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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and supersedes Part I of the Iowa Administrative Code Supplement.

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

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

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

The ARC number which appears before each agency heading is assigned by the Administrative Rules Coordinator for identification purposes and should always be used when referring to this item in correspondence and other communications.

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to Iowa Code section 17A.6. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the administrative rules coordinator and published in the Bulletin.

PHYLLIS BARRY, Deputy Code Editor
LAVERNE SWANSON, Administrative Code Assistant

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
22	Friday, April 6, 1984	April 25, 1984
23	Friday, April 20, 1984	May 9, 1984
24	Friday, May 4, 1984	May 23, 1984

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly as follows:

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Fourth quarter	April 1, 1984, to June 30, 1984	\$ 26.00 plus \$1.04 sales tax

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Iowa Administrative Code

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

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

Iowa Administrative Code - \$644.00 plus \$25.76 sales tax

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Grimes State Office Building
Des Moines, IA 50319
Phone: (515) 281-5231

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RULEMAKING SCHEDULE

Schedule for Rulemaking 1984

FILING DEADLINE	PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 13	Feb. 1	Feb. 21	Mar. 7	May 2	July 30
Jan. 27	Feb. 15	Mar. 6	Mar. 21	May 16	Aug. 13
Feb. 10	Feb. 29	Mar. 20	Apr. 4	May 30	Aug. 27
Feb. 24	Mar. 14	Apr. 3	Apr. 18	June 13	Sep. 10
Mar. 9	Mar. 28	Apr. 17	May 2	June 27	Sep. 24
Mar. 23	Apr. 11	May 1	May 16	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	Aug. 22	Nov. 19
May 18	June 6	June 26	July 11	Sep. 5	Dec. 3
June 1	June 20	July 10	July 25	Sep. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Oct. 3	Dec. 31
June 29	July 18	Aug. 7	Aug. 22	Oct. 17	Jan. 14 '85
July 13	Aug. 1	Aug. 21	Sep. 5	Oct. 31	Jan. 28 '85
July 27	Aug. 15	Sep. 4	Sep. 19	Nov. 14	Feb. 11 '85
Aug. 10	Aug. 29	Sep. 18	Oct. 3	Nov. 28	Feb. 25 '85
Aug. 24	Sep. 12	Oct. 2	Oct. 17	Dec. 12	Mar. 11 '85
Sep. 7	Sep. 26	Oct. 16	Oct. 31	Dec. 26	Mar. 25 '85
Sep. 21	Oct. 10	Oct. 30	Nov. 14	Jan. 9 '85	Apr. 8 '85
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Jan. 23 '85	Apr. 22 '85
Oct. 19	Nov. 7	Nov. 27	Dec. 12	Feb. 6 '85	May 6 '85
Nov. 2	Nov. 21	Dec. 11	Dec. 26	Feb. 20 '85	May 20 '85
Nov. 16	Dec. 5	Dec. 25	Jan. 9 '85	Mar. 6 '85	June 3 '85
Nov. 30	Dec. 19	Jan. 8 '85	Jan. 23 '85	Mar. 20 '85	June 17 '85
Dec. 14	Jan. 2 '85	Jan. 22 '85	Feb. 6 '85	Apr. 3 '85	July 1 '85
Dec. 28	Jan. 16 '85	Feb. 5 '85	Feb. 20 '85	Apr. 17 '85	July 15 '85

20 days from the publication date is the minimum date for a public hearing or cutting off public comment.

35 days from the publication date is the earliest possible date for the agency to consider a noticed rule for adoption.

180 days 17A.4(1)"b" says that if a noticed rule is not adopted by the agency within this time, the agency must either adopt the rule or file a notice of termination.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE DEPARTMENT[30]		
Ethylene dibromide (EDB) residue levels in fruit and baby foods, 10.45(4), 10.45(5) IAB 3/28/84 ARC 4565	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 18, 1984 9:30 a.m.
Infectious and contagious diseases, 16.1 IAB 3/28/84 ARC 4567	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 18, 1984 1:00 p.m.
AUDITOR OF STATE[130]		
Industrial loans, 1.15(5), 1.21 IAB 4/11/84 ARC 4603	Director of the Financial Institutions Division Auditor of State Lucas State Office Bldg. Des Moines, Iowa	May 3, 1984 9:30 a.m.
Conversion from mutual to capital stock owner- ship, 6.10, 6.5 IAB 4/11/84 ARC 4604	Supervisor of Savings and Loan Associations Auditor of State Lucas State Office Bldg. Des Moines, Iowa	May 2, 1984 9:30 a.m.
CONSERVATION COMMISSION[290]		
Waterfowl hunting on Forney Lake and the Riverton Area, 14.1(5) IAB 3/28/84 ARC 4570	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 18, 1984 10:00 a.m.
Migratory game bird regulations, ch 105 IAB 2/29/84 ARC 4490	Auditorium Wallace State Office Bldg. Des Moines, Iowa	July 14, 1984* 10:00 a.m.
INSURANCE DEPARTMENT[510]		
Workers' compensation group self-insurance, ch 56 IAB 4/11/84 ARC 4585	Conference Room in basement Lucas State Office Bldg. Des Moines, Iowa	May 1, 1984 10:00 a.m.
Workers' compensation individual self-insurance, ch 57 IAB 4/11/84 ARC 4584	Conference Room in basement Lucas State Office Bldg. Des Moines, Iowa	May 1, 1984 2:00 p.m.
PUBLIC SAFETY DEPARTMENT[680]		
Weapons, 4.2(9) to 4.2(12), 4.4 IAB 4/11/84 ARC 4578	Conference Room Third Floor (West half) Wallace State Office Bldg. Des Moines, Iowa	May 2, 1984 11:00 a.m.
Fire marshal, 5.850, 5.230(5)"d" IAB 4/11/84 ARC 4581	Conference Room Third Floor (West half) Wallace State Office Bldg. Des Moines, Iowa	May 2, 1984 10:00 a.m.

*The 2/29/84 and 3/14/84 IAB inadvertently listed April 7, 1984.

RACING COMMISSION, STATE[693]

Applications for track
licenses and racing dates, ch 5
IAB 3/14/84 ARC 4529

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

April 19, 1984
9:30 a.m.

Organization and operation,
ch 1; rulemaking, ch 2;
declaratory rulings,
ch 3
IAB 4/11/84 ARC 4591

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

May 17, 1984
9:30 a.m.

Criteria for granting
licenses and determining
race dates, ch 6
IAB 4/11/84 ARC 4592

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

May 17, 1984
9:30 a.m.

REGENTS, BOARD OF[720]

Parietal rule, temporary
suspension, 2.2(5)
IAB 3/28/84 ARC 4558

State Board of Regents
Lucas State Office Bldg.
Des Moines, Iowa

April 20, 1984
3:00 p.m.

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900]

Criteria for award of grants,
91.1
IAB 3/14/84 ARC 4541

Auditorium
Wallace State Office Bldg.
900 E. Grand Avenue
Des Moines, Iowa

April 16, 1984
10:30 a.m.

Hazardous waste, scope of
title, 140.1; location
and construction of
hazardous waste treatment,
storage and disposal facilities,
ch 150
IAB 3/14/84 ARC 4524

Auditorium
Wallace State Office Bldg.
900 E. Grand Avenue
Des Moines, Iowa

April 18, 1984
10:00 a.m.

ARC 4603

AUDITOR OF STATE[130]
NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 536A.28 and 17A.4(1), the Auditor of State hereby files Notice of Intended Action to amend certain rules governing industrial loan companies [Chapter 1]. The Auditor is charged with examining and regulating these companies pursuant to Iowa Code chapter 536A.

The proposed amendments are not substantive in nature. One change will update the existing rules to provide that industrial loan companies may keep their loan records on a computer, as long as printouts can be produced to show the information required in the rules. Current requirements are that information must be kept on account ledger cards which are sometimes handposted.

The second change is being made to remove a prohibition for the charging of appraisal fees on mortgage loans. Such a charge is currently prohibited statutorily for consumer loans secured by real estate, however, a bill is currently under consideration to lift that prohibition. By amending the rules, the Auditor is leaving the discretion of the charging of such fees to the legislature. Appraisal fees on first mortgage loans are permitted under Iowa Code chapter 535.

Any interested parties may make written suggestions or comments on the proposed amendments. These written materials should be delivered to the Director of the Financial Institutions Division, Auditor of State, Lucas State Office Building, Des Moines, Iowa 50319, before May 3, 1984.

Persons who wish to convey their views orally may do so by contacting the Director at (515)281-5491. There will be a public hearing in the Director's office at 9:30 a.m. on May 3, 1984. Persons may present their views at the hearing orally or in writing. Persons who wish to make an oral presentation at the public hearing should contact the Director at least one day prior to the date of the hearing.

ITEM 1. Amend rule 130—1.15(536A) by adding the following new subrule:

1.15(5) EDP systems. The licensee's use, in whole or in part, of mechanical or electronic data processing equipment to maintain its loan account records, or other business records, shall be permitted if it is determined that the EDP system provides the same information as is otherwise required and the licensee is given written approval by the auditor of state.

ITEM 2. Amend rule 130—1.21(536A) as follows:

130—1.21(536A) Appraisal fees. None allowed. *The ability of a licensee to charge appraisal fees to borrowers on real estate loans, shall be governed by chapter 535, 537 or other statute in the Iowa Code which may permit such charge.*

ARC 4604

AUDITOR OF STATE[130]
NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 534.41(2), 534.92 and 17A.4(1), the Supervisor of Savings and Loan Associations, under the direction of the Auditor of State, files Notice of Intended Action to adopt amendments to Chapter 6 entitled "Conversion from Mutual to Capital Stock Ownership." The existing rules govern the conversion of a mutual savings and loan association to a stock association. Mutual associations are owned by their members, which consist of depositors and borrowers. Capital stock associations are owned by their stockholders similar to most other corporate entities. Following conversion, depositors and borrowers no longer have any ownership or voting rights in a stock association.

The Supervisor proposes to amend the existing rules on conversion by adding a new rule 6.10(534) entitled "Change of control." The proposed amendment supplements the existing rules, by providing that the Supervisor of savings and loan associations must approve any acquisition of stock which results in (1) control being vested with a person, persons or organization, or (2) a change of control. Similar rules exist for banks and other stock-owned financial institutions. These rules are necessary to preserve the safety and soundness of financial institutions, as well as ensure a supervisory review of the individual(s) acquiring control.

The other amendment to the rule would change the date referred to in rule 6.5(534), which provides a tie-in to regulations of the Federal Savings and Loan Insurance Corporation (FSLIC) governing conversions. All insured associations are required to follow these FSLIC regulations. The changes would be to delete the existing date and replace it with the date of March 23, 1984, which is the date that this notice is filed. It will keep rules in chapter 6 current with any amendments made by the FSLIC to those regulations, since the old date.

Any interested parties may make written suggestions or comments on the proposed amendments. These written materials should be delivered to the Supervisor of Savings and Loan Associations, Auditor of State, Lucas State Office Building, Des Moines, Iowa 50319, before May 2, 1984.

Persons who wish to convey their views orally may do so by contacting the Supervisor at (515)281-5491. There will be a public hearing in the Supervisor's office at 9:30 a.m. on May 2, 1984. Persons may present their views at the hearing orally or in writing. Persons who wish to make an oral presentation at the public hearing should contact the Supervisor at least one day prior to the date of the hearing.

ITEM 1. Chapter 6 is amended by adding the following new rule:

AUDITOR OF STATE[130] (cont'd)

130—6.10(534) Change of control.

6.10(1) Application. Any person or group of persons desiring to purchase or otherwise acquire outstanding shares of a (capital stock) association, which would result in control or a change of control of that association, shall include with their letter application to the supervisor the following items:

a. Copy of the agreement between the purchaser and seller for the sale of stock which results in the buyer acquiring a majority interest in the association.

b. Terms of any financing to facilitate the purchase of the stock including the amount to be borrowed, rate of interest, term of the loan, collateral pledged to secure the indebtedness and any other pertinent information relating to the loan.

c. Personal financial statement of the purchaser(s), plus a résumé of each individual purchaser which describes experience and affiliations covering at least the previous ten years.

d. Pro forma statement of the purchaser's income and expenses during the term of the loan financing the purchase of the stock, and a statement from the purchaser indicating which assets will be converted to cash or pledged as security to provide the initial equity.

e. Projections of the statement of condition of the association to be purchased during the term of the association stock loan.

f. Projections of income and expenses of the association to be purchased during the term of the association stock loan.

g. A copy of a business plan for the association, plus any plans which the purchaser may have which would represent major changes in the present staff or policies of the association being acquired.

h. An affidavit signed by the purchaser stating that the majority interest in the association is not being acquired for the benefit of another person or company.

6.10(2) Investigation. The supervisor may conduct an investigation of the applicant as deemed necessary and proper to determine whether or not a certificate of approval for the proposed change of control should be issued.

6.10(3) Approval. The supervisor shall determine whether or not approval of an application for change in control should be granted.

6.10(4) Certificate of approval. If approval is granted, a certificate of approval will be issued by the supervisor. Upon receipt of this certificate, the applicant may proceed to close the purchase transaction, subject to any terms and conditions that the supervisor may impose.

ITEM 2. Rule 130—6.5(534) is amended as follows:

130—6.5(534) Content of applicant's plan of conversion. The applicant's plan of conversion shall comply with the requirements of the FSLIC, pursuant to 12 C.F.R. Part 563b, as amended through August 27, 1982 March 23, 1984. The plan of conversion shall include the determination of the eligibility record with respect to subscription rights to purchase the applicant's conversion stock, and shall state the effect of the conversion on each type of member of the converting association. The plan of conversion may also provide for employment contracts for the applicant's officers and employees upon conversion and for a stock option plan which shall be

subject to approval by the supervisor. The supervisor may require provisions in an applicant's plan of conversion in addition to the requirements of the FSLIC if he determines that such additional provisions are necessary for an equitable conversion. An applicant shall attach to its plan of conversion, and incorporate by reference, the applicant's proposed restated articles of incorporation and proposed restated bylaws.

ARC 4595

**CIVIL RIGHTS COMMISSION[240]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 601A.5, the Iowa Civil Rights Commission hereby gives Notice of Intended Action to amend Chapter 1, "Rule of Practice," Iowa Administrative Code.

Subrule 1.1(6) is revised to clarify the right for judicial review of final actions of the Commission.

Subrule 1.1(6), paragraph "c," is revised to require the respondent signature on a case which has been closed as satisfactorily adjusted, after a probable cause determination has been made by the commission.

Any interested person may submit written suggestions or comment on these proposed rules to Ta-Yu Yang, Administrative Division Director, Iowa Civil Rights Commission, Colony Building, 507 Tenth Street, Des Moines, Iowa 50319, before May 1, 1984. Persons who wish to convey their views orally should contact the same at the above address or call (515) 281-8084.

This rule is intended to implement Iowa Code sections 601A.15 and 601A.17.

The following amendments are proposed:

ITEM 1. Subrule 1.1(6) is amended to read as follows:
1.1(6) Final actions. The following procedures shall constitute final actions of the commission, *subject to judicial review* under the Iowa Administrative Procedure Act.

ITEM 2. Subrule 1.1(6), paragraph "c," is amended to read as follows:

c. The term "satisfactorily adjusted" shall mean that the complainant had indicated in writing that the complaint has been resolved to his or her the satisfaction of the complainant, and that no further action is desired from the commission. Whenever the offer of adjustment by a respondent is acceptable to the investigating official, but not to the complainant, the commission may close the case as satisfactorily adjusted. *In a case which has been determined by the commission as having probable cause, the respondent's signature must be obtained before the case can be considered to be satisfactorily adjusted.*

ARC 4596
CIVIL RIGHTS COMMISSION[240]
NOTICE OF INTENDED ACTION
AND TERMINATION

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

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

Pursuant to the authority of Iowa Code section 601A.5 and Executive Order Number 46, the Iowa Civil Rights Commission gives notice of termination to proposed Chapter 12, "Affirmative Action."

These rules were published in IAB July 20, 1983 as **ARC 3904**. These rules are being terminated because more than one hundred eighty days have elapsed since the public hearing was held on August 10, 1983. Numerous comments were received prior to, during and after the public hearing. After due consideration, the Commission has made substantive changes to those rules originally proposed. Since one hundred eighty days have elapsed and since substantive changes were made, the Commission decided to terminate the proposed rules and start the rulemaking procedures anew.

Pursuant to the authority of Iowa Code section 601A.5 and Executive Order Number 46, the Iowa Civil Rights Commission hereby gives Notice of Intended Action to add Chapter 20, "Affirmative Action," Iowa Administrative Code.

The present rules of the Commission do not provide state agencies with uniform affirmative action planning standards. These rules establish such standards.

Any interested person may make written suggestions or comments on these proposed rules prior to May 1, 1984. Such written material shall be directed to the Administrative Division Director, Iowa Civil Rights Commission, 507 - 10th Street, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Administrative Division Director at 515/281-8084 or in the Commission office on the eighth floor of 507 - 10th Street, Des Moines, Iowa.

These rules are intended to implement Iowa Code sections 601A.5 and 601A.15.

The following rules are proposed:

CHAPTER 20
AFFIRMATIVE ACTION

240—20.1(601A) Definitions. The following definitions shall be applied to the rules of this chapter.

20.1(1) "Agency" shall mean each board, commission, department, officer, or other administrative office or unit of the state.

20.1(2) "Availability" shall mean the extent to which protected class members are qualified or qualifiable to be employed in an EEO-4 occupational category.

20.1(3) "Disability" shall mean any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment, as defined by civil rights commission subrule 6.1(1).

20.1(4) "EEO-4 occupational categories" shall mean officials and administrators, professionals, technicians, protective service workers, paraprofessionals, office and clerical, skilled craft workers and service maintenance workers, as defined by the federal Equal Employment Opportunity Commission guidelines.

20.1(5) "EEO-4 income bracket" shall mean the annual salary ranges as defined by the Equal Employment Opportunity Commission and shown in Form AA001. Where employees are paid on other than an annual basis, their regular earnings should be expanded and expressed in terms of an annual income.

20.1(6) "EEO-4 report" shall mean the annual state employment data report as required by the federal Equal Employment Opportunity Commission. This report shall be made available to the agency by the Iowa merit employment department and the Iowa civil rights commission.

20.1(7) "Organizational unit" shall mean those agency units which lend themselves to the most reasonable system of grouping for analysis. These units may not necessarily coincide with an agency's administrative divisions.

20.1(8) "Protected class" shall mean racial or ethnic minorities, sex, age, creed, color, national origin, religion; mental and physical disability.

20.1(9) "Racial or ethnic minorities" shall mean Black, Hispanic, Asian and Pacific Islander, American Indian and Alaskan natives.

20.1(10) "Utilization" shall mean the representation of protected class members within an agency's work force as compared to their availability in the relevant labor force.

20.1(11) "Work force" shall mean an agency's full-time employees and other than full-time employees.

240—20.2(601A) Affirmative action requirement. Each agency shall prepare and implement a written affirmative action plan with goals and time specifications to meet the requirements of Governor's Executive Order Numbers 15 and 46.

240—20.3(601A) Planning standards. Each affirmative action plan shall include, but not be limited to, the following standards:

20.3(1) Affirmative action statement. The affirmative action statement shall include, but not be limited to, the following:

a. Policy statement. The policy statement shall be a clear and unambiguous declaration of commitment to the principles of equal employment opportunity and affirmative action. It shall contain the following or similarly worded language.

(1) The agency prohibits discrimination in its employment policies and practices on the basis of race, creed, color, religion, national origin, sex, age, or mental and physical disability.

(2) The agency is an equal employment opportunity and affirmative action employer.

b. Administration statement. The administration statement shall be a declaration of how the agency's affirmative action policy is to be implemented. It shall contain the following:

(1) The name, job title, and work location of the responsible equal employment opportunity or affirmative action official.

(2) The internal system for auditing and reporting.

CIVIL RIGHTS COMMISSION[240] (cont'd)

c. **Signature.** The affirmative action statement shall be signed and dated by the top administrator of the agency.

