



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME VII  
March 13, 1985

NUMBER 19  
Pages 1259 to 1318

## CONTENTS IN THIS ISSUE

Pages 1266 to 1302 include ARC 5369 to ARC 5383 and ARC 5385 to ARC 5389

### AGRICULTURE DEPARTMENT[30]

- Notice, Iowa-foaled horses and Iowa-whelped dogs, registration, 14.15(4), 14.40, 14.41  
ARC 5371 ..... 1268
- Filed Emergency, Iowa-foaled horses and Iowa-whelped dogs, registration, 14.15(4), 14.40, 14.41 ARC 5370 ..... 1282

### ATTORNEY GENERAL

- Opinions summarized ..... 1307

### COMMERCE COMMISSION[250]

- Findings — Investigation into communications ..... 1266
- Filed, Management efficiency standards, ch 29  
ARC 5385 ..... 1284

### CONSERVATION COMMISSION[290]

- Filed Emergency, Wild turkey spring hunting regulations, 111.3(2) ARC 5389 ..... 1282

### CREDIT UNION DEPARTMENT[295]

- Filed, Maximum real estate terms, 10.4(1)  
ARC 5377 ..... 1286
- Filed, Foreign credit union branch offices, ch 15  
ARC 5378 ..... 1286

### EXECUTIVE DEPARTMENT

- Executive orders, numbers 12 and 15 ..... 1303

### HEALTH DEPARTMENT[470]

- Notice, Optometry examiners, continuing education, 144.2(5) ARC 5369 ..... 1268
- Notice, Barber examiners, license fees, 160.6(2)  
ARC 5372 ..... 1268

### HUMAN SERVICES DEPARTMENT[498]

- Filed Emergency, Food stamp program, 65.29  
ARC 5373 ..... 1283

### INSURANCE DEPARTMENT[510]

- Notice of published monthly average for interest rates on life insurance policy loans ..... 1268

### LABOR, BUREAU OF[530]

- Notice, Miniature boilers and miniature model boilers, 45.1, 45.10 to 45.21 ARC 5382 ..... 1269

### NURSING, BOARD OF[590]

- Filed, Continuing education, ch 5 ARC 5376 ..... 1288

### PHARMACY EXAMINERS, BOARD OF[620]

- Notice, Hearing procedure, 9.2(5)"a" ARC 5379 ..... 1270
- Filed, Automated patient record systems, 6.13  
ARC 5380 ..... 1294
- Filed, Hearing procedure, 9.2(5)"i" ARC 5381 ..... 1295

### PUBLIC HEARINGS

- Summarized list ..... 1262

### REGENTS, BOARD OF[720]

- Filed, Personnel administration, 3.39, 3.39(5), 3.89  
ARC 5383 ..... 1295

### REVENUE DEPARTMENT[730]

- Filed, Taxation—corporation, franchise, amendments to chs 51, 52, 55, 57, 58 and 60 ARC 5386 ..... 1296

### STATE PRESERVES ADVISORY BOARD[790]

- Filed, Organization and operation, ch 1 ARC 5374 ... 1300
- Filed, Management of state preserves, ch 2  
ARC 5375 ..... 1301

### USURY

- Notice ..... 1281

### WATER, AIR AND WASTE MANAGEMENT[900]

- Regulatory Flexibility Analysis Summary,  
Compliance actions, ch 10 ARC 5388 ..... 1270
- Notice, Definitions, water quality standards,  
60.2, 61.2, 61.3 ARC 5387 ..... 1270

## 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>
20	Friday, March 8, 1985	March 27, 1985
21	Friday, March 22, 1985	April 10, 1985
22	Friday, April 5, 1985	April 24, 1985

---

## 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:

First quarter	July 1, 1984, to June 30, 1985	\$117.00 plus \$4.68 sales tax
Second quarter	October 1, 1984, to June 30, 1985	\$ 88.00 plus \$3.52 sales tax
Third quarter	January 1, 1985, to June 30, 1985	\$ 58.00 plus \$2.32 sales tax
Fourth quarter	April 1, 1985, to June 30, 1985	\$ 31.00 plus \$1.24 sales tax

Single copies may be purchased for \$4.00 plus \$0.16 tax. Back issues may be purchased if the issues are available.

### Iowa Administrative Code

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

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

**Iowa Administrative Code** - \$670.00 plus \$26.80 sales tax

(Price includes Volumes I through XII, index and binder, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$3.00 plus \$0.12 tax.)

**Iowa Administrative Code Supplement** - \$137.00 plus \$5.48 sales tax

(Subscription expires June 30, 1985)

**All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:**

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

*Recycled  
Paper*

# RULEMAKING SCHEDULE

## Schedule for Rulemaking 1985

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. 11	Jan. 30	Feb. 19	Mar. 6	April 10	July 29
Jan. 25	Feb. 13	Mar. 5	Mar. 20	April 24	Aug. 12
Feb. 8	Feb. 27	Mar. 19	Apr. 3	May 8	Aug. 26
Feb. 22	Mar. 13	Apr. 2	Apr. 17	May 22	Sep. 9
Mar. 8	Mar. 27	Apr. 16	May 1	June 5	Sep. 23
Mar. 22	Apr. 10	Apr. 30	May 15	June 19	Oct. 7
Apr. 5	Apr. 24	May 14	May 29	June 26	Oct. 21
Apr. 19	May 8	May 28	June 12	July 17	Nov. 4
May 3	May 22	June 11	June 26	July 31	Nov. 18
May 17	June 5	June 25	July 10	Aug. 14	Dec. 2
May 31	June 19	July 9	July 24	Aug. 28	Dec. 16
June 14	July 3	July 23	Aug. 7	Sep. 11	Dec. 30
June 28	July 17	Aug. 6	Aug. 21	Sep. 25	Jan. 13 '86
July 12	July 31	Aug. 20	Sep. 4	Oct. 9	Jan. 27 '86
July 26	Aug. 14	Sep. 3	Sep. 18	Oct. 23	Feb. 10 '86
Aug. 9	Aug. 28	Sep. 17	Oct. 2	Nov. 6	Feb. 24 '86
Aug. 23	Sep. 11	Oct. 1	Oct. 16	Nov. 20	Mar. 10 '86
Sep. 6	Sep. 25	Oct. 15	Oct. 30	Dec. 4	Mar. 24 '86
Sep. 20	Oct. 9	Oct. 29	Nov. 13	Dec. 18	Apr. 7 '86
Oct. 4	Oct. 23	Nov. 12	Nov. 27	Jan. 1 '86	Apr. 21 '86
Oct. 18	Nov. 6	Nov. 26	Dec. 11	Jan. 15 '86	May 5 '86
Nov. 1	Nov. 20	Dec. 10	Dec. 25	Jan. 29 '86	May 19 '86
Nov. 15	Dec. 4	Dec. 24	Jan. 8 '86	Feb. 12 '86	June 2 '86
Nov. 29	Dec. 18	Jan. 7 '86	Jan. 22 '86	Feb. 26 '86	June 16 '86
Dec. 13	Jan. 1 '86	Jan. 21 '86	Feb. 5 '86	Mar. 12 '86	June 30 '86
Dec. 27	Jan. 15 '86	Feb. 4 '86	Feb. 19 '86	Mar. 26 '86	July 14 '86

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

35 days from the publication date is the **earliest** possible date for the agency to consider a noticed rule for adoption. It is the regular effective date for an adopted rule.

180 days 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
<b>AGRICULTURE DEPARTMENT[30]</b>		
Registration of Iowa-foaled horses and Iowa-whelped dogs, 14.15, 14.40, 14.41 IAB 3/13/85 <b>ARC 5371</b> (See ARC 5370 herein)	Second Floor Conference Room South Half Wallace State Office Bldg. Des Moines, Iowa	April 2, 1985 1:00 p.m.
<b>BEER AND LIQUOR CONTROL DEPARTMENT[150]</b>		
Central offices, 1.6 IAB 2/13/85 <b>ARC 5299</b>	Conference Room Central Offices 1918 S.E. Hulsizer Ave. Ankeny, Iowa	March 13, 1985 1:00 p.m.
Liquor license- beer permits, amendments to ch 4 IAB 2/13/85 <b>ARC 5300</b>	Conference Room Central Offices 1918 S.E. Hulsizer Ave. Ankeny, Iowa	March 13, 1985 1:00 p.m.
License and permit division, 5.1(2), 5.1(7), 5.7(1) IAB 2/13/85 <b>ARC 5301</b>	Conference Room Central Offices 1918 S.E. Hulsizer Ave. Ankeny, Iowa	March 13, 1985 1:00 p.m.
Complaint procedure, 10.2, 10.14 IAB 2/13/85 <b>ARC 5302</b>	Conference Room Central Offices 1918 S.E. Hulsizer Ave. Ankeny, Iowa	March 13, 1985 1:00 p.m.
Forms, 12.2(7) IAB 2/13/85 <b>ARC 5303</b>	Conference Room Central Offices 1918 S.E. Hulsizer Ave. Ankeny, Iowa	March 13, 1985 1:00 p.m.
Operation of state liquor stores, 13.2, 13.3 IAB 2/13/85 <b>ARC 5304</b>	Conference Room Central Offices 1918 S.E. Hulsizer Ave. Ankeny, Iowa	March 13, 1985 1:00 p.m.
<b>CONSERVATION COMMISSION[290]</b>		
Falconry regulations for hunting game, ch 100 IAB 2/27/85 <b>ARC 5357</b>	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 20, 1985 10:00 a.m.
Rabbit and squirrel hunting, 102.1, 102.2, 102.3 IAB 2/27/85 <b>ARC 5358</b>	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 20, 1985 10:00 a.m.
Pheasant, quail and gray partridge hunting seasons, ch 103 IAB 2/27/85 <b>ARC 5359</b>	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 20, 1985 10:00 a.m.
Regulations for taking furbearers (except ground hog), amendments to ch 104 IAB 2/27/85 <b>ARC 5349</b>	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 20, 1985 10:00 a.m.
Deer hunting regulations, ch 106 IAB 2/27/85 <b>ARC 5350</b>	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 20, 1985 10:00 a.m.
Water fowl and coot hunting, ch 107 IAB 2/27/85 <b>ARC 5351</b>	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 20, 1985 10:00 a.m.
Common snipe, Virginia rail, sora, woodcock and ruffed grouse hunting, ch 109 IAB 2/27/85 <b>ARC 5352</b>	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 20, 1985 10:00 a.m.

**CONSERVATION COMMISSION[290] (cont'd)**

Wild turkey hunting,  
amendments to ch 112  
IAB 2/27/85 ARC 5353

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

April 20, 1985  
10:00 a.m.

**HEALTH DEPARTMENT[470]**

Radiation emitting equipment,  
chs 38 to 41  
IAB 2/27/85 ARC 5327

Lucas State Office Bldg.  
Fourth Floor Conference Room  
Des Moines, Iowa

April 4, 1985  
1:30 p.m.

**HUMAN SERVICES DEPARTMENT[498]**

Social services block grant,  
amendments to ch 153  
IAB 2/27/85 ARC 5347

Des Moines County  
Board Room  
Courthouse  
Burlington, Iowa.  
Carroll DHS County Office  
611 North West St  
Carroll, Iowa

March 26, 1985  
1:30 p.m.

Grantwood AEA  
Spring Room  
4401 Sixth Ave. S.W.  
Cedar Rapids, Iowa

March 25, 1985  
10:00 a.m.

Community Room  
Central Fire Station  
205 South Main St  
Council Bluffs, Iowa

March 25, 1985  
9:00 a.m.

Council Room  
Old Depot  
116 W. Adams  
Creston, Iowa

March 25, 1985  
1:30 p.m.

Davenport District Office  
428 Western Ave.  
5th Floor Conference Room  
Davenport, Iowa

March 25, 1985  
10:00 a.m.

Winneshiek DHS County Office  
1111 Paine St  
Decorah, Iowa

March 25, 1985  
9:00 a.m.

Des Moines District Office  
District Office Conference Room  
3609½ Douglas  
Des Moines, Iowa

March 26, 1985  
10:00 a.m.

Dubuque DHS County Office  
Town Clock Plaza  
Nesler Centre  
3rd Floor Conference Room  
Dubuque, Iowa

March 26, 1985  
9:00 a.m.

Webster DHS County Office  
23 North Seventh  
Fort Dodge, Iowa

March 26, 1985  
9:00 a.m.

Marshalltown Annex Office  
206 West State Street  
Marshalltown, Iowa

March 25, 1985  
1:30 p.m.

Mason City District Office  
Mohawk Square  
22 North Georgia Ave.  
Mason City, Iowa

March 26, 1985  
12:00 p.m.

Ottumwa Public Library  
Ottumwa, Iowa

March 26, 1985  
1:30 p.m.

Sioux City District Office  
Conference Rooms 1 and 2  
808 - 5th St  
Sioux City, Iowa

March 25, 1985  
10:00 p.m.

March 26, 1985  
1:30 p.m.

**HUMAN SERVICES DEPARTMENT[498] (cont'd)**

Highway Patrol Bldg. Highway 18 West Spencer, Iowa	March 28, 1985 2:30 p.m.
Waterloo District Office Black Hawk County Conference Room 2nd Floor - KWWL Bldg. 500 East 4th Waterloo, Iowa	March 27, 1985 9:30 a.m.

**INSURANCE, DEPARTMENT OF[510]**

Administrative hearings of contested cases, ch 3, licensing rules, ch 10 IAB 1/30/85 ARC 5266	Conference Room Basement Lucas State Office Bldg. Des Moines, Iowa	March 15, 1985 10:00 a.m.
Implementation of health data commission directives, 5.90 IAB 2/27/85 ARC 5329	Conference Room Ground Floor Lucas State Office Bldg. Des Moines, Iowa	March 19, 1985 11:00 a.m.
Unfair discrimination — blindness, 15.83 IAB 2/27/85 ARC 5330	Conference Room Ground Floor Lucas State Office Bldg. Des Moines, Iowa	March 19, 1985 9:00 a.m.

**LABOR, BUREAU OF[530]**

Miniature boilers, amendments to ch 45 IAB 3/13/85 ARC 5382	Bureau of Labor 307 East 7th St. Des Moines, Iowa	April 4, 1985 9:00 a.m.
---	---	----------------------------

**MERIT EMPLOYMENT DEPARTMENT[570]**

Wearing of political badges by state employees, 16.1(3) IAB 2/13/85 ARC 5320	Conference Room South Half First Floor Grimes State Office Bldg. Des Moines, Iowa	March 28, 1985 9:20 a.m.
--	---	-----------------------------

**RACING COMMISSION[693]**

Practice and procedure before before the racing commission and the board of stewards, ch 4 IAB 2/27/85 ARC 5363	Auditorium Second Floor Wallace State Office Bldg. Des Moines, Iowa	March 28, 1985 9:00 a.m.
Evidence of character and reputation, 5.7(4) IAB 2/27/85 ARC 5364	Auditorium Second Floor Wallace State Office Bldg. Des Moines, Iowa	March 28, 1985 9:00 a.m.
Greyhound racing, ch 7 IAB 2/27/85 ARC 5365	Auditorium Second Floor Wallace State Office Bldg. Des Moines, Iowa	March 28, 1985 9:00 a.m.
Mutuels departments, ch 8 IAB 2/27/85 ARC 5366	Auditorium Second Floor Wallace State Office Bldg. Des Moines, Iowa	March 28, 1985 9:00 a.m.

**REAL ESTATE COMMISSION[700]**

Offering of prizes, 1.20 IAB 2/13/85 ARC 5308	Commission Office 1223 East Court Ave. Suite 205 Des Moines, Iowa	March 29, 1985 9:00 a.m.
--	--	-----------------------------

**REVENUE DEPARTMENT[730]**

Value of agricultural realty  
for assessment equalization —  
productivity, 71.12(1)"a"  
IAB 2/27/85 ARC 5340

(See IAB 1/16/85 ARC 5245)

See also Regulatory  
Flexibility Analysis

IAB 2/27/85 ARC 5341

Conference Room  
4 - 2  
Hoover State Office Bldg.  
Des Moines, Iowa

March 20, 1985  
9:00 a.m.

**TRANSPORTATION, DEPARTMENT OF[820]**

Primary road extensions,  
amendments to, [06,J] ch 1,  
[06,L] chs 1 and 2, [06,P] ch 1  
IAB 2/13/85 ARC 5309

Driver licenses,  
amendments to, [07,C] ch 13  
IAB 2/27/85 ARC 5331

Financial responsibility,  
amendments to, [07,C] ch 14  
IAB 2/27/85 ARC 5332

Financial assistance,  
[09,B] 1.3(2)"a"  
IAB 2/27/85 ARC 5333

Department of  
Transportation Complex  
800 Lincoln Way  
Ames, Iowa

Department of  
Transportation Complex  
800 Lincoln Way  
Ames, Iowa

Department of  
Transportation Complex  
800 Lincoln Way  
Ames, Iowa

Department of  
Transportation Complex  
800 Lincoln Way  
Ames, Iowa

April 2, 1985

April 16, 1985

April 16, 1985

April 16, 1985

**WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900]**

Definitions, 60.2; water quality  
standards, amendments to  
ch 61  
IAB 3/13/85 ARC 5387

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

April 2, 1985  
10:00 a.m.

STATE OF IOWA  
IOWA STATE COMMERCE COMMISSION

IN RE:

INVESTIGATION\* INTO  
COMPETITION IN COMMUNICATIONS  
SERVICES AND FACILITIES

DOCKET NO. INU-84-6

FINDINGS OF THE COMMISSION

(Issued February 21, 1985)

Approximately 130 members of the Iowa Telephone Association concurred in the ITA's comments. Several parties concurred in portions of other parties' comments.

Iowa Code Section 476.1 (Supp. 1983) provides in relevant part:

The jurisdiction of the commission as to the regulation of communications services is not applicable to a service or facility provided by a telephone utility that is or becomes subject to competition, as determined by the commission. . . . When a service or facility provided by a telephone utility becomes subject to competition, the commission shall, within a reasonable period of time, deregulate that service or facility.

The statute requires the Commission to determine whether services or facilities provided by a telephone utility are "subject to competition." If the Commission finds a service or facility subject to competition, the statute directs the Commission to "deregulate" the service or facility within "a reasonable period of time." The Commission commenced this investigation on its own motion on August 24, 1984, to address two broad questions: (1) whether and to what extent communications services or facilities provided by telephone utilities in Iowa are subject to competition; and (2) the extent to which a communications service or facility that is found to be subject to competition should be deregulated, and the manner in which deregulation should be carried out.

The Commission invited comments from all interested or affected persons. Parties offering written or oral comments to the Commission were:

- Allnet Communication Services, Inc.
- American Communications, Inc.
- AT&T Communications of the Midwest, Inc.
- Central Telephone Co.
- Gointel Communications, Inc.
- Continental Telephone of Iowa
- General Telephone Co. of the Midwest
- GTE Sprint Communications Corp.
- Mike Hopkins
- Iowa Telephone Assn.
- Jefferson Telephone Co.
- Kalona Coop. Telephone Co., Grand River Mutual Telephone Corp. and Citizens Mutual Telephone Co.
- MCI Telecommunications Corp.
- Modern Sound Engineering, Inc.
- NewVector Communications, Inc.
- North Central Telephone Co. and Webster-Calhoun Coop. Telephone Assn.
- Northwestern Bell Telephone Co.
- Northwest Iowa Telephone Co., Inc.
- Office of Consumer Advocate
- Petroleum Marketers of Iowa
- Teleconnect Co.
- United Telephone Co. of Iowa

I. COMPETITION AND METHOD OF DEREGULATION

Section 476.1 grants the Commission the authority to determine whether "a service or facility provided by a telephone utility . . . is or becomes subject to competition. . . ." This statute plainly provides that services or facilities are to be deregulated if they are determined to be subject to competition. Some parties suggested other approaches, such as evaluation of competition on a company-by-company basis. These approaches are inconsistent with the statute.

In determining whether a service or facility is "subject to competition," the essential question is whether consumers have a reasonable choice among providers of the service or facility. Iowa Code Section 476.1 provides that one factor the Commission must consider in making this judgment is the existence of alternate suppliers. The existence of alternate suppliers does not prove the existence of a reasonable choice, but it is a significant criterion. Other factors bear on the issue of whether consumers have a reasonable choice. For example, the ability or inability of a single provider to determine or control price is a relevant consideration. If the actions of a single provider can determine the price of a service or facility, competition does not exist because other choices are unavailable or unreasonable. Another relevant consideration is the ease with which other providers may enter the market and the likelihood that they will enter. Also, the substitutability of one service or facility for another has a strong bearing upon whether consumers have a reasonable choice. Competition may exist even if providers do not provide exactly the same service or facility. Other considerations may bear on whether a particular service or facility is subject to competition.

Several parties suggested that the Commission adopt a firm-oriented dominant/nondominant approach to deregulation. Under this approach, dominant firms would be subject to

\*See COMMERCE -- INVESTIGATION published in the Iowa Administrative Bulletin September 12, 1984, page 355.

greater regulatory control than nondominant firms. The Commission finds this approach unacceptable. All providers of a regulated service or facility will be equally subject to regulation. Similarly, if a service or facility is found to be subject to competition and is deregulated, all providers will be treated equally under deregulation.

Many parties commented that the degree of competition should be considered so that a comparable degree of regulation could be adopted. The Commission will consider neither degrees of competition nor degrees of regulation. For purposes of deregulation, the degree of competition is irrelevant. A service or facility either is subject to competition or it is not. If it is found not to be subject to competition, it will continue to be subject to regulation.

Some parties suggested deregulation over a scheduled transition period or deregulation in steps. The Commission declines to adopt these proposals. If a service or facility is found to be subject to competition, it will be deregulated completely and as rapidly as possible.

The general process of deregulation is described in Section 476.1. A telephone utility may have regulated services and facilities as well as deregulated services and facilities. Deregulation requires all investment, revenues and expenses associated with a competitive service or facility to be removed from the utility's rate base. Deregulated services and facilities will not be considered in regulatory proceedings unless they continue to affect the regulated operations.

