that a registrant may have committed an act that is in violation of applicable law or rules. The complaint shall be written and signed by the complainant and accompanied with substantiating evidence indicating when, where, and how the registrant committed the violation. All complaints filed with the

LANDSCAPE ARCHITECTURAL EXAMINERS[540] (cont'd)

board shall be privileged and held confidential by all board members, peer review committee members and staff.

A person filing a complaint shall receive immunities in accordance with the Acts of the Sixty-seventh General Assembly, 1977 Session, chapter 95, section 8.

4.2(2) Board instigated complaints. Upon presentation of evidence by a board member, the board's staff, or other state agency, the board may determine that a complaint should be formulated to charge that a registrant may have committed an act that is in violation of applicable law or rules. A majority vote of the board approving a written motion stating the charges and containing evidence as to when, where, and how the violation might have occurred shall constitute a complaint to be processed by the complaint procedure.

540—4.3(118A,17A) Peer review committee. At any point during the complaint procedure or the investigatory procedure and prior to determining whether probable cause exists that a violation has occurred, the board may appoint a peer review committee to assist the board in reaching its decisions by conducting investigation(s) of the complaint.

4.3(1) Make up of the peer review committee. The committee shall consist of three or more registered landscape architects who are selected for their knowledge and experience in the particular aspect of landscape architecture involved in the complaint. The following are ineligible for membership:

- a. Members of the board.
- b. Close relatives of the alleged violator(s) or complainant.
- c. Individuals employed by the same firm or governmental unit as the alleged violator or complainant.

4.3(2) Authority. The committee's investigation shall be limited to interviewing of: Complainants, the alleged violator, individuals with knowledge of the alleged violation, and individuals with knowledge of the alleged violator's reputation in the community.

The committee may not hire legal counsel, investigators, secretarial help or any other assistants without written authorization from the board.

4.3(3) Compensation. Committee members may receive per diem compensation equal to that received by board members for performing board duties. Committee members may be paid reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties within a budget limitation established by the board.

4.3(4) Reports. The peer review committee shall submit a written report within a reasonable period of time that either recommends dismissal of the complaint, further investigation by board counsel, or facts supporting probable cause that a violation has occurred.

4.3(5) Dismissal of peer review committee. Upon satisfactory completion of the investigation by the committee, the committee is to be dismissed by the board.

The board may dismiss individual members of a committee or add new members at any time.

540—4.4(118A,17A) Complaint procedure.

4.4(1) The board shall meet to review all complaints received and determine, based on the information received from the complaint, if a violation may have occurred. If the board concludes that there was no violation, it shall take no further action, and notify the complainant(s) of the board's conclusion. If the board

concludes that a violation may have occurred, it shall initiate a disciplinary proceeding by filing a complaint against the registrant.

4.4(2) Complaint coding. Complaints shall be numbered by the board and referred to by number.

540—4.5(118A,17A) Investigatory procedure.

4.5(1) Notification. When notifying a registrant that it has initiated a disciplinary proceeding, the board shall indicate the general nature of the alleged violation and solicit information that may be helpful to the board in determining if there is substance to the allegation(s).

4.5(2) Appearance by the alleged violator. The board, if it considers it advisable, or if requested by the alleged violator, may give the registrant an opportunity of appearing before the board for an informal discussion of the facts and circumstance of the alleged violation.

4.5(3) Examination of information. The board shall carefully examine the information submitted by the alleged violator, or obtained at the informal discussion, before proceeding, and determine if in its opinion a violation has been correctly alleged or if additional information is required before it can make such a determination.

4.5(4) Determination of probable cause. The board shall review all information received and any additional information or report of investigation prepared by a peer review committee and determine if there is probable cause that a violation has occurred.

4.5(5) No probable cause. If the board determines that there is no probable cause it shall dismiss the complaint and so notify the alleged violator and the complainant.

4.5(6) Probable cause. If the board determines there is probable cause, the board shall:

- a. Seek an informal stipulation or settlement of matter, or
- b. Take appropriate action under the provisions of section 118A.19 of the Code, or
- c. Commence a contested case proceeding by serving on the alleged violator the notice required by section 118A.16 of the Code.

4.5(7) Conflict of interest. If the alleged violator shall be a member of the board, or if a member of the board has a possible conflict of interest in any disciplinary matter before the board, the member shall abstain from participation in any consideration of, or acts of the board upon the subject to the complaint.

4.5(8) Alleged violations committed by a person not registered by the board. When the board receives information or a complaint that indicates a person who is not registered with the board may have violated section 118A.18 of the Code, the board shall take appropriate steps to obtain the facts necessary to make a determination as to whether there is probable cause for taking further action.

If the facts indicate that a violation has occurred the board shall:

- a. Seek to settle the matter by obtaining an informal stipulation or consent order, or
- b. Seek to obtain an injunction as provided by section 118A.19 of the Code, or
- c. Certify the facts to the attorney general or a county attorney for appropriate action as provided by section 118A.18.

540—4.6(118A,17A) Informal stipulation or settlement.

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4.6(1) Informal stipulation or settlement negotiations may be initiated by either party to the controversy prior to or during a contested case proceeding. However, neither party is obligated to utilize this informal procedure to settle the controversy pursuant to such informal procedures. The board shall approve the terms of the stipulation or settlement and the terms shall be in writing for filing by the board.

4.6(2) Reserved.

540—4.7(118A,17A) Notice and hearing.

4.7(1) The board shall initiate all hearings in accordance with the provisions of section 118A.16 and chapter 17A of the Code. These rules are not intended to be an alternative to section 118A.16.

4.7(2) Hearing panel. The board shall designate the hearing panel which shall be comprised of three members of the board who hold a certificate of registration. The board shall also designate the presiding officer. The hearing panel, after receiving the evidence, shall make findings of fact and report to the full board. The hearing panel shall also make a recommendation for or against license discipline and a recommendation as to the sanction(s) that should be imposed. After reviewing the findings of fact of the panel, the board, by five-sevenths vote of the entire board, shall accept or reject the hearing panel's recommendations. If the board rejects the hearing panel's recommendations, it shall, by a five-sevenths vote of the entire board, make the final determination.

4.7(3) Adjournment of hearing. The hearing panel may adjourn a hearing for good cause, from time to time, upon request of either the party charged or legal counsel representing the board, for the purposes of a fair hearing.

4.7(4) Specialists represented on a hearing panel. If, in the opinion of a majority of the board, it is desirable to have a certain expertise represented on the hearing panel, it may obtain specialists within an area of practice of the landscape architecture profession to serve as members of the three member hearing panel. Specialists shall not have a conflict of interest in serving on the panel. If nonboard member specialists comprise the hearing panel the panel shall only make findings of fact and report to the board. Such findings shall not include any recommendation for or against licensee discipline. The full board, by majority vote, shall make all determinations based on the findings of fact reported to the board by the hearing panel.

4.7(5) Conflict of interest. Any board member who has a possible conflict of interest in any matter resulting in a hearing before the board shall be disqualified from serving on the hearing panel and from participating in the decision resulting from the hearing.

4.7(6) Immunities. The presiding officer may grant immunity to a witness as provided by the Acts of the Sixty-seventh General Assembly, 1977 session, chapter 95, section 6, subsection 3, only if all members of the hearing panel concur in the action. The official record of the hearing shall include the reasons for granting the immunity.

540—4.8(118A,17A) Disciplinary sanctions.

4.8(1) Section 118A.15 and the Acts of the Sixty-seventh General Assembly, 1977 session, chapter 95, section 3, subsection 2, gives the board authority to impose the following licensee disciplines:

a. Revoke a certificate of registration.

b. Suspend for a specified period a certificate of registration.

c. Revoke or suspend, for a specified period, the privilege of a registrant to engage in one or more areas of the practice of landscape architecture provided he or she has demonstrated a lack of qualifications to perform certain types of services for the public.

d. Impose a period of probation under specified conditions.

e. Require additional continuing education as a condition precedent to the termination of any suspension or reinstatement of a certificate or registration or suspended privilege.

f. Require a registrant to be re-examined as a condition precedent to the termination of any suspension or reinstatement of a certificate of registration or suspended privilege. For this purpose the board may use the Uniform National Examination or subjects thereof for purposes of re-examination.

g. Impose civil penalties, the amount of which shall be at the discretion of the board, but which shall not exceed \$1,000.00. Civil penalties may be imposed for:

(1) Violations of section 118A.15;

(2) Violations of the Acts of the Sixty-seventh General Assembly, 1977 session, chapter 95, section 9, subsections 2 and 3; and

(3) Failure to comply with an order of the board.

h. Issue citations and warnings respecting licensee behavior which is subject to the imposition of other sanctions by the board.