20.3(2) Work force analysis. A work force analysis shall show the numerical and percentile breakdown of the agency's full-time employees, and other than full-time employees, separately by racial or ethnic minorities, sex, age, and disability. Full-time and other than full-time employees shall be arrayed according to their EEO-4 occupational categories. Full-time employees shall also be arrayed according to their EEO-4 income brackets.

a. **Exemptions.** The work force analysis shall not include elected officials, such officials' immediate secretary, administrative, legislative, or other immediate or firstline aides, and such officials' legal advisor.

b. **Organizational unit.** An agency with a large number of employees may conduct a separate work force analysis for each of its organizational units. The organizational units may be determined by the agency based on the size, geographical dispersion and administrative line of authority of its work force.

c. **Confidentiality.** An agency may suppress work force data which is likely to identify specific employees and violate their confidentiality.

d. **Analysis report.** The work force analysis shall be reported on Work Force Analysis, Form AA001, available upon request from the Iowa civil rights commission. In lieu of completing all parts of Form AA001, an agency may submit its EEO-4 report or a similar report required by another regulatory agency, such as a federal funding agency, as part of its work force analysis.

20.3(3) Availability analysis. An availability analysis shall show the percentile breakdown by racial or ethnic minorities and sex of the relevant labor force arrayed according to their EEO-4 occupational categories. An agency shall assess the relevant labor force by determining the geographical area from which its work force recruitment can reasonably occur for each EEO-4 occupational category. The geographical area will usually be larger for high paid or high ranked classifications for recruitment purposes.

a. **Analysis method.** The percentile breakdown by racial or ethnic minorities and sex shall be determined by:

(1) The analysis method promulgated by OFCCP, 41 Code of Federal Regulations, Chapter 60, Revised Order No. 4, or

(2) The state office for planning and programming's report entitled Race, Sex, and Occupational Make-up of Iowa's 1980 Labor Force, available upon request from the Iowa civil rights commission.

(3) The Iowa civil rights commission may grant exceptions only if an agency can document that its availability analysis is comparable to those provided by subparagraphs (1) and (2) above. Exceptions may include the use of relevant national labor force data for the officials and administrators category.

b. **Organizational unit.** An availability analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 20.3(2), paragraph "b."

c. **Analysis report.** The availability analysis shall be reported on Availability Analysis, Form AA002, available upon request from the Iowa civil rights commission. In lieu of completing all parts of Form AA002, an agency may submit a similar report required by another reg-

ulatory agency, such as a federal funding agency, as part of its availability analysis.

d. **Exemptions.** An agency with fourteen or less full-time and other than full-time employees shall be exempted from the requirements of this subrule.

20.3(4) Quantitative utilization analysis. A quantitative utilization analysis shall compare work force analysis with availability analysis to show the numerical and percentile underrepresentation in the agency's work force, if any, by racial or ethnic minorities and sex.

a. **Rounding.** All partial numerical figures that contain .5 or more shall be rounded upward and .49 or less shall be rounded downward to the nearest whole number.

b. **Organizational unit.** A quantitative utilization analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 20.3(2), paragraph "b."

c. **Analysis report.** The quantitative utilization analysis shall be reported on Quantitative Utilization Analysis, Form AA003, available upon request from the Iowa civil rights commission. In lieu of completing all parts of Form AA003, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, as part of its quantitative utilization analysis.

d. **Exemptions.** An agency with fourteen or less full-time and other than full-time employees shall be exempted from the requirements of this subrule.

20.3(5) Qualitative utilization analysis. A qualitative utilization analysis shall show whether and where an agency's employment policies and practices do or tend to exclude, disadvantage, restrict or result in adverse impact on the basis of age, sex, disability and racial or ethnic minorities. It shall also show whether and where effects of prior illegal discrimination are left uncorrected. The analysis may include, but not be limited to, the following areas:

- a. Recruitment efforts and methods.
- b. Applicant flow characteristics study.
- c. Interview, selection, appointment, and placement policies and practices.
- d. Policies and practices affecting transfers, promotions, and reallocations.
- e. Selection of employees for training.
- f. Policies and practices in demotion, discipline, termination, and reduction in force.
- g. Laws, policies and practices external to the agency that discourage effective results in affirmative action.

20.3(6) Goals and timetables. An agency's affirmative action goals and timetables shall specify the appropriate actions and time frames in which problems identified under subrules 20.3(4) and 20.3(5) are targeted to be remedied.

a. **Appropriate action.** In setting goals, an agency may consider, but not be limited to, the following:

(1) Devising a recruitment program in conjunction with the state recruitment co-ordinating committee sponsored by the Iowa merit employment department.

(2) Validating the selection instruments in conjunction with the Iowa merit employment department.

(3) Revising and improving other personnel policies and practices.

(4) Providing affirmative action training internally or externally through organizations such as the Iowa management training system of the Iowa merit employment department.

CIVIL RIGHTS COMMISSION[240] (cont'd)

(5) Devising a plan so that the agency personnel who are working in a capacity related to affirmative action can have part or all of their performance evaluated based on their meeting the established goals and timetables.

b. Timetable. Each agency shall determine the timetable in which it expects to meet its goals. In setting timetables, an agency should consider, but not be limited to, the following:

- (1) Anticipated vacancies and positions.
- (2) Work force turnover rate.

c. Organizational unit. Goals and timetables shall be prepared for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 20.3(2), paragraph "b."

20.3(7) Consolidation. An agency may consolidate the racial or ethnic minorities and EEO-4 occupational categories into broader groupings in conducting its analysis under subrules 20.3(2), 20.3(3), 20.3(4), 20.3(5) and 20.3(6).

a. Applicability. Consolidation is applicable when the agency or organizational unit work force has been analyzed according to all the racial or ethnic minorities or occupational categories, and the resultant figures are determined to be too small for significant statistical analysis.

b. Racial or ethnic minorities. The minority racial or ethnic groups may be consolidated into one single group.

c. Occupational categories. The occupational categories may be consolidated into one or more groups.

20.3(8) Comparable plan. An agency plan which is consistent with 41 Code of Federal Regulations, Chapter 60, Revised Order No. 4, Affirmative Action Guidelines, issued by the Office of Federal Contract Compliance Programs, shall be considered to be in compliance with the aforementioned planning standards so long as the plan also meets the requirements of subrules 20.3(2), 20.3(5) and 20.3(6).

240—20.4(601A) Dissemination. Each agency shall have an internal and external system for disseminating its affirmative action plan.

20.4(1) Affirmative action plan. The plan shall be distributed to agency employees charged with the responsibility for its implementation. The plan shall also be made available to other agency employees and the public upon request.

20.4(2) Affirmative action statement. The statement shall be disseminated in, but not limited to, the following manner:

- a. A copy shall be given to all agency employees.
- b. It shall be posted on bulletin boards or other conspicuous places.
- c. It shall be distributed to recruiting sources.

240—20.5(601A) Reporting. The following reporting shall be required for each agency.

20.5(1) Initial report. Each agency shall submit an affirmative action plan which conforms to the planning standards as set forth in these rules to the Iowa civil rights commission, on or before January 1, 1985.

20.5(2) Update report. After January 1, 1985, each plan shall be updated annually to include a record of all activities undertaken by the agency to effectuate its plan. The same shall be submitted to the Iowa civil rights commission on or before January 1 of each subsequent year, pursuant to Executive Order Number 15.

240—20.6(601A) Nondiscrimination. An agency which has adopted an affirmative action plan pursuant to these rules shall not be deemed to have violated Iowa Code chapter 601A, by adherence to its affirmative action plan provisions.

ARC 4577**COLLEGE AID COMMISSION[245]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 261.3 and 17A.21, the College Aid Commission proposes to amend Chapter 12, Organization and Operation, Iowa Administrative Code.

The amendment defines a quorum as required by the Administrative Procedure Act.

Interested persons may comment or submit requests for an oral presentation by writing the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 on or before May 14, 1984.

This rule is intended to implement Iowa Code chapter 261.

Subrule **12.2(3)**, paragraph "c" is amended to read as follows:

c. A quorum shall consist of a majority *two-thirds* of the voting members of the commission. When a quorum is present a position is carried by an affirmative vote of the majority of commission members present and eligible to vote ~~except in the case of administrative rules. A majority of the commission members eligible to vote is required to adopt, revise, or rescind an administrative rule.~~

This rule is intended to implement Iowa Code chapter 261.

ARC 4605**ENGINEERING EXAMINERS,
BOARD OF[390]****TERMINATION OF NOTICE**

In accordance with Iowa Code section 17A.4(1)"b," the one hundred eighty days on **ARC 3366** have expired, the Board of Engineering Examiners wishes to terminate further action on this Notice of Intended Action. [**ARC 3366** published in IAB November 10, 1982, proposed a new Chapter 5, "Buildings, structures, mechanical systems and electrical systems requiring professional services."]

ARC 4593**HEALTH DEPARTMENT[470]****BOARD OF OPTOMETRY EXAMINERS
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 258A.2, the Board of Optometry Examiners gives Notice of Intended Action to amend Chapter 144 of the Iowa Administrative Code relating to license renewal and continuing education.

The rules increase the continuing education requirements to thirty hours, provide standards for approved study sessions, and permit practice management and correspondence study for a maximum of six hours.

Any interested person may make written comments concerning the proposed rules not later than 4:30 p.m. May 2, 1984, addressed to Peter J. Fox, Hearing and Compliance Officer, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code section 258A.2.

ITEM 1. Rule 470—144.1(154) is amended to read as follows:

470—144.1(154) General.

144.1(1) The optometric study compliance year shall extend from June 1 to May 31, during which period attendance at approved study sessions may be used as evidence of study fulfillment requirements for the subsequent license renewal year beginning July 1 and expiring June 30.

~~Beginning with~~ *During* the continuing education period from June 1, 1982 to May 31, 1984 ~~and each biennium thereafter~~, each person licensed to practice as an optometrist in this state shall complete a minimum of twenty-four hours of continuing education during the biennium approved by the board. ~~Beginning with the continuing education period from June 1, 1984 to May 31, 1986 and each biennium thereafter~~, each person licensed to practice as an optometrist in this state shall complete a minimum of thirty hours of continuing education approved by the board. *Not more than eighteen hours of continuing education shall be completed during any twelve-month period, from June 1 through May 31, Any continuing education beyond eighteen hours completed during any twelve-month period shall not be counted toward the required hours of continuing education.* The completion of the continuing education is a prerequisite for license renewal. License renewal beginning July 1, 1982 shall be for a two-year period.

144.1(2) ~~Prior to June 1, 1982, The~~ the educational requirement shall be twelve clock hours of attendance and study at approved study sessions. ~~Beginning with the continuing education period starting June 1, 1982, From June 1, 1982 through May 31, 1984~~ the educational requirement shall be twenty-four hours of approved continuing education completed biennially. *Beginning with the continuing education period starting June 1, 1984,*

the educational requirement shall be thirty hours of approved continuing education completed biennially.

ITEM 2. Subrule 144.1(3) is amended to read as follows:
144.1(3) The required number of study hours may be obtained by one or more of the following methods:

a. The annual continuing education program of the Iowa optometric association;

b. Postgraduate study sessions or seminars at an accredited school or college of optometry;

c. Local study group programs approved by the board; *study groups shall meet a minimum of six times per year. A maximum of one hour credit per meeting shall be given for each meeting unless prior approval is rendered by the board for an additional amount of credit.*

d. Other meetings or seminars either within or without the state of Iowa that may be approved in advance by the board with such request for approval to be made to the board at least ~~fourteen~~ *thirty* days prior to ~~said~~ *the* meeting or seminar. Programs, names of speakers with qualifications, and subject matter ~~must~~ *shall* accompany the request; *providers of accredited continuing education must be approved by the board as having education as one of their primary functions.*

e. Home study material specified and approved by the board in cases of extenuating circumstances. Such will be allowed only upon submission of satisfactory evidence to the board of such circumstances and inability to acquire the number of study hours.

f. *Correspondence courses which include post-testing results may be used for a maximum of six hours' credit for the biennium with prior board approval.*

g. *Practice management courses may be used for a maximum of six hours' credit for the biennium.*

ITEM 3. Subrule 144.1(6) is amended to read as follows:

144.1(6) If a new license holder is licensed during the first year of the biennial continuing education period, ~~he~~ *or she* the license holder is only required to complete ~~twelve~~ *fifteen* hours of continuing education for renewal. If the new license holder is licensed during the second year of the biennial continuing education period, ~~he~~ *or she* the license holder will be exempt from meeting continuing education requirements for the first license renewal. The new license holder will be required to complete ~~twenty-four~~ *thirty* hours of continuing education for the ~~second license renewal~~ *subsequent license renewals.*

ARC 4599**HUMAN SERVICES
DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes amending rules appearing in the IAC relating to state supple-

HUMAN SERVICES DEPARTMENT[498] (cont'd)

mentary assistance (chapter 50) and the medical assistance (chapter 76).

Iowa has elected to employ criteria of the supplemental security income program in determining eligibility for supplemental security income related medical assistance groups and state supplementary assistance medical groups. A supplemental security income policy revision, effective April 1, 1982, requires that resource eligibility determination be made as of the first moment of the first day of each month. In accordance with this policy, changes in the amounts of available resources which an individual or couple possesses during a month never affect eligibility for that month. If an applicant or recipient has excess resources on the first day of the month, he or she is ineligible for the entire month, even though available resources might be reduced below the limitation later in the month.

This interpretation had not been implemented for medical assistance purposes due to some confusion and controversy with respect to whether it was mandatory that this policy be applied in determining medical assistance eligibility and, if so, the effective date. The health care financing administration has determined that states must implement this policy revision as soon as possible.

These rules implement the revision and rewrite the rules for clarity.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before May 2, 1984.

These rules are intended to implement Iowa Code section 249A.4.

ITEM 1. Subrule 50.3(1) is amended to read as follows:

50.3(1) Payment for a protective living arrangement or payment for a dependent relative shall be ~~made upon approval for the full month in which application is made, when the applicant is eligible for any part of that month. When eligibility does not exist during the month of application, payment shall be made for the next full month in which eligibility is established effective as of the date of application or the date of eligibility, whichever is later.~~

ITEM 2. Rule 498—76.5(249A) is rescinded and the following inserted in lieu thereof:

498—76.5(249A) Effective date.

76.5(1) Three-month retroactive eligibility.

a. The effective date of approval of medical assistance benefits shall be no later than the third month before the month of application when the individual:

(1) Received any covered medical service during the retroactive three-month period which is still not paid for, and

(2) Would have been eligible for medical assistance benefits in the month services were received, regardless of whether the individual was alive when the application for medical assistance was made.

b. The applicant need not be eligible in the month of application to be eligible in any of the three months prior to the month of application.

c. Persons receiving only supplemental security income benefits who wish to make application for medical assistance benefits for the three months preceding the month of application shall complete Form MA-2124-0, Supplementary Application - Retroactive Medical Assistance Eligibility.

76.5(2) First day of month.

a. For persons approved for aid to dependent children or programs related to aid to dependent children, medical assistance benefits shall be effective on the first day of a month when eligibility was established any time during the month.

b. For persons approved for supplemental security income, programs related to supplemental security income, or state supplementary assistance, medical assistance benefits shall be effective on the first day of a month when the individual was eligible as of the first moment of the first day of the month.

76.5(3) Care prior to approval. No payment shall be made for medical care received prior to the effective date of approval.

ARC 4598**HUMAN SERVICES DEPARTMENT[498]****TERMINATION OF NOTICE**

Notice is hereby given that the Department of Human Services is terminating further rulemaking proceedings under the provisions of Iowa Code section 17A.4(1)"b," for proposed rules relating to the service programs of the department (chapters 52, 131, 132, 133, 135, 136, 137, 138, 140, 141, 145, 146, 148, 150, 151, 153, 154, 155, 158, 159, 160, 161, 162 and 166). The notice proposed further reductions in these programs in the event rules in response to Executive Order number 4 did not take effect as planned. Notice of Intended Action was published in the IAB October 12, 1983, as ARC 4163. The department finds that no further reductions are to be made as a result of Executive Order number 4.

ARC 4600**HUMAN SERVICES DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes amending rules appearing in the IAC relating to food stamps (chapter 65).

The amendment makes a food stamp change which is caused by, or related to, a change in public assistance effective the same date as the public assistance change. Current rules require that an increase in food stamps because of a decrease in public assistance not take place

HUMAN SERVICES DEPARTMENT[498] (cont'd)

until the timely notice period for public assistance expires. They also require that a decrease in food stamps because of a change in public assistance requires timely notice, even though the public assistance change does not. The department is requesting a waiver from USDA to align the program effective dates so the changes for both programs will take place for the same month.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before May 2, 1984.

This rule is intended to implement Iowa Code section 234.12.

498—chapter 65 is amended by adding a new rule.

498—65.25(234) Effective date of change. A food stamp change caused by, or related to, a public assistance grant change, will have the same effective date as the public assistance change.

ARC 4597**HUMAN SERVICES
DEPARTMENT[498]****TERMINATION OF NOTICE**

Notice is hereby given that the Department of Human Services is terminating further rulemaking proceedings under the provisions of Iowa Code section 17A.4(1)"b," for proposed rules relating to medical assistance (chapters 78 and 79). The notice proposed further reductions in this program in the event rules in response to Executive Order number 4 did not take effect as planned. Notice of Intended Action was published in the IAB October 12, 1983, as **ARC 4154**. The department finds that no further reductions are to be made as a result of Executive Order number 4.

ARC 4601**HUMAN SERVICES
DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes amending rules appearing in the IAC relating to medical assistance (chapter 80).

1983 Iowa Acts, chapter 27, established a Health Data Commission. One of the provisions of that Act is that third party payers utilize a uniform billing form approved by

the commission in order to facilitate the collection of health care data. The commission has approved a form developed by the health care financing administration to be used for inpatient and outpatient hospital care, home health agencies, rehabilitation agencies, and skilled nursing facilities. The department will now be using that form for claims from those providers as required by IAC 465—chapter 5.

Consideration will be given to written data, views, and arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before May 2, 1984.

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

Subrule 80.2(2), paragraphs "h," "i," "s," and "u," are amended to read as follows:

h. Home health agencies shall submit claims on Form ~~XIX-HHA-1, Home Health Claim UB-82-HCFA-1450.~~

i. Hospitals providing inpatient care or *outpatient services* shall submit claims on Form ~~XIX-HOSP-1, Inpatient Hospital Claim UB-82-HCFA-1450.~~ Hospitals providing outpatient services shall submit claims on Form ~~XIX-HOSP-2, Outpatient Hospital Claim.~~

s. Rehabilitation agencies shall submit claims on Form ~~XIX-HOSP-2, Outpatient Hospital Claim UB-82-HCFA-1450.~~

u. Skilled nursing facilities shall submit claims on Form ~~XIX-SNH-1, Skilled Nursing Facility Claim UB-82-HCFA-1450.~~

ARC 4602**HUMAN SERVICES
DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 217.6 and Iowa Code chapters 96 and 252B, the Department of Human Services proposes amending rules appearing in the IAC relating to the nonassistance child support recovery program (chapter 96).

This revision lists reasons for terminating child support recovery services to nonassistance cases. Current rules provide for termination only when the client requests termination in writing, although federal CSRU requires termination of services for other reasons.

The revisions also provide that the setoff of unemployment benefits will also be available to nonassistance cases. Currently this is only done for cases receiving aid to dependent children. Collection of support will be facilitated by this change.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover

HUMAN SERVICES DEPARTMENT[498] (cont'd)

State Office Building, Des Moines, Iowa 50319 on or before May 2, 1984.

These rules are intended to implement Iowa Code sections 96.3 and 252B.4.

ITEM 1. Rule 498—96.3(252B) is rescinded and the following inserted in lieu thereof:

498—96.3(252B) Denial or termination of services.

96.3(1) Reasons for denial or termination. Services to an applicant or recipient of nonpublic assistance support services may be denied or terminated when no known possibility of collecting support payments exists. Denial or termination of services may occur for one or more of the following reasons:

a. Upon receipt of a written or oral request from the applicant or client to terminate the case.

b. When all support obligations established by a court order have been collected and the support obligation has terminated.

c. When the responsible person is deceased and no further legal action can be taken to collect on the obligation.

d. When the applicant or client obtains the services of a private attorney to enforce or secure a support obligation.

e. When the absent parent cannot be located after all local, state, and federal location sources have been exhausted and no possibility of collecting support exists.

f. When the responsible person resides in a foreign country and there is not a support or reciprocity agreement with that country.

g. When a court rules the putative father is not the father of a child, blood tests exclude the putative father, or there is insufficient evidence for a court hearing to be held.

h. When the parental rights of the absent parent have been terminated and delinquent support is not owed by the absent parent.

i. When the responsible person is incarcerated, incapacitated, institutionalized, or receiving aid to dependent children.