## II. PAY TELEPHONE FACILITIES

The commenting parties provided adequate evidence in the investigation to support a finding of competitiveness in pay telephone services and facilities. The comments show that customers desiring to acquire a pay telephone device have a choice among providers.

Currently, the major providers of pay telephone equipment in Iowa are the local exchange companies. However, other providers are prepared to market pay telephones in Iowa. Three marketers, American Communications, Cointel Communications and Modern Sound Engineering, offered comments in this docket, demonstrating that current barriers to entry in the pay telephone market are largely created by regulation. If regulatory barriers were removed, several providers are certain to begin Iowa marketing.

Pay telephones have many of the characteristics of other customer premise equipment (CPE). The Commission has deregulated CPE, but did not include "coin-operated, public,

semipublic or pay telephone equipment." The Commission now concludes pay telephones, like other CPE, are a facility subject to competition and thus should be deregulated.

Once pay telephone facilities are deregulated, the service provided to the public by a pay phone will become competitive. Therefore, the Commission will not regulate the price for use of a pay phone or require pay phones to have any specific characteristics. However, the services and facilities of the local exchange and long distance networks are subject to regulation whether accessed by a pay phone or other device.

A rulemaking proceeding will be initiated to eliminate inconsistencies between these findings and Commission rules.

## III. COMPETITIVENESS OF OTHER SERVICES OR FACILITIES

Many of the comments offered in this investigation were directed to the competitiveness of other services or facilities. The record did not provide sufficient evidence to show, however, that consumers have a reasonable choice among alternate providers of these services or facilities. The Commission therefore will not find at this time that other services or facilities are subject to competition. A rulemaking will be initiated to establish a procedure for bringing questions of competition before the Commission. This will be a notice-and-comment procedure similar to a rulemaking rather than a contested case procedure. A finding of competitiveness of a service or facility does not deregulate that service or facility. The deregulation process will begin when a service or facility is found to be subject to competition. A service or facility will not be deemed deregulated until so ordered by the Commission.

## IV. ORDER

IT IS ORDERED:

1. Standards for determination of whether a service or facility is subject to competition shall be consistent with Part I of these findings.
2. The Executive Secretary shall cause to be published in the Iowa Administrative Bulletin a notice in the form of these findings.
3. Docket No. INU-84-6 is closed.

IOWA STATE COMMERCE COMMISSION

/s/ Andrew Varley  
Chairperson

/s/ Christine Hansen  
Commissioner

ATTEST:

/s/ Janet A. Strutt  
Executive Secretary,  
Assistant To

/s/ Paul Franzenburg  
Commissioner

Dated at Des Moines, Iowa, this 21 day of February, 1985.

**ARC 5371**  
**AGRICULTURE DEPARTMENT[30]**  
**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 1985 Iowa Code section 99D.22, the Iowa Department of Agriculture hereby gives Notice of Intended Action to amend Chapter 14, "Registration of Iowa-foaled Horses and Iowa-whelped Dogs," Iowa Administrative Code. The substance of this rule is also being submitted as Emergency Adopted and Implemented Rule, **ARC 5370**, published in the Iowa Administrative Bulletin on March 13, 1985.

The purpose of this notice is to solicit public comment on that submission, the subject matter of which is incorporated herein by this reference.

Any interested person may make written suggestions or comments on these proposed rules prior to April 2, 1985. Such written comments should be directed to R. H. Lounsberry, Secretary of Agriculture, Henry A. Wallace Building, Des Moines, Iowa 50319. There will be a public hearing held on April 2, 1985 at 1:00 p.m., in the Second Floor Conference Room (South Half), Henry A. Wallace Building, East 9th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing, either orally or in writing.

**ARC 5369**  
**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 continuing education.

The proposed rule adjusts provisions relating to local study groups.

Any interested person may make written comments concerning the proposed rule not later than April 2, 1985, addressed to Irene G. Howard, Director, Professional Licensure, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rule is intended to implement Iowa Code section 258A.2.

Subrule 144.2(5) is amended to read as follows:

**144.2(5)** No study group will be recognized that does not maintain a minimum membership of eight optome-

trists and each group must conduct not less than eighteen sessions during any one study compliance period. Each session shall not receive more than two hours credit for study compliance, provided, however, that on prior request to the board approval may be given in special circumstances for a session to exceed two credit hours. *Each study group 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.*

**ARC 5372**  
**HEALTH DEPARTMENT[470]**  
**BOARD OF BARBER EXAMINERS**  
**NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 147.80, the Board of Barber Examiners hereby gives Notice of Intended Action to amend Chapter 160, "License Fees," of the Iowa Administrative Code.

The proposed rule changes the fee for a license by reciprocity from seventy-five to one hundred dollars.

Any interested person may submit written comments concerning the proposed rule addressed to Keith Rankin, Board Administrator, Board of Barber Examiners, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319 not later than April 2, 1985.

The amendment is intended to implement Iowa Code section 147.80.

Subrule 160.6(2) is amended to read as follows:

**160.6(2)** Fee for license by reciprocity in this state is **seventy-five one hundred** dollars.

**NOTICE—INSURANCE**  
**NOTICE OF PUBLISHED MONTHLY AVERAGE FOR**  
**INTEREST RATES ON LIFE INSURANCE POLICY LOANS**

Pursuant to 1984 Iowa Acts, chapter 1017, notice is hereby given that the Commissioner of Insurance has determined that "published monthly average" for January of 1985 is 12.64%. This rate corresponds to Moody's corporate bond yield average-monthly average corporates as published in Moody's Investors Services, Inc. This rate will be effective April 1, 1985.

**ARC 5382**  
**LABOR, BUREAU OF[530]**  
**NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 17A.4(1) and 89.5, the labor commissioner hereby gives Notice of Intended Action to amend and adopt rules relating to miniature boilers and miniature model boilers.

The rules specify the requirements necessary for certification of miniature model boilers, including the qualifications for welders, the quality of materials used and specifications on related appurtenances.

The agency has determined that this Notice of Intended Action may have an impact on small business. The agency has considered the factors listed in 1984 Iowa Acts, chapter 1007, section 1. The agency will issue a regulatory flexibility analysis if a written request is filed by delivery or by mailing postmarked no later than April 3, 1985, to the Deputy Commissioner, Iowa Bureau of Labor, 307 East Seventh Street, Des Moines, Iowa 50319. The request may be made by the administrative rules review committee, the governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the bureau of labor under the Act.

Any interested person may make written suggestions or written comments on the Notice of Intended Action. Written suggestions or written comments must be filed by delivery or by mailing postmarked no later than April 3, 1985, to the Deputy Commissioner, Iowa Bureau of Labor, 307 East Seventh Street, Des Moines, Iowa 50319.

A public hearing will be held on April 4, 1985, at 9:00 a.m. in the offices of the Iowa Bureau of Labor, 307 East 7th Street, Des Moines, Iowa. Any individual may appear to present comments on the rules contained in this Notice of Intended Action.

These rules are intended to implement Iowa Code chapter 89.

ITEM 1. Amend the title of 530—chapter 45 to read “Miniature Boilers and Miniature Model Boilers.”

ITEM 2. Amend 530—45.1(89) to read as follows:

**530—45.1(89) Scope — miniature boilers.** This chapter Rules 45.1(89) to 45.3(89) applies to boilers which do not exceed the following limits: Sixteen-inch inside diameter of shell, twenty square feet of heating surface, five cubic feet gross volume, exclusive of casing and insulation, and one hundred psig maximum allowable working pressure. Where any of the above limits are exceeded, the rules for power boilers apply. If the boiler meets the “miniature” classification, the rules in this chapter 45.1(89) to 45.3(89) shall supplement the rules for power boilers and take precedence over them when there is a conflict.

ITEM 3. Reserve rules 530—45.4(89) to 530—45.9(89).

ITEM 4. Adopt new rules 530—45.10(89) to 530—45.21(89) to read as follows:

**530—45.10(89) Scope — miniature model boilers.** Rules 45.10(89) to 45.21(89) apply to miniature model boilers constructed after July 1, 1985, as a hobby and not for commercial use or sale providing the following limits are not exceeded: Sixteen-inch inside diameter of shell, twenty square feet heating surface and five cubic feet gross volume, and one hundred psig maximum allowable working pressure. Where any of the above-mentioned limits are exceeded, the rules for power boilers apply. If the boiler meets the “miniature model” classification, rules 45.10(89) to 45.21(89) shall apply.

**530—45.11(89) Welding.** It is recommended that welding be done by a welder who has a current qualification under section IX, ASME Code (1984).

**530—45.12(89) Materials.** It is recommended that materials used for pressure parts of a miniature model boiler be of pressure vessel quality and shall meet the pressure and temperature requirements. The recommended minimum thickness permitted is 1/4 inch for shell and 5/16 inch for tube sheets.

**530—45.13(89) Piping.** Piping and pipe fittings shall be equal to at least the requirements of ANSI for 125 psig pressure rating.

**530—45.14(89) Safety appliances.**

**45.14(1) Pressure gages.** Gages shall be approved and acceptable for steam service. The dial of a pressure gage shall be graduated to approximately double the pressure at which the safety valve is set, but in no case to less than 1½ times the safety valve setting.

**45.14(2) Stop valves.** Steam, water and blowdown lines from the miniature model boiler, except safety valve connections, shall have a stop valve located as close as practicable to the miniature model boiler.

**45.14(3) Bottom blowoff.** Each boiler shall be equipped with a blowoff connection, not less than ½-inch pipe size and located to drain from the lowest water space practicable. The blowoff shall be equipped with a valve or cock not less than ½-inch pipe size.

**530—45.15(89) Safety valves.** Each miniature model boiler shall be equipped with one or more officially rated safety valves of the seal spring loaded pop type to relieve the amount of steam at maximum firing.

**530—45.16(89) Fusible plugs.** Each miniature model boiler must have an acceptable fire-actuated fusible plug.

**530—45.17(89) Water gage.** Each miniature model boiler operating with a definite water level shall be equipped with a glass water gage. Gage must be located so the lowest visible part is at least one inch above the lowest permissible water level.

**530—45.18(89) Feedwater supply.** Each miniature model boiler shall be provided with an injector or pump type water supply device.

**530—45.19(89) Inspection and washout openings.** Each miniature model boiler must have the following as a minimum for inspection and washout opening: One in the rear tubesheet below the tubes, one in front head at the line of the crown sheet, two in the mud legs. These openings shall be opposite to each other where possible and one may be used for the attachment of a blowoff valve.

## LABOR, BUREAU OF[530] (cont'd)

**530—45.20(89) Inspection.** It is recommended that permission be obtained from the labor commissioner prior to the construction of a miniature model boiler for Iowa special certification. After the miniature model boiler is assembled a hydrostatic test of four times the maximum allowable working pressure will be applied, and thereafter the hydrostatic tests shall be at three times the maximum allowable working pressure. If the miniature model boiler has been constructed pursuant to the recommendations in rules 45.11(89), 45.12(89), and 45.20(89), the hydrostatic test after assembly shall be at three times the maximum allowable working pressure and thereafter the hydrostatic tests shall be at two times the maximum allowable working pressure.

**530—45.21(89) Stamping.** At the time of final inspection the miniature model boiler will be stamped with an Iowa number followed by the letters IAS meaning Iowa special certification.

These rules are intended to implement Iowa Code section 89.5.

**ARC 5379****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 155.19, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 9, "Purpose and Organization." The proposed amendment was approved during the February 12, 1985 meeting of the Iowa Board of Pharmacy Examiners.

The proposed amendment provides that a board member could be appointed to serve as a hearing officer in the event that the services of a qualified administrative hearing officer could not be obtained.

Any interested person may submit data, views, and written comments on the proposed amendments on or before April 3, 1985 to Norman C. Johnson, Executive Secretary, Iowa Board of Pharmacy Examiners, 1209 E. Court, Executive Hills West, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 155.19.

Subrule 9.2(5), paragraph "a" is amended to read as follows:

a. A hearing shall be conducted by a qualified administrative hearing officer or a member of the board appointed by the chairperson and a quorum of the board. If a board member is appointed to serve as a hearing officer that member shall not participate in the deliberations of the board except in the capacity of a hearing officer. The administrative hearing officer's duties shall include:

**ARC 5388****WATER, AIR AND WASTE  
MANAGEMENT[900]  
REGULATORY FLEXIBILITY  
ANALYSIS SUMMARY**

A regulatory flexibility analysis has been prepared on **ARC 5242** published in Iowa Administrative Bulletin on January 16, 1985, regarding proposed rules to implement administrative penalties in department enforcement actions. The analysis states that since no new compliance or reporting requirements and no new design or operational requirements are proposed, the methods the department is supposed to consider under 1984 Iowa Acts, chapter 1007, have little applicability to these proposed rules. The criteria the department is supposed to consider in assessing administrative penalties are set out in general in statute. To the extent that small businesses may have less serious violations and may enjoy less economic gain from such violations, they will suffer lesser enforcement consequences, just like anyone else. Small business will not be set aside as a separate class for purposes of enforcing environmental laws, however.

The Water, Air and Waste Management Commission is projected to adopt rules on administrative penalties on April 16, 1985, in the Fifth Floor Conference Room, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319. The approximate time of such adoption may be obtained by reference to the Commission agenda notice which will be posted and distributed under the open meeting law, or by contacting Michael P. Murphy at 515-281-8690, after April 8, 1985. Interested persons may make an oral presentation on the analysis at the time adoption is being considered by the Commission on April 16. The full text of the analysis may be obtained by contacting Mr. Murphy at the above address or telephone number.

**ARC 5387****WATER, AIR AND WASTE  
MANAGEMENT DEPARTMENT[900]  
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Water, Air and Waste Management Commission intends to amend Chapter 60 "Scope of Title — Definition — Forms — Rules of Practice," and Chapter 61 "Water Quality Standards."

Water quality standards are periodically reviewed for technical accuracy, incorporation of current scientific data and consistency with the U.S. Environmental Protection Agency (U.S. EPA) guidelines and requirements, and the department is proposing the following modifications because of this review. The following more specifically describes the proposed changes:

## WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

1. Deletion of the Class B Fecal Coliform Standard. A review of the human uses being made of Class B, secondary contact recreation, streams was conducted by a Technical Advisory Committee for the department in 1983. Their evaluation, assisted by department staff, concluded that the lack of reported adverse human health impacts from the incidental exposure to nondisinfected wastewater could not justify the continued need for requiring disinfection of wastewater discharged into Class B streams. In fact, adverse impacts were occurring to aquatic populations due to the use of chlorine as a disinfection agent. The proposed change is reflected in Item 7.

2. Adoption of a Total Residual Chlorine (TRC) Standard. Examination of available technical data continues to demonstrate the toxic effect chlorine and related compounds have on aquatic organisms. The Technical Advisory Committee and the U.S. EPA have recommended the incorporation or adoption of a total residual chlorine (TRC) criteria or standard. The U.S. EPA technical guideline document (Section 304 criteria) recommends a TRC stream standard of 8.3 ug/l necessary to protect freshwater aquatic life and its uses. Adverse aquatic impacts occur when instream levels of TRC are above this value. Therefore, this standard is proposed to be adopted for Class B waters. This proposed change is reflected in Item 7.

3. Expanding Class A Primary Contact Recreation Definition. An evaluation of the existing definition of "primary contact" in 900-60.2(455B) indicates only limited usage is afforded protection. The recreational usage should be expanded to reflect primary contact occurring from activities other than water skiing and swimming. Uses such as tubing, wading, and canoeing are activities for which primary contact with the surface waters occurs. Technical data also indicates that accidental ingestion is not the sole mechanism for encountering human health affects. Contaminated water contact with sensitive body organs such as the eyes, ears and the nose may also pose a human health affect.

Therefore, the expanded definition provides greater detail on the type of stream uses warranting protection and recognizes other mechanisms of inflicting human health problems. This proposed change is reflected in Item 1. Updates of other definitions are also proposed in this item.

4. Lake Reclassification. A review of the one hundred seven publicly owned lakes in the state indicates twenty-one which are not classified for primary contact protection (Class A designation). The U.S. EPA has recommended giving these lakes high consideration in the state's overall review of water uses meeting the national goal of fishable and swimmable waters where attainable. The staff review clearly indicates that the twenty-one lakes meet the fishable and swimmable concept, however for lake management reasons swimming is not encouraged or permitted. It was felt that the designation as Class A waters will not hamper the selected management of the lakes.

Therefore, it is recommended that these twenty-one lakes have the Class A designation added to the existing Class B designations. This change is reflected in Items 32 through 41.

5. Clarification to Several Stream and Lake Designations. Since the previous major water quality standards review in 1980, several new state-owned lakes and streams have had their designated name changed or have

been purchased. Three lakes and seven stream reaches require a new name designation or correction.

Fourteen additional Class B cold water stream segments warrant correction to the proper description of the beginning or ending location of the classified portion, or addition as Class B cold segments. These fourteen streams are managed by the Iowa Conservation Commission as trout fisheries or trout supporting waters.

6. Additional Class A Designation to Selected Rivers and Streams. A staff review of uses made on river and stream segments indicates eighteen additional segments which currently receive extensive to moderate use as primary contact recreation waters. These segments support primary contact recreation (Class A) such as canoeing, tubing, rafting and associated wading. The bacterial protection afforded primary contact recreation (not to exceed 200 fecal coliform organisms/100 ml) is warranted on these usage documented segments. Undoubtedly, additional segments support or potentially support Class A uses, however, the documentation is not available at this time to support the designation.

7. Revisions to the Antidegradation Policy. Four areas of subrule 61.2(2) are having modifications proposed. Three areas reflect U.S. EPA suggestions on clarity and intent of the policy. The fourth adds a new type of designation under the policy, that of High Quality Resource Waters. These are waters of the state which the Conservation Commission has identified as having exceptional recreational or ecological significance. The emphasis is to afford protection to the physical or biological integrity of the waters since the chemical quality may not be exceptional. Forty-three rivers, streams, lakes and marshes are recommended in this designation. These changes are reflected in Items 1 through 3.

8. Inclusion of a Site-Specific Criteria Procedure. Recommendations are made to allow a mechanism to be included in the water quality standards for determining instream criteria (or numerical standards) at a specific stream site. The new procedures, developed by the U.S. EPA, would account for unique stream conditions or different biological organisms at the site. This change is reflected in Item 4.

9. Bacterial Criteria for Discharges into Sinkholes. A new general water quality criteria (61.3(1)"h") is recommended to afford protection to groundwater users in areas where there is direct or near direct interconnection between surface waters and groundwaters, via sinkholes. The waters entering the sinkholes would not exceed 200 fecal coliform organisms/100 ml unless materially affected by surface runoff. This change is reflected in Items 1 and 5.

Any interested person may file written comments on the above-referenced rule changes through April 12, 1985, with the Executive Director of the Department of Water, Air and Waste Management, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319-0120. Persons are also invited to present oral or written comments at a public hearing which will be held on April 2, 1985, at 10:00 a.m. in the 5th Floor Conference Room, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319-0120.

These rules may impact small business, but only in the sense that everyone in Iowa is subject to water quality standards. There are no new reporting or compliance requirements or design or operational standards proposed, and no particular impact on small business can be

## WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

ascertained by the department in its consideration of the methods in 1984 Iowa Acts, chapter 1007, section 1(4a-1).

These rules are intended to implement Iowa Code chapter 455B division III, part I.

ITEM 1. Amend rule 60.2(455B) by amending the definitions as follows and adding three new definitions.

"Act" means the Federal Water Pollution Control Act as amended through December 31, 1980, 33 U.S.C. section 1251 et seq.

"ASTM" means "Annual Book of Standards, Part 31, Water; 1975." The publication is available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

"EPA Methods" means "Methods for Chemical Analysis of Water and Wastes," 1974 1979, U.S. EPA, EPA-600/4-79/020, Methods Development and Quality Assurance Environmental Monitoring and Support Laboratory, National Environmental Research Center, Cincinnati, Ohio 45268; U.S. Environmental Protection Agency, Office of Technology Transfer, Industrial Research Laboratory, Cincinnati, Ohio 45268. This publication is available from the Office of Technology Transfer National Technical Information Service, Springfield, Virginia 22151.

"High quality waters" means those waters designated as such in chapter 61, which exceed the levels described in chapter 61 as necessary to protect existing water uses. The chemical integrity of these waters is enhanced and distinguished as high quality by the exceptional water clarity necessary to protect and maintain the existing designated uses of those waters. Examples include the cold water streams designated by the Iowa conservation commission as Iowa's catchable and special trout streams, and the Iowa Great Lakes chain.

"High quality resource waters" means waters designated as such in chapter 61, of exceptional recreational or ecological significance. These waters are important, unique or sensitive ecologically but whose chemical quality may not be particularly good as measured by traditional standards of chapter 61, or whose resource potential is based on the existing physical or biological integrity rather than on existing chemical integrity.

"Primary contact" means any recreational or other water use in which there is prolonged and intimate direct human contact with the water involving considerable risk of ingestion of water or contact with sensitive body organs such as the eyes, ears and nose, in quantities sufficient to pose a significant health hazard; such as swimming and water skiing.

"Regional administrator" means the regional administrator of the United States Environmental Protection Agency, Region VII, 1357 Baltimore 324 East Eleventh Street, Kansas City, Missouri 641086.

"Sinkhole" means any depression caused by the dissolution or collapse of subterranean materials in a carbonate formation or in gypsum or rock salt deposits through which water may be drained or lost to the local groundwater systems. Such depressions may or may not be open to the surface at times. Intermittently, sinkholes may hold water forming a pond.

"Standard methods" means "Standard Methods for the Examination of Water and Wastewater," 145th Edition, 1975. This publication is available from the American Public Health Association, 1015 185th Street N.W., Washington, D.C. 2003605.

ITEM 2. Subrule 61.2(1), second to the last unnumbered paragraph, is amended to read as follows:

Certain of the criteria are in narrative form without numeric limitations. In applying such narrative standards, decisions will be based on the rationale contained in 'Quality Criteria for Water,' published by the U.S. Environmental Protection Agency (1977), as updated by supplemental Section 304 (of the Act) Ambient Water Quality Criteria documents.