540—4.9(118A,17A) Publicizing disciplinary actions.

4.9(1) Publication of final decision. The board shall publish the final decisions of the board relating to disciplinary proceedings in such manner and for such periods of time as it deems appropriate to protect the public.

4.9(2) Advise other boards. The board shall advise other state boards of landscape architecture, who have issued a similar certificate of registration, or permit to an Iowa registrant, as to disciplinary action taken against a registrant if it reasonably believes that the cause for the disciplinary action may be considered as cause by the other state board(s) of landscape architecture.

540—4.10(118A,17A) Registrants duty to report.

4.10(1) Reporting acts or omissions committed by a registrant. The Acts of the Sixty-seventh General Assembly, 1977 session, chapter 95, section 9, subsection 2, requires a registrant of this board to report acts or omissions of other registrants that demonstrate a lack of qualifications which are necessary to assure the residents of this state a high standard of professional service. When a registrant observes an act or offense as set forth in section 118A.15, the registrant shall report the violation, in writing, to the board office setting forth the name of the registrant alleged to have committed the act or offense of any board rule violated, together with a copy of all material that evidences the violation.

4.10(2) Reporting judgments and settlements alleging malpractice. The Acts of the Sixty-seventh General Assembly, 1977 session, chapter 95, section 9, subsection 3, requires a registrant to report to the board every adverse judgment in a professional malpractice action he or she is a party, and every settlement of a claim against him or her alleging malpractice. When a registrant is a party to such an adverse judgment or

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settlement, he or she shall file a report, in writing, forwarded to the board's office, setting forth the name and address of the client, date claim was originally made, a brief description of the circumstances precipitating the claim and a copy of the judgment or settlement agreement resulting from the claim.

4.10(3) Timely reporting. The reports required by subrules 4.9(1) and 4.9(2) are to be forwarded to the board sixty days from the initial obtaining of the information required to be reported.

4.10(4) Failure to make reports. Upon obtaining information that a registrant failed to file a report required by rule 4.9(118A) within a sixty-day time the board shall initiate a disciplinary proceeding against the registrant who failed to make the required report.

[Filed 11/9/78, effective 1/3/79]

This chapter is intended to implement Acts of the Sixty-seventh General Assembly, chapter 95, section 4. Notice of intended action regarding these rules was published in the October 4, 1978, Iowa Administrative Bulletin. Modifications were made as recommended by the Administrative Rules Committee. These rules shall become effective January 3, 1979.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

NATURAL RESOURCES COUNCIL[580]

Pursuant to the authority of sections 455A.8 and 455A.33, as amended by Acts of the Sixty-seventh General Assembly, Ch 1160, and 17A.3 of the Code, the following rules are adopted:

ITEM 1. Strike all of rule 1.1(17A,84,109,455A,469) and insert in lieu thereof the following:
580—1.1(17A,84,109,455A,469) Description of Iowa natural resources council.

1.1(1) Programs administered. The Iowa natural resources council is a state agency that performs regulatory and planning functions pertaining to water resources management authorized by chapters 84, 109, 455A and 469 of the Iowa Code. The agency is divided into three divisions—water rights, flood plain, and planning and co-ordination. Agency regulatory functions concern the diversion, storage, or withdrawal of water; construction in or on any floodway or flood plain; establishment of encroachment limits; flood plain regulations and zoning ordinances relating to flood plain areas; construction of milldams and races; lowering of water levels behind dams; and matters relating to oil and gas. Agency planning functions concern the establishment and enforcement of a comprehensive state-wide plan for the control, utilization, and protection of the water resources of the state; representation of Iowa on comprehensive water resources planning groups; and the negotiation of terms for the operation of federally authorized water resource projects and the release of water therefrom.

1.1(2) Further information. Requests for information on agency programs or other communications should be addressed to the Director, Iowa Natural Resources Council, Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa 50319. The telephone number is (515) 281-5914.

This rule is intended to implement section 17A.3 of the Code.

ITEM 2. Strike all of rule 1.2(17A,84,109,455A,469) and insert in lieu thereof the following:
580—1.2(17A,84,109,455A,469) Organization.

1.2(1) Council. The council consists of nine voting members, who are electors of the state appointed by the governor with confirmation by two-thirds of the senate for overlapping six-year terms. The executive director of the department of environmental quality (or a designee) is an ex officio nonvoting member of the council.

1.2(2) Director. The director is the executive officer of the council charged with supervising the work of the agency in accordance with council rules, orders, and other directives.

1.2(3) Administrative officer. The administrative officer directs personnel and finance matters.

1.2(4) Water commissioner. The water commissioner supervises the water rights division, which administers the issuance of permits for the diversion, storage, or withdrawal of water, and negotiates for the operation of federally sponsored water resource projects in a manner consistent with state water policy.

1.2(5) Deputy director. The deputy director supervises the planning and co-ordination division, which administers the development and revision of the comprehensive state-wide plan for the control, utilization, and protection of the water resources of the state, and represents the agency on water resource planning groups.

1.2(6) Chief engineer. The chief engineer supervises the flood plain division, which administers the review of floodway and flood plain construction projects, milldam and race projects, and the lowering of water levels behind dams, proposes encroachment limits for council adoption, and enforces flood plain regulations and zoning ordinances relating to flood plain areas.

1.2(7) State geologist. The state geologist acts as the administrator of matters relating to oil and gas under chapter 84 of the Code.

This rule is intended to implement section 17A.3 of the Code.

ITEM 3. Amend rule 580—5.1(455A) by inserting the words "director or" before the word "council"; and by striking the words "five percent" and inserting in lieu thereof the words "three percent".

ITEM 4. Amend rule 580—5.2(455A) by inserting the words "director or" before the word "council".

ITEM 5. Amend rule 580—5.3(455A) by inserting the words "director or" before the word "council".

ITEM 6. Strike rule 580—5.4(455A) and insert in lieu thereof the following rule:

580—5.4(455A) Levees or dikes. Approval by the director or council for construction, operation, and maintenance of levees or dikes shall be required in the following instances.

5.4(1) Rural areas. In rural areas, any levees or dikes located on the flood plain or floodway of any stream or river draining more than ten square miles.

NATURAL RESOURCES[580] (cont'd)

5.4(2) Urban areas. In urban areas, any levee or dike along any river or stream draining more than two square miles.

ITEM 7. Strike rule 580—5.5(455A) and insert in lieu thereof the following rule:

580—5.5(455A) Waste or water treatment facilities. Approval by the director or council for construction, operation, and maintenance of waste or water treatment facilities shall be required in the following instances.

5.5(1) Rural areas. In rural areas, any such facilities on the flood plains or floodway of any river or stream draining more than ten square miles.

5.5(2) Urban areas. In urban areas, any such facilities on the flood plain or floodway of any river or stream draining more than two square miles.

ITEM 8. Strike rule 580—5.6(455A) and insert in lieu thereof the following:

580—5.6(455A) Sanitary landfills. Approval by the director or council for construction, operation, and maintenance of any sanitary landfill shall be required in the following instances.

5.6(1) Rural areas. In rural areas, any such landfill located on the flood plain or floodway of any stream draining more than ten square miles at the landfill site.

5.6(2) Urban areas. In urban areas, any such facilities located on the flood plain or floodway of any stream draining more than two square miles at the landfill site.

ITEM 9. Amend rule 580—5.7(455A) by inserting the words "director or" before the word "council"; by inserting the phrase "In urban areas," at the beginning of subrule 5.7(1); and by adding new subrule 5.7(4) as follows:

5.7(4) Rural areas.

a. In general. Except as provided in paragraph "b" of this subrule, buildings or building complexes in or on the flood plain or floodway of streams draining more than ten square miles.

b. Within two miles of urban areas. Buildings or building complexes in or on the flood plain or floodway of streams draining two or more square miles when such buildings or complexes are located within two miles of an urban area.

ITEM 10. Amend rule 580—5.8(455A) by inserting the words "director or" before the word "council"; by inserting the phrase "In rural areas," at the beginning of subrule 5.8(1); and by inserting the phrase "In urban areas," at the beginning of subrule 5.8(2).