96.3(2) Notification.

a. When services are denied or terminated, a notice shall be sent to the applicant or client at the last known address stating the reason(s) for denying or terminating the services, the effective date of the termination, and an explanation of the right to request a fair hearing, according to 498—chapter 7.

b. The recipient shall also be notified in writing when the status of a case changes from a case not receiving aid to dependent children to a case receiving aid to dependent children.

This rule is intended to implement Iowa Code section 252B.4.

ITEM 2. Amend 498—chapter 96 by adding a new rule:

498—96.6(96) Setoff of unemployment benefits. A setoff of a responsible person's unemployment benefits shall be done in accordance with 498—95.8(96).

This rule is intended to implement Iowa Code section 96.3 and 15 U.S.C. 1673(b).

ARC 4585**INSURANCE DEPARTMENT[510]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 505.8, the Iowa Department of Insurance hereby gives Notice of Intended Action to add Chapter 56, "Workers' Compensation Group Self-Insurance," Iowa Administrative Code.

These rules are being promulgated to provide reasonable conditions and restrictions for the approval of self-insurance for workers' compensation liability for associations of employers. The rules set up standards and criteria for approval and continued approval of a group, and procedures for withdrawal of that approval.

Any interested person may make written suggestions or comments on these proposed rules prior to May 2, 1984. Such written materials should be directed to Kimerlee P. O'Hara, Attorney, Market Conduct Division, Insurance Department of Iowa, Lucas State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the above-named person at 515-281-4025 or in the department offices on the ground floor of the Lucas Building. Also, there will be a public hearing on Tuesday, May 1, 1984, at 10:00 a.m. in the conference room in the basement of the Lucas Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the above-named person at least one day prior to the date of the public hearing. Presentations will be limited to ten minutes.

These rules are intended to implement Iowa Code sections 87.4, 87.11 and 87.20.

The following chapter is proposed:

**CHAPTER 56
WORKERS' COMPENSATION GROUP
SELF-INSURANCE**

510—56.1(87,505) General provisions.

56.1(1) Associations which are issued a certificate of approval by the commissioner shall not be deemed to be insurers or insurance companies and shall not be subject to the provisions of the insurance laws and regulations except as otherwise provided in this chapter or by statute.

56.1(2) The purpose of this chapter is to provide reasonable conditions and restrictions for the approval of self-insurance for workers' compensation liability for associations of employers that have formed an insurance association under Iowa Code section 87.4.

56.1(3) The authority to promulgate these rules is found in Iowa Code section 505.8.

56.1(4) Certificates of relief from insurance shall not exempt a mutual association from Iowa Code chapters 85, 85A, 85B, 86 and 87.

INSURANCE DEPARTMENT[510] (cont'd)

510—56.2(87,505) Definitions.

56.2(1) "Commissioner" shall mean the commissioner of the insurance department of Iowa, appointed by the governor pursuant to Iowa Code section 505.2.

56.2(2) "Department" shall mean the insurance department of Iowa.

56.2(3) "Employer" shall be defined as set forth in Iowa Code section 85.61.

56.2(4) "Workers' compensation self-insurance association" or "association" means a not-for-profit unincorporated association consisting of five or more employers who are members of the same bona fide trade or professional association which has been in existence for not less than five years, and who enter into agreements to pool their liabilities for workers' compensation benefits and employer's liability in this state pursuant to Iowa Code section 87.4.

56.2(5) "Administrator" means an individual, partnership or corporation engaged by a workers' compensation self-insurance association's board of trustees to carry out the policies established by the association's board of trustees and to provide day to day management of the association.

56.2(6) "Insolvent" or "insolvency" means the inability of a workers' compensation self-insurance association to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

56.2(7) "Net premium" means premium derived from standard premium adjusted by any advance premium discounts.

56.2(8) "Service company" means a person or entity which provides services not provided by the administrator, including but not limited to, (a) claims adjustment, (b) safety engineering, (c) compilation of statistics and the preparation of premium, loss and tax reports, (d) preparation of other required self-insurance reports, (e) development of members' assessments and fees, and (f) administration of a claim fund.

56.2(9) "Standard premium" means the premium derived from the manual rates adjusted by experience modification factors but before advance premium discounts.

56.2(10) "Workers' compensation," when used as a modifier of "benefits," "liabilities," or "obligations" means both workers' compensation and employer's liability.

510—56.3(87,505) Requirements for self-insurance.

56.3(1) A proposed workers' compensation self-insurance association shall file with the commissioner its application for a certificate of approval accompanied by a nonrefundable filing fee in the amount of \$100. The application shall include the association's name, location of its principal office, date of organization, name and address of each member, and such other information as the commissioner may reasonably require, together with the following:

a. Proof of compliance with the provisions of subrule 56.3(2).

b. A copy of the articles of association, if any.

c. A copy of agreements with the administrator and with any service company.

d. A copy of the bylaws of the proposed association.

e. A copy of the agreement between the association and each member securing the payment of workers' compensation benefits.

f. Designation of the initial board of trustees and administrator.

g. The address in this state where the books and records of the association will be maintained at all times.

h. A pro forma financial statement on a form acceptable to the commissioner showing the financial ability of the association to pay the workers' compensation obligations of its members.

i. Proof of payment to the association by each member of not less than a twenty-five percent deposit of that member's first year estimated annual net premium on a date prescribed by the commissioner. Such payment shall be considered the deposit premium payment of each member required by subrule 56.17(1), paragraph "a" if the proposed association is granted a certificate of approval.

56.3(2) To obtain and to maintain its certificate of approval a workers' compensation self-insurance association shall comply with the following requirements:

a. A combined net worth of all members of an association of private employers of at least \$1,000,000.

b. Maintain excess insurance of not less than \$3,000,000 per occurrence. Associations containing members with a high risk of multiple injury from a single accident may be required to maintain higher limits. The retention shall be the retention generally available to associations with similar exposures and annual premiums.

c. Maintain annual aggregate excess insurance with limits above the aggregate retention of not less than \$2,000,000, with an aggregate retention no greater than the estimated earned normal premium collected in the policy year less all estimated expenses during the year including excess insurance premiums.

d. Provide a surety bond on a form prescribed by the commissioner in an amount not less than the association's per occurrence excess insurance retention. The commissioner may require a larger performance bond to secure any potential liability of the association not otherwise funded by premium collections or excess insurance.

e. An estimated annual standard premium of at least \$250,000 during an association's first year of operation.

f. An indemnity agreement jointly and severally binding the association with private employers and each member thereof to meet the workers' compensation obligations of each member, in a form prescribed by the commissioner. In an association with public employers, several liability shall not be required.

g. A fidelity bond in the amount of \$250,000 for the administrator.

h. A fidelity bond in the amount of \$250,000 for the service company. The commissioner may also require the service company providing claim services to furnish a performance bond in a form and amount acceptable to the commissioner.

i. Each association shall have within its own organization ample facilities and competent personnel to service its own program with respect to claims, administration loss prevention, loss control, safety engineering and rehabilitation services for injured employees or members' employees or shall contract with an approved service company to provide these services.

56.3(3) An association shall notify the commissioner of any change in the information required to be filed

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under subrule 56.3(1), or in the manner of its compliance with subrule 56.3(2), no later than thirty days after such change.

56.3(4) The commissioner shall evaluate the information provided by the application required to be filed under subrule 56.3(1), to assure that no gaps in funding exist and that funds necessary to pay workers' compensation benefits will be available on a timely basis.

56.3(5) After an initial review, the commissioner may require additional relevant information and additional security.

56.3(6) Within a reasonable time, the commissioner shall issue to the association a certificate of approval upon finding that the applicant association has met all requirements or the commissioner shall issue an order refusing such certificate setting forth reasons for such refusal upon finding that the applicant association does not meet all requirements.

56.3(7) Each workers' compensation self-insurance association shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against it in this state. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this state any obligation or liability of the association for workers' compensation benefits.

510—56.4(87,505) Approval of service companies.

56.4(1) Any person or entity desiring to be approved as a service company shall make application to the commissioner, together with:

a. Summary information concerning its organization and staff;

b. Detailed résumés of all employees, or employees of any subcontractor, in an administrative or professional capacity with responsibility for adjusting Iowa claims. Such résumés shall indicate the areas of administration in which each employee shall work and the qualifications and experience of the employee relating to that area.

c. A description of the administrative services intended to be provided.

d. The identity of the owner(s) of the service company, including but not limited to, all members of a partnership and all officers of a corporation.

e. Most recent independently audited financial statement;

f. Fidelity bond for each person involved with the transfer of funds in the amount of \$250,000 each;

g. If the fee for adjusting losses is to be calculated as a percent of premium, a surety bond in the amount of twenty percent of outstanding losses is required.

56.4(2) The service company and trustees or members of an association shall not have a financial interest in each other in excess of one percent of the net worth.

56.4(3) Unless the commissioner otherwise permits, the service contract shall state that the service company shall handle to their conclusion all claims and other obligations incurred during the contract period.

56.4(4) The service company shall have within the state of Iowa an employee who is able to act as a resident agent, and is authorized to act in all matters, including workers' compensation claim resolution, concerning the service company.

56.4(5) Any records of a service company relating to any of the services offered or provided to any self-insurer in Iowa shall be open to inspection by the commissioner or designee during normal business hours.

56.4(6) All records concerning a loss claim shall be kept for at least eight years after the claim closes. All records concerning a premium calculation for a member shall be kept for at least five years after the expiration of a policy unless the department permits a shorter time period.

56.4(7) A service company may not withdraw and cannot be withdrawn without first giving one hundred twenty days' written notice to the commissioner.

56.4(8) Any approval granted shall be effective unless withdrawn, after notice and opportunity for a hearing, by the commissioner on one of the following grounds:

a. The service company no longer has the organization or financial integrity necessary to supply the required services;

b. The service company failed to adjust claims in accordance with the compensation laws;

c. Misconduct is found in the administration of the company's accounts; or

d. Failure to comply with these rules.

510—56.5(87,505) Excess insurance. No contract or policy of per occurrence or aggregate excess insurance shall be recognized in considering the ability of an applicant to fulfill its financial obligations under the workers' compensation Act, unless such contract or policy complies with the following:

56.5(1) Is issued by a company:

a. Licensed to transact casualty insurance business in this state; or

b. Listed in the most recent NAIC publication "Financial Review of Alien Insurers" (commonly known as the white list); or

c. Listed on the most recent List of Acceptable Non-Admitted Insurers prepared by this department.

56.5(2) Has a term of not less than one year.

56.5(3) No cancellation, termination or alteration of coverage whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of ninety days after written notice of such cancellation, termination, or alteration has been filed with the commissioner unless an earlier date is approved by the commissioner.

510—56.6(87,505) Rates and reporting of rates.

56.6(1) Every workers' compensation self-insurance association shall adhere to the uniform classification system, uniform experience rating plan, and manual rules filed with the commissioner by an advisory organization designated by the commissioner.

56.6(2) Premium contributions to the association shall be determined by applying the manual rates and rules to the appropriate classification of each member which shall be adjusted by each member's experience credit or debit. Subject to approval by the commissioner, premium contributions may also be reduced by an advance premium discount reflecting the association's expense levels and loss experience.

56.6(3) Notwithstanding subrule 56.6(2), an association may apply to the commissioner for permission to make its own rates. Such rates shall be based on at least five years of the association's experience.

56.6(4) Each association shall have its members audited at least annually by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll and rates. For small accounts, members may be audited by use of a mailed questionnaire. A report

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of the audit shall be filed with the commissioner in a form acceptable to the commissioner.

An association or any member thereof may request a hearing on any objections to the classifications. If the commissioner determines that as a result of an improper classification a member's premium contribution is insufficient, the commissioner shall order the association to assess that member an amount equal to the deficiency. If the commissioner determines that as a result of an improper classification a member's premium is excessive, the commissioner shall order the association to refund to the member the excess collected. The audit shall be at the expense of the association.

56.6(5) The rates approved by the commissioner for approved associations prior to the effective date of these rules may remain in effect should the association so choose.

510—56.7(87,505) Special provisions.

56.7(1) If the association fails to pay workers' compensation benefits when due, the commissioner may appoint a party to receive funds from excess insurance or the surety bond, or both, to be disbursed to individual claimants.

56.7(2) The association shall notify the industrial commissioner of all fatalities within ten days of death.

56.7(3) Statutory benefits, and any fees or assessments by the industrial commissioner of Iowa are to be paid by the association for its members.

56.7(4) Loss reserves reported to the commissioner shall not be discounted with respect to investment income. Loss reserves shall only be discounted for remarriage or mortality, or both. If the loss reserves of an association are found to be unreasonably low, the commissioner can require the reserves to be certified annually by an actuary who is a reserve specialist approved by the commissioner.

56.7(5) Assessment provisions.

a. In the event of a deficit in any fiscal year, the deficit shall be immediately made up from any of the following:

- (1) Unencumbered surplus from any fiscal year other than the current year;
- (2) Moneys not allocated to pay claims;
- (3) Retained investment earnings;
- (4) Assessment of the membership if ordered;
- (5) By such alternative method as the commissioner may order or approve.

b. Liability for assessments will be joint and several. Except public employers will only be jointly liable.

56.7(6) All advertising and solicitation materials must be filed with the commissioner prior to their use.

510—56.8(87,505) Certificate of approval; termination.

56.8(1) The certificate of approval issued by the commissioner to a workers' compensation self-insurance association authorizes the association to provide workers' compensation benefits. The certificate of approval remains in effect until terminated at the request of the association or revoked by the commissioner.

56.8(2) The commissioner shall not grant the request of any association to terminate its certificate of approval unless the association has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the commissioner. Such obligations shall include both known claims and expenses associated therewith and claims incurred but not re-

ported and expenses associated therewith. Subject to the approval of the commissioner, an association may merge with another association engaged in the same or similar type of business only if the resulting association assumes in full all obligations of the merging associations. The commissioner shall hold a hearing on the merger if any party, including a member of either association, so requests.

510—56.9(87,505) Examinations. The commissioner shall examine the affairs, transactions, accounts, records and assets of each association as often as the commissioner deems advisable. The expense of such examinations shall be assessed against the association in the same manner that insurers are assessed for examinations.

510—56.10(87,505) Board of trustees—membership, powers, duties, and prohibitions. Each association shall be operated by a board of trustees which shall consist of not less than five persons whom the board of directors of the parent association may appoint or members of an association may elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, or directors of members of the association. The association's administrator, service company, or any owner, officer, employee of, or any other person affiliated with, such administrator or service company shall not serve on the board of trustees of the association. All trustees shall be residents of this state or officers of corporations authorized to do business in this state. The board of trustees of each association shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the association, including all of the following:

56.10(1) The board of trustees shall:

a. Maintain responsibility for all moneys collected or disbursed from the association and segregate all moneys into a claims fund account and an administrative fund account. At least seventy percent of the net premium shall be placed into a designated depository for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions. This shall be called the claims fund account. The remaining net premium shall be placed into a designated depository for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the administrative fund account. The commissioner may approve an administrative fund account of more than thirty percent and a claims fund account of less than seventy percent only if the association shows to the commissioner's satisfaction that more than thirty percent is needed for an effective safety and loss control program, or the association's aggregate excess insurance attaches at less than seventy percent.

b. Maintain minutes of its meetings and make such minutes available to the commissioner.

c. Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the association, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.

d. Retain an independent certified public accountant to prepare the statement of financial condition required by subrule 56.13(2), paragraph "a."

56.10(2) The board of trustees shall not:

a. Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the commissioner.

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b. Borrow any moneys from the association or in the name of the association except in the ordinary course of business, without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner.

510—56.11(87,505) Association membership; termination; liability.

56.11(1) An employer joining a workers' compensation self-insurance association after the association has been issued a certificate of approval shall (1) submit an application for membership to the board of trustees or its administrator and (2) enter into the indemnity agreement required by subrule 56.3(2), paragraph "f." Membership takes effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

56.11(2) Individual members of an association shall be subject to cancellation by the association pursuant to the bylaws of the association. In addition, individual members may elect to terminate their participation in the association. The association shall maintain coverage of each canceled or terminated member for thirty days after notice is given to association members. The association shall also promptly notify the commissioner and the industrial commissioner of the termination or cancellation of a member unless the association is notified sooner by the workers' compensation agency that the canceled or terminated member has procured workers' compensation insurance, has become an approved self-insurer, or has become a member of another association.

56.11(3) The association shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is canceled by an association remains jointly and severally liable, for a public member, jointly liable only, for workers' compensation obligations of the association and its members which were incurred during the canceled or terminated member's period of membership.

56.11(4) An association member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the association or the member of required workers' compensation benefits.

56.11(5) The insolvency or bankruptcy of a member does not relieve the association or any other member of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

510—56.12(87,505) Requirements of sales agents.

56.12(1) Each person who performs any sales or promotional function for the association, deals with the rates or claims, or makes representations about the available coverage is a "person" within the meaning of Iowa Code chapter 507B and must be of good character and competence.

56.12(2) A licensed insurance agent qualifies under subrule 56.12(1).

56.12(3) The trustees must annually file for approval a list of the names, addresses, and backgrounds of all persons to which subrule 56.12(1) applies. In the case of licensed insurance agents, the name and social security number is sufficient.

510—56.13(87,505) Requirements for continued approval.

56.13(1) A certificate of relief from insurance is continuously valid, subject to the annual filing requirements of 56.13(2), and the annual processing fee of \$100. However, the certificate may be revoked under the provisions of rule 56.19(87,505).

56.13(2) Prior to March 1 of each year, each mutual association must submit:

a. A statement of financial condition audited by an independent certified public accountant on or before the last day of the second month following the end of the calendar year. The financial statement shall be on a form prescribed by the commissioner and shall include, but not be limited to, actuarially appropriate reserves for (1) known claims and expenses associated therewith, (2) claims incurred but not reported and expenses associated therewith, (3) unearned premiums and (4) bad debts, which reserves shall be shown as liabilities. An actuarial opinion regarding reserves for items (1) and (2), above shall be included in the audited financial statement. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

The commissioner may prescribe a uniform accounting system for all associations to ensure the accurate and complete reporting of associations' financial information.

Any premium or assessment amount that is not paid within three months of the due date shall be assumed uncollectible for financial statement purposes and in considering the amount of assessments and dividends.

The association shall keep all records and worksheets used to complete the financial statement for at least five years, unless the department permits a shorter time;

b. Proof of excess insurance;

c. Any additional relevant information required by the commissioner; and

d. The required renewal fee.

56.13(3) The department reserves the right to require quarterly financial reporting if warranted by the loss experience.

510—56.14(87,505) Misrepresentation prohibited. No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a member of an association.

510—56.15(87,505) Investments. Funds not needed for current obligations may be invested by the board of trustees in accordance with Iowa Code section 682.23, subsections 1 to 12.

510—56.16(87,505) Refunds.

56.16(1) Any moneys for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than eleven months after the end of the fund year.

56.16(2) Each member shall be given a written description of the refund plan at the time of application for membership. A refund plan for moneys in excess of the amount necessary to fund all obligations for a fund year or disbursement of claims fund moneys may be instituted by the association. Such plan must be filed and approved with the commissioner. Payment of a refund based on a

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member's participation in a previous fund year payable in the following year shall not be contingent on continued membership in the association after that fund year.

56.16(3) A request to the department for authorization to disburse surplus claims moneys shall be made in writing at least thirty days prior to the desired distribution date. The request shall include a current financial statement for the association, a statement by the association that the desired disbursal will not impair the financial condition of the association, a current quarterly status report and a report establishing the adequacy of the reserves in the fiscal year for which the disbursal is requested. The date of payment shall be agreed to by the trustees and the commissioner, but in no event shall such distribution take place less than eleven months after the end of the fiscal year.

56.16(4) If the loss reserves of an association are found to be unreasonably low, the commissioner shall require the reserves to be certified annually by a reserve specialist approved by the commissioner.

510—56.17(87,505) Premium payment; reserves.

56.17(1) Each association shall establish to the satisfaction of the commissioner a premium payment plan which shall include:

a. A deposit premium payment by each member of at least twenty-five percent of that member's annual premium before the start of the association's fund year. A credit may be available for past unused deposits; and

b. Payment of each member's annual premium in monthly, quarterly or other regular payments.