ITEM 3. Subrule 61.2(2) is amended by adding new paragraphs "f" and "g" and amending the remainder as follows:

61.2(2) Antidegradation policy. It is the policy of the state of Iowa that:

a. Existing designated surface water uses and the level of water quality necessary to protect the existing uses will be maintained and protected. No further water quality degradation which would interfere with or become injurious to water uses designated in this chapter will be allowed.

b. Those existing high quality waters, named below, which exceed the water quality levels described in this chapter as necessary to protect existing water uses will be maintained at or above existing water quality, except when, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, it is determined that there is need to lower the water chemical quality because of necessary and justifiable economic or social development. In allowing such degradation or lower chemical quality, the state shall assure adequate chemical quality to fully protect existing uses.

(1) (No change.)

(2) (No change.)

(3) (No change.)

(4) (No change.)

(5) DeSoto National Wildlife Refuge in Harrison and Pottawattamie Counties.

(65) Fenchel Creek, mouth to Richmond Springs, in Delaware County and tributary to the Maquoketa River.

(76) Odell Branch (aka Fountain Spring Creek), mouth (section 10, T90N, R4W, Delaware County), tributary to Elk Creek, which is tributary to the Turkey River to west line of Section 9, T90N, R4W, Delaware County.

(87) Iowa Great Lakes chain of lakes in Dickinson County, including West Lake Okoboji, Spirit Lake, East Lake Okoboji, Minnewashta Lake, Upper Gar Lake, and Lower Gar Lake.

(98) North Bear Creek, with mouth in Winneshiek County and tributary to Bear Creek, listed as number 1 in this listing.

(109) North Cedar Creek, with mouth in Clayton County and tributary to Sny Magill Creek.

(11) Lake Rathbun in Appanoose County.

(1210) Sny Magill Creek, with mouth in Clayton County and tributary to the Mississippi River.

(1311) Turkey River, from the point where it is joined by the Volga River in Clayton County to Vernon Springs in Howard County.

(14) Union Slough National Wildlife Refuge in Kossuth County.

(15) Upper Iowa River from Lane's Bridge at river mile 6 in Allamakee County to the Iowa-Minnesota border at river mile 86.

## WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

(4612) Waterloo Creek, with mouth in Allamakee County and tributary to the Upper Iowa River.

(17) Yellow River from the mouth in Allamakee County to Old Highway 51, in Allamakee County.

(13) Maquoketa River, from confluence with South Fork Maquoketa River (section 16, T90N, R6W, Delaware County) to Highway 3 (north line of section 24, T91N, R7W, Fayette County).

(14) Spring Branch, mouth (section 10, T88N, R5W, Delaware County) to spring source (section 35, T89N, R5W, Delaware County).

(15) Little Turkey River, Clayton-Delaware County line to south line of section 11, T90N, R3W, Delaware County.

(16) Middle Fork Little Maquoketa River (aka Banks-ton Creek), west line of section 31, T90N, R1E to north line of section 33, T90N, R1W, Dubuque County.

(17) Brush Creek, north line of section 23, T85N, R3E to west line of section 1, T85N, R3E, Jackson County.

(18) Dalton Lake - Jackson County.

(19) Little Mill Creek, mouth (Jackson County) to west line of section 29, T86N, R4E, Jackson County.

(20) Mill Creek (aka Big Mill Creek), from confluence with Little Mill Creek in section 13, T86N, R4E, Jackson County, to confluence with Unnamed Creek, section 1, T86N, R3E, Jackson County.

(21) Unnamed Creek (tributary to Mill Creek), mouth (section 1, T86N, R3E, Jackson County) to west line of section 1, T86N, R3E, Jackson County.

(22) Unnamed Creek (aka South Fork Big Mill), tributary to Mill Creek, from mouth (section 8, T86N, R4E, Jackson County) to west line of section 17, T86N, R4E, Jackson County.

(23) Clear Creek, mouth (Allamakee County) to west line of section 25, T99N, R4W, Allamakee County.

(24) French Creek, mouth (Allamakee County) to east line of section 23, T99N, R5W, Allamakee County.

(25) Hickory Creek, mouth (Allamakee County) to south line of section 28, T96N, R5W, Allamakee County.

(26) Little Paint Creek, mouth to north line of section 30, T97N, R3W, Allamakee County.

(27) Paint Creek, from confluence with Little Paint Creek to road crossing in section 18, T97N, R4W, Allamakee County.

(28) Patterson Creek, mouth (Allamakee County) to east line of section 3, T98N, R6W, Allamakee County.

(29) Silver Creek, mouth (Allamakee County) to south line of section 31, T99N, R5W, Allamakee County.

(30) Village Creek, mouth (Allamakee County) to west line of section 19, T98N, R4W, Allamakee County.

(31) Wexford Creek, mouth to west line of section 25, T98N, R3W, Allamakee County.

(32) Buck Creek, mouth (Clayton County) to west line of section 9, T93N, R3W, Clayton County.

(33) Ensign Creek (aka Ensign-Hollow) mouth (section 28, T92N, R6W, Clayton County) to spring source (section 29, T92N, R6W, Clayton County).

(34) South Cedar Creek (aka Cedar Creek), mouth (Clayton County) to north line of section 7, T92N, R3W, Clayton County.

(35) Bear Creek, mouth (Fayette County) to west line of section 6, T92N, R7W, Fayette County.

(36) Unnamed Creek (aka Glover's Creek), mouth to west line of section 15, T94N, R8W, Fayette County.

(37) Grannis Creek, mouth to west line of section 36, T93N, R8W, Fayette County.

(38) Mink Creek, mouth to west line of section 15, T93N, R7W, Fayette County.

(39) Otter Creek, mouth (Fayette County) to confluence with Unnamed Creek (aka Glover's Creek) in section 22, T94N, R8W, Fayette County.

(40) Nichols Creek (aka Bigalk Creek), mouth (section 18, T100N, R10W, Winneshiek County) to west line of section 23, T100N, R11W, Howard County.

(41) Spring Creek, mouth (Mitchell County) to north line of section 8, T97N, R16W, Mitchell County.

(42) Turtle Creek, mouth (Mitchell County) to east line of section 7, T99N, R17W, Mitchell County.

(43) Wapsipinicon River, from the town of McIntire to north line of section 20, T99N, R15W, Mitchell County.

(44) Bohemian Creek, mouth (Winneshiek County) to Highway 139 (west line of section 2, T97N, R11W, Howard County).

(45) Coon Creek, mouth (Winneshiek County) to road crossing in section 13, T98N, R7W, Winneshiek County.

(46) Smith Creek (aka Trout River), mouth to south line of section 33, T98N, R7W, Winneshiek County.

(47) Unnamed Stream (aka Trout Run), mouth to south line of section 27, T98N, R8W, Winneshiek County.

(48) Twin Springs Creek, mouth to west line of section 36, T98N, R9W, Winneshiek County.

(49) Canoe Creek (aka West Canoe Creek), from Winneshiek County Road W38 to west line of section 8, T99N, R8W, Winneshiek County.

c. (No change.)

d. (No change.)

e. (No change.)

f. Water quality management regulatory actions affecting high quality resource waters, listed below, will be directed at water quality improvement commensurate with the exceptional value of the resource and at preserving and enhancing the physical and biological integrity of these waters.

(1) DeSoto National Wildlife Refuge in Harrison and Pottawattamie Counties.

(2) Lake Rathbun in Appanoose County.

(3) Union Slough National Wildlife Refuge in Kossuth County.

(4) Upper Iowa River from Lane's Bridge at river mile 6 in Allamakee County to the Iowa-Minnesota border at river mile 86.

(5) Yellow River from the mouth in Allamakee County to Old Highway 51, northeast quarter of section 11, T96N, R6W, Allamakee County.

(6) All B(c) surface waters designated in 61.3(5) "e" that are not included in 61.2(2)"b," the high quality waters list.

(7) Beaver Creek, mouth (Black Hawk County, section 34, T90N, R14W) to County Road T47 (Butler County, section 27, T90N, R16W).

(8) Boone River, mouth (Webster County, section 36, T87N, R27W) to Hamilton County, section 5, T88N, R25W (east corporate limits, Webster City).

(9) Cedar River, mouth (Louisa County, section 20, T75N, R4W) to Highway 30 (Linn County, section 9, T82N, R6W).

(10) Cedar River, Black Hawk County, section 34 T90N, R14W (confluence with Beaver Creek) to Chickasaw County, section 29, T94N, R14W (south corporate limits, Nashua).

(11) Chariton River, Highway 2 (Appanoose County, section 27, T69N, R17W) to Rathbun Lake Dam (Appanoose County, section 35, T69N, R18W).

## WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

(12) Chariton River, Lucas-Wayne County line (Lucas County, section 36, T71N, R20W) to Highway 14 (Lucas County, section 30, T72N, R21W).

(13) Des Moines River, Fraser Dam (Boone County, section 2, T84N, R27W) to Webster County, section 15, T88N, R28W).

(14) East Fork Des Moines River, mouth (Humboldt County, section 19, T91N, R28W) to County Road B63 (Kossuth County, section 23, T94N, R29W).

(15) English River, mouth (Washington County, section 11, T77N, R6W) to confluence with South English River (Washington County, section 6, T77N, R9W).

(16) Iowa River, mouth (Louisa County) to Louisa County, section 35, T74N, R3W (south corporate limit, Wapello).

(17) Iowa River, confluence with Cedar River (Louisa County, section 20, T75N, R4W) to Johnson-Washington County line.

(18) Iowa River, Highway 149 (Iowa County, section 35, T81N, R9W) to confluence with Asher Creek (Marshall County, section 26, T84N, R18W).

(19) Iowa River, Marshall-Hardin County line to Hardin County, section 20, T89N, R20W (east corporate limit, Iowa Falls).

(20) Little Sioux River, Cherokee County, section 23, T92N, R40W (north corporate limit, Cherokee) to Clay County, section 17, T96N, R36W (east corporate limit, Spencer).

(21) Maquoketa River, confluence with Deep Creek (Jackson County, section 18, T84N, R5E) to confluence with Plum Creek (Delaware County, section 11, T87N, R4W).

(22) Middle Raccoon River, Redfield Dam (Dallas County, section 5, T78N, R25W) to Guthrie-Carroll County line.

(23) North River, County Road R63 (Warren County, section 16, T77N, R24W) to confluence with Badger Creek (Warren County, section 33, T77N, R25W).

(24) North Fork Maquoketa River, mouth (Jackson County, section 13, T84N, R2E) to confluence with White Water Creek (Jones County, section 10, T86N, R1W).

(25) North Skunk River, mouth (Keokuk County, section 5, T74N, R10W) to Poweshiek-Mahaska County line.

(26) Raccoon River, Dallas-Polk County line to Highway 286 (Carroll County, section 17, T85N, R33W).

(27) Shell Rock River, mouth (Black Hawk County, section 4, T90N, R14W) to Bremer County, section 12, T91N, R14W (south corporate limit, Waverly).

(28) Skunk River, Henry County, section 3, T71N, R7W, to confluence with North and South Skunk Rivers (Keokuk County, section 5, T74N, R10W).

(29) South Skunk River, mouth (Keokuk County, section 5, T74N, R10W) to Highway 21 (Keokuk County, section 34, T75N, R13W).

(30) South Skunk River, Story County, section 23, T84N, R24W, to confluence with Drainage Ditch #71 (Hamilton County, section 11, T86N, R24W).

(31) Thompson River, County Road R34 (Decatur County, section 1, T68N, R26W) to Decatur-Ringgold County line.

(32) Volga River, mouth (Clayton County, section 35, T92N, R4W) to Fayette County, section 28, T93N, R8W (east corporate limit, Fayette).

(33) Wapsipinicon River, mouth to confluence with East Fork Wapsipinicon River (Bremer County, section 34, T93N, R12W).

(34) West Fork Cedar River, mouth (Black Hawk County, section 9, T90N, R14W) to confluence with Maynes Creek (Butler County, section 7, T91N, R17W).

(35) Clear Lake - Cerro Gordo County.

(36) Elk Lake - Clay County - sections 1 and 36, T95N, R35W.

(37) Silver Lake - Worth County - sections 14 and 15, T100N, R22W.

(38) Tuttle Lake - Emmet County - sections 10, 11 and 12, T100N, R32W.

(39) Virgin Lake - Palo Alto County - sections 29, 30 and 31, T96N, R34W.

(40) Bur Oak Lake - Emmet County - section 21, T98N, R33W.

(41) Elm Lake - Wright County - sections 21, 22, 27 and 28, T92N, R24W.

(42) Grover's Marsh - Dickinson County - section 12, T100N, R36W.

(43) Silver Lake - Worth County - sections 10, 11, 14 and 15, T100N, R22W.

g. It is the intent of the antidegradation policy to protect and maintain the existing physical, biological, and chemical integrity of all waters of the state. Consistency with Iowa's water quality standards requires that any proposed activity modifying the existing physical, biological, or chemical integrity of a water of the state shall not adversely impact these resource attributes, either on an individual or cumulative basis. An adverse impact shall refer to the loss of or irreparable damage to the aquatic, semiaquatic, or wildlife habitat or population, or a modification to the water body that would cause an overall degradation to the aquatic or wildlife population and diversity. The Iowa state conservation commission and the U.S. Fish and Wildlife Service shall serve as consultants to the department for assessing impacts. Exceptions to the preceding will be allowed only if full mitigation is provided by the applicant and approved by the department.

For those waters of the state designated as high quality or high quality resource waters and the Mississippi and Missouri Rivers, any proposed activity that will adversely impact the existing physical, chemical, or biological integrity of that water will not be consistent with Iowa's water quality standards. Mitigation will not be allowed.

This policy shall be enforced in conjunction with water quality certification review pursuant to section 401 of the Act, flood plain development permit review, and any other permit issued by this department. In the event that no permit is required from this department for the activity or the activity is exempted from departmental permit regulation, any action not consistent with this policy shall be construed as a water quality standards violation.

ITEM 4. Subrule 61.2(5) is amended by lettering the second and third unnumbered paragraphs as "a" and "b," respectively, and adding a new paragraph "c," as follows:

c. Site specific water quality standards may be allowed in lieu of the water quality standards referenced in this chapter if adequate documentation is provided to show that site specific criteria will protect all existing or potential uses of the surface water. Site specific water quality standards may be appropriate where:

(1) The types of organisms differ significantly from those used in setting the statewide standards, or;

(2) The chemical characteristics of the surface water such as pH, temperature, and hardness differ significantly from the characteristics of the water used in setting the statewide standard.

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

Development of site specific criteria shall include an evaluation of the chemical and biological characteristics of the water resource and an evaluation of the impact of the discharge. All evaluations must be co-ordinated and performed with prior consent and approval of the department using scientifically accepted procedures.

ITEM 5. Subrule 61.3(1) is amended by adding a new paragraph "h" as follows:

h. Water which enters a sinkhole shall not exceed a fecal coliform content of 200 organisms/100 ml, except when the waters are materially affected by surface runoff; but in no case shall fecal coliform levels downstream from a discharge which may contain pathogens to humans be more than 200 organisms/100 ml higher than the background level upstream from the discharge.

ITEM 6. Subrule 61.3(2) paragraph "a" is amended as follows:

a. From April 1 through October 31 fecal coliform content shall not exceed 200 organisms/100 ml, except when the waters are materially affected by surface runoff; but in no case shall fecal coliform levels downstream from a discharge which may contain human pathogens to humans be more than 200 organisms/100 ml higher than the background level upstream from the discharge.

ITEM 7. Subrule 61.3(3) is amended by inserting the following in paragraph "b," between "selenium" and "zinc," and by rescinding paragraph "d":

Total residual chlorine (TRC) 8.3 ug/l

ALL OF THE FOLLOWING ITEMS REFER TO CHANGES IN THE WATER USE DESIGNATIONS OF SUBRULE 61.3(5) PARAGRAPH "e," PAGES 8-65. THE ITEMS WILL REFER TO THE PAGE NUMBER ON WHICH CHANGES ARE PROPOSED.

ITEM 8. Page 9, the use designation of the Little Sioux River is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Little Sioux R.</u>				
Mouth (Harrison Co.) to the Iowa-Minnesota State line Hwy. 3 in Cherokee (S26, T92N, R40W, Cherokee Co.)		X		
Hwy. 3 in Cherokee (S26, T92N, R40W, Cherokee Co.) to Linn Grove Dam (Buena Vista Co.)	X	X		
Linn Grove Dam (Buena Vista Co.) to the Iowa-Minnesota State line			X	

ITEM 9. Page 11, the use designation of the Thompson River (aka Grand R.) is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Thompson R. (aka Grand R.)</u>				
Iowa-Missouri State line (S line of Section 24, T67N, R26W, Decatur Co.) to the Madison-Adair Co. line U.S. Hwy. 34 (S17, T72N, R28W, Union Co.)	X	X		
U.S. Hwy. 34 (S17, T72N, R28W, Union Co.) to the Madison-Adair Co. line			X	

ITEM 10. Page 15, the use designation of the Des Moines River is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Des Moines R.</u>				
Mouth (Lee Co.) to Red Rock Reservoir confluence with the Raccoon R.	X	X		
Ottumwa Municipal Water Works				X
Red Rock Reservoir Dam to Hwy. 14 (S1, T76N, R20W, Marion Co.)	X	X		
Red Rock Reservoir to confluence with the Raccoon R.			X	

ITEM 11. Page 16, add after "North R." the following new water designation.

	Water Uses			
	A	B(W)	B(C)	C
<u>Four Mile Cr.</u>				
Mouth (Polk Co.) to Co. Rd. bridge (S18, T80N, R23W, Polk Co.)				X

ITEM 12. Page 17, the use designation of the Des Moines River is amended to read:

	Water Uses			
	A	B(W)	B(C)	C
<u>Des Moines R.</u>				
Raccoon R. to Center St. Dam in Des Moines			X	
Center St. Dam in Des Moines to Hwy. I-80/I-35 (S17, T79N, R24W, Polk Co.)	X	X		
Des Moines Water Works Intake, Prospect Park (NE 1/4, SE 1/4, S 28, T79N, R24W, Polk Co.)				X
Hwy. I-80/I-35 to Saylorville Reservoir Dam			X	

ITEM 13. Page 17, the use designation of the Humboldt Impoundment (aka Lake Nakomis) is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Humboldt Impoundment (aka Lake Nakomis)</u>				
Dam to W line, Section 27, T92N, R29W, Humboldt Co. Iowa-Minnesota State line	X	X		
Humboldt Impoundment (aka Lake Nakomis) to Iowa-Minnesota State line			X	

ITEM 14. Page 18, the use designation of the Boone R. is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Boone R.</u>				
Mouth (Webster Co.) to State Hwy. 17 (S18, T88N, R25W, Hamilton Co.)	X	X		

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

Mouth (Webster Co.) State Hwy. 17 (S18, T88N, R25W, Hamilton Co.) to confluence with D.D.44 (S15, T94N, R26W, Hancock Co.)

X

ITEM 15. Page 19, the use designation of the E. Fk. Des Moines R. is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>E. Fk. Des Moines R.</u>				
Mouth (Humboldt Co.) to Tuttle Lake Divine bridge access Hwy. 169 (S26, T94N, R29W, Humboldt Co.)	X	X		
Divine bridge access Hwy. 169 (S26, T94N, R29W, Humboldt Co.) to Tuttle Lake			X	

ITEM 16. Page 21, the use designations of the Raccoon River and the North Raccoon River, including the new use for Walnut Creek, are amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Raccoon R.</u>				
Mouth (Polk Co.) to confluence of N. Raccoon R. and S. Raccoon R.	X	X		
City of Des Moines Water Works intake				X
<u>Walnut Cr.</u>				
Mouth (Polk Co.) to Interstate 35/80 (S33, T79N, R25W, Polk Co.)	X			
<u>N. Raccoon R.</u>				
Mouth (Dallas Co.) to Sac Co. Rd. M54 (S24, T88N, R36W, Sac Co.)	X	X		
Mouth (Dallas Co.) Sac Co. Rd. M54 (S24, T88N, R36W, Sac Co.) to Buena Vista Co. Rd. C49 (N line of Section 35, T91N, R36W, Buena Vista Co.)			X	

ITEM 17. Page 22, the use designation of the Middle Raccoon River, mouth to Lake Panorama Dam, is amended by placing an "X" under the "A" use.