ITEM 11. Amend rule 580—5.9(455A) by inserting the words "director or" before the word "council".

ITEM 12. Strike rule 580—5.10(455A) and insert in lieu thereof the following new rule as follows:

580—5.10(455A) Boat docks.

5.10(1) In general. Except as provided in subrule 5.10(2), director or council approval is required for all boat docks that are located in any stream other than a lake and do not float on the surface of the water.

5.10(2) Exempted nonfloating boat docks. Recreational nonfloating type boat docks located on the Mississippi and Missouri rivers, and the conservation pools of the Coralville, Rathbun, Red Rock, and Saylorville reservoirs shall not require director or council approval, provided a permit is obtained from the Iowa Conservation Commission.

ITEM 13. Amend rule 580—5.11(455A) by inserting the words "director or" before the word "council".

ITEM 14. Amend chapter 5 by adding rule 580—5.12(455A) a revised version of old rule 580—5.10(455A), which reads as follows:

580—5.12(455A) Miscellaneous structures, obstructions, or deposits not otherwise provided for in other rules. Approval by the director or, council for construction, operation, and maintenance of miscellaneous structures, obstructions, or deposits, shall be required in the following instances.

5.12(1) Rural areas. In rural areas, any miscellaneous structures, obstructions, or deposits on the floodway or flood plain of any river or stream draining more than ten square miles where such works obstruct more than three percent of the cross-sectional area of the stream channel at bankfull stage or where such works obstruct more than fifteen percent of the total cross-sectional area of the flood plain at any stage. In determining a fifteen percent obstruction of the flood plain, the concept of equal and opposite conveyances shall apply.

5.12(2) Urban areas. In urban areas, miscellaneous structures, obstructions, or deposits, on the floodway or flood plains of any river or stream draining more than two square miles.

ITEM 15. Reserve rules 580—5.13 to 580—5.29 under division I of chapter 5 for future use.

ITEM 16. Strike all of division II of chapter 5 (i.e., rules 5.12, 5.13 and 5.14) and insert in lieu thereof new division II (i.e., rules 5.30, 5.31, 5.32 and 5.33) as follows.

DIVISION II

RULES OF PRACTICE FOR PROCESSING
FLOOD PLAIN CONSTRUCTION PERMITS

580—5.30(455A) Procedure for issuance of council orders.

5.30(1) Council approval order or administrative waiver required. The construction, operation, and maintenance of flood plain and floodway projects project to regulation under division I of chapter 5 shall not occur until an application meeting the requirements of rule 580—5.31(455A) has been submitted and the director has issued a council order or administrative waiver approving the project. Flood plain and floodway projects initiated without necessary approval or in noncompliance with council order conditions shall be handled pursuant to the procedures of rule 580—11.5(109, 455A, 469).

5.30(2) Administrative waivers. Upon satisfactory proof to the director or council that a specific project is minor in scope, cannot cause an appreciable effect on flood flows, and is otherwise consistent with these rules, the director may issue an administrative waiver in lieu of a council order for projects subject to these rules. Temporary channel obstructions shall be a form of administrative waiver.

5.30(3) Investigations. Upon receipt of an application, agency staff shall make an investigation, in accordance with chapter 11 of these rules, of proposed flood plain and floodway projects for which an application is submitted. Submission of the application is deemed to constitute consent by the applicant for the agency staff and its agents to enter upon the land on which the proposed activity or project will be located for

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the sole purpose of collecting the data necessary to process the application, unless the applicant indicates to the contrary on the application.

5.30(4) Hearings. A hearing on the application for approval of a flood plain or floodway project shall be held at the discretion of the director or council to obtain evidence concerning the proposed project. Hearing procedures shall be in accordance with chapter 10 of these rules.

5.30(5) Council order conditions. The director or council may prescribe conditions in the council order or administrative waiver on a case-by-case basis, in addition to conditions imposed by division three and four of chapter 5, if such conditions are reasonably necessary to implement the provisions of chapters 109, 455A, or 469 of the Code and these rules.

5.30(6) Delivery of council order. Upon issuance of a council order, the director shall mail a copy thereof to the applicant and other parties of record. Certification of the date of mailing shall accompany the council order.

580—5.31(455A) Application requirements.

5.31(1) Application forms. Application for approval in or on any floodway or flood plain shall be made on forms provided by the agency and shall be mailed or delivered to the Director, Iowa Natural Resources Council, East 9th and Grand, Des Moines, Iowa 50319. Such application shall be submitted in duplicate by the persons or agents thereof which have or will have responsibility by reason of ownership, lease, or easement over the area where construction, operation, and maintenance is to take place. All applications submitted to the agency shall be signed and verified by the applicants or agents thereof.

5.31(2) Engineering plans and specifications. Duplicate sets of engineering plans shall be submitted to the director with the application. The engineering plans submitted shall contain information specified by the director or council, including engineering specifications, operating procedures and other information relating to environmental impacts. The engineering plans and other engineering information shall be certified by a registered professional engineer and, if applicable, a registered land surveyor, as required by chapter 114 of the Code.

5.31(3) Modification of application and engineering plans and specifications. The modification of applications or engineering plans and specifications that are necessary to bring a project into compliance with agency rules shall be allowed at the discretion of the director or council.

5.31(4) Application processing priority. Applications shall be processed in the order received by the agency, with the exception that projects may be processed immediately if there is imminent danger to the public health, welfare, or safety.

This rule is intended to implement section 455A.33 of the Code.

580—5.32(455A) Callup of application by council for consideration. The director shall furnish biweekly to the council a digest of flood plain and floodway project applications submitted to the agency within the previous two weeks. Copies of applications shall be provided to individual council members upon their request. Prior to the director's decision, any application may be called up for council consideration upon the request of three council members.

This rule is intended to implement section 455A.33 of the Code.

580—5.33(455A) Appeal of the director's decision to the council.

5.33(1) Notice of appeal. A council order issued by the director may be appealed to the council by an aggrieved party, who shall mail a written notice of appeal to the director within fifteen days of the date of mailing the council order. Copies of the notice of appeal and any accompanying documents shall also be mailed by the appellant to each party of the proceedings or whose rights are involved in the case. The notice of appeal shall contain the following:

- a. An identification of the action or decision being appealed;
- b. A concise and complete statement of the facts and laws relied upon by the appellant;
- c. The remedy sought;
- d. Certification setting forth the names of the parties served the notice of appeal, their addresses, and the date of mailing;
- e. Whether the appellant plans to submit briefs; and
- f. The signature of the appellant or a qualified representative of the appellant.

5.33(2) Pleadings. Appellants may submit to the council exceptions and briefs on contested issues. The appellant shall mail ten copies of such documents to the director for transmittal to the council within fifteen days of the date of mailing the notice of appeal. Other parties of record, other than the director, shall have twenty days from the date of mailing the appellant's exceptions or briefs to mail to the council ten copies of any exceptions or briefs in response thereto. The director may file a response by the time set by the council. Additional or rebuttal responses may be filed only upon permission first and notices upon motion of any party for good cause or upon its own motion. All parties submitting exceptions or briefs to the council shall also mail such documents to all other parties of record and shall certify to the council the names and addresses of the parties served and the date of mailing.

5.33(3) Decisions on appeal. The council will review the record on an appeal and affirm, modify, revoke, or take such other action as the circumstances call for. The council may direct a hearing on the entire matter or specified portions thereof, may decide the appeal forthwith upon the record already made, or make other disposition of the case. The council may also assign agency staff, other than staff assigned to the flood plain division, to assist the council in the appeal proceeding and such staff shall report directly to the council.

5.33(4) Stay or director's decision. The council or director may, in its discretion and on such terms, if any, as it deems proper order a stay of any or all approved construction activity, pending disposition of the appeal of the director's decision.

This rule is intended to implement section 455A.33 of the Code.

ITEM 17. Reserve rules 580—5.34(455A) to 580—5.49(455A) under division II of chapter 5 for future use.

ITEM 18. Amend rule 580—5.15(455A) by renumbering the rule as 580—5.50(455A); by renumbering all referrals in the text of the rule to various other subrules and paragraphs of that rule as appropriate to reflex the renumbering of the rule from 5.15 to 5.50; by

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striking the first sentence of the rule and inserting in lieu thereof the sentence "The following criteria shall apply to the construction, operation, and maintenance of bridges and road embankments."; and by striking the words "5.25(455A)" in subrule 5.15(6) (renumbered as 5.50(6)) and inserting in lieu thereof the words "5.60(455A)"; and by adding at the beginning of subrule 5.15(1) (renumbered as 5.50(1)) the following sentence: "For bridges and road embankments affecting floodway or flood plain areas having a low flood damage potential, the following criteria will apply."; and by striking the words "resources council" wherever it appears in subrule 5.15(8) (renumbered as 5.50(8)), and insert in lieu thereof the word "director".