56.17(2) Each association shall establish and maintain actuarially appropriate loss reserves which shall include reserves for (1) known claims and expenses associated therewith and (2) claims incurred but not reported and expenses associated therewith.

56.17(3) Each association shall establish and maintain bad debt reserves based on the historical experience of the association or other associations.

510—56.18(87,505) Deficits and insolvencies.

56.18(1) If the assets of an association are at any time insufficient to enable the association to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this Act, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

56.18(2) In the event of a deficiency in any fund year, such deficiency shall be made up immediately, by one or more of the methods described in subrule 56.16(5). The commissioner shall be notified prior to any transfer of surplus funds from one fund year to another.

56.18(3) If the association fails to assess its members or to otherwise make up such deficit within thirty days, the commissioner shall order it to do so.

56.18(4) If the association fails to make the required assessment of its members within thirty days after the commissioner orders it to do so, or if the deficiency is not fully made up within sixty days after the date on which such assessment is made, or within such longer period of time as may be specified by the commissioner, the association shall be deemed to be insolvent.

56.18(5) The commissioner shall proceed against an insolvent association in the same manner as the commis-

sioner would proceed against an insolvent domestic insurer in this state as prescribed in Iowa Code sections 515.85 to 515.87 regarding liquidation, conservation, etc. The commissioner shall have the same powers and limitations in such proceedings as are provided under those sections, except as otherwise provided in this chapter.

56.18(6) In the event of the liquidation of an association, the commissioner shall levy an assessment upon its members for such an amount as the commissioner determines to be necessary to discharge all liabilities of the association, including the reasonable cost of liquidation.

510—56.19(87,505) Grounds for nonrenewal or revocation of a certificate of relief from insurance. The following constitute grounds for nonrenewal or revocation of a certificate of relief from insurance:

56.19(1) Failure to comply with any provisions of these rules or of Iowa Code chapter 85, 85A, 85B, 86 or 87;

56.19(2) Failure to comply with any lawful order of the commissioner;

56.19(3) Failure to promptly pay lawful compensation claims;

56.19(4) Committing an unfair or deceptive act or practice;

56.19(5) Deterioration of financial condition adversely affecting the certificate holder's ability to pay expected losses;

56.19(6) The application or any necessary forms that have been filed with the department contain fraudulent information or omissions;

56.19(7) The association or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the association or its administrator in its fiduciary capacities.

510—56.20(87,505) Hearing and appeal. Prior to denying a renewal application or revoking a certificate issued under this chapter, a certificate holder shall be given a hearing and a right to appeal as provided in rule 3.1(17A,502,505) et seq.

510—56.21(87,505) Existing approved self-insurers.

56.21(1) All mutual associations which were given a certificate of relief from insurance or some other approval to group self-insure from the commissioner prior to the effective date of these rules shall bring themselves into full compliance with these rules within ninety days after their effective date or by the filing time set out for renewals, whichever comes later.

56.21(2) An existing association may petition the commissioner for a waiver of a rule, or rules. The commissioner may grant such waiver upon showing to the commissioner's satisfaction that the association is solvent and has the ability to pay workers' compensation benefits as required by law.

510—56.22(87,505) Severability clause. If any provision of this chapter, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this chapter.

These rules are intended to implement Iowa Code sections 87.4, 87.11 and 87.20.

ARC 4584**INSURANCE DEPARTMENT[510]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 505.8, the Iowa Department of Insurance hereby gives Notice of Intended Action to add Chapter 57, "Workers' Compensation Individual Self-Insurance," Iowa Administrative Code.

These rules are being promulgated to provide general guidelines for the approval of self-insurance for workers' compensation liability for certain qualified employers. The rules set out standards and criteria for approval and continued approval of an individual employer and procedures for withdrawal of that approval.

Any interested person may make written suggestions or comments on these proposed rules prior to May 26, 1984. Such written materials should be directed to Kimerlee P. O'Hara, Attorney, Market Conduct Division, Insurance Department of Iowa, Lucas State Office Building, Des Moines, IA 50319. Persons who want to convey their views orally should contact the above-named person at 515-281-4025 or in the department offices on the ground floor of the Lucas Building. Also, there will be a public hearing on Tuesday, May 1, 1984, at 2:00 p.m. in the conference room in the basement of the Lucas Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the above-named person at least one day prior to the date of the public hearing. Presentations will be limited to ten minutes. These rules are intended to implement Iowa Code sections 87.4, 87.11 and 87.20.

The following chapter is proposed:

CHAPTER 57**WORKERS' COMPENSATION SELF-INSURANCE
FOR INDIVIDUAL EMPLOYERS****510—57.1(87,505) General provisions.**

57.1(1) The purpose of this chapter is to provide general guidelines for the approval of self-insurance for workers' compensation liability for individual employers.

57.1(2) The authority to promulgate these rules is found in Iowa Code section 505.8.

57.1(3) Certificates of relief from insurance shall not exempt an employer from Iowa Code chapters 85, 85A, 85B, 86 and 87.

510—57.2(87,505) Definitions.

57.2(1) "Commissioner" shall mean the commissioner of the insurance department of Iowa, appointed by the governor pursuant to Iowa Code section 505.2.

57.2(2) "Department" shall mean the insurance department of Iowa.

57.2(3) "Employer" shall be defined as set forth in Iowa Code section 85.61.

57.2(4) "Self-insurer" shall mean an employer who has been granted relief from the requirement of in-

surance by the commissioner after having complied with the relevant portions of this chapter but shall not include an employer who is a member of a group of employers under chapter 56 of the rules of the department.

57.2(5) "Insolvent" or "insolvency" means the inability of a workers' compensation self-insurer to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its liabilities over its assets or by its not having sufficient assets to insure all of its outstanding liabilities after paying all accrued claims owed by it.

57.2(6) "Parent company" shall mean a company that owns at least twenty percent of the outstanding stock of another company.

510—57.3(87,505) Requirements for self-insurance. To qualify to receive a certificate of relief from insurance, an employer must satisfy the following requirements:

57.3(1) Purchase excess insurance as set forth below, unless waived by the commissioner for an employer with sufficient net worth to ensure independent financial ability to pay claims.

a. For a private employer. Either:

(1) Limit and retention per occurrence excess insurance of at least \$5,000,000 or, if fewer than seven full-time employees in Iowa, \$750,000 per full-time employee equivalent. The retention shall not exceed five percent of the net worth for an individual employer or parent company; or

(2) Limit and retention annual aggregate excess insurance of at least \$10,000,000. The retention shall not exceed ten percent of the net worth for an individual employer or parent company.

b. For a political subdivision of the state. Either:

(1) Limit and retention per occurrence excess insurance of at least \$5,000,000. The retention shall not exceed the amount specifically budgeted for workers' compensation benefits for accidents occurring during the current twelve-month period plus twenty-five percent of the additional revenue which can be raised to pay statutory benefits without voter approval; or

(2) Limit and retention annual aggregate excess insurance of at least \$10,000,000. The retention shall not exceed the amount specifically budgeted for workers' compensation benefits for accidents occurring during the current twelve-month period plus fifty percent of the additional revenue which can be raised to pay statutory benefits without voter approval.

c. See rule 57.7(87,505) for additional requirements for excess insurance.

57.3(2) Comply with the security requirements of rule 57.4(87,505).

57.3(3) For a private employer, a parental guarantee, completed on forms provided by the department, to cover statutory losses and any loss adjusting expense is required from any parent company.

a. The parental guarantee shall provide for giving the commissioner sixty days' notice for cancellation. Once notice is given, the department reserves the right to require additional bond or aggregate excess insurance, or both, to be obtained prior to the effective date of the cancellation.

b. For a subsidiary that is to be sold, which desires to avoid cancellation of the certificate of relief from insurance, it must file pro forma financial statements representing the condition of the subsidiary before and

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after sale, sales agreement, financial statement of acquiring company and the parental guarantee of acquiring company.

57.3(4) Each employer shall have within its own organization ample facilities and competent personnel to service its own program with respect to claims, administration, loss prevention, loss control, safety engineering and rehabilitation services for injured employees or shall contract with an approved service company to provide these services.

510—57.4(87,505) Security requirements.

57.4(1) The following formula will be used to determine the appropriate security requirements:

a. Determine the following three ratios:

(1) Current assets: Current liabilities

(2) Capital + retained earnings (net of treasury stock) as a percentage of sales (Less discounts)

(3) Long-term debt: Capital + retained earnings

b. Upon determination of the value for the above ratios, points will be calculated from the following tables:

(1) Current Assets to Current Liabilities

2	:	= 6 Points
1.75	:	= 5 Points
1.6	:	= 4 Points
1.4	:	= 3 Points
1.25	:	= 2 Points
1.1	:	= 1 Point
1	:	= 0 Points

(2) Capital & Retained Earnings to Sales

20%	= 6 Points
17.5%	= 5 Points
13.5%	= 4 Points
10%	= 3 Points
8.5%	= 2 Points
7%	= 1 Point
5%	= 0 Points

(3) Long-term Debt to Equity

1	:	2	= 6 Points
1	:	1.75	= 5 Points
1	:	1.6	= 4 Points
1	:	1.4	= 3 Points
1	:	1.25	= 2 Points
1	:	1.11	= 1 Point
1	:	1	= 0 Points

c. Total the number of points for the three ratios and assign the appropriate percentage:

16 - 18 Points = 35%

14 - 15 Points = 40%

12 - 13 Points = 60%

9 - 11 Points = 70%

less than 9 Points = 100%

d. The required additional security shall then be calculated as follows:

(1) Determine the three years average of medical payments and compensation paid under the Workers' Compensation Laws (If fiscal year, specify dates _____ through _____.)

Year 1	Year 2	Year 3	Total
\$ _____	+ _____	+ _____	= \$ _____

Divide the total by 3 = \$ _____

(2) Multiply this average by 2 = \$ _____

(3) Enter the total amount of compensation for fatalities and permanent disabilities, both permanent total and permanent partial for which the employer is presently liable but has not paid, including medical reserves. \$ _____

(4) Add lines 2 and 3 \$ _____

(5) Multiply line 4 by the percentage determined in subrule 57.4(1)"c." This, when rounded to the nearest thousand, will be the security required. \$ _____

57.4(2) Based on the experience of the employer, financial condition, loss potential within and without the state, and other relevant considerations, the department shall require any one or more of the following methods to post the required security:

a. A higher limit or lower retention level, or both, on excess insurance;

b. Annual aggregate excess insurance;

c. Surety bond;

d. Irrevocable letter of credit;

e. Trust fund.

(1) If a trust fund is established, the commissioner shall be the trustee. The employer may invest the funds in accordance with Iowa Code section 682.23, subsections 1 to 12. The trust document and the evidence of invested assets are to be kept in the vault of the department or in some other secure place designated by the commissioner.

(2) Interest or dividends on the trust assets, or both, are to accumulate to the trust unless the commissioner deems the trust has sufficient assets, in which case the interest or dividends, or both, are to be delivered to the employer.

(3) The trust fund is to be used to pay losses and loss adjustment expenses if the employer is unable to pay the statutorily required compensation benefits.

510—57.5(87,505) Application for an individual self-insurer.

57.5(1) An applicant for a certificate of relief from insurance shall submit a completed application to the department together with the following:

a. Proof of excess insurance;

b. Parental guarantee from the uppermost parent, if applicable;

c. Most recent audited financial statement, such as that included in the shareholders annual report. If such statement is over six months old, also include the latest unaudited financial statement and an affidavit signed by the treasurer of the company stating that there has been no material lessening of net worth or other adverse changes since the last audited statement, or, if there were, an explanation of such changes. For subsidiaries, this information is to be furnished on the topmost parent company;

d. Data from the immediate past five years on paid and outstanding Iowa workers' compensation losses subject to self-insurance; and

e. A fee of \$100 per application review and \$100 per certificate issued, paid in separate checks. If the application is denied, the fee for the issuance of a certificate will be returned to the applicant. The department will either issue one certificate for each parent and each subsidiary or the department will issue one certificate only for the approved parent and all approved subsidiaries, at the applicant's option.

INSURANCE DEPARTMENT[510] (cont'd)

57.5(2) After an initial review, the department may require additional relevant information and additional security, as provided in rule 57.4(87,505).

57.5(3) Within a reasonable time, the department will rule on the application and either issue a certificate of relief from insurance or send a letter denying the application with a specific explanation.

510—57.6(87,505) Approval of service companies.

57.6(1) Any person or entity desiring to be approved as a service company for an employer shall make application to the department, together with:

a. Summary information concerning its organization and staff;

b. Detailed résumés of all employees, or employees of any subcontractor, in an administrative or professional capacity with responsibility for adjusting Iowa claims. Such résumés shall indicate the areas of administration in which each employee shall work and the qualifications and experience of the employee relating to that area.

c. A description of the administrative services intended to be provided.

d. The identity of the owners of the service company, including but not limited to, all members of a partnership and all officers of a corporation.

e. Most recent audited financial statement;

f. Fidelity bond for each person involved with the transfer of funds in the amount of \$250,000 each;

g. If the fee for adjusting losses is to be calculated as a percent of premium, a surety bond in the amount of twenty percent of outstanding losses is required.

57.6(2) The service company and employer may have a financial interest in each other.

57.6(3) The service company shall have within the state of Iowa an employee who is able to act as a resident agent, and is authorized to act in all matters concerning the service company.

57.6(4) Any records of a service company relating to any of the services offered or provided to any self-insurer in Iowa shall be open to inspection by the commissioner or his designee during normal business hours.

57.6(5) All records concerning a loss claim shall be kept for at least eight years after the claim closes.

57.6(6) A service company may not withdraw and cannot be withdrawn without first giving sixty days' written notice to the department.

57.6(7) Any approval granted shall be effective for one year unless withdrawn sooner by the commissioner on one of the following grounds:

a. The service company no longer has the organization or financial integrity necessary to supply the required services;

b. The service company failed to adjust claims in accordance with the compensation laws;

c. Misconduct is found in the administration of the company's accounts; or

d. Failure to comply with these rules.

510—57.7(87,505) Excess insurance. No contract or policy of per occurrence or aggregate excess insurance shall be recognized in considering the ability of an applicant to fulfill its financial obligations under the workers' compensation Act, unless such contract or policy complies with the following:

57.7(1) Is issued by a company:

a. Licensed to transact casualty business in this state; or

b. Listed in the most recent NAIC publication "Financial Review of Alien Insurers" (commonly known as the white list); or

c. Listed on the most recent List of Acceptable Non-Admitted Insurers prepared by this department.

57.7(2) Has a term of not less than one year.

57.7(3) No cancellation, termination or alteration of coverage whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of ninety days after written notice of such cancellation, termination, or alteration has been filed with the commissioner unless an earlier date is approved by the commissioner.

510—57.8(87,505) Insolvency. If the individual employer becomes insolvent, the commissioner may appoint a party to receive funds from an excess insurance carrier, if applicable, a bond or a trust fund to be disbursed to individual claimants.

510—57.9(87,505) Renewals.

57.9(1) Individual employers.

a. A certificate of relief from insurance is valid for one year, unless sooner revoked under the provisions of rule 57.10(87,505). Such certificate is effective from July 1 to June 30.

b. By June 1 of each year, each individual employer must submit:

(1) A completed application;

(2) Most recent audited financial statement, for good cause shown, a substitution may be accepted by the department;

(3) Proof of the required excess insurance;

(4) Any additional relevant information required by the department; and

(5) The required fee.

c. Depending on any change in financial condition, the commissioner may require additional security, as provided in rule 57.4(87,505).

d. The commissioner reserves the right to require financial reports more frequently than once each year if a deterioration in financial security warrants a closer scrutiny of an individual employer.

57.9(2) Service companies. Approval granted to a service company is valid for one year unless renewed by filing the following with the commissioner:

a. Most recent audited financial statement;

b. Fidelity bond for each employee involved with the transfer of funds in the amount of \$250,000 each;

c. A statement describing the changes in the information required by rule 57.6(87,505), if any. If subrule 57.6(1) paragraph "g" of that rule applies, outstanding losses must also be reported; and

d. Surety bond if required by subrule 57.6(1), paragraph "g."

510—57.10(87,505) Periodic examination. The commissioner reserves the right to examine an employer as often as it deems necessary. Cost of the examination is to be paid by the employer. Examination shall include but not be limited to adequacy of loss reserves and claims handling practices.

510—57.11(87,505) Grounds for nonrenewal or revocation of a certificate of relief from insurance. The following constitute grounds for nonrenewal or revocation of a certificate of relief from insurance:

INSURANCE DEPARTMENT[510] (cont'd)

57.11(1) Failure to comply with any provisions of these rules or of Iowa Code chapter 85, 85A, 85B, 86 or 87;

57.11(2) Failure to comply with any lawful order of the commissioner;

57.11(3) Failure to promptly pay lawful compensation claims;

57.11(4) Committing an unfair or deceptive act or practice;

57.11(5) Deterioration of financial condition adversely affecting the certificate holder's ability to pay expected losses.

510—57.12(87,505) Hearing and appeal. Prior to denying a renewal application or revoking a certificate issued under this chapter, a certificate holder shall be given a hearing and a right to appeal as provided in rules 3.1(17A,502,505) et seq.

510—57.13(87,505) Existing approved self-insurers.

57.13(1) All individual employers which were given a certificate of relief from insurance or some other approval to self-insure from the department prior to the effective date of these rules shall bring themselves into full compliance with these rules within ninety days after their effective date or by the filing time set out for renewals, whichever comes later.

57.13(2) An existing individual self-insurer may petition the commissioner for a waiver of a rule, or rules. The commissioner may grant such waiver upon showing to the commissioner's satisfaction that the employer is solvent and has the ability to pay workers' compensation benefits as required by law.

510—57.14(87,505) Severability clause. If any provision of this chapter, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this chapter.

These rules are intended to implement Iowa Code sections 87.11 and 87.20.

The proposed amendment rescinds current subrule 6.5(3), which was adopted under objection, and replaces it with clarifying language which would exempt those pharmacists employed in prescriber-owned pharmacies from the provisions of the subrule for a period of twenty-five years.

Any interested person may submit data, views and arguments in writing on or before May 1, 1984, to Norman C. Johnson, Executive Secretary, Board of Pharmacy Examiners, 1209 E. Court, Executive Hills West, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 147.55 and 258A.10.

Subrule 6.5(3) is rescinded and the following adopted in lieu thereof:

6.5(3) Undue influence. It is unethical for a practitioner of the profession of pharmacy to accept professional employment or share or receive compensation in any form arising out of or incidental to the pharmacist's professional activities from a prescriber of prescription drugs or any other person or corporation in which one or more such prescribers have a proprietary or beneficial interest sufficient to permit them to directly or indirectly exercise supervision or control over the practitioner of pharmacy in the pharmacist's professional responsibilities and duties or over the pharmacy wherein the pharmacist practices. Provided, however, that it shall not be unethical, in and of itself, or be evidence of unethical behavior for a practitioner of the profession of pharmacy to accept professional employment or share or receive compensation in any form arising out of, or incidental to, the pharmacist's professional activities from any persons or corporations in which one or more prescribers had the above described proprietary or beneficial interest as of April 23, 1981, and which were engaged in the operation of a pharmacy on April 23, 1981, for a period of twenty-five years from April 23, 1981.

ARC 4579

**PHARMACY EXAMINERS,
BOARD OF[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 Iowa Code §17A.4(1)"b".

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend rule 6.5(147), "Unethical conduct or practice". The proposed amendment was approved during the March 13, 1984 meeting of the Iowa Board of Pharmacy Examiners.

ARC 4606

**PLANNING AND
PROGRAMMING[630]
TERMINATION OF NOTICE**

Pursuant to the authority of Iowa Code chapter 7A, the Office for Planning and Programming hereby terminates their Notice of Intended Action, **ARC 3806**, IAB, June 8, 1983. This notice was submitted simultaneous with rules filed emergency, **ARC 3805**, to provide opportunity for the public to comment on the submission of a new Chapter 24, "Community Development Block Grant Technical Assistance Program."

The public hearing on these rules was held on July 7, 1983, and there were no comments or changes in the rules as filed.

ARC 4578**PUBLIC SAFETY
DEPARTMENT[680]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code chapters 80 and 724, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 4, "Weapons," Iowa Administrative Code.

The present rules of the department do not reflect the changes made in forms regarding weapons as a result of 1983 Iowa Acts, chapter 7.