ITEM 18. Page 24, the use designation of the South Skunk River is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>S. Skunk R.</u>				
Mouth (Keokuk Co.) to Story Hamilton Co. line Ames Water Works Dam (S36, T89N, R29W, Story Co.)		X		
At Oskaloosa				X
Ames Water Works Dam (S36, T89N, R29W, Story Co.) to Story-Hamilton Co. line	X	X		

ITEM 19. Pages 26 and 27, the use designation for the Iowa River is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Iowa R.</u>				
Mouth (Louisa Co.) to dam at Iowa City Hwy. 69 bridge (S30, T93N, R23W, Wright Co.)	X	X		
Dam at Iowa City to Hwy. 218 (S22, T81N, R7W, Johnson Co.)	X	X		
State University of Iowa Water Works intake				X
City of Iowa City Water Works intake				X
Hwy. 218 to dam at Steamboat Rock			X	
Steamboat Rock Impoundment Dam to N line of Section 16, T88N, R19W, Hardin Co.	X	X		
Steamboat Rock Impoundment to dam at Iowa Falls			X	
Iowa Falls Impoundment Dam to Hwy. 20 (S15, T89N, R21W, Hardin Co.)	X	X		
Iowa Falls Impoundment to Dam at Alden			X	
Alden Impoundment Dam to Rd. Crossing, center of Section 1, T89N, R22W, Hardin Co.	X	X		
Alden Impoundment Hwy. 69 Bridge (S30, T93N, R23W, Wright Co.) to confluence of E. Fk. Iowa R. and W. Fk. Iowa R. (Wright Co.)				X

ITEM 20. Page 30, the use designation for the Cedar River is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Cedar R.</u>				
Mouth (Louisa Co.) to dam at Palisades Keplar State Park bridge crossing in LaPorte City (S19, T87N, R11W, Black Hawk Co.)	X	X		
Palisades Keplar Impoundment Dam to Hwy. 30 (S9, T82N, R6W, Linn Co.)	X	X		
Palisades Keplar Impoundment to dam at Ellis Park in Cedar Rapids			X	
Cedar Rapids Municipal Water Works intake				X
Ellis Park Dam to Hwy. 110 at Vinton (S16, T85N, R10W, Benton Co.)	X	X		
Hwy. 101 Bridge crossing in LaPorte City (S19, T87N, R11W, Black Hawk Co.) to the dam at Cedar Falls				X

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

Cedar Falls Impoundment Dam to W line of Section 2, T89N, R14W, Black Hawk Co.	X	X
Cedar Falls Impoundment to dam at Waverly		X
Waverly Impoundment Dam to W line of Section 35, T92N, R14W, Bremer Co.	X	X
Waverly Impoundment to dam at Nashua		X
Nashua Impoundment Dam to Chickasaw-Floyd Co. line	X	X
Nashua Impoundment to Charles City Dam #2		X
Charles City Impoundment Dam #2 to N line of Section 2, T95N, R16W, Floyd Co. Iowa- Minnesota State line	X	X
Charles City Impoundment to Mitchell Impoundment Dam (S8, T98N, R17W, Mitchell Co.)		X
Mitchell Impoundment Dam to N line of Section 8, T98N, R17W, Mitchell Co.	X	X
Mitchell Impoundment to Iowa- Minnesota State line		X

ITEM 21. Page 37, the use designations for Duck Creek and the Wapsipinicon River are amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Duck Cr.</u>				
Mouth (Scott Co.) to Scott Co. Rd. (S16-21, T78N, R3E, Scott Co)	X	X		
Mouth (Scott Co.) Scott Co. Rd. (S16-21, T78N, R3E, Scott Co.) to Scott Co. Rd. Y48 (W line of Section 13, T78N, R2E, Scott Co.)	X			
<u>Crow Cr.</u> (No change)				
<u>Wapsipinicon R.</u>				
Mouth (Scott-Clinton Co. line) to Hwy. 67 Snyder Access (S22, T80N, R5E, Scott-Clinton S33, T93N, R12W, Bremer Co. line)	X	X		
Hwy. 67 to dam at Anamosa		X		
Anamosa Impoundment Dam to W line of Section 9, T84N, R4W, Jones Co.	X	X		
Anamosa Impoundment to Dam at Central City		X		
Central City Impoundment Dam to N line of Section 33, T86N, R6W, Linn Co.	X	X		

Central City Impoundment to dam at Quasqueton				X
Quasqueton Impoundment Dam to N line of Section 34, T88N, R8W, Buchanan Co.	X	X		
Quasqueton Impoundment to dam at Independence				X
Independence Impoundment Dam to W line of Section 28, T89N, R9W, Buchanan Co.	X	X		
Independence Impoundment Snyder Access (S33, T93N, R12W, Bremer Co.) to N line of Section 3, T99N, R15W, Mitchell Co. (Town of McIntire)				X
Town of McIntire to N line of Section 20, T100N, R15W, Mitchell Co.				X

ITEM 22. Page 39, the use designation of the Maquoketa River is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Maquoketa R.</u>				
Mouth (Jackson Co.) to dam at Monticello Quaker Mills Dam	X	X		
Monticello Dam to Hartwick Lake Dam			X	
Hartwick Lake Dam to Quaker Mills Dam	X	X		

ITEM 23. Page 41, the description of Spring Branch is amended as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Spring Br.</u>				
Mouth (S10, T88N, R5W, Delaware Co.) to N line of Section 2, T88N, spring source (Section 35, T89N, R5W, Delaware Co.)				X

ITEM 24. Page 43, the description of Mill Creek is amended, and three new water use designations are added under Little Mill Creek as follows:

	Water Uses			
	A	B(W)	B(C)	C
<u>Mill Cr. (aka Big Mill Cr.)</u>				
Mouth (Jackson Co.) to confluence with Little Mill Cr. (S13, T86N, R4E, Jackson Co.)		X		
Little Mill Cr. to W line of section 6, T86N, R4E confluence with Unnamed Creek (Section 1, T86N, R3E, Jackson Co.)				X
<u>Little Mill Cr.</u>				
Mouth (Jackson Co.) to W line of Section 29, T86N, R4E, Jackson Co.				X

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

Unnamed Cr. (aka S. Fk. Big Mill)

Mouth (S8, T86N, R4E, Jackson Co.) to W line of Section 17, T86N, R4E, Jackson Co.)

X

Unnamed Cr. (aka Storybrook Hollow)

Mouth (S7, T86N, R4E, Jackson Co.) to S line of Section 12, T86N, R3E, Jackson Co.)

X

Unnamed Cr.

Mouth (S1, T86N, R3E, Jackson Co.) to W line of Section 1, T86N, R3E

X

ITEM 25. Page 45, the use designation of the Turkey River, and the description of Bloody Run Creek are amended as follows:

Water Uses  
A B(W) B(C) C

Turkey R.

Mouth (Clayton Co.) to bridge crossing in Garber (S36, T92N, R4W, Clayton Co.

X

Mouth Bridge crossing in Garber (S36, T92N, R4W, Clayton Co.) to W line of Section 9, T93N, R5W, Clayton Co. (two stream miles downstream from Big Springs Trout Hatchery  
Two stream miles downstream from Big Springs Trout Hatchery to Big Springs Trout Hatchery (S31, T94N, R5W, Clayton Co.

X X

X X

Big Springs Trout Hatchery to bridge crossing in Elgin (S13, T94N, R7W, Fayette Co.)

X X

Big Springs Trout Hatchery Bridge crossing in Elgin (S13, T94N, R7W, Fayette Co.) to confluence with S. Br. Turkey R. (S2, T98N, R12W, Howard Co.

X

Little Turkey R.

Mouth (Clayton Co.) to Clayton-Delaware Co. line

X

Clayton-Delaware Co. line to S line of Section 11, T90N, R3W, Delaware Co.

X

Point Hollow Cr. (aka White Pine Cr.)

Mouth (S31, T91N, R2W, Clayton Co.) to spring source (S8, T90N, R2W, Dubuque Co.)

X

Bloody Run Cr. (aka Grimes Hollow)

Mouth (S1, T90N, S36, T91N, R3W, Delaware Co.) to spring source (S3, T90N, R3W, Delaware Co.)

X

ITEM 26. Page 46, the description of Steeles Branch is amended as follows:

Water Uses  
A B(W) B(C) C

Steeles Br.

Mouth (S26, T91N, R4W, Clayton Co.) to SW line of section 35, T90N, R4W, Delaware Co.

X

ITEM 27. Page 47, a new stream designation for Chialk Creek is added after Bohemian Creek, the use designation for the Volga River is amended, and the descriptions of Bear Creek and Mossey Glen Creek are amended, as follows:

Water Uses  
A B(W) B(C) C

Chialk Cr.

Mouth (S1, T98N, R11W, Howard Co.) to N line of Section 36, T99N, R11W, Howard Co.

X

Water Uses  
A B(W) B(C) C

VOLGA RIVER SUBBASIN

Volga R.

Mouth (Clayton Co.) to bridge crossing in Volga (S3-10, T92N, R6W, Clayton Co.)

X X

Mouth (Clayton Co.) Bridge crossing in Volga (S3-10, T92N, R6W) to confluence with N. Br. Volga R. (S33, T93N, R9W, Fayette Co.)

X

Bear Cr.

Mouth (Clayton Co.) to S line of Section 18, T91N, R4W, Clayton Co.

X

S line of Section 18, T91N, R4W to SW line of Section 263, T91N, R5W, Clayton Co.

X

Doe Cr.

Mouth (S32, T92N, R4W, Clayton Co.) to S line of Section 1, T91N, R5W, Clayton Co.

X

Honey Cr.

Mouth (Clayton Co.) to W line of section 3, T91N, R5W, Clayton Co.

X

Mossey Glen Cr.

Mouth (S3, T91N, R5W, Clayton Co.) to S line of Section 310, T91N, R5W, Clayton Co.

X

ITEM 28. Page 48, the description for Cox Cr. is added and a new stream designation for Ensign Creek is added following Hewett Cr. as follows:

Water Uses  
A B(W) B(C) C

NORTHEASTERN IOWA RIVER BASINS VOLGA RIVER SUBBASIN (Volga R. Tributaries, Continued)

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

Cox Cr. (aka Alderson Hollow)

Mouth (S21, T92N, R5W, Clayton Co.) to confluence with Kleinlein Cr. (aka Spring Cr.) (S36, T92N, R6W, Clayton Co.) X

Kleinlein Cr. to S line of Section 12, T91N, R6W, Clayton Co. X

Kleinlein Cr. (aka Spring Cr.)

Mouth (Clayton Co.) to spring source (S10, T91N, R6W, Clayton Co.) X

Hewett Cr.

Mouth (Clayton Co.) to S line of Section 29, T92N, R6W, Clayton Co. X

Ensign Cr.

Mouth (S28, T92N, R6W, Clayton Co.) to spring source (S29, T92N, R6W, Clayton Co.) X

ITEM 29. Page 49, the designation for the Yellow River is amended as follows:

		Water Uses			
		A	B(W)	B(C)	C

Yellow R.

Mouth (Allamakee Co.) to County Rd. X-26 (S24, T96N, R5W, Allamakee Co.) X, X

Mouth (Allamakee Co.) County Rd. X-26 (S24, T96N, R5W, Allamakee Co.) to old Hwy. 51 (NE quarter of Section 11, T96N, R6W, Allamakee Co.) X

Old Hwy. 51 to confluence with N. Fk. Yellow R. (S13, T96N, R7W, Winneshiek Co.) X

ITEM 30. Page 51, the stream description for N. Bear Cr. is changed and two new streams are added as follows:

		Water Uses			
		A	B(W)	B(C)	C

Bear Cr.

Mouth (Allamakee Co.) to confluence with N. Bear Cr. (S25, T100N, R7W, Winneshiek Co.) X

N. Bear Cr. to W line of spring source (Mestad Spring) (Section 29, T100N, R7W, Winneshiek Co.) X

Waterloo Cr.

Mouth (S35, T100N, R6W, Allamakee Co.) to Iowa-Minnesota State line X

N. Bear Cr.

Mouth (S25, T100N, R7W, Winneshiek Co.) to Iowa-Minnesota State line X

Middle Bear Cr.

Mouth (S14, T100N, R7W, Winneshiek Co.) to N line of Section 16, T100N, R7W, Winneshiek Co. X

Paint Cr. (aka Pine Cr.)

Mouth (S9, T99N, R6W, Allamakee Co.) to confluence of Unnamed Cr. (SE 1/4, S11, T99N, R7W, Winneshiek Co.) X

Unnamed Cr. Mouth (SE 1/4, S11, T99N, R7W, Winneshiek Co.) to N line of Section 12, T99N, R7W, Winneshiek Co. X

ITEM 31. Page 52, the use descriptions for Canoe Cr. and Smith Cr. are amended as follows:

		Water Uses			
		A	B(W)	B(C)	C

Canoe Cr.

Mouth (Winneshiek Co.) to Winneshiek Co. Rd W38 (SE quarter of Section 243, T99N, R8W, Winneshiek Co.) X

(aka W. Canoe Cr.) Winneshiek Co. Rd. W38 to W line of Section 8, T99N, R8W, Winneshiek Co. X

Pine Cr.

Mouth (S26, T99N, R7W, Winneshiek Co.) to N line of Section 21, T99N, R7W, Winneshiek Co. X

N. Canoe Cr.

Mouth (S22, T99N, R8W, Winneshiek Co.) to N line of Section 2, T99N, R8W, Winneshiek Co. X

Coon Cr.

Mouth (Winneshiek Co.) to Rd. crossing in Section 13, T98N, R7W, Winneshiek Co. X

Trout Cr.

Mouth (S9, T98N, R7W, Winneshiek Co.) to confluence with Smith Cr. (S21, T98N, R7W, Winneshiek Co.) X

Smith Cr. (aka Trout River) Mouth (S21, T98N, R7W, Winneshiek Co.) to S line of Section 33, T98N, R7W, Winneshiek Co. X

ITEM 32. Page 54, change the use designation of Meadow Lake and Orient Lake in Adair Co. and add a new lake in Black Hawk Co. to read as follows:

		Water Uses			
		A	B(W)	B(C)	C
<b>Adair</b>					
Meadow Lake	31	76	17	X	X
Orient Lake	31	74	20	X	X
<b>Black Hawk</b>					
Hope Martin Pond	13	89	27		X
Meyer Lake	12	88	6	X	X

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

ITEM 33. Page 56, change the use designation of East Lake, Clarke Co, Trumbull Lake, Clay Co., and Slip Bluff Lake, Decatur Co, and Add Yellow Smoke Park Lake, Crawford Co., and Little River Watershed Lake, Decatur Co. to read as follows:

	A	B(W)	B(C)	Water Uses		
				C		
Clarke						
East Lake (Osceola)	25	72	16	X	X	
Clay						
Trumbull Lake	35	97	27	X	X	
Crawford						
Yellow Smoke Park Lake	38	83	6	X	X	
Decatur						
Little River Watershed Lake	25	69	19	X	X	
Slip Bluff Lake	26	68	28	X	X	

ITEM 34. Page 57, the use designations for Lower Gar Lake and Upper Gar Lake, Dickinson Co. and the lake description for Volga Lake, Fayette Co. are amended as follows:

	A	B(W)	B(C)	Water Uses		
				C		
Dickinson						
Lower Gar Lake	36	99	32	X	X	
Upper Gar Lake	36	99	29	X	X	
Fayette						
Frog Hollow (aka Volga Lake)	8	93	3	X	X	

ITEM 35. Page 58, the use designation for Willow Lake, Harrison Co. is amended as follows:

	A	B(W)	B(C)	Water Uses		
				C		
Harrison						
Willow Lake	43	80	23	X	X	

ITEM 36. Page 59, the use designation for Mariposa Lake in Jasper Co. and Chatfield Lake and Wilson Park Lake in Lee County are amended as follows:

	A	B(W)	B(C)	Water Uses		
				C		
Jasper						
Mariposa Lake	18	81	32	X	X	
Lee						
Chatfield Lake	5	65	2	X	X	
Wilson Park Lake	6	68	35	X	X	

ITEM 37. Page 60, the use designation for Williamson Pond, Lucas Co., Barnes City Lake, Mahaska Co. and Green Castle Lake, Marshall Co., and new lake designation for Badger Creek Lake, Madison Co. and White Oak Conservation Area Lake, Mahaska Co. are amended as follows:

	A	B(W)	B(C)	Water Uses		
				C		
Lucas						
Williamson Pond	21	73	27	X	X	

Madison						
Badger Creek Lake	27	77	11	X	X	
Cedar Lake	27	76	19		X	X

Mahaska						
Hawthorne Lake (aka Barnes City Lake)	14	77	10	X	X	
Edmunson Pond	16	75	27		X	
Lake Keomah	15	75	13	X	X	X
White Oak Conservation Area Lake	14	75	28	X	X	

Marshall						
Green Castle Lake	17	82	8	X	X	

ITEM 38. Page 61, use designation for Pierce Creek Pond, Page Co. is amended as follows:

	A	B(W)	B(C)	Water Uses		
				C		
Page						
Pierce Creek Pond	39	70	29	X	X	

ITEM 39. Page 62, the use designation for Arrowhead Lake, Pottawattamie Co., and Arbor Lake, Poweshiek Co. is amended as follows:

	A	B(W)	B(C)	Water Uses		
				C		
Pottawattamie						
Arrowhead Lake	41	77	29	X	X	
Poweshiek						
Arbor Lake	16	80	20	X	X	

ITEM 40. Page 63, the use designation for Arrowhead Lake, Sac Co., Manteno Park Pond, Shelby County, Wilson Park Lake and Windmill Lake in Taylor County, and the name of Hickory Hills Lake in Tama County are amended as follows:

	A	B(W)	B(C)	Water Uses		
				C		
Sac						
Arrowhead Lake	36	86	4	X	X	
Shelby						
Manteno Park Lake	40	81	2	X	X	
Tama						
Hickory Hills Casey Lake	13	86	13	X	X	
Taylor						
Wilson Park Lake	32	70	28	X	X	
Windmill Lake	35	69	36	X	X	

ITEM 41. Page 64, the use classification of Thayer Lake, Union County and addition of Twelve Mile Creek Lake, Union Co. are amended to read:

	A	B(W)	B(C)	Water Uses		
				C		
Union						
Thayer Lake	28	72	22	X	X	
Twelve Mile Creek Lake	30	72	12	X	X	X

## NOTICE - USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

April 1, 1983 - April 30, 1983	12.75%
May 1, 1983 - May 31, 1983	12.50%
June 1, 1983 - June 30, 1983	12.50%
July 1, 1983 - July 31, 1983	12.50%
August 1, 1983 - August 31, 1983	12.75%
September 1, 1983 - September 30, 1983	13.50%
October 1, 1983 - October 31, 1983	13.75%
November 1, 1983 - November 30, 1983	13.75%
December 1, 1983 - December 31, 1983	13.50%
January 1, 1984 - January 31, 1984	13.75%
February 1, 1984 - February 29, 1984	13.75%
March 1, 1984 - March 31, 1984	13.75%
April 1, 1984 - April 30, 1984	13.75%
May 1, 1984 - May 31, 1984	14.25%
June 1, 1984 - June 30, 1984	14.75%
July 1, 1984 - July 31, 1984	15.50%
August 1, 1984 - August 31, 1984	15.50%
September 1, 1984 - September 30, 1984	15.25%
October 1, 1984 - October 31, 1984	14.75%
November 1, 1984 - November 30, 1984	14.50%
December 1, 1984 - December 31, 1984	14.25%
January 1, 1985 - January 31, 1985	13.50%
February 1, 1985 - February 28, 1985	13.50%
March 1, 1985 - March 31, 1985	13.50%

**ARC 5370****AGRICULTURE DEPARTMENT[30]**

Pursuant to the authority of 1985 Iowa Code section 99D.22, the Iowa Department of Agriculture hereby emergency adopts amendments to Chapter 14, "Registration of Iowa-foaled Horses and Iowa-whelped Dogs," Iowa Administrative Code.

These rules are being promulgated to provide for a penalty for late registration of greyhound dog litters and thoroughbred, standardbred or quarterhorse mares. In addition, the rules provide for a more effective administrative process by spacing registration of mares over a longer period of time.

In compliance with Iowa Code section 17A.4(2), the Department, for good cause, finds that public notice and participation is unnecessary and impracticable in that the Department has currently registered greyhound dogs, thoroughbred, standardbred and quarterhorse mares. Registration for the 1985 year concluded December 31, 1984. The proposed rules have been discussed with the industry and they incorporate the industry's proposal.

The Department also finds that pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules thirty-five days after publication should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on February 15, 1985, as it confers a benefit on the public by preventing confusion.

These amendments will become effective immediately upon filing with the Administrative Rules Coordinator on February 15, 1985 and shall be published in the March 13, 1985 Iowa Administrative Bulletin.

These amendments are intended to implement 1985 Iowa Code section 99D.22. They are being submitted simultaneously under a Notice of Intended Action as **ARC 5371**.

The following amendments are proposed.

**ITEM 1.** Amend rule 30—14.15(70GA,SF2328) by adding the following subrule:

**14.15(4)** All mares, to meet the December 31 residency requirements, shall be registered by November 30. The penalty for registering mares after this date is \$15.00.

**ITEM 2.** Amend rule 30—14.40(70GA, ch1266) by adding the following unnumbered paragraph:

Effective December 31, 1986 all commercial enterprises that own Iowa-whelped dogs must have been formed under the laws of the state for a period of two years. Effective December 31, 1984, seventy-five percent of all stockholders or members of such commercial enterprises must qualify as two-year residents of Iowa, prior to the whelping.

**ITEM 3.** Amend the first unnumbered paragraph of rule 30—14.41(70GA, ch 1266) to read as follows:

**30—14.41(70GA, ch126699D) Procedures for registration.** Within fifteen days after litter registration with the National Greyhound Association, a copy of the litter acknowledgment must be received by the department. *Any late registrations will be assessed a penalty of \$25.00. All litter registrations over one year old will not be accepted.* When application for individual dog registra-

tion is made to the National Greyhound Association, the onionskin copy shall be provided to the department.

**ITEM 4.** Amend **30—chapter 14** by striking the citation (70GA,SF2328) wherever it appears and insert in lieu thereof the citation (99D).

These rules are intended to implement 1985 Iowa Code section 99D.22.

[Filed emergency 2/15/85, effective 2/15/85]  
[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

**ARC 5389****CONSERVATION COMMISSION[290]**

Pursuant to the authority of Iowa Code sections 107.24, 109.38, and 109.39, the State Conservation Commission emergency adopts an amendment to Chapter 111, "Wild Turkey Spring Hunting Regulations," Iowa Administrative Code, correcting an error in subrule 111.3(2).

At the August 31, 1984. Commission meeting, the State Conservation Commission approved a Notice of Intended Action to amend Chapter 111 with the word "live" added preceding the word "decoys" in subrule 111.3(2) "Prohibited devices." This change was made; however, the word "live" was not underlined. Subsequently, when the notice and adopted versions were published respectively in Iowa Administrative Bulletin, September 26, 1984, as **ARC 4983**, and November 21, 1984, as **ARC 5121**, subrule 111.3(2) was not printed because the word "live" was not underlined and the Code Editor's Office did not realize a change was being made in the subrule. Public comments were accepted and the State Conservation Commission approved the adopted rule on November 1, 1984.

A public hearing was held according to Iowa Code section 17A.4 and the provisions of section 17A.5(2)"b"(2) are being utilized to correct an error and eliminate public confusion about the rule. Because the 1985 spring wild turkey season starts April 15 and because license applications have already been accepted, there is not adequate time to complete the usual rule change process.

This emergency adopted and implemented rule is adopted to correct this error by inserting the word "live" in subrule 111.3(2) before the word "decoys" and shall become effective upon filing with the Administrative Rules Coordinator's office [February 26, 1985].

Subrule 111.3(2) is amended to read as follows:

**111.3(2)** Prohibited devices. The use of *live* decoys, dogs, horses, motorized vehicles, aircraft, bait, and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with

## CONSERVATION COMMISSION[290] (cont'd)

paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord.