ITEM 19. Amend rule 580—5.16(455A) by renumbering the rule as 580—5.51(455A); by striking the word "deposition" in subrule 5.16(5) (renumbered as 5.51(5)) and inserting in lieu thereof the word "disposition"; and by adding the following new subrule:

5.51(9) Soil erosion. The tillage of land along the reach of a straightened stream shall be prohibited or modified when necessary to hold soil erosion to reasonable limits. Zones of land in which tillage shall be prohibited along the straightened reach shall be set on a case-by-case basis with consideration given to topography, soil characteristics, current use, and other factors affecting propensity for soil erosion. The tillage prohibition shall be recorded by the director in the office of the appropriate county recorder and shall run with the land against the applicant and all successors in interest to the land subject to the prohibition.

ITEM 20. Amend rule 580—5.17(455A) by renumbering it as rule 580—5.52(455A); and by inserting the sentence "The following criteria shall apply to dams and impounding structures." at the beginning of the rule.

ITEM 21. Amend rule 580—5.18(455A) by renumbering it as rule 580—5.53(455A); and by striking the numbers "5.18(1)" "c" in 5.18(1) "g", (renumbered as 5.53(1) "g") and inserting in lieu thereof the numbers "5.53(1) "c".

ITEM 22. Amend rule 580—5.19 (455A) by renumbering it as rule 580—5.54(455A); by striking the number "5.19(1)" "a" in 5.19(1) "d" (renumbered as 5.54(1) "d") and inserting in lieu thereof the number "5.54(1) "a"; by inserting the words "director or" before the word "council" in subrule 5.19(1) "e" (renumbered as 5.54(1) "e"); by striking the number "5.19(1)" in 5.19(2) (renumbered as 5.54(4)) and inserting the number "5.54(1)" in lieu thereof; and by striking the phrase "as referred to in 2.20(455A)" at the end of the sentence in 5.19(3) "b" (renumbered as 5.54(3) "b").

ITEM 23. Amend rule 580—5.20(455A) by renumbering it as 580—5.55(455A); and by inserting the sentence "The following criteria shall apply to wastewater treatment facilities." at the beginning of the rule.

ITEM 24. Amend rule 580—5.21(455A) by renumbering it as rule 580—5.56(455A); and inserting the sentence "The following criteria shall apply to sanitary land fills." at the beginning of the rule.

ITEM 25. Amend rule 580—5.22(455A) by renumbering it as rule 580—5.57(455A); and by inserting the sentence "The following criteria shall apply to water supply treatment facilities." at the beginning of the rule.

ITEM 26. Amend rule 580—5.23(455A) by renumbering it as 580—5.58(455A); and inserting the sentence "The following criteria shall apply to stream protective devices." at the beginning of the rule.

ITEM 27. Amend rule 580—5.24(455A) by renumbering it as 580—5.59(455A); and by inserting the sentence "The following criteria shall apply to pipeline river and stream crossings." at the beginning of the sentence.

ITEM 28. Amend rule 580—5.25(455A) by renumbering it as rule 580—5.60(455A); by inserting the sentence "The following criteria shall apply to miscellaneous construction." at the beginning of the sentence; and by striking the number "5.25(1)" "a" in 5.25(2) "b" (renumbered as 5.60(2) "b") and inserting in lieu thereof the number "5.60(1)" "a".

ITEM 29. Reserve rules 580—5.61(455A) to 580—5.79(455A) under division III of chapter 5 for future use.

ITEM 30. Strike rules 580—5.26(455A), 580—5.27(455A) and 580—5.28(455A) and insert below the division IV caption in lieu thereof rule 580—5.80(455A), a revised version of old rule 580—5.27(455A), which reads as follows:

580—5.80(455) General conditions. Council orders and administrative waivers approving an activity or project shall be subject to the following conditions.

5.80(1) Maintenance. The applicant and any successor in interest to the real estate on which the project or activity is located shall be responsible for proper maintenance.

5.80(2) Responsibility. No legal or financial responsibility arising from the construction or maintenance of the approved works shall attach to the state of Iowa or the agency due to the issuance of an order or administrative waiver.

5.80(3) Lands. The applicant shall be responsible for obtaining such government licenses, permits, and approvals, and lands, easements, and rights-of-way which are required for the construction, operation, and maintenance of the authorized works.

5.80(4) Change in plans. No material change from the plans and specifications approved by the director or council shall be made unless authorized by the director or council.

5.80(5) Revocation of order or waiver. A council order or administrative waiver may be revoked if construction is not completed within the period of time specified in the council order or waiver.

5.80(6) Performance bond. A performance bond may be required when necessary to secure the construction, operation, and maintenance of approved projects and activities in a manner that does not create a hazard to the public's health, welfare, and safety. The amount and conditions of such bond shall be specified as special conditions in the council order.

ITEM 31. Amend rule 580—5.29(455A) by renumbering it as rule 580—5.81(455A); by inserting the words "director or" before the word "council" in each of the subrules; and by striking the number "5.29(2)" "b" in 5.29(3) (renumbered as 5.81(3)) and inserting in lieu thereof the number "5.81(2)" "b".

ITEM 32. Reserve rules 580—5.82(455A) to 580—5.94(455A) under division IV of chapter 5 for future use.

ITEM 33. Amend rule 580—5.30(455A) by

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renumbering it as rule 580—5.95(455A); and by striking the numbers "5.30(2)", "5.31(455A)" and "5.30(2)" in subrule 5.30(1) (renumbered as 5.95(1)), and insert in lieu thereof the numbers "5.95(2)", "5.96(455A)" and "5.95(2)", respectively.

ITEM 34. Amend rule 580—5.31(455A) by renumbering it as rule 580—5.96(455A); by striking the numbers "5.31(2)", "5.31(7)", and "5.31(7)" in subrule 5.31(3) (renumbered as 5.96(3)) and inserting in lieu thereof the numbers "5.96(2)", "5.96(7)", and "5.96(7)", respectively; by striking the number "5.31(7)" in 5.31(5)"a" (renumbered as 5.96(5)"a") and insert in lieu thereof the number "5.96(7)"; and by striking the number "5.31(7)" in 5.31(6) (renumbered as 5.96(6)) and inserting in lieu thereof the number "5.96(7)".

ITEM 35. Amend rule 580—5.32(455A) by renumbering it as rule 580—5.97(455A); and by striking the number "5.30(2)" in rule 5.32 (renumbered as 5.97) as number "5.95(2)".

ITEM 36. Strike all of rules 580—11.4(109, 455A, 469) and 580—11.5(109, 455A, 469) and insert in lieu thereof the following:

580—11.4(109, 455A, 469) Complaints of unauthorized activities.

11.4(1) Form of complaint. Complaints alleging unauthorized activities listed in subrule 11.1(7) shall be in writing, signed, and shall include, at the discretion of the council, director, or water commissioner, all or part of the following:

- a. Description of the alleged activity;
- b. Location of the activity by quarter section, township or tier, range, and county;
- c. Apparent ownership of the land on which the activity is occurring and the parties responsible for the activity;
- d. Alleged effect of the activity, including injuries that could be caused by the activity; and
- e. Additional information necessary to substantiate the unauthorized nature of the activity or that it is a public nuisance.

11.4(2) Disposition of complaint. Persons complaining of unauthorized activities and those persons responsible for initiation or completion of unauthorized activities shall be notified of the disposition made of complaints of alleged unauthorized activities.

580—11.5(109, 455A, 469) Procedures for processing unauthorized activities. Unauthorized activities listed in subrule 11.1(7), whether uncompleted or completed and in operation, shall be processed by the agency as follows:

11.5(1) Notice of violation. Persons on whose property the unauthorized activities have been undertaken or who are responsible for the unauthorized activities shall be notified that such activities are in violation of state law and may constitute a public nuisance and that they shall cease and desist from engaging in further unauthorized activities.

11.5(2) Submission of plans and application for review. The parties responsible for the unauthorized activities shall submit applications, plans, specifications, and other information as may be ordered by the council, director, or water commissioner.