Any interested person may make written suggestions or comments on these proposed rules prior to May 2, 1984. Such written materials should be directed to the Administrative Services Director, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Administrative Services Director at (515) 281-8422 or in the Administrative Services Director's Office on the third floor of the Wallace State Office Building. Also, there will be a public hearing on Wednesday, May 2, 1984 at 11:00 a.m. in the west half, third floor conference room of the Wallace State Office Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing, should contact the Administrative Services Director at least one day prior to the date of the public hearing.

This rule is intended to implement Iowa Code chapter 724.

The following amendments are proposed:

ITEM 1. Subrule 4.2(9) shall be amended as follows:

4.2(9) Form WP7. A ~~standard fingerprint card that shall be used for fingerprints. A two-part form that shall be used to apply for a professional permit to be used by certified full-time peace officers.~~

ITEM 2. Rule 680—4.2(17A,724) shall be amended by adding the following subrules:

4.2(10) Form WP8. A form that shall be used by a certified peace officer or correctional officer as a concealed weapons permit.

4.2(11) Form WP9. A two-part form that shall be used to apply for a professional permit to be used by correctional officers.

4.2(12) Form WP10. A standard fingerprint card that shall be used for fingerprints.

ITEM 3. Rule 680—4.4(17A,724) shall be amended as follows:

680—4.4(17A,724) Applicant procedures.

4.4(1) Residents of Iowa who wish to obtain a permit to carry weapons shall apply to the sheriff of the county of their residence. The applicant shall:

a. Submit a fully and accurately completed application on Form WP1, ~~or~~ WP2, ~~or~~ WP7;

b. Submit a certificate of completion, except a certified peace officer, of a training program on Form WP0;

c. Submit a statement showing a reasonable justification for going armed on Form WP5;

d. If so requested by the sheriff, submit two completed fingerprint cards, Form WP7 10;

e. Comply with the requirements of the Code; and

f. Pay a fee as established by the Code.

4.4(2) The sheriff ~~may use in his or her discretion in may issue~~ *issuing* the permit. The permit shall be issued on Forms WP1, ~~or~~ WP2, ~~WP7 and~~ WP9 and the sheriff may restrict or limit the authority granted by the permit.

4.4(3) Residents who wish to renew the permit to carry weapons shall comply with the renewal procedures established by the sheriff, which may include a training program, an examination or qualification on a firing range and shall pay a fee established by the Code.

4.4(4) Nonresidents of Iowa who wish to obtain a permit to carry weapons shall apply to the commissioner. The applicant shall:

a. Submit a fully and accurately completed application on Form WP1 or WP2;

b. Submit a certificate of completion (Form WP0) of a training program, except a certified peace officer, that includes qualifying on a firing range.

c. Submit a statement showing a reasonable justification for going armed, on Form WP5;

d. Submit two completed fingerprint cards, Form WP7 10;

e. Comply with the requirements of the Code; and

f. Pay a fee as established by the Code.

4.4(5) If the commissioner determines that a permit will be issued, the commissioner may issue the permit (Forms WP1, ~~or~~ WP2, ~~WP8~~) and may restrict or limit the authority granted by the permit.

4.4(6) Nonresidents who wish to renew a permit to carry weapons shall reapply for the permit in the same manner and by the same procedures as provided in 4.4(4). The renewal fee is established by the Code.

4.4(7) State employees who are required by their employment to go armed shall apply to the commissioner for a permit on Form WP1, ~~or~~ WP2 ~~or~~ WP7. The applicant shall:

a. Submit a fully and accurately completed application on Form WP1, ~~or~~ WP2, ~~or~~ WP7;

b. Submit a certification of completion (Form WP0) of a training program, except a certified peace officer, that includes qualifying on a firing range;

c. Submit a statement showing a reasonable justification for going armed on Form WP5;

d. Unless a certified peace officer, submit two complete fingerprint cards, Form WP7 10;

e. Comply with the requirements of the Code;

f. Pay a fee as established by the Code; and

g. Attach a statement by the manager or administrator of their organization or agency that shows that the applicant is required to go armed in his ~~or~~ her employment and that the permit is reasonably justified. The statement shall further provide that the organization or agency will ensure compliance with any restrictions or limits imposed by the commissioner on the authority granted by the permit and will return the permit if the employment of applicant or the need to go armed terminates.

4.4(8) If the commissioner determines that a permit will be issued, the commissioner may issue the permit

PUBLIC SAFETY DEPARTMENT[680] (cont'd)

(Form WP1, or WP2, WP8 or WP9) and may restrict or limit the authority granted by the permit.

4.4(9) State employees who wish to renew the permit to carry weapons shall reapply for the permit in the same manner and by the same procedure as provided in 4.4(7).

This rule is intended to implement Iowa Code sections 724.6, 724.7 and 724.11.

ARC 4581

PUBLIC SAFETY
DEPARTMENT[680]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code chapters 80 and 101A, the Iowa Department of Public Safety, State Fire Marshal's Division hereby gives Notice of Intended Action to amend Chapter 5, "Fire Marshal," Iowa Administrative Code.

The proposed amendments are to update present rules in accordance with recent editions of the National Fire Protection Association to allow for proper disposal of explosive materials and provide an exception for the requirement of automatic fire extinguishing systems in open parking garages.

Any interested person may make written suggestions or comments on these proposed rules prior to May 2, 1984. Such written materials should be directed to the State Fire Marshal, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the State Fire Marshal's Office at (515) 281-5821 or in the State Fire Marshal's Office on the second floor of the Wallace State Office Building. Also, there will be a public hearing on Wednesday, May 2, 1984, at 10:00 a.m. in the west half, third floor conference room of the Wallace State Office Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing, should contact the State Fire Marshal at least one day prior to the date of the public hearing.

These rules are intended to implement Iowa Code chapters 100 and 101.

The following amendments are proposed:

ITEM 1. Rule 680—5.850(101A) shall be amended as follows:

680—5.850(101A) Rules generally. The standard of "Manufacture, Transportation, Storage and Use of Explosives and Blasting Agents" number 495, ~~1970~~ 1982 edition of the National Fire Protection Association together with its references to other specific standards referred to shall be the rules governing explosives and blasting agents in the state of Iowa.

ITEM 2. Subrule 5.230(5) shall be amended by adding the following paragraph:

d. The fire marshal will exempt open parking garages over four stories in height from the systems requirement, provided they are of fire resistive construction and house no occupancy above the open parking garage. Any portion of the building not used as an open parking garage, other than a control booth or office used for operation of the garage, must be protected with an approved system.

ARC 4591

RACING COMMISSION, STATE[693]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 99D.7 and 99D.9, the State Racing Commission hereby gives Notice of Intended Action to create Chapter 1, "Organization and Operation;" Chapter 2, "Rulemaking;" and Chapter 3, "Declaratory Rulings."

These rules comply with the mandated rulemaking provisions of Iowa Code chapter 17A. They attempt to maximize public participation and awareness of commission actions while permitting the commission to efficiently administer its statutory mandate under Iowa Code chapter 99D.

Any interested person may make written suggestions or comments on these proposed rules prior to May 17, 1984. Such written material should be directed to the State Racing Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the commission office on the second floor of the Wallace State Office Building or at 515/281-3986. Also, there will be a public hearing on Thursday, May 17, 1984 at 9:30 a.m. in the conference room on the second floor of the Wallace State Office Building. Persons may present their views at the public hearing either orally or in writing.

These rules begin implementation of Iowa Code chapter 99D.

CHAPTER 1
ORGANIZATION AND OPERATION

693—1.1(99D) Function. The Iowa racing commission was created by Iowa Code chapter 99D, and is charged with the administration of the Iowa Pari-mutuel Wagering Act. Iowa Code chapter 99D mandates that the commission shall have full jurisdiction over and shall supervise all race meetings governed by Iowa Code chapter 99D.

693—1.2(99D) Organization and operations.

1.2(1) The state racing commission is located on the second floor of the Wallace State Office Building, Des Moines, Iowa 50319; phone 515/281-3986. Office hours are 8:00 a.m. to 4:30 p.m. Monday through Friday.

1.2(2) The state racing commission consists of five members. The membership shall elect a chairman and vice-chairman in July of each year.

RACING COMMISSION, STATE[693] (cont'd)

1.2(3) The commission meets periodically throughout the year and will meet in July of each year at Des Moines, Iowa. Notice of a meeting is published at least five days in advance of the meeting or will be mailed to interested persons upon request. The notice will contain the specific date, time and place of the meeting. Agendas are available to any interested persons not less than five days in advance of the meeting. All meetings will be open to the public, unless a closed session is voted by four members or all members present for the reasons specified in Iowa Code section 28A.5. The operation of commission meetings will be governed by the following rules of procedure:

- a. A quorum shall consist of three members.
- b. When a quorum is present, a position is carried by an affirmative vote of the majority of the entire membership of the commission.
- c. Persons wishing to appear before the commission shall submit a written request to the commission office not less than seven days prior to the meeting. The executive secretary or commission may place a time limit on presentations after taking into consideration the number of presentations requested.
- d. Special or electronic meetings may be called by the chair only upon a finding of good cause and shall be held in strict accordance with Iowa Code section 28A.4 or 28A.8.
- e. The presiding officer may exclude any person from the meeting for behavior that disrupts or obstructs the meeting.
- f. Cases not covered by these rules shall be governed by Robert's Rules of Order Revised (1981 edition).

1.2(4) Minutes of commission meetings are prepared and are available at the commission office for inspection during business hours. Copies may be obtained without charge by contacting the office.

693—1.3(99D) Administration of the commission. The commission shall appoint an executive secretary for the Iowa racing commission who is responsible for the day-to-day administration of the commission's activities.

693—1.4(68) Open records. Except as provided in Iowa Code sections 68.7 and 17A.2(7)"f" all public records of the commission are available for public inspection during business hours. Requests to obtain records may be made either by mail, telephone or in person. Minutes of commission meetings, forms and other records routinely requested by the public may be obtained without charge. Other records requiring more than ten copies may be obtained upon payment of the actual cost for copying. This charge may be waived by the executive secretary.

693—1.5(17A,100) Forms. All forms utilized in the conduct of business with the Iowa racing commission are available from the commission upon request.

CHAPTER 2 RULEMAKING

693—2.1(99D) Commission rulemaking. The commission shall make rules in accordance with Iowa Code section 17A.4.

693—2.2(99D) Oral presentations. When requested by the persons or groups enumerated in Iowa Code section 17A.4(1)"b," an opportunity for an oral presentation shall be scheduled on the agenda of the next regularly scheduled commission meeting held not less than thirty-five days after the publication of notice. The request must be presented at the commission office within twenty-one days of the publication of the notice of intended action and must identify the proposed rules subject to the request by ARC number and by the specific citation of the proposed rule upon which presentations are to be made.

2.2(1) Notice. When so requested under the provisions of rule 2.2(99D), the executive secretary shall use discretion in scheduling an opportunity for oral presentations by publishing a notice of the opportunity in the Iowa Administrative Bulletin, which shall refer to the ARC number and citation of the proposed rule, and which shall give the public not less than twenty days' notice of the date, time and place of the meeting. Additional notice shall be mailed to all persons who have requested the opportunity for an oral presentation.

2.2(2) Conduct of meetings. The acting chairperson of the commission shall serve as the presiding officer at the meetings. At the commencement of the meeting, any person wishing to make an oral presentation shall advise the presiding officer of the person's name, address and affiliation. The meetings shall be conducted in the same manner as any commission meeting and be governed by Robert's Rules of Order.

693—2.3(99D) Conferences or consultation. In addition to the required rulemaking procedures, the commission or designee may obtain viewpoints or advice concerning proposed rulemaking through informal conferences or consultations as the commission or designee may deem desirable.

693—2.4(99D) Adoption. After all oral and written presentations and discussion have been completed, the commission shall consider final action on the proposed rule or defer final action to a subsequent meeting. Once the proposed rule has been adopted by the commission in final form, it shall then be made effective pursuant to the provisions of Iowa Code section 17A.5. Adoption of the rule must not be less than thirty-five days after the publication of notice of the intended action.

693—2.5(99D) Petition for rulemaking. Any interested person may petition the commission to request the promulgation, amendment or repeal of the rule. The petition for rulemaking shall be filed in the commission office, Wallace State Office Building, Des Moines, Iowa 50319. The petition shall either be mailed certified, return receipt requested, or may be delivered in person. An additional copy may be provided if the petitioner wishes to retain a filed stamped copy of the petition. The petition may be either typewritten or legibly printed in ink and must substantially conform to the following form:

RACING COMMISSION, STATE[693] (cont'd)

IOWA STATE RACING COMMISSION
Wallace State Office Building
Des Moines, Iowa 50319

typewritten and must substantially conform to the following:

IOWA STATE RACING COMMISSION
Wallace State Office Building
Des Moines, Iowa 50319

Petition by (Name)
to (Amend, Adopt, Or Repeal)
Rules Relating to (state
subject matter)

PETITION FOR RULE-
MAKING

(petition must state in separate numbered paragraph)

- 1. Petitioner's name and address and phone number.
2. The nature of petitioner's interest in the matter.
3. The text or substance of any requested rule adoption, amendment or repeal including the text and citation for any current rule in effect.
4. The reasons for seeking the requested action, including any statute, rule, data, evidence or arguments which are relevant to the request. Copies of any statute, rule, evidence, etc. should be attached to the petition.

Petitioner's signature

2.5(1) Procedure after petition is filed. Upon filing of the petition, the executive secretary shall inspect the petition to ensure substantial compliance with the recommended form. If the petition does not contain the text or substance of the proposed amendment or fails to include copies of any cited statute, rule or evidence, the executive secretary may reject the petition and return it to the petitioner along with the reasons for the rejection. Petitioner may then correct the reasons for rejection and refile the petition. A petition in substantial compliance with the recommended form shall be filed, stamped and copies promptly sent to the commission members for further study.

2.5(2) Commission action. Within sixty days of the filing of a petition, the commission shall meet to consider the petition. The petitioner shall be given twenty days' notice of the meeting and, at the discretion of the commission, may appear at the meeting and speak to the merits of the petition. The commission shall either grant the petition and commence rulemaking, or deny the petition and notify the petitioner in writing of the grounds for the denial.

CHAPTER 3
DECLARATORY RULINGS

693-3.1(17A) General. Any interested person may solicit oral or written advice from the executive secretary concerning the application or interpretation of any statute or administrative rule dealing with the racing commission. However, unless the request is made pursuant to Iowa Code section 17A.9, petition for declaratory ruling, any such advice is not binding upon the commission. Petitioners for a declaratory ruling must have a real and direct interest in a specific fact situation which may affect their legal rights, duties or responsibilities under statutes or regulations administered by the commission.

693-3.2(17A) Petition for declaratory rulings. A petition for a declaratory ruling shall be filed in the office of the Executive Secretary, Racing Commission, Wallace State Office Building, Des Moines, Iowa 50319. The petition shall either be mailed certified return receipt requested or delivered in person. An additional copy may be provided if the petitioner wishes to retain a filed stamped copy of the petition. The petition shall be

Petition by (Name)
For a Declaratory Ruling on
(state statute, rule cita-
tion to be ruled on)

PETITION FOR
DECLARATORY RULING

(petition must state in separate numbered paragraphs)

- 1. Petitioner's name, address and phone number.
2. A clear, concise and complete statement of all relevant facts on which the ruling is requested.
3. A clear and concise statement of the controversy or uncertainty.
4. Reference to the statutory authority or rules in question, along with attached copies.
5. The reasons for prompting the petition and a full disclosure of petitioner's interest.
6. Whether petitioner is currently a party to a contested case, rulemaking or judicial proceeding involving the controversy or uncertainty.
7. The names and addresses, when known, of other persons who may be affected by the declaratory ruling.

(Petitioner's signature)

693-3.3(17A) Procedure after petition is filed.

3.3(1) Initial review. Upon filing of the petition the executive secretary shall inspect the petition for substantial compliance with the recommended form, and may reject a petition which fails to contain one or more of the required statements.

a. The executive secretary shall conduct an initial review of the petition and may request the petitioner to provide additional facts or provide greater specificity and detail in the questions posed. A request shall be made within ten days of the filing of the petition. If the requested information is not provided within thirty days of receipt of the request, the petitioner will be deemed to have withdrawn the petition.

b. The executive secretary shall then draft a proposed ruling or declination to rule within twenty days of the receipt of additional information or of the filing of the petition, whichever is later. The petition for a declaratory ruling, the proposal by the executive secretary and copies of all evidence and arguments shall then be forwarded to the commission members for final action.

3.3(2) Commission action. Within thirty days of the receipt of the petition or additional information, whichever is later, the commission shall meet to consider the petition. Petitioner shall be given ten days' notice of the meeting and, at the discretion of the commission, may appear at the meeting and speak to the merits of the petition. After due consideration, the commission may:

- a. Adopt the proposed ruling of the executive secretary.
b. Modify the proposed rule and adopt the modification.
c. Instruct the executive secretary to obtain additional information pursuant to subrule 3.3(1).
d. Instruct the executive secretary to prepare an alternate proposed ruling to be considered at the next meeting, if petitioner agrees to an extension of the time period.

RACING COMMISSION, STATE[693] (cont'd)

e. Decline to issue a ruling based upon one or more of the following:

(1) The issue in question is currently involved in a rulemaking, contested case or judicial proceeding.

(2) The petition does not contain sufficient facts to demonstrate that the petitioner will be aggrieved or adversely affected by failure to issue a declaratory ruling.

(3) The petitioner presents issues or facts which are unclear, overbroad or otherwise inappropriate as a basis upon which to issue a declaratory ruling.

(4) The petition indicates the petitioner seeks to obtain approval to engage in activities so borderline as to be of dubious legality, although perhaps marginally proper.

(5) The issue in question has been rendered moot by a change in circumstances, fact or law.

(6) The issue in question depends upon peculiar facts which cannot be predicted or accurately described in advance.

(7) Other good and sufficient reasons, which shall be detailed in writing.

3.3(3) Effect of declaratory ruling. A declaratory ruling adopted by the commission is binding upon both the commission and the petitioner on the questions of law dealt with in the ruling to the fact situation set out in the petition including such additional facts required by the executive secretary or commission in accordance with these rules.

ARC 4592**RACING COMMISSION, STATE[693]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 99D.7 and 99D.9, the State Racing Commission hereby gives Notice of Intended Action to create Chapter 6, "Criteria for Granting Licenses and Determining Race Dates."

These rules set forth criteria which the commission will consider when deciding whether to issue a license to conduct racing in Iowa.

Any interested person may make written suggestions or comments on these proposed rules prior to May 17, 1984. Such written material should be directed to the State Racing Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the commission office on the second floor of the Wallace State Office Building or at 515/281-3986. Also, there will be a public hearing on Thursday, May 17, 1984 at 9:30 a.m. in the conference room on the second floor of the Wallace State Office Building. Persons may present their views at the public hearing either orally or in writing.

These rules begin implementation of Iowa Code chapter 99D.

**CHAPTER 6
CRITERIA FOR GRANTING LICENSES AND
DETERMINING RACE DATES**

693—6.1(99D) In general. This chapter of the rules of the commission sets forth criteria which the commission will consider when deciding whether to issue a license to conduct racing in Iowa. The various criteria may not have the same importance in each instance and other factors may present themselves in the consideration of an application or applications for a license. The criteria are not listed in order of priority.

6.1(1) The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99D.9.

6.1(2) The commission will consider whether the application will provide adequate revenue to the state and local communities through direct taxation on its operation and indirect revenues from tourism, ancillary businesses, creation of new industry and taxes on employees and patrons.

6.1(3) The commission will consider whether the proposed track is viable and properly financed.

6.1(4) The commission will consider whether the proposed track is planned in a manner which provides adequate security for all aspects of its operation and for the people working at and visiting the track.

6.1(5) The commission will consider whether the proposed track is planned in a manner which promotes efficient and safe operation of all aspects of its facility including, but not limited to, barn and kennel areas, the racing surface, concession areas and pari-mutuel management areas.

6.1(6) The commission will consider whether the proposed track is planned in a manner which promotes efficient, safe and enjoyable use by patrons including but not limited to parking facilities, concessions, the grandstand, access to pari-mutuel windows and restrooms.

6.1(7) The commission will consider whether the proposed track is in compliance with applicable state and local laws regarding fire, health, construction, zoning and other similar matters.

6.1(8) The commission will consider whether the applicant will employ the persons necessary to operate the track in a manner consistent with the needs, safety and interest of all persons who will be on the track.