This rule is intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

[Filed emergency 2/26/85, effective 2/26/85]  
[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

**ARC 5373****HUMAN SERVICES  
DEPARTMENT[498]**

Pursuant to the authority of Iowa Code section 234.6(7), the Department of Human Services hereby amends Chapter 65, "Administration," appearing in the Iowa Administrative Code. The Department shall promulgate rules necessary to administer the food programs.

Current food stamp rules require that the income of self-employed individuals be averaged over a twelve-month period of time, even if the income is received within a short period of time during that twelve months.

Federal regulations permit states to elect to allow households with annualized self-employment income to have this income unevenly prorated. The Department is electing to implement this option to be more responsive to cash flow problems currently being experienced by farmers and other self-employed households.

This amendment allows households whose self-employment income is annualized to choose to have that income unevenly prorated, thereby allowing the household to receive more food stamp benefits when no income or resources are available.

In order to choose this option a household must first be eligible based on its averaged, or annualized, monthly income. If the household elects this option, it cannot assign income in any month which exceeds the maximum monthly eligibility standard.

The Department of Human Services finds that public comment on this rule is unnecessary and impracticable due to the difficulties these families are experiencing and the need for an immediate response from the Department. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this rule confers a benefit on the public by providing greater food stamp benefits to households in times of cash flow problems and inadequate cash reserves. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted this rule on February 15, 1985.

This rule is intended to implement Iowa Code section 234.12.

This rule became effective March 1, 1985.

Amend 498—chapter 65 by adopting the following new rule:

**498—65.29(234) Uneven proration of self-employment income.** If a household is determined eligible based on its monthly net self-employment income, the household has the option to have the benefit level determined by using either the same net self-employment income which was used to determine eligibility or by unevenly prorating the household's annual self-employment income over the period for which the household's self-employment income was averaged to more closely approximate the time when the income is actually received. If income is prorated, the net income assigned in any month cannot exceed the maximum monthly net income eligibility standards for the household's size.

[Filed emergency 2/19/85, effective 3/1/85]  
[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

**ARC 5385****COMMERCE COMMISSION[250]**

The Iowa State Commerce Commission gives notice that on February 15, 1985, the Commission issued an order in Docket No. RMU-84-28, In Re: Adoption of Standards for Public Utility Management Efficiency, "Order Adopting Rules." The purpose of this rulemaking is to comply with Iowa Code section 476.52 (1985), which requires the Commission to adopt rules and policies to implement a program for the analysis of management efficiency of public utilities. The Commission is directed to adopt (1) rules establishing a methodology for the analysis of management efficiency, and (2) rules for determining the level of profit or revenue requirement adjustment appropriate in light of the efficiency of the utility's management.

Notice of Intended Action was published in the Iowa Administrative Bulletin, December 5, 1984, as **ARC 5150**.

Interested persons were allowed to comment on the proposed rules. Written statements of position were filed by fifteen investor-owned utilities, the Office of Consumer Advocate (OCA), the Operations Review Division (ORD), the Iowa Association of Municipal Utilities and approximately 65 municipal utilities. The Commission received oral comments on January 16, 1985.

The OCA has formally asked the Commission to take official notice of written and oral comments submitted in prior rulemakings on management efficiency, Docket Nos. RMU-83-17 and RMU-84-24. The Commission will do so. Many of the comments in the earlier rulemakings have limited direct bearing upon the rules proposed in Docket No. RMU-84-28. The comments demonstrate the extremely wide variety of opinions concerning the proper methodology for evaluating management efficiency. The comments clearly demonstrate that there is no accepted methodology for evaluating management efficiency.

The Commission proposed flexible rules for evaluating management efficiency. Some parties urged the Commission to set more rigid, strictly mathematical, "scientific" standards. This punctilious approach brings to mind what Mark Twain said about the scientific method in "Life on the Mississippi":

"In the space of one hundred seventy-six years the Lower Mississippi has shortened itself two hundred and forty-two miles. That is an average of a trifle over one mile and a third per year. Therefore, any calm person who is not blind or idiotic can see that in the Old Oolitic Silurian Period, just a million years ago next November, the Lower Mississippi was upward of one million three hundred thousand miles long, and stuck out over the Gulf of Mexico like a fishing-rod. And by the same token any person can see that seven hundred and forty-two years from now the Lower Mississippi will be only a mile and three-quarters long, and Cairo and New Orleans will have joined their streets together, and be plodding comfortably along under a single mayor and a mutual board of aldermen. There is something fascinating about science. One gets such wholesale returns of conjecture out of such a trifling investment of fact."

One of those urging such an approach was the ORD. The ORD's own witness admitted during the hearing that the methodology proposed by the ORD in Docket No. RMU-84-24 ignores customers' quality of service. He states (Transcript at 21-22):

Mr. Joshi [ORD witness]: "Well, I do realize that ORD methodology does not incorporate any measure to take care of quality-of-service aspects because it looks essentially at two factors, revenues and growth in the operating cost."

Commissioner Hansen: "All right. So if the company rated well under your model and the customers were dissatisfied, the model would still tell this Commission that that's a well-managed company?"

Mr. Joshi: "Yes."

Commissioner Hansen: "Forget the customer?"

Mr. Joshi: "Sure."

The Commission intends to adopt a flexible methodology to avoid such absurd results.

The Commission has given extensive consideration to the statements and comments submitted, and adopts the proposed rules with some minor modifications.

Rule 29.1(476) now clearly states that management efficiency standards will not be applied to nonrate-regulated utilities. Unlike the management efficiency rules proposed in Docket No. RMU-84-24, the rules proposed in Docket No. RMU-84-28 did not exclude municipal utilities from their scope. Many municipal utilities expressed concern that the lack of an exclusion may imply that the Commission will subject municipal utilities to management efficiency evaluation, which they asserted would be wasteful and tantamount to rate regulation. The Commission does not believe the legislature intended for the Commission to evaluate the management efficiency of municipal utilities, and the Commission never intended to apply the management efficiency rules to municipal utilities. A minor change makes this clear.

Nine municipal utilities and the Iowa Association of Municipal Utilities requested that the Commission prepare a regulatory flexibility analysis of the proposed rules. The Commission questions whether any of the parties making the request is entitled to a regulatory flexibility analysis. It is not clear that a municipal utility is a "small business" as defined in Iowa Code section 17A.31(1) (1985), which must be organized "for profit." However, it is not necessary to address the merits of the requests, because all requests for a regulatory flexibility analysis have been withdrawn.

Some parties asked the Commission to clarify some of the factors listed in subrule 29.3(1). Two clarifications have been added to subrule 29.3(1), paragraph "a." The first makes it clear that price per unit of service includes amounts being collected subject to refund. The second defines "unit of service" for natural gas utilities as 1,000 BTU. Subrule 29.3(1), paragraph "b," was amended to specify reporting requirements for utilities that serve areas outside of Iowa as well as areas in Iowa. Subrule 29.3(1), paragraph "c," was amended to clarify which customer complaints will be considered. Subrule 29.3(1), paragraph "d," was amended by changing "total sales" to "total revenue from sales."

The proposed standard of subrule 29.3(1), paragraph "e," was criticized by most of the investor-owned utilities. The standard was characterized as vague, discriminatory, inappropriate, in excess of the Commission's jurisdiction and an attempt to control the composition of the boards of directors. It is interesting that the investor-owned utilities so clearly indicate that demographic representation (or lack of representation) of customers or stockholders on their boards of directors has nothing to do

## COMMERCE COMMISSION[250] (cont'd)

with whether they are managed efficiently. A standard of this sort obviously requires further analysis before being adopted by the Commission, since the companies are apparently completely unaware of how directors or officers might even compare to stockholder or customer demographics. The Commission will therefore withdraw proposed subrule 29.3(1), paragraph "e," at this time and separately initiate a formal investigation to inquire into the relationship between director representation and efficient management.

Some parties thought that it would be impossible to implement the standard of subrule 29.3(1), paragraph "f" [now renumbered as 29.3(1), paragraph "e"]. The Commission does not agree. The utility may bring its innovative ideas, whether small or monumental, whether successful or unsuccessful, to the attention of the Commission. The Commission will use its expertise to determine whether programs are innovative.

The Commission will adopt subrule 29.3(5) in substantially the same form as it was proposed. Because only three water utilities in Iowa are rate-regulated by the Commission, a comparison of the water utilities to each other is not likely to produce any meaningful information. Each water utility will be presumed to be managed satisfactorily, unless exceptionally good or poor management is shown in a proceeding under Iowa Code chapter 476.

Some minor modifications have been made to the standards applicable to natural gas utilities. Subrule 29.3(3), paragraph "a," now specifies that total cost per unit of gas purchased by the distribution company from the pipeline may be considered. Total cost per unit of gas purchased from other sources has been added as a factor. Subrule 29.3(3), paragraph "b," [now renumbered as 29.3(3), paragraph "c"] has been amended to make it clear that "investment in the system" refers to rate base.

Some utilities suggested that there may be instances where the management efficiency standards in rule 29.3(476) may be misleading. Because the factors will be considered in formal rate proceedings, the utilities will have every opportunity to explain why a particular factor should or should not be indicative of the quality of management. The case-by-case analysis of efficiency will also allow the utilities to present to the Commission any other factors they believe may be indicative of management efficiency.

Finally, rule 29.5(476) has been modified. The rule now provides that the Commission will be ultimately responsible for publishing the data collected. The Commission also adopts a rule change proposed by General Telephone: Data, only when admitted as evidence of record, may be used in a rate case to evaluate management efficiency. This rule change will allow the utility or other interested parties to explain or cross-examine the data.

These rules will become effective April 17, 1985.

## CHAPTER 29

## MANAGEMENT EFFICIENCY STANDARDS

**250—29.1 (476) Policy and purpose.** It is the policy of the commission that a public utility shall be operated in an efficient manner. This chapter describes the methodology to be used for evaluating the efficiency of rate-regulated utility management and the manner in which those evaluations will be used. This chapter is intended to implement 1983 Iowa Code Supplement section 476.52.

**250—29.2 (476) Efficiency considered in rate case.** In formal rate proceedings conducted under Iowa Code chapter 476, the commission may consider whether the public utility is being operated in an efficient or inefficient manner. All utilities will be evaluated according to the procedure set forth in rule 29.3(476). If the commission finds the utility is poorly managed or exceptionally well managed, the commission may establish a penalty or reward, respectively, as provided in rule 29.4(476).

**250—29.3(476) Management efficiency standards.**

**29.3(1)** In general. The efficiency or inefficiency of a utility will be evaluated on a case-by-case basis, based upon the utility's particular facts and circumstances. Utility management efficiency does not lend itself to an absolute measure due to the vast array of extremely important factors that may vary from area to area. These include such things as customer mix, territory of the utility, economic conditions in the areas served, weather patterns and disasters. The reality of change, and the ability of management to anticipate and respond to these changes, greatly affect any judgment of management efficiency or inefficiency, and must be considered in establishing any rewards for efficiency or penalties for inefficiency.

When evaluating a utility, the commission may consider any of the factors listed in this subrule and any additional relevant information. These factors will be guidelines for evaluating a utility's efficiency or inefficiency. No single factor or group of factors will be deemed conclusive evidence of efficiency or inefficiency. In considering those factors, the commission may use data collected under rule 29.5(476) to compare a utility, except a water utility, to other utilities providing the same service in the state. The commission may consider:

a. The price per unit of service (including amounts collected subject to refund) by customer class and type of service. For natural gas utilities, one "unit of service" is 1,000 BTUs.

b. Operation and maintenance costs per unit of service. Low operations and maintenance costs will not be deemed indicative of efficiency if quality of service is substandard. This data shall be reported on a total company basis and on an Iowa jurisdictional basis if the company serves jurisdictions other than Iowa.

c. Quality of service, as reflected by customer complaints shown in company and commission records and measures of customer satisfaction.

d. The top five management salaries in proportion to total revenue from sales.

e. The company's bad debt ratio.

f. Innovative ideas implemented by utility management.

g. Other factors the commission determines to be relevant in an individual proceeding.

**29.3(2)** Electric utilities. When evaluating an electric utility, the commission may consider the following factors in addition to the factors listed in subrule 29.3(1):

a. Fuel cost per kWh.

b. Plant availability of the company's three most efficient plants.

c. Company-wide load factor.

**29.3(3)** Natural gas utilities. When evaluating a natural gas utility, the commission may consider the following factors in addition to the factors listed in subrule 29.3(1):

## COMMERCE COMMISSION[250] (cont'd)

a. Total cost per unit of gas purchased by distribution companies from the pipeline (to be considered separately from operations and maintenance costs).

b. Total cost per unit of purchased gas from other sources (to be considered separately from operations and maintenance costs).

c. Residential and commercial sales volume in relation to investment in the system (rate base).

d. Unaccounted-for gas as a percentage of total sales volume.

**29.3(4) Telephone utilities.** When evaluating a telephone utility, the commission may consider the following factors in addition to the factors listed in subrule 29.3(1):

a. Total plant investment per customer.

b. Quality of service, as reflected by the percentage of customers with access to specific types of service.

**29.3(5) Water utilities.** Water utilities will not be evaluated by comparison with other water utilities. Satisfactory management of water utilities will be presumed unless the contrary is established in an individual proceeding under Iowa Code chapter 476.

**250—29.4(476) Rewards and penalties.** In the course of a proceeding conducted under Iowa Code chapter 476, the commission will determine whether a utility is being managed well or poorly. In making this determination, the commission will not be limited to test year data. If the commission determines that a utility is being managed exceptionally well, the commission will adjust the return on common equity upward to reflect the degree of management efficiency. If the commission determines that a utility, except a rural electric cooperative, is being poorly managed, the commission will adjust the return on common equity downward to reflect the degree of management inefficiency. When a rural electric cooperative is shown to be poorly managed, the commission will disallow from the revenue requirement all travel expenses for the board of directors and manager. The commission will not establish any reward or penalty if the commission finds the utility has been managed satisfactorily but not exceptionally well or poorly, because satisfactory management is expected from all public utilities.

**250—29.5(476) Annual reports of management efficiency.** The Commission will annually publish data reflecting the different measures of utilities' operations listed in rule 29.3(476). These data will not be used to rank the utilities. Since management efficiency can only be evaluated by the consideration of a wide variety of factors which may be unrelated, any ranking of utilities would be meaningless and misleading. The data will be collected from annual reports filed under 250—chapter 23 and from other reports which the commission may require. The data, when admitted as evidence of record, may be used in the context of a rate case, together with rate-case-specific information, to evaluate management efficiency. Copies of the report will be distributed to members of the boards of directors of all the companies evaluated.

[Filed 2/22/85, effective 4/17/85]  
[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

## ARC 5377

## CREDIT UNION DEPARTMENT[295]

Pursuant to the authority of Iowa Code chapter 17A and section 533.16(4), the Credit Union Review Board adopted an amendment to Chapter 10, Real Estate Loans, on January 21, 1985.

The current rule limits the amount a credit union can loan on real estate to ninety percent of the sales price or appraised value, whichever is less. The adopted amendment allows a credit union to loan up to ninety-five percent provided the loan has been sold to the secondary market.

Notice of Intended Action was published as ARC 5086 in the November 7, 1984 Iowa Administrative Bulletin. Provision was granted for both written comments and requests for a public hearing. No written comments were received nor were there any requests for a public hearing.

This rule is intended to implement Iowa Code section 533.16(4), and is identical to the one published under notice as ARC 5086.

This rule shall become effective April 17, 1985.

Subrule 10.4(1) is amended to read as follows:

**295—10.4(533) Maximum real estate terms.** Credit union real estate loans are subject to the following additional terms and conditions:

**10.4(1)** On all real estate loans secured by improved residential property the maximum loan is ninety percent of the sales price or appraised value, whichever is less, and shall be repaid both principal and interest within a period not exceeding thirty years from the date the loan is made; *except loans which have been sold to the secondary market shall be considered in transit for a period of up to ninety days, and may be made at ninety-five percent of value.*

[Filed 2/22/85, effective 4/17/85]  
[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

## ARC 5378

## CREDIT UNION DEPARTMENT[295]

Pursuant to the authority of 1984 Iowa Acts, chapter 1230, section 27, the Credit Union Review Board adopted Chapter 15, Foreign Credit Union Branch Offices, January 21, 1985. This chapter provides the procedure which must be followed in order for credit unions chartered by another state regulator to operate a branch office in Iowa.

Notice of Intended Action was published as ARC 5087 in the November 7, 1984 Iowa Administrative Bulletin. Provision was granted for both written comment and requests for a public hearing. No written comments were received nor were there any requests for a public hearing. At the request of the Administrative Rules Review

## CREDIT UNION DEPARTMENT[295] (cont'd)

Committee an amendment was made to 15.8(1). The amendment requires waiver of the sixty-day notice to move a branch office in the event of dissolution of the credit union.

These rules are intended to implement Iowa Code section 533.39.

These rules shall become effective April 17, 1985.

Add the following new chapter:

**CHAPTER 15  
FOREIGN CREDIT UNION BRANCH OFFICES**

**295—15.1(17A) Definitions.** The definition of terms included in Iowa Code section 17A.2 and credit union rule 1.1(533) shall apply to such terms used in this chapter. In addition, as used in this chapter:

"Account insurance" means either the federal NCUA insurer or a state guaranty corporation which has been approved by the regulator who supervises the foreign credit union.

"Foreign credit union" means a credit union chartered by a state regulator other than the Iowa regulator.

"Reciprocal state" means a state whose statute allows Iowa's state chartered credit unions to establish branch offices in that state.

**295—15.2(533) Application of foreign credit union.**

**15.2(1)** An application for a credit union organized and duly qualified as a credit union in a reciprocal state to establish a branch office in Iowa shall be submitted on a form furnished by the administrator.

**15.2(2)** The application may be obtained by writing the Administrator, Credit Union Department, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319; or calling (515) 281-6514.

**295—15.3(533) Exhibits.** Attached to the application submitted pursuant to 15.2(1) shall be the following exhibits:

**15.3(1)** A certificate issued by the secretary of state pursuant to Iowa Code section 496A.103 showing that the credit union is authorized to do business in this state including the name of the agent upon whom process directed at the credit union may be served.

**15.3(2)** A schedule of interest rates to be charged on loans to be made to the residents of this state, a statement that the applicant understands the provisions of Iowa Code chapter 537, and a copy of that portion of the applicable law under which the credit union operates establishing maximum interest rates.

**15.3(3)** Evidence that the credit union members' share and deposit accounts are insured by Title II of the Federal Credit Union Act (12U.S.C. Secs. 1781 et seq.) or other comparable insurance acceptable to the administrator. (See rule 295—15.1(17A))

**15.3(4)** Evidence that the credit union has obtained surety bond coverage and fidelity bond coverage as required by the laws of the state under which the credit union operates.

**15.3(5)** A letter from the supervisory agency indicating the credit union is in good standing in the state where the principal office is located.

**15.3(6)** A copy of the last report, audit or examination by the applicable regulatory or supervisory agency and response to that report, audit or examination, if such response was required.

**15.3(7)** If the credit union operates on a fiscal year different from the calendar year, a statement indicating the period covered by the credit union's last fiscal year.

**15.3(8)** A copy of the audited balance sheet and income statement, prepared by an independent accountant or certified public accountant, for the most recently completed calendar or fiscal year.

**15.3(9)** A copy of the most recent month end balance sheet and income statement.

**15.3(10)** Statistics indicating the present number of members in the credit union, the total number of persons eligible for membership, the number of persons eligible for membership in Iowa, and the number of members residing in Iowa.

**15.3(11)** A statement of exact present field of membership and the location of any branch offices in Iowa as well as any proposed field of membership, if a change is to be made concurrently with the establishment of the branch office.

**15.3(12)** Copy of Articles of Incorporation.

**15.3(13)** Copy of official bylaws.

**15.3(14)** An analysis of delinquent loans prepared as of the date of the most recent financial statements.

**15.3(15)** A report of the names, addresses and telephone numbers of the person(s) managing each branch office in this state.

**15.3(16)** The language to be used in connection with the credit union's name in Iowa.

**15.3(17)** A copy of a resolution of the board of directors agreeing to keep the administrator or the administrator's duly designated representative advised at all times of the address at which the books, accounts, papers, records, files, safes and vaults are located in Iowa and the office hours of the credit union. (See 295—15.8(533))

**15.4 Reserved.**

**295—15.5(533) Annual reporting requirements.** By resolution, a copy of which shall be furnished to the administrator, the board of directors shall commit the credit union to furnish to the administrator the following:

**15.5(1)** The names of the officers, within fifteen days after the board of directors elects the officers of the credit union. At this time, the credit union shall also notify the administrator of the names of the board of directors, the members and alternate members of the credit committee and the members of the supervisory committee. Such reporting may be done by providing copies of the oath of directors or whatever form the credit union uses to report such information to the regulator of their state.

**15.5(2)** The names of the directors, officers, members and alternate members of the credit committee and members of the supervisory committee within fifteen days of any change. Such reporting shall be done as outlined in subrule 15.5(1).

**15.5(3)** The names, addresses and telephone numbers of the person(s) managing each branch office in this state within fifteen days of any change.

**15.5(4)** Reports of annual audits or examinations, on a continuing basis, performed by the applicable regulatory or supervisory agency within thirty days of receipt by the credit union and copies of any responses to those reports at the time they are sent to the agency.

**15.5(5)** All amendments to the Articles of Incorporation, bylaws and the field of membership within thirty days of adoption and approval by the applicable regulatory or supervisory agency.

**15.5(6)** Should the branch office be closed such action shall be reported to the administrator at least thirty days prior to the actual closing.

## CREDIT UNION DEPARTMENT[295] (cont'd)

**295—15.6(533) Fees.**

**15.6(1)** Each credit union operating a branch office in this state pursuant to these rules and Iowa Code section 533.39 shall pay an annual fee of \$250.00 to the administrator on or before February 1 of each year.

**15.6(2)** If payment is not made to the administrator by the due date, the certificate then in effect stating that the foreign credit union has been approved to operate a branch office in Iowa may by order be summarily suspended or revoked by the administrator ten days after giving of notice by the administrator that such amount is due and unpaid.