11.5(3) Disposition. An unauthorized activity found to comply with state law and these rules may be permitted under such conditions as the council, director,

or water commissioner may prescribe. An unauthorized activity found not to comply with state law and these rules shall be brought into compliance or be removed or discontinued under such conditions as the council may specify. If the unauthorized activity is not brought into compliance, removed, or discontinued, then the council, director, or water commissioner may order the activity to be enjoined, or abated either as a public nuisance or pursuant to subrule 11.5(5).

11.5(4) Co-operation. When the council, director, or water commissioner does not receive co-operation from the responsible persons to bring the unauthorized activity into compliance with state law and these rules, the office of the attorney general or the appropriate county attorney shall be requested to take legal action necessary to obtain such compliance and co-operation.

11.5(5) Certain unauthorized activities detected within one year of construction. Any structure, dam, obstruction, deposit, or excavation, which is erected or made without a water permit or council order required by chapter 455 of the Code and brought to the attention of the agency within one year of cessation of construction, may be abated at the expense of the responsible party without proof that it is a public nuisance.

ITEM 37. Amend chapter 6 of the rules by adding the following new rule:

580—6.7(455A, 469) Performance bond. A performance bond may be required when necessary to secure the construction, operation, and maintenance of a dam or raceway and ancillary facility in a manner that does not create a hazard to the public's health, welfare, and safety. The amount and conditions of such bond shall be specified as special conditions in the council order.

ITEM 38. Amend chapter 2 by striking the number "5.19(1)" in subrule 2.1(24) and inserting in lieu thereof the number "5.54(1)".

ITEM 39. Amend chapter 2 by striking the number "5.31(2)" in subrule 2.1(28) and insert in lieu thereof the number "5.96(2)".

[Filed 11/13/78, effective 1/3/79]

On September 20, 1978, a notice of intended action that described the subjects and issues involved in this rule-making proceeding was published in the Iowa Administrative Bulletin. An opportunity for oral presentation on October 25, 1978, and for written comments by November 3, 1978, was also provided for in this notice. No oral or written comments were received by the public.

On November 6, 1978, the council adopted the above rules. The effective date of these rules is January 3, 1979.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 218.4 of the Code, the following rules are adopted.

TITLE II CORRECTIONS CHAPTER 22 MT. PLEASANT MEDIUM SECURITY FACILITY

770—22.1(218) Definitions.

22.1(1) Contraband. Whenever "contraband" is used in these rules, it shall mean weapons, alcohol, drugs, money, obscene materials as defined in section 725.1 paragraph (1) of the Iowa Code or materials advocating disruption of or injury to inmates, employees, programs, or physical facilities. It shall also include anything which is illegal to possess under the law, or materials which are used in the production of drugs or alcohol or used in conjunction with the taking of illicit drugs.

22.1(2) Immediate family. Whenever "immediate family" is used in these rules it shall mean spouse, child, parent, brother, sister, natural grandparents, and legal guardian.

770—22.2(218) Visiting.

22.2(1) All persons wishing to visit an inmate shall be placed on an approved visiting list prior to the visit. An application to visit shall be completed and returned to the institution.

a. Applicants shall be notified within thirty days as to approval or disapproval and reason given when disapproved.

b. All visitors must have proper identification. Signature cards may be required from visitors.

c. Visitors must be appropriately attired and not wear suggestive clothing styles.

d. Visitors shall not be admitted when the apparent odor or effect of alcohol or a narcotic drug is detected.

e. Periodic personal searches shall be made by institutional staff to prevent the entry of contraband. Criminal charges shall be filed against individuals who attempt the introduction of contraband. Refusal to comply with such search will be the basis for denial for visiting privileges.

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

g. Ex-felons shall have prior approval from the superintendent's office to visit.

22.2(2) Visitors fifteen years of age and younger shall be accompanied by an approved adult. Visitors sixteen and seventeen may visit alone when the parent or guardian writes for advance permission for the child to visit and provides a statement of approval.

22.2(3) Visiting hours are Wednesday, Friday, and Sunday from 9:00 a.m. to 4:00 p.m. and Tuesday, Thursday, and Saturday from 12:00 noon to 8:00 p.m. Residents will be permitted unrestricted visits through week, and on weekends and holidays they will be limited to three hours in length. An individual on the approved visiting list of one resident shall not concurrently be on the approved visiting list of another resident unless so approved by the superintendent or designee. Exceptions shall be made when immediate family members are confined. Persons approved for participation in group

volunteer program activities are not allowed to be on an individual resident's visiting list except with the permission of the superintendent or designee.

22.2(4) Visiting procedures may be temporarily modified in the following circumstances: Riot disturbance, fire, labor dispute, space restrictions, natural disaster or other extreme emergency.

22.2(5) Failure of any visitor to abide by these rules will result in the loss of visiting privileges for such visitor. Visiting privileges can be reinstated only at the discretion of the superintendent.

22.2(6) The institution will not be liable for injury to guests or visitors nor responsible for loss of personal property.

22.2(7) All visitors may be required to be photographed for future identification purposes.

770—22.3(218) Guests of institution.

22.3(1) Persons wishing to visit the institution shall give prior notice of their intended visit and receive approval for the visit. Such prior notice and approval may be waived for emergencies by a department head. Any guest shall agree to comply with the policy and procedures of the institution when signing in at the control center.

a. Guests attending institution activities must be at least ten years of age. Persons under eighteen years of age shall be accompanied by a responsible adult. No adult shall have in charge more than four children.

b. Female guests shall be escorted by a staff member.

22.3(2) Persons outside of the institution shall be allowed personal contact with a resident only when it serves the best interests of such resident as determined by the superintendent.

a. All contact with residents shall be absent of any encouragement, support or suggestion of activity which would bring disorder to the institution. Any person that encourages a resident to ignore institutional regulations shall be expelled from the institution.

b. Legal papers are the only items that can be given to or taken from a resident without approval from a department head.

c. Interruption by a guest of institutional programs which are part of the rehabilitation of the resident shall be kept to a minimum.

d. Any person who has personal involvement with a resident of an intimate nature or gives the appearance of being overly familiar beyond any therapeutic goal may be excluded from the institution at the discretion of the superintendent.

22.3(3) Guests shall be properly attired and not wear suggestive clothing.

22.3(4) Periodic personal searches shall be made by institutional staff to prevent the entry of contraband. Criminal charges shall be filed against any individual who attempts the introduction of contraband.

22.3(5) Any person wishing to attend a meeting of the institutional organizations shall submit a request at least seven working days prior to the meeting day.

770—22.4(218) Mail and packages.

22.4(1) Letters shall be written in a legible manner on writing paper. Letters will not be delivered which are written in a foreign language or code, unless the foreign language is the only language of the resident. The sender's name must be signed in full at the end of the letter. The sender's name and address must appear in the upper left-hand corner of the envelope. The resident's

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name, number, box number, city, and state must also appear on the envelope in detail.

22.4(2) Persons who are under the age of eighteen who are outside the immediate family shall have written permission from their parents before corresponding with a resident.

22.4(3) A person may deposit funds in a resident's account by sending drafts or money orders payable to the superintendent. Cash or personal checks will not be accepted. Complete identification of the sender and a cover letter shall accompany a draft or money order. These may be enclosed in letters to the residents.

22.4(4) Periodicals, newspapers, magazines, and books sent to residents shall have prior approval from the superintendent and shall be sent directly to the institution from the publisher.

22.4(5) Guidelines for books, magazines, and publications which should not be sent and will not be given to residents include, but are not limited to:

a. Materials which would cause a substantial interference with resident welfare.

b. Materials that would assist individuals in developing escape plans, making or using explosives, weapons, synthetic drugs and similar articles.

c. Materials advocating or suggesting injury or damage to personal property or programs of the institution.

d. Obscene and licentious materials.

22.4(6) The following articles of new clothing may be ordered by residents or sent to residents: T-shirts, sweatshirts, shorts, undershirts, pajamas, shoes, socks. Photographs without frames or glass may be sent except when a person in the photograph is unclothed. Any other articles shall have prior approval from the superintendent or designee.