6.1(9) The commission will consider the population of the area to be served in a track together with location of other tracks within and without the state of whatever nature.

6.1(10) The commission will consider support within the community in which a proposed track is to be located for the promotion and continuation of racing.

6.1(11) The commission will consider the character and reputation for honesty of all persons identified with the ownership and operation of the track or licensed business, and their capability to comply with the regulations of the commission and Iowa Code.

6.1(12) The commission will consider whether the proposed operation would serve to nurture, promote, develop and improve the racing industry in Iowa, and provide high quality racing in Iowa.

6.1(13) The commission will consider whether the proposed operation will maximize purses.

6.1(14) The commission will consider whether the proposed operation is beneficial to Iowa breeders.

RACING COMMISSION, STATE[693] (cont'd)

6.1(15) The commission will consider the number and quality of employment opportunities for Iowans created and promoted by the proposed operation.

6.1(16) The commission will consider such other factors as may arise in the circumstances presented by a particular application.

693—6.2(99D) Limited number of licenses. If the commission receives applications for racetracks, all of which cannot be granted in the best interests in the state of Iowa, it will consider which of the applications best promotes the considerations set forth in rules 693—6.1(99D) and 693—6.3(99D).

693—6.3(99D) Determining race dates. When determining race dates to be allotted to licensees, the commission

will consider the economic and practical feasibility of racing at the various tracks. Factors to be considered include, but are not limited to, the competing markets within and without the state, the effects that various types of racing have on one another, the quality of racing provided at various tracks, past dates, past performance at tracks and past compliance by licensees with the requirements of the laws, stability of dates and stability of racing circuit.

The general policy of the commission is that overlapping racing dates are undesirable unless in different geographic market areas and unless both tracks agree to such dates. The commission shall also consider the licensee's compliance with those considerations in sub-rules 6.1(1) to 6.1(16).

ARC 4583
GENERAL SERVICES
DEPARTMENT[450]

Pursuant to the authority of Iowa Code sections 18.4 and 18.6(8), the Iowa Department of General Services emergency adopts rules amending Chapter 2, "Purchasing Procedures for State Agencies" to change small purchase procedures for state agencies.

In compliance with Iowa Code section 17A.4(2), the department finds that public notice and participation is impracticable because the proposed changes do not affect the rights of the public. These changes are designed to provide greater latitude to state agencies in making small purchases, to eliminate a 1.2 percent interagency administrative charge for purchases less than \$500 and to change the definition of equipment used in purchasing and inventory procedures. The major benefit of this change is to save state agencies approximately \$50,000 in administrative charges during the first fiscal year by eliminating the administrative charge for small purchases. This change is made to implement Recommendation 38, Governor's Task Force on Efficiencies and Cost Effectiveness in Iowa State Government, December 1983.

The department also finds, pursuant to section 17A.5(2)"b"(2) that the normal effective date of this rule thirty-five days after publication should be waived and the rule made effective April 1, 1984, as it confers a benefit upon state agencies to ensure speedy compliance with the Governor's Task Force recommendation.

The Department of General Services adopted this rule on March 23, 1984. This rule implements Iowa Code section 18.6(8).

The following amendments are adopted:

ITEM 1. Subrule 2.3(3) "Field purchases" is rescinded in its entirety.

ITEM 2. Rule 2.4(18) is rescinded and the following inserted in lieu thereof:

450—2.4(18) Purchases under \$500.00. Authority is granted to purchase facility maintenance, repair and operational supplies and services from local vendors when such supplies and services cost less than \$500.00 and they cannot be aggregated reasonably on an agency, regional or statewide basis. The Comptroller Claim Voucher (CV) accompanied by a vendor invoice will be used to process such transactions. This procedure also may be used for immediate or emergency needs costing less than \$500.00 and for items on individual or statewide contract when the required quantity is less than the contract minimum order quantity.

Exceptions to the above authority include any type of equipment, draperies, carpeting, office furniture, items above the minimum order on individual or general contract or other supplies and services for which the purchasing division specifically determines that it is in the best interests of the state to require requisitions be submitted. Purchases greater than \$500.00 shall not be split to fall under this rule. Continued violations will result in withdrawal of the privilege.

2.4(1) Definition of equipment. Any item costing \$500.00 or more and having an anticipated life of one year or more, plus all of the following items:

All types of chairs, tables, full suspension legal or letter-size files (any size), karex files and desk card file

cabinets of more than four drawers, surveying equipment, binoculars and pocket calculators, plus any item that bears a serial number assigned by the original equipment manufacturer. Chairs, tables, files and movable partitions costing less than \$500.00 shall be marked "State of Iowa" and accounted for in aggregate. All other items of equipment shall be accounted for by a separate serial numbered tag.

Hand tools (saws, hammers and screwdrivers, etc.), and normal desk supply items (staplers, punches, wastebaskets, etc.) are not considered equipment.

2.4(2) Reserved.

This rule is intended to implement Iowa Code sections 18.6(8) and 18.12(4).

ITEM 3. Subrule 6.1(4) "Field purchases" is rescinded in its entirety.

[Filed emergency 3/23/84, effective 4/1/84]

[Published 4/11/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/11/84.

ARC 4575
HEALTH DEPARTMENT[470]

BOARD OF CHIROPRACTIC EXAMINERS

Pursuant to the authority of Iowa Code section 147.80, the rules of the Board of Chiropractic Examiners relating to license fees appearing in the Iowa Administrative Code, Chapter 141, are hereby amended.

Notice of Intended Action regarding the proposed rule was published in the Iowa Administrative Bulletin January 4, 1984 as **ARC 4359**.

The rule adjusts license fees to pay for the cost of licensing as required by Iowa Code section 147.80, including indirect costs as directed by the Office of the State Comptroller. No comments were received, and the rule is the same as filed under Notice of Intended Action.

The Board of Chiropractic Examiners finds that the rule is required by statute, and therefore the rule is filed pursuant to Iowa Code section 17A.5(2)"b"(1). This will permit the fees to be in effect for the July 1, 1984 renewal period.

The Board of Chiropractic Examiners adopted the rule March 9, 1984.

The rule is intended to implement Iowa Code section 147.80.

The rule shall become effective March 15, 1984 upon filing.

Subrule 141.16(2) is amended as follows:

141.16(2) For the biennial renewal fee of a license to practice chiropractic, ~~eighty dollars~~ *one hundred dollars*. Renewal fees shall be received by the board before the end of the last month of the renewal period.

[Filed emergency after notice 3/14/84, effective 3/15/84]

[Published 4/11/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/11/84.

ARC 4590**INSURANCE DEPARTMENT[510]**

Pursuant to the authority of Iowa Code section 505.8, the Insurance Department of Iowa emergency implements rules amending Chapter 34, Nonprofit Health Service Corporations.

Iowa Code section 514.4 (Interim Supplement to the 1983 Iowa Code) mandates a change in the composition of the boards of directors of corporations subject to that chapter. (Iowa Code chapter 514 governs entities such as Blue Cross of Iowa.) Previously, these boards were required to have a two-thirds provider majority. The law has been changed to require a two-thirds subscriber majority. In this vein, the commissioner of insurance has been directed to: "...adopt rules pursuant to chapter 17A to implement the process of the election of subscriber directors of the board of directors of a corporation to ensure the representation of a broad spectrum of subscriber interest on each board. The rules shall provide for an independent subscriber nominating committee to serve until the composition of the board of directors meets the percentage requirements of this section." These rules are the result of this legislative directive.

The rules provide definitions for the operative terms, specify the percentage requirements for subscriber directors, and provide for an independent subscriber nominating committee. This committee, appointed by the commissioner of insurance from names suggested by interested persons, is responsible for the preparation of a slate of nominees for each subscriber director board position. The rules also recognize a process for nomination of subscriber board members by petition.

Notice of Intended Action was published in the February 15, 1984 edition of Iowa Administrative Bulletin as **ARC 4473**.

Changes from the Notice of Intended Action were made in the definitions of "competitor," "immediate family member," "material financial interest," "subscriber," and "subscriber director." A new definition "health care services" was added. Other changes from the notice are as follows:

34.7(3)"a"

34.7(3)"b"(1), (3) and (4); subparagraph (5) was deleted

34.7(3)"c" and "d"; paragraph "e" was added

34.7(4) - first paragraph

The department finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of this rule thirty-five days after publication should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on March 23, 1984, as it confers a benefit upon the public to ensure compliance with Iowa Code section 514.4 within the legislature's mandated time frame.

The commissioner of insurance adopted this rule on March 21, 1984.

These rules are intended to implement Iowa Code section 514.4 as amended by 1983 Iowa Acts, chapter 27.

ITEM 1. Amend 510—34.2(514) to read as follows:

510—34.2(514) Definitions. For purposes of this chapter, the following definitions shall apply:

34.2(1) "Commissioner" means the commissioner of insurance for the state of Iowa.

"Competitor" means a corporation, business entity, or person engaged in the business of contracting to provide

health care services to others, pay indemnity for health care services provided to others, or provide administrative services relevant thereto in the state of Iowa.

34.2(2) "Department" means the insurance department of Iowa.

"Employee" is as defined by Iowa Code section 85.61.

"Health care services" means services included in the furnishing to any individual of medical or dental care, or hospitalization, or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of all other services for the purposes of preventing, alleviating, curing or healing human illness, injury, or physical disability.

"Immediate family member" means an individual within the first degree of consanguinity or affinity who resides in the same household. With respect to determining the immediate family or spouse of a provider, only those providers licensed and practicing in Iowa on a regular basis shall be considered.

"Material financial interest" means a vested interest of at least ten percent of the fair market value of the property or an interest from which at least ten percent of individual's gross income is derived.

"Provider" means any physician, hospital, or person as defined in Iowa Code chapter 4 which is licensed or otherwise authorized in the state of Iowa to furnish health care services.

"Related industry" means a commercial enterprise whose goods or services are by design or function primarily for use in the health care services industry. Related industry does not include commercial enterprises whose goods and services are generic to business in general, such as, but not limited to, utilities, food cleaning, financial, or legal services.

"Subscriber" means an individual who enters into a contract for hospital services, medical or surgical services, dental services, pharmaceutical services, or optometric services with a corporation subject to Iowa Code chapter 514. With respect to contracts providing benefits to more than one individual, subscriber shall include each individual entitled to receive benefits who has reached the legal age of majority. Subscriber also includes all individuals entitled to receive services or payment for services from a corporation subject to Iowa Code chapter 514 pursuant to the terms of a contract or certificate issued by the corporation to an employer or group. Subscriber also includes any individual eligible for medical assistance or additional medical assistance as defined by Iowa Code chapter 249A and with respect to whom the department of human services has entered into a contract with the corporation subject to Iowa Code chapter 514.

"Subscriber director" means a subscriber who is a member of the board of directors of a corporation subject to Iowa Code chapter 514 and who is not a provider, the spouse or an immediate family member of a provider. Subscriber director includes only those individuals nominated pursuant to subrule 34.7(2). Subscriber director does not include any individual who has a material financial interest or fiduciary interest in the delivery of health care services or a related industry, an employee of an institution which provides health care services, or the spouse or an immediate family member of such an individual. A subscriber director of a hospital or medical service corporation shall be a subscriber of the services of that corporation. Proof of compliance with the requirements of this paragraph shall be by affidavit.

INSURANCE DEPARTMENT[510] (cont'd)

ITEM 2. Amend Chapter 34, Nonprofit Health Service Corporation, by adding the following new rule:

510—34.7(514,70GA,ch27) Composition, nomination, and election of board of directors.

34.7(1) Composition of board of directors. The composition of the board of directors of each corporation subject to Iowa Code chapter 514 shall be as follows:

a. On and after August 1, 1984, a majority of the members of the board of directors of each corporation subject to Iowa Code chapter 514 shall be subscriber directors.

b. On and after August 1, 1985, at least two-thirds of the members of the board of directors of each corporation subject to Iowa Code chapter 514 shall be subscriber directors.

34.7(2) Nomination of subscriber directors. The slate of nominees for the election of subscriber directors shall be prepared as follows:

a. Once the board composition requirements of subrule 34.7(1), paragraph "b," are met, the slate of nominees for each subscriber director position shall be prepared exclusively by the subscriber directors.

b. Until the board composition requirements of subrule 34.7(1), paragraph "b," are met, a slate of nominees for each subscriber director position shall be prepared by an independent subscriber nominating committee pursuant to subrule 34.7(3). Until the board composition requirements of subrule 34.7(1), paragraph "b," are met, nominations for subscriber director positions may also be made by petition signed by at least fifty subscribers or providers.

34.7(3) Independent subscriber nominating committee.

a. Generally. An independent subscriber nominating committee shall be appointed for each corporation subject to Iowa Code chapter 514. Each independent subscriber nominating committee shall consist of at least five to seven members. Commonality of membership among the independent subscriber nominating committees shall be permissible. The independent subscriber nominating committee for each corporation shall, as a whole, be broadly representative of the subscribers of the corporation. The independent subscriber nominating committee for each corporation shall serve only until the composition of the board of directors for the corporation meets the requirements of subrule 34.7(1), paragraph "b."

b. Standards for independent subscriber nominating committee membership. Each individual appointed to the independent subscriber nominating committee shall meet the following criteria:

(1) Each member of an independent subscriber nominating committee shall be a subscriber of a corporation subject to Iowa Code chapter 514. Each member of the independent subscriber nominating committee of a hospital or medical service corporation shall be a subscriber of the services of that corporation.

(2) No member of an independent subscriber nominating committee shall be a member of the board of directors of a corporation subject to Iowa Code chapter 514.

(3) No member, their spouse or an immediate family member, of an independent subscriber nominating committee shall have a material financial interest in, be a fiduciary to, or be an employee of a competitor. Proof of compliance with this requirement shall be by affidavit.

(4) Each member of an independent subscriber nominating committee shall have reasonable knowledge of the operation of and issues facing the corporation for which the independent subscriber nominating committee has been appointed.

c. Appointment. The commissioner shall appoint each committee from names suggested by individual subscribers, group subscribers, labor organizations, the Health Policy Corporation of Iowa, each corporation subject to Iowa Code chapter 514, and other interested persons. Interested persons shall submit the names of potential independent subscriber nominating committee members to the commissioner within thirty days of the effective date of these rules. The committee appointments will be within seven days thereafter.

d. Work of the independent subscriber nominating committee. The independent subscriber nominating committee shall develop a slate of nominees for each subscriber director position to be filled. At least two and not more than three individuals shall be nominated for each subscriber director position to be filled.

The independent subscriber nominating committee shall consider each individual currently serving as a subscriber representative on the board of directors of a corporation operating pursuant to Iowa Code chapter 514 for inclusion on the slate of nominees for subscriber directors. The independent subscriber nominating committee shall ensure that the slate of nominees represents an appropriate balance of demographic and geographic characteristics for the corporation's service area. The independent subscriber nominating committee shall determine whether or not potential nominees are subscribers.

e. Criteria for nominees. The independent subscriber nominating committee shall utilize the following criteria in developing nominations for subscriber directors:

(1) Each nominee shall be a subscriber of a corporation subject to Iowa Code chapter 514. Each nominee to the board of directors of a hospital or medical service corporation shall be a subscriber of the services of that corporation.

(2) A nominee, their spouse or an immediate family member, shall not have a material financial interest in, be a fiduciary to, or be an employee of a competitor. Proof of compliance with this requirement shall be by affidavit.

(3) Each nominee shall have reasonable knowledge of the operation of and issues facing the corporation for which the independent subscriber nominating committee has been appointed.

34.7(4) Election of subscriber directors. Until the board composition requirements of subrule 34.7(1), paragraph "b," are met, each subscriber director shall be elected from a slate of nominees prepared by the appropriate independent subscriber nominating committee pursuant to subrule 34.7(3) or those individuals nominated by petition in accordance with subrule 34.7(2), paragraph "b," and applicable corporate requirements. Election shall be by the corporate membership.

Once the board composition requirements of subrule 34.7(1), paragraph "b," are met, each subscriber director shall be elected from the slate of nominees prepared by the existing subscriber directors. Election shall be by the corporate membership.

34.7(5) Construction. The articles or bylaws of a corporation operating pursuant to Iowa Code chapter 514

INSURANCE DEPARTMENT[510] (cont'd)

shall continue in existence to the extent that they do not conflict with this rule.

[Filed emergency after notice 3/23/84, effective 3/23/84]
[Published 4/11/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/11/84.

ARC 4587**REGENTS, BOARD OF[720]**

Pursuant to the authority of Iowa Code section 262.9(4), the Board of Regents emergency adopts an amendment to Chapter 8, "Purchasing," Iowa Administrative Code.

The 1983 Iowa Acts, chapter 142, amends Iowa Code section 8.15 to provide for payment of interest on claims which remain unpaid after sixty days. The board is adopting an amendment to the Iowa Administrative Code, Chapter 8, in order to comply with the apparent intent of 1983 Iowa Acts, chapter 142. This amendment provides that for claims received for services, supplies, materials or a contract payable from the institution's general fund which remain unpaid after sixty days, interest shall be paid at the rate of one percent per month on the unpaid amount.

In compliance with Iowa Code section 17A.4(2), the Board of Regents finds that public notice and participa-

tion is impracticable and contrary to the public interest since the intent of the rule is to provide compliance with 1983 amendments to Iowa Code section 8.15 and it is desirable to adopt and implement the rule as quickly as possible. Further, pursuant to Iowa Code section 17A.5(2)"b"(2), the Board of Regents finds that the rule should be made effective upon filing with the Administrative Rules Coordinator on March 23, 1984, as it confers a benefit on the public in providing for interest payments on claims unpaid after sixty days.

The Board of Regents adopted this rule at its regular meeting on March 22, 1984.

This rule implements Iowa Code section 262.9(7).

Amend rule 720—8.2(262) by adding the following subrule:

8.2(4) Interest on claims. In the case of any claim received after March 23, 1984, for services, supplies, materials, or a contract which is payable from the institution's general fund which remains unpaid after sixty days following receipt of the claim or the satisfactory delivery, furnishing or performance of the services, supplies, materials or contract, whichever date is later, interest shall be paid at the rate of one percent per month on the unpaid amount of the claim. This paragraph does not apply to claims against the state under Iowa Code chapters 25 and 25A or the claims paid by federal funds.

[Filed emergency 3/23/84, effective 3/23/84]
[Published 4/11/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/11/84.

ARC 4594**CIVIL RIGHTS COMMISSION[240]**

Pursuant to the authority of Iowa Code section 601A.5(10), the Iowa Civil Rights Commission, in its regular meeting on February 24, 1984, adopted amendments to Chapter 1, "Rules of Practice," Iowa Administrative Code.

The current rule 240—1.4(601A), subrules 1.4(1) and 1.4(2) are reorganized to show sequential processing of a complaint.

The revised subrule 1.4(3) provides for specific procedures to be followed in determining extent of further processing and closure.

Subrule 1.4(4) sets forth guidelines for a mediation process which may be pursued at the discretion of the agency.

Subrule 1.4(5) is added to show where investigation falls in the sequential processing of a complaint.

Subrule 1.4(6) clarifies the preservation of complaint anonymity.

Notice of Intended Action was published in Iowa Administrative Bulletin, volume VI, number 13, on December 21, 1983 as **ARC 4324**.

This rule is identical to that published as Notice of Intended Action.

This rule is intended to implement Iowa Code section 601A.15.

This rule will become effective on May 16, 1984.

ITEM 1. Rescind subrule 1.4(1) and insert the following:

1.4(1) Jurisdictional review. Upon the receipt of a statement offered as a complaint, the executive director or designee shall review the complaint to determine whether the commission has jurisdiction of the complaint. A no jurisdiction determination shall constitute final agency action for purposes of judicial review.

ITEM 2. Rescind subrule 1.4(2) and insert the following:

1.4(2) Notice of the complaint. After jurisdictional review and within twenty days of receipt of the complaint, the executive director or designee shall serve respondent with a copy of the complaint by certified mail. A letter of acknowledgment shall advise the complainant of the right to withdraw the complaint and sue in the district court according to Iowa Code section 601A.16.