**15.6(3)** If, after such an order as described in subrule 15.6(2) is made, a request for hearing is filed in writing and a hearing is not held within sixty days thereafter, the order is rescinded as of its effective date.

**295—15.7(533) Certificate of Approval.**

**15.7(1)** Within sixty days of the receipt of the application and all required exhibits the administrator shall transmit in writing a decision granting or denying the application.

**15.7(2)** In the case of approval of the application the administrator shall issue a Certificate of Approval for the foreign credit union to operate a branch office in the state of Iowa. Said certificate shall be suitable for framing and shall be displayed in the branch office.

**295—15.8(533) Change of location of a branch office.**

**15.8(1)** A foreign credit union desiring to move its branch office within the state of Iowa shall be required by 15.3(17) and this rule to notify the administrator at least sixty days prior to the date the office is moved; except in the event of dissolution of the credit union the sixty-day notice requirement shall be automatically waived by the administrator.

**15.8(2)** Notification of the proposed change in location shall be submitted on an Application To Relocate a Branch Office. The rules governing the establishment of a branch office by a foreign credit union shall also govern the relocation of a branch office.

These rules are intended to implement Iowa Code section 533.39.

[Filed 2/22/85, effective 4/17/85].

[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

**ARC 5376****NURSING, BOARD OF[590]**

Pursuant to the authority of Iowa Code sections 258A.2 and 258A.3, the Iowa Board of Nursing rescinds Chapter 5, "Continuing Education as a Prerequisite to License Renewal" appearing in the Iowa Administrative Code and inserts in lieu thereof rules creating a new Chapter 5, "Continuing Education."

These rules relate to the continuing education requirements for license renewal, reinstatement, or reactivation and requirements for approved continuing education providers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 2, 1985, as ARC 5215. A public hearing was held on January 17, 1985 in Des Moines, Iowa.

Several revisions from said notice were made to improve the language and clarity of the rules. The following two changes were the most significant:

1. Subrule 5.1(4) altered the definition of continuing education to conform more closely with the statute definition.

2. Subrule 5.1(9) added the definition of practicum so that the reference to it later in subrule 5.2(2), paragraph "c," subparagraph (2) will be more clearly understood.

These rules are intended to implement Iowa Code sections 258A.2 and 258A.3.

These rules will become effective on June 1, 1985.

The following rules are adopted:

**CHAPTER 5  
CONTINUING EDUCATION**

**590—5.1(152) Definitions.**

"Approved provider" means those persons, organizations, or institutions that meet the criteria specified in subrule 5.3(2) and are authorized by the board to offer approved continuing education programs.

"Approved provider number" means the number assigned by the board which identifies an approved provider.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period; or the selection of approved providers for verification of adherence to continuing education approved provider requirements during a specified time period.

"Continuing education" means planned, organized learning activities acquired following initial licensure and designed to maintain, improve, or expand nurses' knowledge and skills or to develop new knowledge and skills relevant to nursing for the enhancement of practice, education, administration, or theory development to the end of improving the health of the public.

"Criteria" means those standards as defined in subrule 5.3(2) which the provider shall meet to be an approved provider.

"Formal offering" means an extension course, independent study, or other course which is offered for academic credit or audit by an accredited institution of higher education. A formal offering need not be offered by an approved provider.

"Informal offering" means workshop, seminar, institute, conference, lecture, short term course, or organized self-study which is offered for credit in contact hours or continuing education units.

"Nonapproved provider" means those persons, organizations, or institutions who do not hold an Iowa approved provider number. The board may recognize credit from nonapproved providers under special situations as specified in subrule 5.2(2), paragraph "e," subparagraph (2).

"Practicum" means a course-related, planned and supervised clinical experience which includes clinical objectives and assignment to practice in a laboratory setting or with patients/clients for obtainment of the objectives.

"Self-study" means that the provider designs a program for learning for the nurse who completes the program at

## NURSING, BOARD OF [590] (cont'd)

the individual's pace, e.g., home study, programmed instruction.

**590—5.2(152) Continuing education—licensees.**

**5.2(1) Board authority.** The board derives its authority under Iowa Code chapter 258A to create continuing education requirements as a prerequisite to obtain a current license and an audit system to assure compliance. Rules relating to the continuing education and licensing of registered nurses and licensed practical nurses are found in this chapter; rules relating to the continuing education and licensing of advanced registered nurse practitioners are found in nursing board rules, chapter 7.

**5.2(2) Requirements.** To obtain a registered nurse or licensed practical nurse license for the next renewal period the licensee shall submit a completed report form which documents the completion of continuing education requirements or exceptions to the requirements, as outlined in subrule 5.2(3).

a. Forty-five contact hours or 4.5 continuing education units (CEU's) shall be required for renewal of a three-year license. Thirty contact hours or 3.0 CEU's shall be required for renewal of a license which was issued for less than three years as a result of one of the following:

- (1) Examination.
- (2) Endorsement into Iowa from another state.
- (3) Reactivation from inactive status.
- (4) Reinstatement from delinquent status.

b. The hours specified in paragraph "a" shall be completed in the license period for which the license was issued. Continuing education credits from a previous license period shall not be used, nor shall credits be accumulated for use in a future licensing period. New graduates may collect hours beginning with the first day of the month following the licensure examination. Credit will not be accepted for a duplication of informal or formal offerings within a license period.

c. Units of measurement used for continuing education courses shall be as follows:

- (1) 1 contact hour = 50 minutes of instruction.
- (2) 1 contact hour = 150 minutes of clinical or laboratory practicum in an informal offering.
- (3) 1 CEU = 10 contact hours of instruction.
- (4) 1 academic semester hour = 15 contact hours of instruction.
- (5) 1 academic quarter hour = 10 contact hours of instruction.

d. To be approved for continuing education credit, informal offerings shall meet the qualifications of appropriate subject matter as specified in subrule 5.3(2), paragraph "a" or be required as a part of a formal nursing program which extends beyond the education completed for the original nursing license. Questions about whether particular formal offerings will be approved may be directed to the board office. A denial of approval may be appealed to the board within one month of the denial. The licensee shall retain a transcript exhibiting a passing grade for each formal offering or verification of attendance for offerings which are audited.

e. To be approved for continuing education credit, informal offerings shall meet the qualifications of appropriate subject matter as specified in subrule 5.3(2), paragraph "a." There are no restrictions on amount of credit acquired through self-study. The licensee shall retain a certificate of attendance to verify completion of each informal offering.

(1) Informal offerings shall be accepted when offered by board approved providers. All offerings within Iowa shall be presented by a board approved provider to be acceptable.

(2) Informal offerings offered outside of Iowa by a nonapproved provider shall be accepted when specially approved by the board for an individual licensee. A licensee shall obtain special approval from the board office in order to receive credit acceptable to fulfill the requirements. A request in writing or by telephone for special approval shall be received in the board office prior to the completion of the offering. Special approval requires submission of a completed application and a brochure, advertisement, or course description. Course content shall meet the qualifications of appropriate subject matter as specified in subrule 5.3(2), paragraph "a." The licensee shall retain the approval letter from the board office, in addition to the certificate of attendance received from the nonapproved provider. A denial of approval may be appealed to the board within one month of the denial.

f. Activities not specified in subrule 5.2(2), paragraph "d" or "e" shall be considered appropriate for continuing education credit only after approval has been obtained in writing from the board.

**5.2(3) Exceptions to the requirements in subrule 5.2(2), paragraph "a."** A waiver of continuing education requirements or extensions of time within which to fulfill the requirements may be granted on an individual basis. Specific instructions are available from the board office for the following:

a. A licensee shall be deemed to have complied with the continuing education requirements during periods that person serves honorably on active duty in the military service as specified in Iowa Code section 258A.2(3). The continuing education credit requirements shall be waived; however, a licensee who claims this exception shall retain evidence of active duty to be presented upon request from the board.

(1) A licensee who served on active duty for the entire license period or through the end of the license period shall be exempt from the requirement of continuing education credits.

(2) A licensee, who served on active duty for a portion of a license period but is not on active duty at the time of renewal, shall comply with continuing education requirements of Iowa for the remainder of the license period. The required hours are prorated at fifteen contact hours per year for each period of twelve consecutive months when not on active duty.

b. A licensee shall be deemed to have complied with the continuing education requirements when that person, at the time of renewal, resides outside of Iowa and holds a current license to practice in a state other than Iowa which also has mandatory continuing education. The continuing education credit requirements shall be waived; however, a licensee who claims this exception shall retain evidence of the out-of-state license to be presented upon request from the board.

(1) A licensee who resides out of state for the entire license period or through the end of the license period and meets a state's continuing education requirements to maintain a current license shall be exempt from the requirements of continuing education credits.

(2) A licensee, who resided out of state for a portion of a license period but is residing in Iowa at the time of renewal, shall comply with continuing education require-

## NURSING, BOARD OF [590] (cont'd)

ments of Iowa for the remainder of the license period. The required hours are prorated at fifteen contact hours per year for each period of twelve consecutive months residence in Iowa.

c. A licensee shall be deemed to have complied with the continuing education requirements during periods that person is a government employee working as a registered nurse or licensed practical nurse and assigned to duty outside of the United States as specified in Iowa Code section 258A.2(3). The continuing education credit requirement shall be waived; however, a licensee who claims this exception shall retain evidence of government employment outside the United States to be presented upon request from the board.

(1) A licensee who is a government employee serving outside the United States for the entire license period or through the end of the license period shall be exempt from the requirement of continuing education credits.

(2) A licensee who is a government employee serving outside the United States for a portion of a license period but is not in that status at the time of renewal, shall comply with continuing education requirements of Iowa for the remainder of the license period. The required hours are prorated at fifteen contact hours per year for each period of twelve consecutive months when not in that status.

d. A licensee shall be deemed to have complied with the continuing education requirements during periods that person is serving as a registered nurse or licensed practical nurse outside the United States where a current license is required for the licensee's service. The continuing education credit requirement shall be waived; however, a licensee who claims this exception shall retain evidence of foreign service requiring licensure to be presented upon request from the board.

(1) A licensee who is serving in such a position for the entire license period or through the end of the license period shall be exempt from the requirement for continuing education credits.

(2) A licensee who is serving in such a position for a portion of the license period, but is not in that status at the time of renewal, shall comply with continuing education requirements of Iowa for the remainder of the license period. The required hours are prorated at fifteen contact hours per year for each period of twelve consecutive months when not in that status.

e. A licensee who has had a physical or mental disability or illness during the license period shall be eligible for a waiver. A waiver provides for an extension of time or exemption from some or all of the continuing education requirements. An application for a waiver is available upon request to the board office. The application requires the signature of a physician who can attest to the existence of a disability or illness during the license period. The application for a waiver shall be approved or denied depending on the disability or illness of the licensee. A licensee shall be notified of the decision. A licensee who obtains approval shall retain a copy of the waiver to be presented to the board upon request.

**5.2(4)** Failure to meet requirements or exceptions to requirements. The licensee who fails to meet the requirements or the conditions for the exceptions has the following options:

a. If prior to the expiration date of the license, the license may be placed on inactive status without penalty and no continuing education is required. The licensee

shall notify the board in writing of the desire to place the license on inactive status.

b. If during the late renewal period, the late licensee as defined in nursing board subrule 3.1(9) may retain the license in an active status, or place it on inactive status.

(1) To remain active, the licensee shall complete the continuing education requirements as specified in subrule 5.2(2) or 5.2(3) as well as other requirements specified in nursing board subrule 3.6(4).

(2) To place the license on inactive status, the licensee shall make a written request to be placed on inactive status and submit the late fee as specified in nursing board subrule 3.1(6). No continuing education is required in order to place the license on inactive status.

c. If the license is in delinquent status, the delinquent licensee as defined in nursing board subrule 3.1(3) may reinstate the license or place the license on inactive status.

(1) To reinstate a license, the licensee shall complete fifteen contact hours of continuing education as well as other requirements specified in nursing board subrule 3.6(5). The continuing education shall have been earned within twelve months prior to reinstatement.

(2) To place a license on inactive status, the licensee shall make a written request to be placed on inactive status and submit the delinquent fees as specified in nursing board subrule 3.1(6) plus all renewal fees to date due. No continuing education is required in order to place the license on inactive status.

**5.2(5)** Audit of licensees. The board may select licensees for audit following a period of licensure.

a. The licensee must submit verification of compliance with continuing education requirements or exceptions for the period of licensure being audited. Verification for satisfactory completion of the audit includes legible copies of certificates of attendance, transcripts, special approval of informal offerings from nonapproved providers, or documentation of compliance with exceptions in subrule 5.2(3).

b. Verification must be submitted within one month after the date of the audit. Extension of time may be granted on an individual basis.

c. Licensees are required to keep certificates of attendance, letters verifying special approval for informal offerings from nonapproved providers, transcripts, and documentation of compliance with exceptions for four years.

d. The board shall notify the licensee of satisfactory completion of the audit.

e. Failure to complete the audit satisfactorily or falsification of information shall result in board action as described in nursing board rules, chapter 4.

f. Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement; completion of an audit will be required prior to further license renewal.

**590—5.3(152) Continuing education—providers.**

**5.3(1)** Board authority. The board derives its authority under Iowa Code chapter 258A to create requirements for becoming an approved provider and maintaining that status. The board also has the authority to develop an audit, a mechanism to verify compliance with criteria for approved providers.

**5.3(2)** Criteria for approved providers. The approved providers shall show evidence of capability to adhere to criteria indicative of quality continuing education activities for nurses.

## NURSING, BOARD OF[590] (cont'd)

a. Criteria related to appropriate subject matter. Appropriate subject matter for continuing education credits reflects the educational needs of the nurse learner and the health needs of the consumer. Subject matter is limited to offerings that are scientifically founded and predominantly for professional growth. A nonsectarian approach shall be utilized. The following areas are deemed appropriate subject matter for continuing education credit:

(1) Nursing practice related to counseling, teaching, or care of clients in any setting.

(2) Sciences upon which nursing practice, nursing education, or nursing research is based, e.g., nursing theories and biological, physical, behavioral, computer, social, or basic sciences.

(3) Social, economic, and legal aspects of health care.

(4) Management or administration of health care, health care personnel, or health care facilities.

(5) Education of patients or their significant others, students, or personnel in the health care field.

b. Criteria related to operation of an approved continuing education providership. The provider shall:

(1) Have a consistent, identifiable authority who has overall responsibility for the operation of the providership and execution of the informal offerings.

(2) Maintain financial integrity so that participants receive the continuing education for which they have paid.

(3) Maintain participant and program records as specified in paragraph "c" of this subrule.

(4) Demonstrate active nursing participation in the planning and administration of informal offerings.

(5) Select appropriate subject matter designed to fulfill the educational needs of nurses in order to meet the health care needs of consumers as defined in paragraph "a" of this subrule.

(6) Demonstrate planning for each offering that includes a statement of purpose and measurable, educational objectives.

(7) Provide notification to licensees of the availability of informal offerings. A brochure or written advertisement shall be developed for all informal offerings and a copy shall be sent to the board prior to each offering. The brochure or advertising shall accurately describe the activities by including the date, time, location, statement of purpose, educational objectives, intended audience, credentials of instructors, costs and items covered by the fee, refund policy, and amount of continuing education credit to be awarded. The board approved provider number shall appear on the cover.

(8) Structure program content and learning experience to relate to the stated purpose and objectives. Program content shall cover one topic or a group of closely related topics. Current, relevant, scientifically based supportive materials shall be used.

(9) Include a system for verification of satisfactory completion of the activity by each participant. The provider may not award credit to those who serve as organizers during the actual offerings. Completion of the offering is required prior to the award of credit. The provider may make an exception and award partial credit in extreme emergency conditions. The provider may make an exception and award partial credit for the portion of time a nurse participated in an offering other than the time the nurse was a presenter.

(10) Develop policies and procedures for management of continuing education programs including program evaluation, enrollee grievances, and tuition refund.

(11) Assign credit according to a uniform measure of credit as defined in subrule 5.2(2), paragraph "c." Credit shall be granted in increments of half hours or whole hours; however, no credit shall be awarded for less than one contact hour or .1 CEU.

(12) If desired, cosponsor an offering provided by a nonapproved provider. When cosponsoring is done, the approved provider awards the credits and is responsible for assurance that all criteria in this chapter are met.

(13) An approved provider shall notify the board within thirty days of changes in the administrative authority or address of the providership or the inability to meet the criteria.

c. Criteria related to record maintenance of continuing education programs. The provider shall:

(1) Maintain participant records for a minimum of four years from the date of program completion. The participant records shall include the name of licensee, license number, contact hours or CEU's awarded, offering titles, and dates of offerings. The record system shall provide for secure storage and retrieval of individual attendance and information regarding each offering. The participant records of continuing education credits granted shall be available within two weeks upon request from individual nurses or the board. Individual nurses may be assessed for this retrieval service.

(2) Maintain program records for a minimum of four years from the date of program completion. Program records for all informal offerings shall include a brochure or advertising, roster of attendees to whom credit was awarded, and a summary of the program including participant and provider evaluations. Documents from two typical course offerings are also required as specified in subrule 5.3(4), paragraph "a," subparagraph (6).

(3) The approved provider shall furnish each participant with an individual record of attendance which displays the following on the front of the certificate: Participant's name, provider number, credit hours awarded, starting and ending dates of the offering, subject matter taken, and a reminder to the participant to retain the certificate for four years.

d. Criteria related to faculty of informal offerings. The faculty shall:

(1) Be current, knowledgeable, and skillful in the subject matter of the offering by having evidence of further education in the subject. Such education shall be acquired through course completion or an advanced degree, experience in teaching in the specialized area within the three years preceding the offering, or six months' work experience in the specialized area within the three years preceding the offering.

(2) Include a nurse if the subject matter is nursing.

(3) Encourage active participation of the nurse learners enrolled in the offerings.

(4) Utilize principles of adult education in teaching strategies.

(5) Utilize teaching methodologies appropriate to the subject, audience, and time allotment.

(6) Utilize current supportive materials by drawing from resources that are predominantly less than five years old unless the topic is of an historical nature.

(7) Not receive credit when teaching participants.

## NURSING, BOARD OF[590] (cont'd)

e. Criteria related to evaluation of continuing education programs. The provider shall:

(1) Implement an evaluation mechanism which allows the participant to assess achievement of program objectives, faculty effectiveness, and teaching-learning methodologies, when applicable, for each offering.

(2) Utilize evaluation techniques so that the provider may assess the effectiveness of each offering and plan for future offerings.

**5.3(3)** Initial approval process for providers. Initial approval is granted upon the submission of required materials and the determination by the board or its representative that the materials fulfill the criteria for approved providers specified in subrule 5.3(2).

a. Upon request, the board office shall send an application to a potential provider which requires the submission of the following materials:

(1) Definition of the administrative authority. The definition shall include:

The name of the administrative authority if it is one person.

The name of each member of the administrative authority, and a narrative description of their relationship (e.g., partnership, corporation, board of directors) and roles, if applicable.

(2) Biographical information about each member of the administrative authority. This information shall support that the authority is knowledgeable in administration and has the capability to organize, execute, and evaluate the overall operations of the providership.

(3) Position description of the administrative authority. The description shall explain the authority's role in planning, decision making, and formulation of policies affecting the continuing education offerings.

(4) Table of organization. The table shall: Delineate the administrative authority for the providership.

Define the line relationships within the providership as well as within the parent organization, if applicable.

Illustrate co-operative or advisory relationships, if applicable.

(5) Goals, philosophy, and objectives. These shall indicate the overall direction of the providership for a five-year period.

(6) Program offerings. The program offerings shall reflect the goals and philosophy.

(7) Evidence of nursing participation. Nursing participation shall be documented in a written statement of policy, denotation on the table of organization, and planning minutes.

(8) Plan on subject matter. The plan shall: Indicate the mechanism of assessing the learning needs of the population to be served.

Describe how the provider shall meet the criteria related to appropriate subject matter in its offerings, as specified in subrule 5.3(2), paragraph "a."

(9) Plan for a record system and maintenance. The plan shall include the following:

A policy regarding the content of participant records.

A policy regarding the content of provider records including a roster of participants, and information regarding the offering and faculty.

A policy regarding the length and method of record storage.

A policy regarding retrieval of records.

A sample of the certificate to be used.

(10) Plan for verification of completion. The plan shall include:

A system for verification of satisfactory completion of the offering by each participant.

A method of informing the participant of the consequences of not completing an offering in its entirety.

A policy regarding granting of partial credit to a speaker who has presented a portion of an offering.

A policy regarding granting of partial credit for less than full attendance due to emergency conditions.

A method of informing the participant of the control methods to be employed to ensure completion of the offering.

(11) Registration procedures.

(12) Tuition refund policy.

(13) Plan for dealing with enrollee grievances.

(14) Plans for evaluation. The plan shall include:

A design for participant evaluation which includes assessment of the instruction, resources, and facilities.

A method of notifying the participants that the evaluation may be submitted directly to the board.

A design for provider evaluation which includes techniques that assess the effectiveness of each offering and the overall providership.

(15) Plan for faculty selection. The plan shall describe the mechanism of selecting faculty who are current, knowledgeable, and skillful in the subject-matter of the offering.

(16) Policy regarding the use of the uniform measure of continuing education credit.

(17) Documents from two typical sample course offerings. Documents for each of these two offerings shall include:

A narrative of the planning of the offering including evidence of nursing participation.

A sample brochure or advertising.

Content of course, i.e., topical outline.

Teaching-learning methodologies and supportive materials.

Bibliography.

A sample evaluation form for participant completion.

A sample evaluation form for provider completion.

(18) Plan for cosponsorship of offerings, if applicable. The plan shall include:

A policy on cosponsorship which addresses the mechanism for compliance with criteria and delineation of responsibilities of all parties.

A sample contract or letter of agreement.

b. Upon receipt of the completed application, a review is held by a committee.

(1) The committee is composed of at least three appointees of the board. The review is held at the board office within sixty days of receipt of the application.

(2) The review is based on the criteria as specified in subrule 5.3(2).