The following articles may be sent between December 1 and December 15; Vacuum canned meats, vacuum canned candy, vacuum canned nut meats, vacuum canned fruit, T-shirts, sweatshirts without lettering or symbol, knit shorts, socks, bluejeans, pajamas, handkerchiefs, new conventional shoes with heels no greater than one and one-half inches thick and soles no greater than one-half inch thick except for crepe-soled shoes which may be up to one and one-half inches thick in the soles, slippers, belts up to three inches in width, gloves, mittens, newspaper and magazine subscriptions direct from the publisher, ball-point pens, pencils, cigarette lighters but not gas lighters, pipes, combs, hairbrushes, toothbrushes, shoeshine kits without polish, sewing kits, and electric or safety razors. Packages shall weigh twenty pounds or less. Drafts or money orders shall be sent in separate letters.

22.4(7) All correspondence shall be inspected for contraband. Mail shall be read when there is probable cause to believe or to suspect abuse of correspondence or a threat to the good sense of order and security of the institution. Residents are permitted to send sealed letters to a specific group of individuals. Mail to these persons shall not be opened or inspected. Mail from these persons may be opened only for inspection for contraband or to be assured the contents are from the return addressee. Confidential letters may be written to officers of federal, state, or municipal courts, any federal or state official, the commissioner of the department of social services, any official of the division of correctional institutions, or division of community services, or any member of the board of parole, the attorney of record, the office of the

citizen's aide (letters received from this office shall not be opened by law) and the civil rights commission of Iowa.

22.4(8) The institution will not be responsible for lost or damaged goods sent into the institution.

770—22.5(218) Tours of the institution.

22.5(1) Scheduled evening tours for the general public are conducted and shall be scheduled through the superintendent's office. Daytime tours are limited to professional groups in work related to corrections and/or school groups.

22.5(2) Tours shall be approved by the superintendent or the assistant to the superintendent.

770—22.6(218) Interviews and statements.

22.6(1) When residents are selected to be interviewed and photographed within the institution either singly or part of a group, identifiable interviews or pictures shall require the written consent of the resident involved as well as prior consent of the superintendent or designee.

22.6(2) The superintendent has the responsibility for all communications with mass media.

770—22.7(218) Donations. Donations of money, books, games, recreation equipment, or other such gifts shall be made directly to the superintendent. The superintendent shall evaluate the donation in terms of the nature of the contribution to the institution's programs. The superintendent shall be responsible for accepting donations and reporting the gifts to the director, division of correctional institutions, in the Iowa department of social services.

These rules are intended to implement section 218.4 of the Code

[Filed 11/13/78, effective 1/3/79]

Notice of intended action was published in the IAC Supplement March 22, 1978, and these rules shall become effective January 3, 1978. The rules were clarified to specify what conventional shoes are.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 217.6 and chapter 249 of the Code, rules of the department of social services appearing in the IAC relating to state supplementary assistance (chapter 52) are hereby amended.

Subrule 52.1(3) is amended by adding the following paragraph:

g. *The per diem rate established for recipients of state supplementary assistance shall not exceed the average rate established by the facility for private pay residents.*

(1) *Residents placed in a facility by another governmental agency are not considered private paying individuals. Payments received by the facility from such an agency shall not be included in determining the average rate for private paying residents.*

SOCIAL SERVICES[770] (cont'd)

(2) To compute the facility-wide average rate for private paying residents, the facility shall accumulate total monthly charges for those individuals over a six-month period and divide by the total patient days care provided to this group during the same period of time.

[Filed 11/7/78, effective 1/3/79]

Notice of intended action regarding these rules was published in IAC Supplement April 19, 1978, and these rules shall become effective January 3, 1979. These rules were modified to clarify what payments are excluded in determining private pay rates.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 217.6 and chapter 249 of the Code, rules of the department of social services appearing in the IAC relating to state supplementary assistance (chapter 54) are hereby amended.

ITEM 1. Subrule 54.3(1) is amended by striking the subrule and inserting the following in lieu thereof.

54.3(1) *Failure to maintain records. Failure to adequately maintain fiscal records, including census records, medical charts, ledgers, journals, tax returns, cancelled checks, source documents, invoices, and audit reports by or for a facility may result in the penalties specified in subrule 54.8(1).*

ITEM 2. Subrule 54.3(11) is amended by striking paragraph "c", relettering paragraphs "d" to "j" as "g" to "m" and inserting the following in lieu thereof.

c. Bad debts are not an allowable expense.

d. Charity allowances and courtesy allowances are not an allowable expense.

e. Personal travel and entertainment are not allowable as reimbursable costs. Certain expenses such as rental or depreciation of vehicle and expenses of travel which include both business and personal shall be prorated. Amounts which appear to be excessive may be limited after consideration of the specific circumstances. Records shall be maintained to substantiate the indicated charges.

(1) Commuter travel by owner(s), owner-administrator(s), administrator, nursing director or all other employees is not an allowable cost (from private residence to facility and return to residence).

(2) One car or one van or both shall be designated for use in transporting patients for the expense of same to be an allowable cost. All expenses shall be covered by a sales slip, invoice or other documents setting forth the designated vehicle as well as the expenses incurred for the expenses to be an allowable expense.

(3) Expenses associated with association business meetings, limited to individual members of associations which are members of a national affiliate, and expenses associated with workshops, symposiums, and meetings which provide administrators or department heads with

hourly credits required to comply with continuing education requirements for licensing, are allowable expenses.

(4) Travel of an emergency nature required for supplies, repairs of machinery or equipment, or building is an allowable expense.

(5) Travel for which a patient must pay is not an allowable expense.

(6) Allowable expenses in paragraphs (2) to (4) above are limited to six percent of total administrative expense.

f. Entertainment provided by the facility for participation of all residents who are physically and mentally able to participate is an allowable expense except entertainment for which the patient is required to pay is not an allowable expense.

n. Depreciation, interest and other capital costs attributable to construction of new facilities, expanding existing facilities, or the purchase of an existing facility, are allowable expenses only if prior approval has been gained through the health planning process specified in rules of the health department, 470—chapter 201.

ITEM 3. Subrule 54.3(13), line 3, is amended by inserting after the word "established" the words ", subject to provisions set forth in 53.1(3)"c".

ITEM 4. Add the following new rule.
770—54.8(249) Audits.

54.8(1) Audit of financial and statistical report. Authorized representatives of the department of social services or the department of health, education and welfare shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report for Residential Care Facilities, Form AA-4038-0, are reasonable and proper according to the rules set forth in 770—54.3(249). The aforementioned audits may be done either on the basis of an on-site visit to the facility, their central accounting office, or office(s) of their agent(s).

a. When a proper per diem rate cannot be determined, through generally accepted and customary auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department of social services that the indicated per diem be reduced to seventy-five percent of the established payment rate for the ensuing six-month period and if the situation is not remedied on the subsequent Financial and Statistical Report for Residential Care Facilities, Form AA-4038-0, the health facility shall be suspended and eventually cancelled from the residential care facility program, or

b. When a facility continues to include as an item of cost an item or items which had in a prior audit been removed by an adjustment in the total audited costs, the auditor shall recommend to the department of social services that the per diem be reduced to seventy-five percent of the current payment rate for the ensuing six-month period. The department may, after considering the seriousness of the exception, make such reduction.

54.8(2) Audit of proper billing and handling of resident funds.

a. Field auditors of the department of social services, or representatives of health, education and welfare, upon proper identification, shall have the right to audit billings to the department of social services and receipts of client participation, to insure the facility is not receiving payment in excess of the contractual agreement and that

SOCIAL SERVICES[770] (cont'd)

all other aspects of the contractual agreement are being followed as deemed necessary.

b. Field auditors of the department of social services or representatives of health, education and welfare, upon proper identification, shall have the right to audit records of the facility to determine proper handling of resident funds in compliance with rule 770—54.5(249).

c. The auditor shall recommend and the department of social services shall request repayment by the facility to either the department of social services or the resident(s) involved, such sums inappropriately billed to the department or collected from the resident.

d. The facility shall have sixty days to review the audit and repay the requested funds or present supporting documentation which would indicate that the requested refund amount, or part thereof, is not justified.

e. If the facility fails to comply with paragraph "d", the audit results may be referred to the attorney general's office for whatever action may be deemed appropriate.

f. When exceptions are taken during the scope of an audit which are similar in nature to the exceptions taken in a prior audit, the auditor shall recommend and the department may, after considering the seriousness of the exceptions, reduce payment to the facility to seventy-five percent of the current payment rate.

This rule is intended to implement section 249.12 of the Code.