ITEM 3. Amend rule 240—1.4(601A) by adding the following new subrules and renumber subrule 1.4(3) as 1.4(6):

1.4(3) Administrative review.

a. The executive director or designee shall periodically review the complaint to determine whether further processing is warranted. Further processing is warranted when the information collected indicates a strong possibility of a probable cause determination, the law issues in the complaint need development, or commission resources permit. A complaint determined not to warrant further processing may be administratively closed after notice of intended closure. Notice of intended closure shall state reasons for closure and be served by certified mail upon the complainant. The complainant shall be allowed thirty days to respond. Response shall be in writing and sent to the executive director or designee stating reasons why the complaint should remain open. The executive director or designee shall review and consider the response before making a closure decision. A complaint determined not to warrant further processing may be closed after one

hundred twenty days of receipt and before three hundred days or before a probable cause determination, whichever occurs first.

b. A complaint may be administratively closed at any time if the complainant cannot be contacted after diligent efforts or is unco-operative causing unreasonable delay in the processing of the complaint.

c. A complaint may be closed as satisfactorily adjusted when the respondent has made an offer of adjustment acceptable to the executive director or designee but not to the complainant. Notice of intended closure shall state reasons for closure and be served by certified mail upon the complainant. The complainant shall be allowed thirty days to respond in writing to the executive director or designee stating reasons why the offer is unacceptable. The executive director or designee shall review and consider the response before making a closure decision.

1.4(4) Mediation. The executive director or designee may conduct an impartial mediation of the complaint by offering the complainant and the respondent an opportunity to negotiate a no-fault predetermination settlement for the purpose of amicably resolving the complaint prior to full investigation.

1.4(5) Investigation. The executive director or designee shall make a prompt investigation of the complaint and issue a recommendation. An administrative hearing officer shall review the recommendation and issue a determination of probable cause or no probable cause.

ITEM 4. Subrule 1.4(3) is amended to read as follows:

~~1.4(3)~~ **1.4(6)** Anonymity of complaint. For purposes of public commission meetings, the complaints shall be identified only by case number so that the anonymity of the complaints and respondents parties can be preserved. Nothing in this provision shall apply to the executive sessions of the commission, or meetings after the commission has made a decision to hold a public hearing.

[Filed 3/23/84, effective 5/16/84]

[Published 4/11/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/11/84.

ARC 4576**COLLEGE AID COMMISSION[245]**

Pursuant to the authority of Iowa Code section 261.37, the College Aid Commission adopts amendment to Chapter 10, Iowa Guaranteed Student Loan Program, Iowa Administrative Code.

Section II-A-2-10 will allow the commission to reinstate the eligibility of a student who has defaulted on a guaranteed student loan.

Notice of Intended Action was published in IAB Volume VI, number 16, February 1, 1984, as **ARC 4440**.

This rule was adopted in final form on March 13, 1984, and will become effective on May 16, 1984.

This rule implements Iowa chapter 261.

Rule 245—10(261) is amended to read as follows:

II.A.10. not be in default on any loan previously received under the National Direct Student Loan Program or Guaranteed Student Loan Program. If such default exists, the defaulted loan must be paid in full prior to receipt of an Iowa Guaranteed Student Loan

COLLEGE AID COMMISSION[245] (cont'd)

unless the commission agrees to reinstate eligibility on the basis of adequate evidence of extenuating circumstances presented in an appeal under the procedures set forth in chapter 11.

This rule is intended to implement Iowa Code chapter 261.

[Filed 3/19/84, effective 5/16/84]
[Published 4/11/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/11/84.

ARC 4580**CORRECTIONS,
DEPARTMENT OF[291]**

Pursuant to 1983 Iowa Acts, chapter 96, the Department of Corrections hereby adopts amendment to Chapter 21, Iowa State Penitentiary, to add one visit per month to the visitation rules and allow the warden to restrict at least one visit per month to a weekday.

Notice of Intended Action was published in IAB, Volume VI, number 15, on January 18, 1984, as **ARC 4414**.

This rule amendment becomes effective May 16, 1984. Subrule 21.2(2) is amended as follows:

21.2(2) Approved visitors may be allowed *five four* visits per month. *The warden or designee may require that at least one of the five visits occurs on a weekday.*

[Filed 3/21/84, effective 5/16/84]
[Published 4/11/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/11/84.

ARC 4582**HEALTH DEPARTMENT[470]**

Pursuant to the authority of Iowa Code section 135.72, the State Department of Health amends Chapter 203, "Standards for Certificate of Need Review," Iowa Administrative Code. These rules were adopted by the Department on March 14, 1984.

Notice of Intended Action was published on December 7, 1983, as **ARC 4293**.

The rules provide numerical and qualitative standards for the implementation of criteria to be applied by the Health Facilities Council to projects involving hospital inpatient substance abuse treatment units.

There are no changes in the noticed rule.

This rule implements Iowa Code section 135.64.

The rule will become effective May 16, 1984.

The following new rule is adopted:

470—203.11(135) Designated inpatient substance abuse treatment unit standards.

203.11(1) Purpose and scope.

a. These standards are measures of some of those criteria found in Iowa Code section 135.64(1)"a" to "g."

Criteria which are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications which are to be evaluated against these standards include applications to:

(1) Construct, develop, offer new, modernize, replace, renovate, or relocate designated inpatient substance abuse treatment units and services.

(2) Expand bed capacity in designated inpatient substance abuse treatment units.

203.11(2) Definitions.

a. Designated inpatient substance abuse treatment unit. A designated set of hospital facilities with patient beds, equipment and personnel designed for the treatment and rehabilitation of patients for whom the primary diagnosis is alcohol abuse or dependence or other drug abuse or dependence. Units designated strictly for detoxification are not considered a treatment unit as defined in this standard.

b. Reserved.

203.11(3) Availability and need (Iowa Code section 135.64(1)"c," "d," "e," "g," "h").

a. The following formula shall be used as a means of projecting current utilization of inpatient substance abuse treatment services into the future and shall serve as an approximation of the number of beds needed to serve the projected population.

$$\text{Bed Need} = \frac{\text{Population by Thousand}}{80\% \text{ Occupancy}} \times \frac{\text{Patient Days per Thousand Population}}{365}$$

The formula shall be calculated separately for community hospitals and state mental health institutes. The methodology for applying the formula shall be as follows:

(1) Bed need shall be calculated annually for a period five years into the future.

(a) "Population by thousand" refers to office for planning and programming population projection for five years into the future.

(b) For calculating community hospital bed need, "patient days per thousand population" is calculated by dividing the total patient days in all community hospital-based substance abuse treatment units during the past year (as reported on the annual hospital survey by the department of health) by the state population for that year as projected by the office for planning and programming.

(c) Applying the figures from (1)(a) and (1)(b) in the formula will project a statewide total of likely bed need for community hospital substance abuse treatment units, based on current utilization.

(d) For calculating mental health institute bed need, "patient days per thousand population" is calculated by dividing the total patient days in the four mental health institute substance abuse treatment units (as reported to the department of human services) by the state population for that year as projected by the office for planning and programming.

(e) Applying the figures from (1)(a) and (1)(d) in the formula will project a statewide total of likely bed need for mental health institute substance abuse treatment units based on current utilization.

(2) For purposes of comparing "need" to "existing" beds in community hospitals, the state shall be divided into eight planning districts, as used by the department of human services.

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(a) The total number of beds derived in (1)(c) above for likely bed need for community hospital units shall be divided by the projected state population in thousands to derive beds needed per thousand population.

(b) For each district, the factor in (2)(a) above shall be multiplied by the projected population by thousand in that district for a district bed need.

(c) To determine number of existing beds in a given district, the number of substance abuse treatment beds at all community hospitals in that district shall be added together. The number of beds at each facility shall be the number of licensed or registered beds in the substance abuse treatment unit, as reported on the annual hospital survey to the department of health.

(3) For purposes of comparing "need" to "existing" beds in mental health institutes, the total number of beds derived in (1)(e) above for likely bed need for MHI units will be compared to the total of the existing substance abuse treatment beds at the four MHIs in the state as reported on the health department annual survey.

b. The provisions of subrule 203.11(3)"a" shall be effective only until June 30, 1986. At least one year prior to that time the department of health shall reconvene a study group to recommend continuing the same formula or developing a new or revised formula to use in projecting future needs and shall promulgate a new subrule 203.11(3)"a" accordingly.

c. In documenting need for a project, the applicant shall identify the service area and target population, including a description of the methodology used by the applicant in determining need for the requested beds, the expected sources of referrals, and expected average length of stay. The applicant shall document that the number of beds requested is appropriate to the modality of treatment being proposed. The applicant shall also identify where the target population has received services in the past.

d. The availability and utilization of other services in the area (e.g., inpatient, outpatient, and residential services) shall be considered in the determination of need. The applicant shall describe the relationship of the proposed service to existing services and describe what impact the proposed service will have on similar or alternate services in the district.

e. Existing hospital-based substance abuse treatment programs in the district should be running at least at eighty-five percent occupancy in units of less than twenty beds and at least ninety percent occupancy in units of twenty beds or more before any additional inpatient substance abuse treatment beds are approved.

f. A hospital seeking expansion of a substance abuse treatment unit must demonstrate that its occupancy has been greater than ninety percent for the past two years.

g. Applicants must be able to project an annual seventy percent occupancy rate in the unit for the second year of operation and must be able to project an eighty percent occupancy rate in the unit by the third year of operation.

203.11(4) Quality (Iowa Code section 135.64(1)"i," "k").

a. Staffing for an inpatient substance abuse treatment unit should minimally consist of:

(1) Medical director. The applicant shall document that the physician has specific knowledge and special interest in the area of substance abuse and several years of experience and training in the treatment of substance

abusers. Physician backup must be available on a twenty-four-hour basis.

(2) Administrative director. The applicant shall document that the director, if other than the medical director, has experience in hospital administration or substance abuse treatment and rehabilitation.

(3) Nursing personnel must staff the unit on a twenty-four-hour basis. The applicant shall document that the RNs and LPNs have had or will be provided with specific training in the area of substance abuse treatment.

(4) Counselors. The applicant shall document the availability of chemical dependency counselors who are certified or have equivalent qualifications in training, education, and experience.

(5) Psychiatrist or psychologist should be available on staff or on a contract basis. The applicant shall document that the psychiatrist or psychologist has shown a continued interest in the area of substance abuse treatment and has experience in dealing with chemically dependent patients.

(6) Family therapist(s). The program shall employ or contract with a family therapist(s) that has completed a chemical dependency counselor training program with emphasis on family involvement; or has a master's level in family social work, family counseling or other appropriate fields; or has the equivalent in training or experience.

(7) Other ancillary personnel. The program should have access to other personnel such as social workers, dieticians, recreational therapists, occupational therapists, physical therapists, and other ancillary services as needed.

b. All inpatient programs shall develop and utilize specific written admission criteria. A good example of such criteria is that developed by the Iowa Foundation for Medical Care.

c. The program shall have a written evaluation system and be capable of providing treatment process and outcome data to evaluate the quality and effectiveness of the program at least once annually.

203.11(5) Continuity (Iowa Code section 135.64(1)"g," "h," "k").

a. The applicant shall have formal referral arrangements with existing diagnosis and referral services, and detoxification services.

b. If outpatient services are available, the applicant shall provide a description of the circumstances under which a client would be accepted for inpatient treatment rather than entered into the outpatient program. The applicant shall also describe the circumstances under which a patient would be referred from inpatient to outpatient care and should have referral arrangements for outpatient services.

c. The applicant shall document that aftercare or continuing care services will be provided by the facility on a long-term basis or that such services will be provided through referral arrangements. For patients leaving the vicinity of the hospital to return to their home communities, the applicant shall indicate what arrangements will be made to provide for aftercare.

203.11(6) Accessibility and acceptability (Iowa Code section 135.64(1)"c," "d"). Population subgroups which have traditionally been underserved, such as adolescents, the elderly, women, and racial minorities, should be

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considered when planning for or reviewing inpatient treatment programs.

203.11(7) Costs and financial feasibility (Iowa Code section 135.64(1) "e," "f," "i," "p").

a. The applicant shall document that for the target population, hospital-based inpatient care is warranted. The applicant shall demonstrate that alternatives were considered and that there is no less costly acceptable mode of treatment.

b. Charges per patient day should be justifiable when compared to current charges of other inpatient substance abuse treatment programs in the state.

c. The applicant should outline the anticipated sources of reimbursement in preparing the program's projected budget, indicating the percentage of patient days allocated to indigent clients, Medicare clients, private pay clients, privately insured clients or others.

d. Conversion projects will be considered preferable to new construction, unless documentation of cost-savings is presented, or other factors to be specified by the applicant prohibit such conversion.

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ARC 4586

INSURANCE DEPARTMENT[510]

Pursuant to the authority of Iowa Code sections 505.8 and 508A.4, the Iowa Department of Insurance hereby adopts an additional chapter, Chapter 33, "Variable Life Insurance Model Regulation," to the Iowa Administrative Code.

Notice of Intended Action was published in IAB, January 18, 1984, as ARC 4419.

Changes from such notice are as follows:

There were a number of very technical, grammatical corrections;

Paragraphs were added at 33.6(1)"d" and 33.6(2);

Rule 510—33.10(508A), which had been inadvertently omitted, was added back.

This chapter will become effective June 1, 1984.

These rules are intended to implement Iowa Code chapter 508A.

CHAPTER 33
VARIABLE LIFE INSURANCE
MODEL REGULATION

510—33.1(508A) Authority.

33.1(1) This chapter, applicable to variable life insurance policies, is promulgated under the authority of Iowa Code sections 505.8 and 508A.4.

33.1(2) This chapter is supplementary to chapter 31 of the Iowa Administrative Code, which remains in effect except that, with respect to any variable life insurance policy issued on or after the effective date of this chapter, this chapter shall control to the extent there is any conflict.

510—33.2(508A) Definitions. As used in this chapter:

33.2(1) "Affiliate" of an insurer means any person, directly or indirectly, controlling, controlled by, or under

common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of any such insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.

33.2(2) "Agent" means any individual licensed under Iowa Code chapter 522 as a life insurance agent.

33.2(3) "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

33.2(4) "Benefit base" means the amount to which the net investment return is applied.

33.2(5) "Commissioner" means the insurance commissioner of the state of Iowa.

33.2(6) "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management of policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

33.2(7) "Flexible premium policy" means any variable life insurance policy other than a scheduled premium policy as specified in subrule 33.2(15).

33.2(8) "General account" means all assets of the insurer other than assets in separate accounts established pursuant to Iowa Code section 508A.1 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

33.2(9) "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income, or term riders.

33.2(10) "May" is permissive.

33.2(11) "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

33.2(12) "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base.

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33.2(13) "Person" means an individual, corporation, partnership, association, trust, or fund.

33.2(14) "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash value.

33.2(15) "Scheduled premium policy" means any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

33.2(16) "Separate account" means a separate account established pursuant to Iowa Code section 508A.1 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

33.2(17) "Shall" is mandatory.

33.2(18) "Variable death benefit" means the amount of death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account; which the insurer would have to pay in the absence of any minimum death benefit.

33.2(19) "Variable life insurance policy" means any individual policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, pursuant to Iowa Code section 508A.1 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

510—33.3(508A) Qualification of insurer to issue variable life insurance. The following requirements are applicable to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

33.3(1) Licensing and approval to do business in this state. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless the insurer is licensed or organized to do a life insurance business in this state, and the insurer has obtained the written approval of the commissioner for the issuance of variable life insurance policies in this state. The commissioner shall grant such written approval only after he has found that:

a. The plan of operation for the issuance of variable life insurance policies is not unsound;

b. The general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in this state; and

c. The present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider, among other things:

(1) The history of operation and financial condition of the insurer;

(2) The qualifications, fitness, character, responsibility, reputation, and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer;

(3) The applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies. The state of entry of an

alien insurer shall be deemed its state of domicile for this purpose; and

(4) If the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meet these standards.

33.3(2) Filing for approval to do business in this state. The commissioner may, at his discretion, require that an insurer, before it delivers or issues for delivery any variable life insurance policy in this state, file with this department the following information for the consideration of the commissioner in making the determination required by subrule 33.3(1):

a. Copies of and a general description of the variable life insurance policies it intends to issue;

b. A general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial or distribution services to the insurer;

c. With respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the issuer intends to follow for the investment of the assets held in such separate account, and a statement of procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

d. A description of any investment advisory services contemplated as required by subrule 33.6(10);

e. A copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable life insurance policies;

f. Biographical data with respect to officers and directors of the insurer on the National Association of Insurance Commissioners Uniform Biographical Data Form; and

g. A statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.

33.3(3) Standards of suitability. Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a written statement specifying the standards of suitability to be used by the insurer. Such standards of suitability shall specify that no recommendations shall be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy shall be issued in the absence of reasonable grounds to believe that the purchase of such policy is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of such applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or to the agent making the recommendation.

33.3(4) Use of sales materials. An insurer authorized to transact variable life insurance business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in this state which is false, misleading, deceptive, or inaccurate. Variable life insurance sales material, advertising material, and descriptive literature shall be subject to the additional requirements of chapter 15 of the Iowa Administrative Code.

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33.3(5) Requirements applicable to contractual services. Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial, or other services with respect to variable life insurance operations shall be in writing and provide that the supplier of such services shall furnish the commissioner with any information or reports in connection with such services which the commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with this chapter and any other applicable law or regulations.

33.3(6) Reports to the commissioner.

a. Any insurer authorized to transact the business of variable life insurance in this state shall submit to the commissioner, in addition to any other materials which may be required by this chapter or any other applicable laws or regulations:

(1) An annual statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners;

(2) Prior to the use in this state any information furnished to applicants as provided for in rule 33.7(508A);

(3) Prior to the use in this state the form of any of the reports to policyholders as provided for in rule 33.9(508A); and

(4) Such additional information concerning its variable life insurance operations or its separate accounts as the commissioner shall deem necessary.

b. Any material submitted to the commissioner under this subrule shall be disapproved if it is found to be false, misleading, deceptive, or inaccurate in any material respect and, if previously distributed, the commissioner shall require the distribution of amended material.

33.3(7) Authority of commissioner to disapprove. Any material required to be filed with and approved by the commissioner shall be subject to disapproval if at any time it is found by the commissioner not to comply with the standards established in this chapter.

510—33.4(508A) Insurance policy requirements. The commissioner shall not approve any variable life insurance form filed pursuant to this chapter unless it conforms to the requirements of this rule.

33.4(1) Filing of variable life insurance policies. All variable life insurance policies, and all riders, endorsements, applications and other documents which are to be attached or made a part of the policy and which relate to the variable nature of the policy, shall be filed with the commissioner and approved by him prior to delivery or issuance for delivery in this state.

a. The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with this chapter, the same as those otherwise applicable to other life insurance policies.

b. The commissioner may approve variable life insurance policies and related forms with provisions the commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this chapter.

33.4(2) Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

a. Mortality and expense risks shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.

b. For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of subrule 33.4(4)“b”).

c. The policy shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the reflection of investment experience in the variable life insurance policy is actuarially sound.

d. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

e. Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

f. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other nonforfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values to the minimum values required by Iowa Code section 508.37 (Standard Nonforfeiture Law) for a general account policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Nonforfeiture Law of this state. If the policy does not contain an assumed investment rate this demonstration shall be based on the maximum interest rate permitted under the Standard Nonforfeiture Law. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

g. The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the commissioner.

33.4(3) Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

a. The cover page or pages corresponding to the cover page of each such policy shall contain:

(1) A prominent statement in either contrasting color or in bold-faced type that the amount or duration of death benefit may be variable or fixed under specified conditions;

(2) A prominent statement in either contrasting color or in bold-faced type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

(3) A statement describing any minimum death benefit required pursuant to subrule 33.4(2)“b”;

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(4) The method, or a reference to the policy provision which describes the method, for determining the amount of insurance payable at death;

(5) A captioned provision that the policyholder may return the variable life insurance policy within ten days of receipt of the policy by the policyholder, and receive a refund equal to the sum of:

1. The difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy and

2. The value of the amounts allocated to any separate accounts under the policy, on the date the returned policy is received by the insurer or its agent;

(6) Such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this chapter.

b. Grace period.

(1) For scheduled premium policies, a provision for a grace period of not less than thirty-one days from the premium due date which shall provide that when the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.

(2) For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amount available under the policy to pay such charges in accordance with the terms of the policy. Such grace period shall end on a date not less than sixty-one days after the mailing date of the report to policyholders required by subrule 33.9(3).