(3) If the submitted materials meet the requirements, the committee shall approve the provider for five years and issue a provider number. The approved provider shall be notified within two weeks of the decision of the committee.

(4) If the committee finds submitted materials to be incomplete or unsatisfactory, it shall notify the provider applicant within six weeks of the submission of the application. The applicant is given the opportunity to meet the criteria with an additional review to be held within six weeks of submission of new materials.

## NURSING, BOARD OF[590] (cont'd)

(5) If the applicant is unable to meet the criteria within three committee reviews or one year, whichever comes first, the committee shall recommend nonapproval at the next regularly scheduled board meeting.

(6) Notice of this recommendation of nonapproval shall be provided to the applicant at least thirty days before the board meeting.

(7) The board shall make the final decision.

c. At any time the provider applicant disagrees with the committee's actions, the applicant may request board action. At this time the matter becomes a contested case and an evidentiary hearing as specified in Iowa Code chapter 17A shall be held by the board at its next regularly scheduled meeting.

(1) If the final decision of the board is approval, approval shall be granted up to five years and an approved provider number is issued. The applicant shall be notified of the decision within two weeks of the board's final decision.

(2) If the final decision of the board is a denial, the applicant shall be notified of the decision within two weeks of the board's final decision. Provisions for making a request for reconsideration and appeal are found in Iowa Code sections 17A.16 and 17A.19.

d. A provider applicant who has been denied approved provider status may apply no sooner than one year after denial to become an approved provider by starting the initial approval process specified in this subrule.

5.3(4) Renewal process for approved providers. Re-approval is granted upon the submission of required materials and the determination by the board or its representatives that the materials fulfill the criteria for approved providers specified in this chapter.

a. The board shall send an application for re-evaluation to an approved provider four months before the expiration of the current approval. The completed application shall be submitted to the board office no later than two months prior to the expiration of the current approval. The application requires submission of the following materials:

(1) Identification of the current administrative authority. The information shall include the name(s) and title(s) of the authority.

(2) Current table of organization. The table shall: Delineate the administrative authority for the providership.

Define the line relationships within the providership as well as within the parent organization, if applicable.

Illustrate co-operative or advisory relationships, if applicable.

(3) Goals, philosophy, and objectives. These shall:

Be described in regard to accomplishments, strengths, and weaknesses during the approval period.

Indicate the overall direction of the providership for the next five-year period, taking into consideration the strengths and weaknesses of the providership.

(4) List of course offerings from the previous year.

(5) Explanation of changes. A sample shall be submitted for each alteration in policies, procedures, or certificates made since the previous approval.

(6) Documents from two typical course offerings. The approved provider shall submit documents from a classroom offering and a self-study offering, as applicable. The following documents shall be included:

A narrative of the planning of the offering.

A brochure, advertising, or written agreement.

Content of course, i.e., topical outline.

Teaching-learning methodologies and supportive materials.

Bibliography.

Attendance record.

Participant evaluation form.

Summary of participant and provider evaluations.

b. Upon receipt of the renewal application, a review shall be made by a board designee at the board office within thirty days of the receipt of the application.

(1) The review is based on the criteria as specified in subrule 5.3(2).

(2) If the submitted materials meet the requirements, the designee shall issue a renewal of the approved provider status for a five-year period.

(3) If the submitted materials are incomplete or unsatisfactory, the designee shall notify the provider within two weeks of the review. The provider shall be given the opportunity to meet the criteria within two weeks. If the provider is unable to meet the requirements, the designee shall recommend nonapproval at the next regularly scheduled board meeting.

(4) Notice of this recommendation of nonapproval shall be provided to the applicant at least thirty days before the board meeting.

(5) The board shall make the final decision.

(6) At any time the renewal applicant disagrees with the designee's actions, the applicant may request board action. At this time the matter becomes a contested case and an evidentiary hearing as specified in Iowa Code chapter 17A shall be held by the board at its next regularly scheduled meeting, when the board shall issue a final decision.

(7) If the final decision of the board is reapproval, approval shall be granted up to five years. The approved provider shall be notified of the decision within two weeks of the board's final decision.

(8) If the final decision of the board is denial, the renewal applicant shall be notified of the decision within two weeks of the board's decision. Provisions for making a request for reconsideration and appeal are found in Iowa Code sections 17A.16 and 17A.19.

(9) A renewal applicant who has been denied re-approval may apply no sooner than one year after denial to become an approved provider by starting the initial approval process specified in subrule 5.3(3).

5.3(5) Audit of approved providers. An audit of a provider may be initiated by a determination of the board that an audit shall be made or as a result of a complaint.

a. Disciplinary proceedings against providers shall follow the same process as those for licensees specified in Iowa Administrative Code, nursing board rules, chapter 4. In addition:

(1) A complaint may be filed with the board against a provider for acts or omissions which indicate a failure to meet the criteria established in this chapter. If the complaint is in regard to a particular offering it shall be filed within one month of the completion of the offering.

(2) The board will acquaint the provider with a complaint. If satisfactory resolution to the problem can be obtained between the provider and complainant, no further disciplinary proceedings shall be executed.

(3) In the investigation, information may be requested that evidences compliance with the rules of this chapter. It may include unannounced survey visits by representatives of the board.

## NURSING, BOARD OF[590] (cont'd)

b. The final decision shall be issued by the board within a reasonable period of time and may include one of the following sanctions:

(1) The board may accept the voluntary relinquishment of an approved providership.

(2) The board may issue a citation and warning to the approved provider for willful or repeated failure to meet one or more of the criteria specified in subrule 5.3(2).

(3) The board may place the approved provider on probation for a specified time period for willful or repeated failure to meet one or more criteria specified in subrule 5.3(2). During the probationary period, the provider shall submit information that satisfactorily fulfills the criteria in question.

(4) The board may suspend the approved provider status for a specified time period or revoke the approved provider status for violations of the criteria specified in subrule 5.3(2).

c. A provider who wishes to request reconsideration shall do so within twenty days from the date of receipt of notification. The provider shall submit a statement which shows cause why action should not have been taken by the board. This statement shall be acted upon by the board within twenty days.

d. A provider who wishes to appeal the sanction imposed by the board may do so pursuant to Iowa Code section 17A.19.

e. A provider whose approved provider status has been suspended, relinquished, or revoked shall no longer advertise that it is an approved provider. The provider number shall no longer be used or appear in brochures, advertisements, certificates, or other materials.

f. A provider whose approved provider status has been suspended or withdrawn shall make arrangements with the board for record storage.

g. The board shall notify other states which have mandatory nursing continuing education of the suspension, relinquishment, or revocation of the approved provider status and the reason(s) for withdrawal.

h. A provider whose approved provider status has been relinquished, suspended, or revoked may apply no sooner than one year after the withdrawal of approval to become an approved provider by the initial approval process described in subrule 5.3(3).

**5.3(6)** Voluntary relinquishment of an approved providership. An approved provider may voluntarily relinquish its provider number. In doing so the provider shall discontinue providing continuing education that is acceptable for license renewal in Iowa.

a. The provider shall maintain the records required in subrule 5.3(2) until four years after the last credit was granted or transfer the records to the custody of the board.

b. The provider may apply no sooner than one year after the relinquishment to become an approved provider by starting the initial approval process specified in subrule 5.3(3).

[Filed 2/22/85, effective 6/1/85]

[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

ARC 5380

## PHARMACY EXAMINERS, BOARD OF[620]

Pursuant to the authority of Iowa Code section 155.19, the Iowa Board of Pharmacy Examiners adopted an amendment to Chapter 6, "Minimum Standards for the Practice of Pharmacy." The amendment was adopted during the February 12, 1985 meeting of the Iowa Board of Pharmacy Examiners.

Notice of Intended Action was published in Iowa Administrative Bulletin 11, November 21, 1984, as ARC 5112.

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

This amendment will become effective on April 18, 1985.

This rule is intended to implement Iowa Code sections 155.19 and 204.301.

620—Chapter 6 is amended by adding the following new rule:

**620—6.13(155, 204) Automated patient record systems.** An automated data processing system may be used as an alternative method for the storage and retrieval of prescription information subject to the following conditions:

**6.13(1)** The original written prescription or a hard copy of an oral prescription order either transcribed by the pharmacist or generated by an automated data processing system shall be retained on file for two years.

**6.13(2)** The system shall provide for the retrieval via visual display device or hard-copy printout of original and refill prescription information. Such information shall include, but not be limited to, each of the following:

- a. Date of issuance of the original prescription;
- b. Name and address of the patient;
- c. Name and address of the prescriber;
- d. Name, strength, dosage form, and quantity of the drug dispensed;
- e. Directions for use by the patient;
- f. Total number of refills authorized by the prescriber;
- g. DEA registration number of the prescriber where appropriate;

- h. Prescription serial number;
- i. Date of dispensing of the original prescription and date of dispensing of each refill;
- j. Quantity dispensed originally and upon each refill;
- k. Total number of refills dispensed to date (or total number of authorized refills remaining);

l. Name or identification code of the dispensing pharmacist for the original filling and each refill.

**6.13(3)** Documentation of the correctness of controlled substance prescription refill information entered into an automated data processing system shall be provided by the individual pharmacist who makes use of such a system. In documenting this information, the pharmacy shall have the option to either:

- a. Maintain a bound log book, or separate file, of daily statements which have been signed by each dispensing pharmacist and which state that the refill information entered into the system that day has been reviewed and is correct as shown; or

## PHARMACY EXAMINERS, BOARD OF[620] (cont'd)

b. Provide a printout of each day's controlled substance prescription refill information. This printout shall be verified, dated, and signed by each dispensing pharmacist. This printout of the day's controlled substance prescription refill information shall be provided to the pharmacy using an automated data processing system within seventy-two hours of the date on which the refill was dispensed.

This documentation shall be maintained by the pharmacy for two years from the date of last dispensing.

**6.13(4)** An auxiliary recordkeeping system shall be established for the documentation of refills if the automated data processing system is inoperative for any reason. The auxiliary system shall ensure that all refills are authorized by the original prescription and that the maximum number of refills is not exceeded. When the automated data processing system is restored to operation, the information regarding prescriptions filled and refilled during the inoperative period shall be entered into the automated data processing system as soon as possible. Auxiliary records may be destroyed after entry into the system. This subrule does not require that a permanent dual recordkeeping system be maintained.

**6.13(5)** The system shall have the capability of producing sight-readable documents of all original and refilled prescription information. The term "sight-readable" means that a regulatory agent shall be able to examine the record and read the information. During the course of an onsite inspection, the record may be read from a visual display device. In the case of administrative proceedings, records shall be provided in a paper printout form.

**6.13(6)** The system shall contain adequate safeguards or security of the records to maintain the confidentiality and accuracy of prescription information. Safeguards against erasures and unauthorized changes in data after the information has been entered and verified by the pharmacist shall be provided by the system.

**6.13(7)** An adequate backup system shall be maintained to prevent the accidental or technical loss of computerized records.

**6.13(8)** Any pharmacy using an automated data processing system must comply with all applicable state and federal laws and regulations.

**6.13(9)** The system shall be able to produce documentation of current prescription status that would provide all necessary refill information for use in the event that the pharmacy discontinues use of the computer system.

**6.13(10)** A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates. A pharmacy shall assure continuity in the maintenance of records.

**6.13(11)** Any hospital pharmacy using an electronic data processing system for outpatient prescriptions, employee prescriptions, and take-home prescriptions shall conform to all subrules of this rule.

[Filed 2/22/85, effective 4/18/85]  
[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

## ARC 5381

PHARMACY EXAMINERS,  
BOARD OF[620]

Pursuant to the authority of Iowa Code section 155.19, the Iowa Board of Pharmacy Examiners adopted an amendment to Chapter 9, "Purpose and Organization." The amendment was adopted during the February 12, 1985 meeting of the Iowa Board of Pharmacy Examiners.

Notice of Intended Action was published in Iowa Administrative Bulletin 13, December 19, 1984, as ARC 5185

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

This amendment will become effective on April 18, 1985.

This rule is intended to implement Iowa Code section 155.19.

Subrule 9.2(5) is amended by adding the following:

i. The chairperson of the board shall have the right to vote in all administrative hearings.

[Filed 2/22/85, effective 4/18/85]

[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

## ARC 5383

## REGENTS, BOARD OF[720]

Pursuant to the authority of Iowa Code section 262.9 and section 19A.3, subsection 21, the Board of Regents hereby amends Chapter 3, "Personnel Administration," Iowa Administrative Code.

These rules are identical to those published in the Iowa Administrative Bulletin, December 19, 1984 as ARC 5173.

The adopted rule change will allow an employee who achieved permanent status in the merit system classification and was promoted subsequently to a professional position at a regent institution, with approval of the resident director, to return during the employee's current continuous employment to a vacant position in a lower classification. The employee who is returning to a merit system position from a professional position will be paid in accordance with subrule 3.39(4) pay on demotion.

Any employee participating in a phased retirement program shall have the salary provided under these rules adjusted as specified by state law and regent policy.

The Board of Regents adopted these rule amendments February 13, 1985, and will become effective April 17, 1985.

These rules are intended to implement Iowa Code section 19A.9.

The following amendments are adopted.

ITEM 1. Rule 720—3.39(19A) is amended to read as follows:

**720—3.39(19A) Administration of the pay plan.** Within the provisions of these rules, the pay plan will be uniformly administered by the resident directors under the direction of the merit system director for all classes in the system. Except as otherwise provided in these rules

## REGENTS, BOARD OF [720] (cont'd)

and in the pay plan, all employees will be paid at one of the steps of the pay grade to which the employee's class is assigned and such pay will constitute the total cash remuneration the employee receives for ~~his or her~~ *the employee's* work in that position. Perquisites such as subsistence and maintenance allowances will be considered a part of pay and the value of such will be deducted from an employee's rate of pay. *Any employee who is approved for participation in a phased retirement program as provided for by state law and regent policy shall have the salary provided under these rules adjusted as specified by such law and regent policy.*

ITEM 2. Subrule 3.39(5) is amended as follows:

**3.39(5)** Pay on reinstatement, re-employment or return from leave. An employee who is reinstated to the previously occupied class will be paid at a rate no less than what the employee was last paid and no higher than that provided at the step of the pay grade at which the employee was last paid with the prior approval of the resident director. An employee who is reinstated to a lower class, or who is returned to a merit system position from a professional position, will be paid in accordance with subrule 3.39(4) pay on demotion. The date of reinstatement will be the merit review date.

ITEM 3. Rule 720—3.89(19A) is amended to read as follows:

**720—3.89(19A) Reinstatement.** A permanent employee who has resigned in good standing may be reappointed without certification from an eligibility list to a position in the same class from which he or she ~~the~~ *employee* resigned or a lower class, provided that such reappointment is made within a period of time no greater than the period of ~~his or her~~ *the employee's* previous employment and in no case more than two years after the date of ~~his or her~~ *the employee's* resignation and provided there is no re-employment list for that class.

*With approval of the resident director, an employee who achieved permanent status in a merit system classification and was promoted subsequently to a professional position at a regent institution may be returned during the employee's current continuous employment to a vacant position in the employee's previous classification or to a vacant position in a lower classification provided the employee meets current minimum requirements and there is no re-employment register for the class.*

[Filed 2/22/85, effective 4/17/85]  
[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

**ARC 5386****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 Chapters 51 "Administration," 52 "Filing Returns, Payment of Tax and Penalty and Interest," 55 "Assessments, Refunds, Appeals," 57 "Administration," 58 "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," and 60 "Assessments, Refunds, Appeals," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, volume VII, number 15, on January 16, 1985, as **ARC 5246**.

These rules are amended to remove references to divisions and positions which no longer exist due to the reorganization of the Revenue Department, to remove surplus wordage, and to remove gender related language. Rules 51.7(422) and 57.6(422) are amended to include examiners in the classification of employees that are governed by the confidentiality statute. Subrule 52.4(3) is amended to remove an outdated provision relating to when a corporate tax taxpayer could claim an income tax credit for motor vehicle fuel tax paid. Subrule 58.3(2) is amended to remove a provision that relates to a repealed section of the Code.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective April 17, 1985, after filing with the rules coordinator and publication in the Iowa Administrative Bulletin.

These rule amendments are intended to implement Iowa Code chapter 422.

The following amendments are adopted.

ITEM 1. Amend subrule 51.1(1) to read as follows:

**51.1(1)** When the word "department" appears herein, ~~the same~~ *it* refers to and is synonymous with the "Iowa Department of Revenue"; the word "director" is the "Director of Revenue" or *the director's authorized assistants and employees*; ~~the word "division" is the "Income Tax Division, Iowa Department of Revenue"~~; the word "tax" is the "corporation income tax"; and the word "return" is the "corporation income tax return."

The administration of the corporation income tax is a responsibility of the ~~income tax division created by the director department~~. ~~This division~~ *The department* is charged with the administration of the corporation income tax, subject always to the rules, regulations and direction of the director.

ITEM 2. Amend subrule 51.2(1), paragraph "f," to read as follows:

f. The department is allowed the longer of the periods of limitation as outlined in paragraphs "a," "b," "c," "d" or "e" or six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination.

The notification shall be in writing in any form sufficient to inform the department of such final disposition, and attached thereto shall be a photo reproduction or carbon copy of the federal document which shows the final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the ~~Corporation Audit Section Audit Division~~, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. Any notification and copy of the federal document which is included in, made a part of, or mailed with an Iowa corporation income tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

When a taxpayer's income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer's income, a copy of the revenue agent's tax computation, a schedule of revised foreign tax credit on a

## REVENUE DEPARTMENT[730] (cont'd)

separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

ITEM 3. Amend subrule 51.6(1) to read as follows:

**51.6(1)** A jeopardy assessment may be made in a case where a return has been filed; and the director believes for any reason that collection of the tax will be jeopardized by delay, or in a case where a taxpayer fails to file a return, whether or not formally called upon to file a return, do so; in which case the department is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest. and demand immediate payment.

ITEM 4. Amend rule 730—51.7(422) to read as follows:

**730—51.7(422) Information confidential.** Sections 422.20 and 422.72 apply generally to the director, deputies, auditors, examiners, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above sections. Other persons having acquired information disclosed in a taxpayer's filed return or report or other confidential state information, will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law. See rule 6.3(17A).

This rule is intended to implement Iowa Code sections 422.20, 422.38 and 422.72.

ITEM 5. Amend rule 730—51.9(422) to read as follows:

**730—51.9(422) Delegation of authority to audit and examine.** Pursuant to statutory authority the director delegates to the director of the income tax division authorized assistants and employees the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director. The power so delegated may further be delegated by the director of the income tax division to such auditors, agents, clerks, and employees of the income tax division as he or she shall designate.

This rule is intended to implement Iowa Code section 422.71; The Code.

ITEM 6. Amend subrule 52.1(1), paragraph "c," to read as follows:

c. Representative. A representative does not include an independent contractor. A person may be considered a representative even though he or she that person may not be considered an employee for other purposes such as the withholding of income tax from commissions. If the person is subject to the direct control of the foreign corporation, he or she that person may not qualify as an independent contractor. See Herff Jones Company v. State Tax Commission, Oregon Supreme Court, August 23, 1967, 430 P.2d 998 (Ore. 1967).

ITEM 7. Amend subrule 52.1(4) to read as follows:

**52.1(4)** Taxation of subchapter "S" corporations, domestic international sales corporations and real estate investment trusts. Certain corporations and other types of entities, which are taxable as corporations for federal purposes, may by federal election and qualification have a portion or all of their income taxable to the shareholders or the beneficiaries. Generally, the state of Iowa follows the federal provisions (with adjustments provided by

Iowa law) for determining the amount and to whom the income is taxable. Examples of entities which may avail themselves of pass-through provisions for taxation of at least part of their net income are real estate investment trusts, small business corporations electing to file under sections 1371-1378 of the Internal Revenue Code, Domestic International Sales Corporations as authorized under sections 991-997 of the Internal Revenue Code, and certain types of cooperatives and regulated investment companies. The entity's portion of the net income which is taxable as corporation net income for federal purposes is generally also taxable as Iowa corporation income (with adjustments as provided by Iowa law) and the shareholders or beneficiaries will report on their Iowa returns their share of the organization's income reportable for federal purposes as shareholder income (with adjustments provided by Iowa law). Nonresident shareholders or beneficiaries are required to report their distributive share of said income reasonably attributable to Iowa sources. Schedules shall be filed with the individual's return showing the computation of the income attributable to Iowa sources and the computation of the nonresident taxpayer's distributive share thereof. Entities with a nonresident beneficiary or shareholder shall include a schedule in the return computing the amount of income as determined under chapter 54 of the rules. It will be the responsibility of the entity to make the apportionment of the income and supply the nonresident taxpayer with information regarding his the nonresident taxpayer's Iowa taxable income.

ITEM 8. Amend subrule 52.1(5) to read as follows:

**52.1(5)** Exempted corporations and organizations filing requirements.

a. Application for exemption. A corporation or organization claiming exemption from taxation pursuant to Iowa Code section 422.34; The Code, must file an application for exemption (form 42-044) with the director of the income tax division in such form and manner as may be prescribed by the director of the income tax division containing such information as is necessary to enable him or her to determine the exempt status of the organization. A copy of the federal determination letter must be attached to such application.

b. Information returns. Every corporation shall file returns of information as provided by sections 422.15 and 422.16 and any regulations regarding information returns.

c. Annual return. If a corporation or organization is notified by the department in writing that it is exempt from the Iowa corporation income tax under section 422.34, the filing of an annual return is not required. If the exemption is denied or revoked by the director of the income tax division, an Iowa corporation income tax return shall be required to be filed within such time as the director of the income tax division may specify and any tax shown to be due shall be paid together with interest thereon from the original due date of the return as prescribed in section 422.21 through the month in which the tax is paid. The corporation or organization shall inform the director of the income tax division in writing of the revocation of or change in exempt status by the Internal Revenue Service within thirty days after the federal determination.

d. Tax on unrelated business income. Where a corporation or organization is subject to the federal income tax imposed by section 511 of the Internal Revenue Code

## REVENUE DEPARTMENT[730] (cont'd)

on unrelated business income, such corporation or organization is not subject to Iowa corporation income tax on the unrelated business income. Opinion of the Attorney General, Griger to Craft, February 13, 1978.