[Filed 11/7/78, effective 1/3/79]

Notice of intended action regarding these rules was published in IAC Supplement April 19, 1978, and these rules shall become effective January 3, 1979. Clarifications and changes were made throughout the rules in response to public comment.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 249A.4 of the Code, rules of the department of social services appearing in the IAC relating to intermediate care facilities (chapter 81) are hereby amended.

ITEM 1. Subrule 81.4(3), line 3, is amended by inserting after the word "funds." the words "the personal needs funds shall be deposited in a single checking account, not commingled with trust funds from any other facility, nor commingled with facility operating funds except for facility funds, not to exceed \$500.00, deposited to cover bank charges, and have in the account name the terms "Resident Trust Funds". The funds shall be deposited in a bank within the state of Iowa insured by FDIC. Expense for bank service charges for this account is an allowable expense under rule 770—81.6 if the service cannot be obtained free of charge."

ITEM 2. Subrule 81.6(1) is amended by striking the subrule and inserting the following in lieu thereof:

81.6(1) Failure to maintain records. Failure to adequately maintain fiscal records, including census records, medical charts, ledgers, journals, tax returns, cancelled checks, source documents, invoices, and audit reports by or for a facility may result in the penalties specified in subrule 81.14(1).

ITEM 3. Subrule 81.6(11), paragraph "a", lines 1 and 2, is amended by striking the words "Such taxes are considered in computing the fee for services for proprietary institutions."

ITEM 4. Subrule 81.6(11) is amended by striking paragraph "c", relettering paragraphs "d" to "j" as "g" to "m" and inserting the following paragraphs in lieu thereof.

c. Bad debts are not an allowable expense.

d. Charity allowances and courtesy allowances are not an allowable expense.

e. Personal travel and entertainment are not allowable as reimbursable costs. Certain expenses such as rental or depreciation of vehicle and expenses of travel which includes both business and personal shall be prorated. Amounts which appear to be excessive may be limited after consideration of the specific circumstances. Records shall be maintained to substantiate the indicated charges.

(1) Commuter travel by owner(s), owner-administrator(s), administrator, nursing director or all other employees is not an allowable cost (from private residence to facility and return to residence).

(2) One car or one van or both shall be designated for use in transporting patients for the expense of same to be an allowable cost. All expenses shall be covered by a sales slip, invoice or other documents setting forth the designated vehicle as well as the expenses incurred for the expenses to be an allowable expense.

(3) Expenses associated with association business meetings, limited to individual members of association which are members of a national affiliate, and expenses associated with workshops, symposiums, and meetings which provide administrators or department heads with hourly credits required to comply with continuing education requirements for licensing, are allowable expenses.

(4) Travel of an emergency nature required for supplies, repairs of machinery or equipment, or building is an allowable expense.

(5) Travel for which a patient must pay is not an allowable expense.

(6) Allowable expenses in paragraphs (2) through (4) above are limited to six percent of total administrative expense.

f. Entertainment provided by the facility for participation of all residents who are physically and mentally able to participate is an allowable expense except that entertainment for which the patient is required to pay is not an allowable expense.

n. Depreciation, interest and other capital costs attributable to construction of new facilities, expanding existing facilities, or the purchase of an existing facility, are allowable expenses only if prior approval has been gained through the health planning process specified in rules of the health department, 470—chapter 201.

ITEM 5. Subrule 81.6(15), line 3, is amended by inserting after the word "established" the words ", not to exceed private pay charges".

SOCIAL SERVICES[770] (cont'd)

ITEM 6. Rule 770—81.6(249A) is amended by adding the following subrule:

81.6(16) Establishment of ceiling and reimbursement rate.

a. An inflation factor will be considered in determining the facility's prospective payment rate. The rate will be determined by using the change in the weighted average cost per diem of the compilation of various costs and statistical data as found in the two most recent reports of "Unaudited Compilation of Various Cost and Statistical Data". The percentage increase of this weighted average will be the basis for the next semiannual inflation factor. This factor shall not exceed five percent on a semiannual basis.

b. The maximum allowable cost ceiling shall be established at the beginning of the state's fiscal year. The maximum allowable cost ceiling shall be determined at a level where seventy-four percent of the participating facilities are receiving one hundred percent of their allowable costs. The most recent report of "Unaudited Compilation of Various Costs and Statistical Data" shall be the basis of the calculation.

c. An incentive factor shall be determined at the beginning of the state's fiscal year based upon the most recent "Unaudited Compilation of Various Costs and Statistical Data". The incentive factor shall be equal to one-half the difference between the forty-sixth percentile of allowable costs and the seventy-fourth percentile of allowable costs.

d. The reimbursement rate shall be established by determining, on a per diem basis, the allowable cost plus the established inflation factor plus the established incentive factor, subject to the maximum allowable cost ceiling.

ITEM 7. Add the following new rule:
770—81.14(249A) Audits.

81.14(1) Audit of financial and statistical report.

Authorized representatives of the department of social services or the department of health, education and welfare shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report for Nursing Homes, Form AA-4036-0, are reasonable and proper according to the rules set forth in 770—81.6(249A). The aforementioned audits may be done either on the basis of an on-site visit to the facility, their central accounting office, or office(s) of their agent(s).

a. When a proper per diem rate cannot be determined, through generally accepted and customary auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department of social services that the indicated per diem shall be reduced to seventy-five percent of the established payment rate for the ensuing six-month period and if the situation is not remedied on the subsequent Financial and Statistical Report for Nursing Homes, Form AA-4036-0, the health facility shall be suspended and eventually canceled from the intermediate care facility program, or

b. When a health facility continues to include as an item of cost an item or items which had in a prior audit been removed by an adjustment in the total audited costs, the auditor shall recommend to the department of social services that the per diem be reduced to seventy-five percent of the current payment rate for the ensuing six-month period. The department may, after considering

the seriousness of the exception, make such reduction.

81.14(2) Audit of proper billing and handling of patient funds.

a. Field auditors of the department of social services, or representatives of health, education and welfare, upon proper identification, shall have the right to audit billings to the department of social services and receipts of client participation, to insure the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

b. Field auditors of the department of social services or representatives of health, education and welfare, upon proper identification, shall have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 81.4(3).

c. The auditor shall recommend and the department of social services shall request repayment by the facility to either the department of social services or the resident(s) involved, such sums inappropriately billed to the department or collected from the resident.

d. The facility shall have sixty days to review the audit and repay the requested funds or present supporting documentation which would indicate that the requested refund amount, or part thereof, is not justified.

e. When the facility fails to comply with paragraph "d", the requested refunds may be withheld from future payments to the facility. Such withholding shall not be more than twenty-five percent of the average of the last six monthly payments to the facility. Such withholding shall continue until the entire requested refund amount is recovered. If in the event the audit results indicate significant problems, the audit results may be referred to the attorney general's office for whatever action may be deemed appropriate.

f. When exceptions are taken during the scope of an audit which are similar in nature to the exceptions taken in a prior audit, the auditor shall recommend and the department may, after considering the seriousness of the exceptions, reduce payment to the facility seventy-five percent of the current payment rate.

This rule is intended to implement sections 249A.2(6) and 249A.3(2)"a" of the Code.

[Filed 11/7/78, effective 1/3/79]

Notice of intended action regarding these rules was published in IAC Supplement April 19, 1978, and these rules shall become effective January 3, 1979. Clarifications and changes were made throughout the rules in response to public comment.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of sections 217.6 and 234.6 of the Code, rules of the department of social services appearing in the IAC relating to general provisions for social services (chapter 130) are hereby amended.

Subrule 130.3(3) is amended by adding the following new paragraph:

SOCIAL SERVICES[770] (cont'd)

q. *Earnings received by any youth under Title III, Part C—Youth Employment Demonstration Program of the Comprehensive Employment and Training Act of 1973.*

[Filed without notice 11/7/78, effective 1/3/79]

The department of social services finds that notice and public participation would be unnecessary as this rule meets all the criteria of rule 770—1.5(17A). Therefore, this rule is filed without notice and public participation pursuant to section 17A.4(2) of the Code. These rules shall become effective January 3, 1979.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

TRANSPORTATION DEPARTMENT[820]

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of section 307.10 of the Code, rules 820—[07,D] chapter 11 entitled "Vehicle Registration and Certificate of Title" are hereby amended.