The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep such policy in force until the next policy processing day.

c. For scheduled premium policies, a provision that the policy will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

(1) All overdue premiums with interest at a rate not exceeding the legally permissible maximum rate of interest compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding the legally permissible maximum rate of interest compounded annually; or

(2) One hundred and ten percent of the increase in cash value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding the legally permissible maximum rate of interest compounded annually.

d. A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

e. A provision designating the separate account to be used and stating that:

(1) The assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account.

(2) The assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly.

f. A provision specifying what documents constitute the entire insurance contract under state law;

g. A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on behalf of the insured, shall be considered as representations and not warranties;

h. An identification of the owner of the insurance contract;

i. A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation;

j. A statement of any conditions or requirements concerning the assignment of the policy;

k. A description of any adjustments in policy values to be made in the event of misstatement of age or sex of the insured;

l. A provision that the policy shall be incontestable by the insurer after it has been in force for two years during the lifetime of the insured, provided, however, that any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after any such increase has been in force, during the lifetime of the insured, for two years from the date of issue of such increase;

m. A provision stating that the investment policy of the separate account shall not be changed without the approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of this state;

n. A provision that payment of variable death benefits in excess of any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

(1) For up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account, or

(2) Otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical.

o. If settlement options are provided, at least one such option shall be provided on a fixed basis only;

p. A description of the basis for computing the cash value and the surrender value under the policy shall be included;

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q. Premiums or charges for incidental insurance benefits shall be stated separately;

r. Any other policy provision required by this chapter;

s. Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this chapter.

t. A provision for nonforfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which any nonforfeiture insurance options will not be available.

33.4(4) Policy loan provisions. Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than the following with respect to policy loans after the policy has been in force for five full years:

a. At least seventy-five percent of the policy's cash surrender value may be borrowed.

b. The amount borrowed shall bear interest at a rate not to exceed that permitted by state insurance law.

c. Any indebtedness shall be deducted from the proceeds payable on death.

d. Any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.

e. For scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within thirty-one days after the date of mailing of such notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following policy processing day exceed the amounts available under the policy to pay such charges, a report must be sent to the policyholder containing the information specified by subrule 33.9(3).

f. The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding one hundred and ten percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request.

g. The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum shall not apply to any automatic premium loan provision.

h. No policy loan provision is required if the policy is under an extended insurance nonforfeiture option.

i. The policy loan provisions shall be constructed so that variable life insurance policyholders who have not exercised such provisions are not disadvantaged by the exercise thereof.

j. Amounts paid to the policyholders upon the exercise of any policy loan provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the amounts for policy loans from the general account.

33.4(5) Other policy provisions. The following provision may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:

a. An exclusion for suicide within two years of the issue date of the policy; provided, however, that to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two years of any increase in death benefits which results from an application of the owner subsequent to the policy issue date;

b. Incidental insurance benefits may be offered on a fixed or variable basis;

c. Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:

(1) The amount of the dividend may be credited against premium payments;

(2) The amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance;

(3) The amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

(4) The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;

(5) The amount of the dividend may be deposited as a variable deposit in a separate account.

d. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans under subrule 33.4(4), except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed;

e. A provision allowing the policyholder to make partial withdrawals;

f. Any other policy provision approved by the commissioner.

510—33.5(508A) Reserve liabilities for variable life insurance.

33.5(1) Reserve liabilities for variable life insurance policies shall be established under the Standard Valuation Law (Iowa Code section 508.36) in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

33.5(2) For scheduled premium policies, reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of the following minimum reserves:

a. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

b. The aggregate total of the "attained age level" reserved on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in subrule 33.5(2)"b"(1), of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in 33.5(2)"b"(2).

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(1) The "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest in the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

(2) The payment referred to in 33.5(2)"b" shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in subrule 33.5(2)"b"(1), of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid up, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate or the valuation interest but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

c. The valuation interest rate and mortality table used in computing the two minimum reserves described in subrule 33.5(2), paragraphs "a" and "b," shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

33.5(3) For flexible premium policies, reserve liabilities for any guaranteed minimum death benefit shall be maintained in the general account of the insurer and shall be not less than the aggregate total of the term costs, if any, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the valuation interest rate.

The valuation interest rate and mortality table used in computing this additional reserve, if any, shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

33.5(4) Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits shall be maintained in a separate account, in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

510—33.6(508A) Separate accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer:

33.6(1) Establishment and administration of separate accounts. Any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to Iowa Code section 508A.1.

a. If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets shall be in writing and the commissioner shall have authority to review and approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.

b. Such insurer shall not without prior written approval of the commissioner employ in any material connection with the handling of separate account assets any person who:

(1) Within the last ten years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of Section 1341, 1342, or 1343 of Title 18, United States Code; or

(2) Within the last ten years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit or knowing misrepresentation; or

(3) Within the last ten years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit, or knowing misrepresentation.

c. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in the amount of not less than the greater of the amount required pursuant to section 17(g) of the Investment Company Act of 1940 or such other amount as the commissioner may deem appropriate.

d. The assets of such separate accounts shall be valued at least as often as variable benefits are determined but in any event at least monthly.

33.6(2) Amounts in the separate account. The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

33.6(3) Investments by the separate account.

a. No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(1) In case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and

(2) Such transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.

b. The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.

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33.6(4) Limitations on ownership.

a. A separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by this chapter, would exceed ten percent of the value of the assets of the separate account. The commissioner may waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

b. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of such issuer. The commissioner may waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.

c. The percentage limitation specified in subrule 33.6(4)"a" shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of subrule 33.6(3) and other applicable portions of this chapter.

33.6(5) Valuation of separate account assets. Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

33.6(6) Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under 33.3(2)"c" shall not be changed without first filing such change with the commissioner.

a. Any change filed pursuant to this rule shall be effective sixty days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of such sixty-day period of his disapproval of the proposed change. At any time the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this subrule.

b. The commissioner may disapprove the change if he determines that the change would be detrimental to the interests of the policyholders participating in such separate account.

33.6(7) Charges against separate account. The insurer must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to, the following:

a. Taxes or reserves for taxes attributable to investment gains and income of the separate account;

b. Actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;

c. Actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities;

d. Charges for administrative expenses and investment management expenses, including internal costs

attributable to the investment management of assets of the separate account;

e. A charge, at rate specified in the policy, for mortality and expense guarantees;

f. Any amounts in excess of those required to be held in the separate accounts;

g. Charges for incidental insurance benefits.

33.6(8) Standards of conduct. Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its board of directors a statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such standards of conduct shall be binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of Section 17(j) under the Investment Company Act of 1940 and applicable rules and regulations thereunder shall satisfy the provisions of this subrule.

33.6(9) Conflicts of interest. Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee or other similar body.

33.6(10) Investment advisory services to a separate account. An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable life insurance policies unless:

a. The person providing such advice is registered as an investment advisor under the Investment Advisors Act of 1940; or

b. The person providing such advice is an investment manager under the Employee Retirement Income Security Act of 1974 with respect to the assets of each employee benefit plan allocated to the separate account; or

c. The insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed advisor:

(1) The name and form of organization, state of organization, and its principal place of business;

(2) The names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment advisor be an individual, of such individual;

(3) A written standard of conduct complying in substance with the requirements of subrule 33.6(8) which has been adopted by the investment advisor and is applicable to the investment advisor, its officers, directors, and affiliates;

(4) A statement provided by the proposed advisor as to whether the advisor or any person associated therewith:

Has been convicted within ten years of any felony or misdemeanor arising out of such person's conduct as an employee, salesman, officer or director of an insurance company, a banker, an insurance agent, a securities broker, or an investment advisor involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, or involving the violation of Section 1341, 1342, or 1343 of Title 18 of United States Code;

Has been permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment advisor, underwriter, broker, or dealer, or as an affiliated person or as an employee of any investment company, bank, or insur-

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ance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

Has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under any such laws; or

Has been censured, denied an investment advisor registration, had a registration as an investment advisor revoked or suspended, or been barred or suspended from being associated with an investment advisor by order of federal or state regulatory authorities; and

d. Such investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty days' written notice to the investment advisor.

The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if he deems continued operation thereunder to be hazardous to the public or the insurer's policyholders.

510—33.7(508A) Information furnished to applicants. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgment of receipt from such applicant coincident with or prior to the execution of the application, the following information. The requirements of this rule shall be deemed to have been satisfied to the extent that a disclosure containing information required by this rule is delivered, either in the form of (1) a prospectus included in the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof.

33.7(1) A summary explanation, in nontechnical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by 33.4(3)"a"(5) and 33.4(3)"f."

33.7(2) A statement of the investment policy of the separate account, including:

a. A description of the investment objectives intended for the separate account and the principal types of investments intended to be made; and

b. Any restrictions or limitations on the manner in which the operations of the separate account are intended to be conducted.

33.7(3) A statement of the net investment return of the separate account for each of the last ten years or such lesser period as the separate account has been in existence.

33.7(4) A statement of the charges levied against the separate account during the previous year.

33.7(5) A summary of the method to be used in valuing assets held by the separate account.

33.7(6) A summary of the federal income tax aspects of the policy applicable to the insured, the policyholder, and the beneficiary.

33.7(7) Illustrations of benefits payable under the variable life insurance contract. Such illustrations shall

be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only.

510—33.8(508A) Applications. The application for a variable life insurance policy shall contain:

33.8(1) A prominent statement that the death benefit may be variable or fixed under specified conditions.

33.8(2) A prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees).

33.8(3) Questions designed to elicit information which enable the insurer to determine the suitability of variable life insurance for the applicant.

510—33.9(508A) Reports to policyholders. Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at the policyholder's last known address the following reports.

33.9(1) Within thirty days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, any optional payments allowed pursuant to subrule 33.4(4) under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than sixty days prior to the mailing of such notice. This statement shall state that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by this rule. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that: (i) Planned periodic premiums, if any, are paid as scheduled; (ii) guaranteed costs of insurance are deducted; and (iii) the net return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next twelve months unless additional premium is paid.

33.9(2) Annually, a statement or statements including:

a. A summary of the financial statement of the separate account based on the annual statement last filed with the commissioner;

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b. The net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five years when available;

c. A list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner;

d. Any charges levied against the separate account during the previous year;

e. A statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment advisor of the separate account.

33.9(3) For flexible premium policies, a report must be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of such amount.

510—33.10(508A) Foreign companies. If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by this chapter, the commissioner to the extent deemed appropriate in the commissioner's discretion, may consider compliance with such law or regulation as compliance with this chapter.

510—33.11(508A) Qualifications of agents for the sale of variable life insurance.

33.11(1) Qualification to sell variable life insurance.

a. No person may sell or offer for sale in this state any variable life insurance policy unless such person is an agent and has filed with the commissioner, in a form satisfactory to the commissioner, evidence that such person holds any license or authorization which may be required for the solicitation or sale of variable life insurance.

b. Any examination administered by the department for the purpose of determining the eligibility of any person for licensing as an agent shall, after the effective date of this chapter, include such questions concerning the history, purpose, regulation, and sale of variable life insurance as the commissioner deems appropriate.

33.11(2) Reports of disciplinary actions. Any person qualified in this state under this rule to sell or offer to sell variable life insurance shall immediately report to the commissioner:

a. Any suspension or revocation of his agent's license in any other state or territory of the United States.

b. The imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension, or revocation of or denial of registration, imposed upon him by any national securities exchange, or national securities association, or any federal, state, or territorial agency with jurisdiction over securities or variable life insurance.

c. Any judgment or injunction entered against such person on the basis of conduct deemed to have involved

fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

33.11(3) Refusal to qualify agent to sell variable life insurance—suspension, revocation, or nonrenewal of qualification. The commissioner may reject any application or suspend or revoke or refuse to renew any agent's qualification under this rule to sell or offer to sell variable life insurance upon any ground that would bar such applicant or such agent from being licensed to sell other life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's license shall also govern any proceeding for suspension or revocation of an agent's qualification to sell or offer to sell variable life insurance.

510—33.12(508A) Separability article. If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

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[Published 4/11/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/11/84.

ARC 4588**REVENUE DEPARTMENT[730]**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby adopts amendments to Chapter 17, "Exempt Sales," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume VI, number 17, on February 15, 1984, as **ARC 4466**.

This rule provides a standardized method for determining the taxable gallonage of water sales to farmers when separate meters are not utilized to distinguish between agricultural (exempt) and nonagricultural (taxable) uses.

None of the rule amendments in this chapter will necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

This subrule is identical to that published under Notice of Intended Action. The amendments will become effective May 16, 1984, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

The following amendments are adopted.

Amend subrule 17.9(6) to read as follows:

17.9(6) Water when sold to farmers who are purchasing water for both livestock production as well as for household and sanitation use shall be subject to the imposition of the tax the same as electricity or steam in rule 17.3(422,423).

Water sold to farmers and others and used directly as drinking water for livestock or poultry products for market, shall be exempt from the imposition of tax. Water used for other purposes such as household use,

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sanitation, or swimming pools shall be subject to tax. When water is used in livestock production, as well as for other purposes, the water may, when practical, be separately metered and separately billed to clearly distinguish the water consumed for livestock purposes from other purposes. When it is impractical to separately meter water which is exempt from that which is taxable, the purchaser may furnish a statement to his or her the seller which will enable the seller to determine the percentage of water subject to the exemption. *In the absence of proof to the contrary, the retailer of the water shall bill and collect tax on the first 4,000 gallons of water per month. The first 4,000 gallons of water per month will be considered to be for nonexempt use and the balance will be considered to be used as part of agricultural production.*

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 423.1. The Code:

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ARC 4589

REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby adopts amendments to Chapter 40, "Determination of Net Income," Chapter 53, "Determination of Net Income," and Chapter 59, "Determination of Net Income," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume VI, number 17, on February 15, 1984, as ARC 4467.

The 1983 Iowa Acts, chapter 174, provides for an additional deduction equal to fifty percent of the first twelve months wages paid for certain employment. New rules 40.21(422), 53.11(422) and 59.8(422) are adopted to provide for this additional deduction.

None of the adopted rules or subrules will necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

With the exception of changing the word "twelve" to "six" in 40.21(3), paragraph "g," 53.11(3), paragraph "g," and 59.8(3), paragraph "g," in response to a request by the Iowa Association of Business and Industry, these rules are identical to those published under Notice of Intended Action. The amendments will become effective May 16, 1984, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code sections 421.14 and 422.68(1).

The following amendments are adopted.

ITEM 1. New rule 730—40.21(422) is adopted as follows:

730—40.21(422) Additional deduction for wages paid or accrued for work done in Iowa by certain

individuals. For tax years beginning on or after January 1, 1984, a taxpayer who operates a business which is considered to be a small business as defined in subrule 40.21(2) below is allowed an additional deduction for fifty percent of the first twelve months of wages paid or accrued during the tax years for work done in Iowa by employees first hired on or after January 1, 1984, who meet one of the following criteria.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 247A.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 247.40 applies.

40.21(1) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa department of job service, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

40.21(2) The term "small business" means a business entity organized for profit, including but not limited to an individual proprietorship, partnership, joint venture, association or cooperative. It includes the operation of a farm, but not the practice of a profession. The following conditions apply to a business entity which is a small business for purposes of the additional deduction for wages:

a. The small business shall not have had more than twenty full-time equivalent employee positions during each of the twenty-six consecutive weeks within the fifty-two-week period immediately preceding the date on which an individual for which an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of forty or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

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<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full time)

b. The small business shall not have more than one million dollars in annual gross revenues. Annual gross revenues means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

c. The small business shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. "Dominant in its field of operation" means having more than twenty full-time equivalent employees and more than one million dollars of annual gross revenues. "Affiliate or subsidiary of a business dominant in its field of operations" means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. "Operation of a farm" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. "The practice of a profession" means a vocation requiring specialized knowledge and preparation including but not limited to the following: Medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

40.21(3) Definitions.

a. The term "handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term "physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term "major life activities" means functions such as caring for one's self, performing manual tasks,

walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term "has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term "is regarded as having such an impairment" means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

f. The term "successfully completing a probationary period" includes those instances where the employee quits without good cause attributable to the employer during the probationary policy or was discharged for misconduct during the probationary period.

g. The term "probationary period" means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary period for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

40.21(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the targeted jobs tax credit under Section 44 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

40.21(5) The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

40.21(6) If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement Iowa Code section 422.35 as amended by 1983 Iowa Acts, chapter 174.

ITEM 2. New rule 53.11(422) is adopted as follows:

730—53.11(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals. For tax years beginning on or after January

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1, 1984, a taxpayer which is considered to be a small business corporation, as defined by subrule 53.11(2), is allowed a deduction for fifty percent of the first twelve months of wages paid or accrued during the tax years for work done in Iowa for employees first hired on or after January 1, 1984, who meet the following criteria.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.

2. Is on parole pursuant to Iowa Code chapter 906.

3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.

4. Is in a work release program pursuant to Iowa Code chapter 247A.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 247.40 applies.

53.11(1) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa department of job service, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

53.11(2) The term small business corporation includes the operation of a farm but does not include the practice of a profession. The following conditions apply for the purpose of determining what constitutes a small business corporation.

a. A small business corporation shall not have had more than twenty full-time equivalent positions during each of the twenty-six consecutive weeks within the fifty-two-week period immediately preceding the date on which the individual for which an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of forty or more hours;

2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	$\frac{1}{4}$
15 or more but less than 25	$\frac{1}{2}$
25 or more but less than 35	$\frac{3}{4}$
35 or more	1 (full time)

b. A small business corporation shall not have more than one million dollars in annual gross revenues. Annual

gross revenues means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

c. A small business corporation shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. "Dominant in its field of operation" means having more than twenty full-time equivalent employees and more than one million dollars of annual gross revenues. "Affiliate or subsidiary of a business dominant in its field of operations" means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. "Operation of a farm" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. "The practice of a profession" means a vocation requiring specialized knowledge and preparation including but not limited to the following: Medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

53.11(3) Definitions.

a. The term "handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term "physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term "has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term "is regarded as having such an impairment" means:

REVENUE DEPARTMENT[730] (cont'd)

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

f. The term "successfully completing a probationary period" includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

g. The term "probationary period" means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

53.11(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the targeted jobs tax credit under Section 44 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

53.11(5) The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

53.11(6) If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement Iowa Code section 422.35 as amended by 1983 Iowa Acts, chapter 174.

ITEM 3. Chapter 59 is amended by adding adopted new rule 730—59.8(422) and renumbering the existing rules.

730—59.8(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals. For tax years beginning on or after January 1, 1984, a taxpayer which is considered to be a small business corporation, as defined by subrule 59.8(2), is allowed a deduction for fifty percent of the first twelve months of wages paid or accrued during the tax years for work done in Iowa for employees first hired on or after January 1, 1984, who meet the following criteria.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

- 1. Has been convicted of a felony in this or any other state or the District of Columbia.
- 2. Is on parole pursuant to Iowa Code chapter 906.
- 3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
- 4. Is in a work release program pursuant to Iowa Code chapter 247A.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 247.40 applies.

59.8(1) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the Iowa department of job service, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

59.8(2) The term small business corporation includes the operation of a farm but does not include the practice of a profession. The following conditions apply for the purpose of determining what constitutes a small business corporation.

a. A small business corporation shall not have had more than twenty full-time equivalent positions during each of the twenty-six consecutive weeks within the fifty-two-week period immediately preceding the date on which the individual for which an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

- 1. An employment position requiring an average work week of forty or more hours;
- 2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or
- 3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full time)

b. A small business corporation shall not have more than one million dollars in annual gross revenues. Annual gross revenues means total interest received from loans and investments, service charges, management fees, fiduciary fees, commissions, and gross proceeds from the sale of securities held as investments as determined in

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accordance with generally accepted accounting principles.

c. A small business corporation shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. "Dominant in its field of operation" means having more than twenty full-time equivalent employees and more than one million dollars of annual gross revenues. "Affiliate or subsidiary of a business dominant in its field of operations" means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

d. "Operation of a farm" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

e. "The practice of a profession" means a vocation requiring specialized knowledge and preparation including but not limited to the following: Medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

59.8(3) Definitions.

a. The term "handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

b. The term "physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. The term "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. The term "has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. The term "is regarded as having such an impairment" means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

f. The term "successfully completing a probationary period" includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

g. The term "probationary period" means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

59.8(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the targeted jobs tax credit under Section 44 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

59.8(5) The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

59.8(6) If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa corporation income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement Iowa Code section 422.35 as amended by 1983 Iowa Acts, chapter 174, and section 422.61.

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