ITEM 1. Subrule 11.1(5) is amended to read as follows:

11.1(5) Manufacturer's statement of origin means a certification signed by the manufacturer or importer, that the vehicle described therein has been transferred to the person or dealer named therein and that transfer is the first transfer of the vehicle in ordinary trade and commerce. The description shall include the make, model, style, vehicle identification number, and if a motorized bicycle the engine displacement and maximum speed, and any other information which may be required by statute or rule. The terms "manufacturer's certificate", "importer's certificate", "MSO" and "MCO" shall be synonymous with the term "manufacturer's statement of origin".

ITEM 2. Rule [07,D]11.6(321) is amended by adding the following new subrule:

11.6(8) *A salvage certificate of title may be obtained without payment of the current registration fee or any delinquent registration fee and penalty. If the registration fee is delinquent at the time of issuance of a salvage certificate of title no additional penalty shall accrue after issuance thereof. Any registration fee or penalty which was due at the time of issuance of a salvage certificate of title shall be paid upon issuance of a regular certificate of title, together with the current registration fee if not already paid. Registration plates shall not be issued or assigned when a salvage certificate of title is issued.*

ITEM 3. Rule [07,D]11.43(321) is amended to read as follows:

820—[07,D]11.43(321) *Storage of vehicles.* The owner of a vehicle upon which the registration fee is not delinquent, who, before February 1 of any year, surrenders all registration plates for said vehicle to the county treasurer of the county in which said vehicle is registered, or to the department if the vehicle is owned by a nonresident, shall have the right to register the vehicle at any later period of time upon payment of the current registration fee. *The registration plates which have been surrendered shall be retained and reissued to the owner if the vehicle is registered within thirty days from the date of surrender of the plates. If the vehicle is not registered within the thirty day period, the plates shall be destroyed and new plates assigned to the owner at such time as the vehicle is registered, without payment of a replacement plate fee.* This rule shall not apply to the owner of a mobile home which is subject to registration under the provisions of section 321.123(3). The owner of such mobile home shall be required to pay the registration fee in the manner provided in such section. The owner of a motor vehicle which is placed in storage by such owner upon that person's entry into the military service of the United States shall comply with the provisions of section 321.126(4) and the provisions of this rule shall not be applicable to such person.

ITEM 4. [07,D] chapter 11 is amended by adding rule [07,D]11.61(321) as follows:

820—[07,D]11.61(321) *Reassignment of registration plates.* Registration plates may be reassigned from the seller to the purchaser of a vehicle under the following conditions:

11.61(1) *Ownership of the vehicle is held by a natural person or persons and not a corporation, association, co-partnership, company or firm.*

11.61(2) *At least one of the persons listed on the registration receipt issued prior to the transfer is also listed on the registration receipt issued after the transfer.*

This rule is intended to implement section 321.34(1) of the Code, as amended by Acts of the Sixty-seventh General Assembly, 1977 session, chapter 103, section 10

[Filed 11/13/78, effective 1/3/79]

A notice of intended action for the amendment of these rules was published in the September 20, 1978, Iowa Administrative Bulletin. The transportation commission approved the amendment to these rules on November 2, 1978. The amendment to these rules is to be published as adopted in the November 29, 1978, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective January 3, 1979. The amendment to these rules is identical to the one published under notice.

[Published 11/29/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/29/78.

SOCIAL SERVICES[770]

At its November 14th meeting the Administrative Rules Review Committee voted the following objection:

The Committee objects to paragraph 79.7(5)b, relating to voting requirements for Medical Advisory Council, and appearing in the 11/1/78 IAB, on the grounds that it is unreasonable. The rule would allow a motion to pass the council upon a vote consisting of the majority of the quorum. This would allow a minority of the council members to pass or adopt measures. This objection may be overcome by amending the paragraph to require a majority vote of the entire council to carry a vote.

**TRANSPORTATION,
DEPARTMENT OF[820]**

At its November 14th meeting the Administrative Rules Review Committee voted the following objection to [07,D]11.3(6)a(9):

The Committee objects to subparagraph 11.3(6)a(9), relating to the weighing of vehicles, and appearing in the 11/1/78 IAB, on the grounds that the subparagraph is unreasonable and arbitrary, because it does not specify a uniform method to weigh the vehicles. Specifically, the Committee notes that such factors as whether the vehicle has a full tank of gasoline, or whether air conditioning has been added, can make a difference in the taxable value.

EFFECTIVE DATE DELAY**[Pursuant to §17A.4(5)]**

AGENCY	RULE	DELAYED
Agriculture[30]	6.17	Under provision of 67 GA, ch. 1024, §19
City Finance[230]	4.2	Delay published in Iowa Administrative Bulletin 11/1/78 suspended by Administrative Rules Review Committee on 11/14/78

Executive Order Number 33

- Whereas, volunteerism and citizen action must be regarded as prime resources in our society; and
- Whereas, Iowa state government encourages its citizens to offer their time and skills for the improvement of the quality of life and the betterment of society; and
- Whereas, the development and expansion of volunteer programs enhance the work of state agencies and institutions; and
- Whereas, organizations need assistance to make effective use of such voluntary services.

Now, Therefore, I, Robert D. Ray, Governor of the State of Iowa, do hereby formally establish the **Iowa Office for Volunteerism** composed of a Director and an Advisory Council which will be responsible to the Governor.

The Volunteer Advisory Council shall be composed of not less than eight nor more than fifteen citizens with a broad representation of skills and interests in volunteerism, in order to guide, review, promote, and monitor the work of the State Office for Volunteerism.

The members of the Council shall be appointed by and serve at the will of the Governor with designated terms of two years; however, one-half of the initial members shall serve for one-year terms. The chairperson and the director shall also be appointed by the Governor to serve at his discretion.

The Iowa Office for Volunteerism shall:

1. Determine the dimensions, effectiveness, strengths, and weaknesses of volunteer programs in state agencies and institutions.
2. Provide greater recognition and visibility to volunteer efforts.
3. Serve as an information resource center on subjects related to volunteerism.
4. Provide technical assistance and consultation to the voluntary sector.
5. Identify areas in the public and private sector in which volunteers could make a contribution and encourage same.

In Testimony Whereof, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 2nd day of November in the year of our Lord one thousand nine hundred seventy-eight.

Attest:

/s/ Robert D. Ray
Governor

/s/ Melvin D. Synhorst

Secretary of State

Executive Order Number 34

- Whereas,** the United Nations General Assembly has proclaimed 1979 as the International Year of the Child; and
- Whereas,** 1979 is the twentieth anniversary of the Declaration of the Rights of the Child; it provides an opportunity to recognize the potential of children; and
- Whereas,** Iowa takes pride in its children and works to enrich their lives and insure their healthy development; and
- Whereas,** the state should use this opportunity to promote a new awareness of existing policies and available resources to help, guide and sustain a happy healthy climate for young people in Iowa:

Now, Therefore, I, Robert D. Ray, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and the laws of Iowa do hereby create and establish the Iowa Commission on the International Year of the Child which will be responsible to the Governor.

The Iowa Commission is to provide a statewide yearlong program for observance of the International Year of the Child. Its function will be to: a) promote a better understanding of the special needs of children; b) coordinate and stimulate public and private projects and activities for observance of the International Year of the Child.

In Furtherance Whereof, the following is also established:

Organization:

The Iowa Commission for the International Year of the Child will consist of an Honorary Chairperson, a chairperson and 11 members to be appointed by the Governor for a term to start immediately and to expire January 31, 1980. The Governor may appoint or remove such representatives as deemed to be beneficial to the advancement of the Commission's objectives.

Implementation:

To assist the Iowa Commission on the International Year of the Child, subcommittees may be formed to fulfill its goals, and there shall be at least the following three such committees:

1. A Nongovernmental Agency Coordinating Committee composed of private nonprofit agencies and organizations which serve the needs of children and subscribe to the mission of the International Year of the Child; and
2. An Intra-governmental Agency Coordinating Committee composed of representatives of state departments, advisory boards and councils which are concerned with the needs of children; and
3. A Public Relations Committee to promote activities and projects in conjunction with the International Year of the Child composed of a representative of each of Iowa's ninety-nine counties.

In Testimony Whereof, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 3rd day of November in the year of our Lord one thousand nine hundred seventy-eight.

Attest:

/s/ Robert D. Ray

Governor

Melvin D. Synhorst

Secretary of State

PROCLAMATIONS

Robert D. Ray, Governor of the State of Iowa, proclaimed the following:

- Youth Honor Day October 30, 1978
- Respiratory Therapy Week November 11 - 14, 1978
- Iowa State Snowmobile Safety Week..... November 12 - 18, 1978

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