ITEM 9. Amend subrule 52.2(1) to read as follows:

**52.2(1)** Returns of corporations. A return of income for all corporations must be filed on or before the due date. The due date for all corporations excepting cooperative associations as defined in section 6072(d) of the Internal Revenue Code, is the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or the fiscal year; or the last day of the period covered by an extension of time granted by the director. When the due date falls on a Saturday, Sunday or a legal holiday, the return will be due the first business day following such the Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the ~~income tax division~~ department on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Corporate Income Tax Processing, Lucas Hoover State Office Building, Des Moines, Iowa 50319.

ITEM 10. Amend subrule 52.4(3) to read as follows:

**52.4(3)** Motor fuel credit. A corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by *Iowa Code* chapter 324 of the Code. A corporation which holds a motor fuel refund permit under *Iowa Code* section 324.18 of the Code must cancel its permit before it becomes eligible to take a motor fuel credit on the corporate income tax return. The permit must be canceled within thirty days after the first day of the corporation's tax year. Once an election is made, it will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The amount of income tax credit shall be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by *Iowa Code* chapter 324 and sections 422.86, 422.87, and 422.88 of the Code less any state sales tax deductible under *Iowa Code* section 422.52(4) of the Code. The credit shall be deducted on the tax return filed for the year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or credited to income tax due in subsequent years.

The motor fuel credit option is available on corporate income tax returns filed for tax years beginning on or after January 1, 1975.

For tax years beginning on or after January 1, 1975 and ending on or before December 31, 1976, a corporate taxpayer may elect to use the motor vehicle fuel tax credit option even though it failed to cancel its motor vehicle fuel refund permit. The credit is allowable on the income tax return only if the taxpayer has complied with all the other requirements of the law with respect to a refund of fuel taxes through an income tax credit under section 422.86 of the Code.

Effective for tax returns which are timely filed after January 1, 1980, members of partnerships or subchapter S corporations may claim a credit for their respective share of the motor vehicle fuel tax paid by the partnership or subchapter S corporation. The credit is to be shared in the same ratio as the person's pro rata share of the earnings from the partnership or subchapter S corpo-

ration. In order to be eligible for the tax credit, the partnership or subchapter S corporation must not hold a valid motor vehicle fuel refund permit during the tax year or the permit must have been canceled within thirty days after the beginning of the tax year. A schedule must be attached to the individual's return showing the distribution of gallons and the amount of credit claimed by each partner or shareholder.

The corporation or partnership must attach to its return a schedule showing the allocation to each shareholder or partner of gallons purchased.

ITEM 11. Amend subrule 52.4(6) to read as follows:

**52.4(6)** Payment of tax by uncertified checks. The ~~income tax division~~ department will accept uncertified checks in payment of income taxes, provided such checks are collectible for their full amount without any deduction for exchange or other charges. The date on which the ~~income tax division~~ department receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two or more corporations' taxes, the remittance must be accompanied by a letter of transmittal stating: (a) The name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order or other instrument included in the same remittance; (d) the name of each corporation whose tax is to be paid by the remittance; and (e) the amount of payment on account of each corporation.

ITEM 12. Amend rule 730-55.1(422) to read as follows:

**730-55.1(422) Notice of discrepancies.**

**55.1(1)** Notice of adjustment. An ~~agent, auditor, clerk or~~ employee of the ~~income tax division~~ department, designated by the director of the ~~income tax division~~ department, to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of his the discovery by ordinary mail. ~~Such~~ The notice shall not be termed an assessment, and it may inform the taxpayer what of the amount would be due from him if the information discovered is correct.

**55.1(2)** Right of taxpayer upon receipt of notice of adjustment. A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, he the taxpayer should then file claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the ~~agent, auditor, clerk or~~ employee who notified him the taxpayer of the discrepancy, either in person or through correspondence, all matters of fact and law which he the taxpayer considers relevant to the situation. Documents and records supporting his the taxpayer's position may be required.

**55.1(3)** Power of agent and auditor to compromise tax claims. No employee of the department has the power to compromise any tax claims. The power of the ~~agent, auditor, clerk or~~ employee who notified the taxpayer of the discrepancy is limited to the determination of the correct amount of the tax.

This rule is intended to implement *Iowa Code* section 422.25. The Code.

## REVENUE DEPARTMENT[730] (cont'd)

ITEM 13. Amend subrule 55.3(1) to read as follows:

**55.3(1)** A claim for refund of corporation income tax may be made on a form obtainable from the ~~income tax division department~~. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

ITEM 14. Amend subrule 55.3(3) to read as follows:

**55.3(3)** When an overpayment of estimated tax is indicated on the face of the return, the overpayment will ordinarily be refunded to the taxpayer by the department without the filing of a formal claim for refund. If a refund of the indicated overpayment is not received within a reasonable period of time, a claim for refund may be filed by the taxpayer on an official form obtainable from the Iowa Department of Revenue, ~~Corporation Audit Taxpayer Services~~ Section, Hoover State Office Building, Des Moines, Iowa 50319.

If an overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund shall be allowed.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may be properly assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year ~~or refunded~~, ~~such~~ the election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset ~~and~~ any subsequently determined tax liability.

ITEM 15. Amend subrule 57.1(1) to read as follows:

**57.1(1)** When the word "department" appears herein, ~~the same~~ it refers to and is synonymous with the "Iowa Department of Revenue"; the word "director" is the "Director of Revenue" ~~or the director's authorized assistants and employees~~; the word "division" is the ~~Income Tax Division, Iowa Department of Revenue~~; the word "tax" is the "franchise tax on financial institutions"; and the word "return" is the "franchise tax return."

The administration of the franchise tax is a responsibility of the ~~income tax division created by the director department~~. ~~This division~~ The department is charged with the administration of the franchise tax, subject always to the rules, regulations and direction of the director.

ITEM 16. Amend subrule 57.2(1), paragraph "f" to read as follows:

f. The department is allowed the longer of the periods of limitation as outlined in paragraph "a," "b," "c," "d," or "e," or six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination.

The notification shall be in writing in any form sufficient to inform the department of such final disposition, and attached thereto shall be a photo reproduction or carbon copy of the federal document which shows the

final disposition and any schedules necessary to explain the federal adjustments. The notification and copy of the federal document shall be mailed, under separate cover, to the ~~Corporation Audit Section~~ *Audit Division*, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. Any notification and copy of the federal document which is included in, made a part of, or mailed with an Iowa franchise tax return will not be considered as proper notification for the purposes of beginning the running of the six-month period.

When a taxpayer's income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer's income, a copy of the revenue agent's tax computation, a schedule of revised foreign tax credit on a separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

ITEM 17. Amend subrule 57.5(1) to read as follows:

**57.5(1)** A jeopardy assessment may be made ~~in a case~~ where a return has been filed; and the director believes for any reason that collection of the tax will be jeopardized by delay; ~~or in a case~~ where a taxpayer fails to file a return, whether or not formally called upon ~~to file a return. to do so, in which case~~ *The* department is authorized to estimate the income of the taxpayer upon the basis of available information, ~~and to add penalty and interest, and demand immediate payment.~~

ITEM 18. Amend rule 730—57.6(422) to read as follows:

**730—57.6(422) Information deemed confidential.** *Iowa Code* Section 422.72 applies generally to the director, deputies, auditors, *examiners*, agents, present or former officers and employees of the department. Disclosure of information from a taxpayer's filed return or report or other confidential state information by department of revenue personnel to a third person is prohibited under the above section. See rule 6.3(17A).

This rule is intended to implement Iowa Code sections 422.66 and 422.72.

ITEM 19. Amend rule 730—57.8(422) to read as follows:

**730—57.8(422) Delegation to audit and examine.** Pursuant to statutory authority the director delegates to the ~~director of the income tax division~~ *authorized assistants and employees* the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director. ~~The power so delegated may further be delegated by the director of the income tax division to such auditors, agents, clerks, and employees of the income tax division as he or she shall designate.~~

This rule is intended to implement *Iowa Code* sections 422.66 and 422.70 ~~of the Code~~.

ITEM 20. Amend subrule 58.2(1) to read as follows:

**58.2(1)** Returns of financial institutions. A return of income for all financial institutions must be filed on or before the delinquency date. The delinquency date for all financial institutions is the day following the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or the fiscal year; or the day following the last day of the period covered by an extension of time granted by the director. When the last day prior to the

## REVENUE DEPARTMENT[730] (cont'd)

delinquency date falls on a Saturday, Sunday or a legal holiday, the return will be timely if it is filed on the first business day following such the Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the ~~income tax division department~~ on or before the delinquency date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Franchise Tax Processing, Hoover State Office Building, Des Moines, Iowa 50319.

ITEM 21. Amend subrule 58.3(2) by striking the first unnumbered paragraph starting with the word "Supportive."

ITEM 22. Amend subrule 58.4(4) to read as follows:

58.4(4) Payment of tax by uncertified checks. The ~~income tax division department~~ will accept uncertified checks in payment of franchise taxes, provided such checks are collectible for their full amount without any deduction for exchange or other charges. The date on which the ~~income tax division department~~ receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two or more financial institutions' taxes, the remittance must be accompanied by a letter of transmittal stating:

- a. The name of the drawer of the check;
- b. The amount of the check;
- c. The amount of any cash, money order or other instrument included in the same remittance;
- d. The name of each financial institution whose tax is to be paid by the remittance; and
- e. The amount of payment on account of each financial institution.

ITEM 23. Amend rule 730—60.1(422) to read as follows:

**730—60.1(422) Notice of discrepancies.**

60.1(1) Notice of adjustment. An ~~agent, auditor, clerk or employee of the income tax division department~~, designated by the director of the ~~income tax division~~ to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of his or her the discovery by ordinary mail. ~~Such~~ The notice shall not be termed an assessment, and ~~it~~ may inform the taxpayer ~~what of the amount would be due from it~~ if the information discovered is correct.

60.1(2) Right of taxpayer upon receipt of notice of adjustment. A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, ~~it the taxpayer~~ should then file claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the ~~agent, auditor, clerk or employee who notified it the taxpayer~~ of the discrepancy, either in person or through correspondence, all matters of fact and law which ~~it the taxpayer~~ considers relevant to the situation. Documents and records supporting ~~its the taxpayer's~~ position may be required.

60.1(3) Power of ~~agent, auditor or employee to compromise tax claims. No employee of the department has~~

the power to compromise any tax claims. The power of the ~~agent, auditor, clerk or employee who notified the taxpayer of the discrepancy~~ is limited to the determination of the correct amount of the tax.

This rule is intended to implement *Iowa Code* sections 422.66, 422.25, and 422.28 of the Code.

ITEM 24. Amend subrule 60.3(1) to read as follows:

60.3(1) A claim for refund of franchise tax may be made on a form obtainable from the ~~income tax division department~~. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

ITEM 25. Amend subrule 60.3(3) to read as follows:

60.3(3) When an overpayment of estimated tax is indicated on the face of the return, the overpayment will ordinarily be refunded to the taxpayer by the department without the filing of a formal claim for refund. If a refund of the indicated overpayment is not received within a reasonable period of time, a claim for refund may be filed by the taxpayer on an official form obtainable from the Iowa Department of Revenue, ~~Corporation Audit Taxpayer Services~~ Section, ~~Lucas Hoover~~ State Office Building, Des Moines, Iowa 50319.

If an overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund shall be allowed.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may be properly assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year ~~or refunded, such the~~ election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

[Filed 2/22/85, effective 4/17/85]

[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

**ARC 5374**

**STATE PRESERVES  
ADVISORY BOARD[790]**

Pursuant to the authority of Iowa Code section 111B.8(2), the State Preserves Advisory Board at their regular meeting on February 12, 1985, rescinded the present Chapter 1 and adopted in lieu thereof Chapter 1, "Organization and Operation," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Vol. VII, No. 14, January 2, 1985, as ARC 5213.

These rules establish the guidelines to be followed in organization and operation of the state preserves board.

## STATE PRESERVES ADVISORY BOARD[790] (cont'd)

The only change from the notice is the deletion of "not" in two places in the last sentence of 790—1.5(111B).

These rules implement Iowa Code section 111B.8, and shall become effective April 18, 1985.

The following rules are adopted.

## CHAPTER 1

## ORGANIZATION AND OPERATION

**790—1.1(111B) Function.** The state advisory board for preserves was created by Iowa Code chapter 111B and is charged with the responsibility of locating, identifying, evaluating, and dedicating areas as state preserves.

**1.1(1) Organization and operation location.** The state advisory board for preserves is located within the Iowa Conservation Commission's office, Wallace State Office Building, Capitol Complex, Des Moines, Iowa 50319. Office hours are from 8:00 a.m. to 4:30 p.m., Monday through Friday.

**1.1(2) Membership.** The state advisory board for preserves consists of seven members, six of whom are appointed by the governor following the procedures detailed in the Code of Iowa.

**790—1.2(111B) Staff.** Recommends employment of a trained ecologist and personnel needed to carry out board duties.

**790—1.3(111B) Advisors.** Representatives of agencies, institutions, and organizations may serve as advisors.

**790—1.4(111B) Meetings.** Minimally the state preserves advisory board meets annually to elect a chairperson but may meet at other times. Meetings may be called either by the chairperson or on request to the chairperson by three board members.

All board meetings shall comply with Iowa Code chapter 28A. A quorum of two-thirds of the board members must be present to transact business. Meetings follow Robert's Rules of Order. Minutes of each meeting are available from the Chairperson, State Preserves Advisory Board, Iowa Conservation Commission, Wallace State Office Building, Capitol Complex, Des Moines, Iowa 50319.

**790—1.5(111B) Open records.** All public records of the board are available for public inspection during business hours. Requests to obtain records may be made by mail, telephone, or in person to the Director's Office, Iowa Conservation Commission. Minutes of the board meetings may be obtained without charge. Other records requiring more than five copies may be obtained upon payment of the actual cost for copying. Information concerning the nature and location of any preserve for which the excavation, destruction, or removal of a resource contained therein may be made available to the public unless such disclosure would create a risk or harm to such resources or to the site at which such resources are located.

**790—1.6(111B) Biennial reports.** The state preserves advisory board shall prepare a report accounting for the number of preserves in the state preserve system and containing any other pertinent information to be presented to the governor and legislature before January 15 on odd-numbered years.

**790—1.7(111B) Budget.** The state preserves advisory board shall prepare a budget for inclusion in the state conservation commission budget, for appropriation from the state general fund.

**790—1.8(111B) Petition for adoption of rules under Iowa Code section 17A.7.** A petition under section 17A.7 shall be made to the State Preserves Advisory Board, Iowa Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. The petition shall be submitted in writing; state the full name and address of the petitioner; set forth clearly and concisely the text of the proposed rule, or as precisely as possible the substance of the proposed rule; and state the facts, arguments, and data that favor the proposed rule. The petition must be subscribed by the petitioner, by an authorized officer of the petitioner if it be a corporation, organization, or other legal entity, or by the petitioner's attorney. The preserves board shall either initiate rulemaking proceedings or deny the petition within sixty days of receipt of the petition. If the petition is denied, the preserves board shall cause a statement to be sent to the petitioner which indicates the reasons for denial.

[Filed 2/20/85, effective 4/18/85]

[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.

**ARC 5375**

## STATE PRESERVES ADVISORY BOARD[790]

Pursuant to the authority of Iowa Code section 111B.8(2) the State Preserves Advisory Board at their regular meeting on February 12, 1985, adopted Chapter 2, "Management of State Preserves," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. VII, No. 14, January 2, 1985, as ARC 5214.

These rules establish guidelines to be followed in the management of state preserves.

There are no changes from the Notice of Intended Action.

These rules implement Iowa Code section 111B.8, and shall become effective April 18, 1985.

The following rules are adopted.

## CHAPTER 2

## MANAGEMENT OF STATE PRESERVES

**790—2.1(111B) General provisions.**

**2.1(1) Definitions.** As used in these rules, the following definitions shall apply:

- a. "Board" means the state preserves advisory board.
- b. "Commission" means the state conservation commission.
- c. "Articles of dedication" means those terms described in Iowa Code section 111B.9.
- d. "Preserves" means the same as defined in Iowa Code section 111B.1.

## STATE PRESERVES ADVISORY BOARD[790] (cont'd)

**2.1(2) Types of preserves.** There shall be five major classes of preserves.

a. Nature preserves. These areas which are of value primarily because they contain natural communities, habitats, or flora and fauna which have undergone little or no disturbance by modern man, or which contain species which are in danger of extinction in the state of Iowa.

b. Archaeological preserves. These areas contain important archaeological resources which include any material remains of past human life or activities which are of archaeological interest.

c. Historical preserves. These are sites which contain structures, objects, or features, both man-made and natural, which are of significance in studying the tenure of man in Iowa since European contact.

d. Geological preserves. These are areas which contain rare or distinctive landforms, fossils, stratigraphic sections, mineral deposits or examples of mining history; type or reference sections; or other special features or deposits which represent the events and processes of Iowa's earth history.

e. Scenic preserves. These are areas which contain scenic features of aesthetic or educational value.

**790—2.2(111B) Management provisions.**

**2.2(1) Administration and custody.** The administrative and custodial authority shall be designated in the articles of dedication. In the case that an individual is designated

as the custodian, the articles of dedication shall provide for a successional custodian(s) until the area is assured of permanent care.

**2.2(2) Management and use.** All rules for the management and use of a preserve shall be included in the articles of dedication. A specific management plan shall be attached to and made a part of the articles of dedication.

**2.2(3) Reports and records.** The custodian shall submit periodic reports to the board and to the commission as the board and the commission shall designate, and shall retain a copy of the report. These reports shall constitute a portion of the records for each preserve. Such records shall be open for public inspection at any reasonable time.

**2.2(4) Research.** In addition to cultural and natural history research, there may be continuing studies on the management of each preserve or on particular problems unique to each preserve. Management plans may be updated as necessary. Revisions shall be attached to the articles of dedication.

These rules are intended to implement Iowa Code section 111B.8.

[Filed 2/20/85, effective 4/18/85]

[Published 3/13/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/13/85.



State of Iowa  
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER TWELVE

- WHEREAS, it is estimated that there are currently more than 23 million functionally illiterate adults in the United States; and
- WHEREAS, each year an estimated 2.3 million join the pool of persons who are functionally illiterate; and
- WHEREAS, the ability to read and comprehend and write and compute is a virtual necessity in today's society; and
- WHEREAS, voluntary efforts on the part of Iowa citizens can do much to alleviate functional illiteracy within the state.
- WHEREAS, both public and private agencies have formed a cooperative network of staff and volunteers who are committed to the advancement of literacy in Iowa.
- NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the virtue of the authority vested in me by the laws and Constitution of the State of Iowa do hereby formally establish the Iowa Literacy Council composed of a director and advisory council which will be responsible to the Governor.

The Iowa Literacy Council shall be composed of no less than nine or more than fifteen citizens with a broad representation of skills and interests in promoting literacy in order to guide, support and review the work of the Iowa Literacy Program.

The members of the council shall be appointed by and serve at the will of the Governor with designated terms of three years; however, one-third of the initial members shall serve one-year terms and one-third of the initial members shall serve two-year terms. The chairperson shall be appointed by the Governor to serve at his discretion.

The Iowa Literacy Council shall work with the established executive committee composed of representatives from the Governor's Office for Volunteers, the Department of Public Instruction, and the Iowa Refugee Service Center to meet the following goals:

- 1) Seek to identify persons in need of literacy training and strive to serve any Iowan with a demonstrable need for these services.
- 2) Coordinate literacy programs in Iowa.
- 3) Serve as a clearinghouse for information on literacy services available in Iowa.
- 4) Provide greater visibility to literacy programs in Iowa, and encourage Iowans to volunteer their assistance.
- 5) Provide technical support to literacy volunteers and literacy programs.

IN TESTIMONY WHEREOF, I have here unto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 6th day of September in the year of our Lord one thousand nine hundred eighty-four.



Terry E. Branstad  
GOVERNOR

ATTEST:

Mary Jane O'Neil  
SECRETARY OF STATE



State of Iowa  
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER FIFTEEN

- WHEREAS, economic development and the creation of jobs for Iowa is a primary theme of this administration; and
- WHEREAS, several state and federal agencies play key roles in operating programs or providing advice which can help to improve the economic climate of Iowa; and
- WHEREAS, past coordination among state agencies has been successful as evidenced by the success of the Community Development Loan Program for cities, the Iowa Industrial New Jobs Training Program, the very recent Capitol for a Day project, the monthly publication and distribution of critical economic indicators and employment statistics to 15,000 Iowa businesses through Iowa Development Commission's Digest, and production of Iowa's widely distributed "Guide to Assistance for Economic Development; and
- WHEREAS, the Committee for Iowa's Future Growth suggested increasing coordination among the many entities whose activities have a bearing on economic development;
- NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by the laws and Constitution of the State of Iowa do hereby order that:
- I. There shall be created an Iowa Economic Development Coordinating Committee whose membership will include heads of key state agencies and representatives of federal agencies which can affect Iowa's economic future.
  - II. The purpose of this committee shall be to exchange information and suggestions on specific state or federal programs critical to Iowa's economic well-being and to share ideas on new initiatives. The Committee meetings shall be a principal means of interagency consultation to insure economy, efficiency, coordination and cooperation among public sector initiatives and to insure that new ideas have a forum for enlightened interagency debate prior to being put forward by any single agency.

III. The Committee shall be comprised of the following state organizations:

Iowa Development Commission  
 Office for Planning and Programming  
 Job Service of Iowa  
 Iowa Department of Public Instruction  
 Iowa Department of Agriculture  
 Iowa Housing Finance Authority  
 Iowa Board of Regents  
 Iowa Department of Water, Air, and Waste  
 Management  
 Iowa Department of Revenue  
 Iowa Department of Transportation  
 Iowa State University Extension Service  
 Center for Industrial Research and Services

IV. The following organizations shall be asked to participate with the Committee:

Iowa Business Growth Company  
 Iowa Association of Community College Presidents  
 and Boards of Trustees  
 Iowa's Small Business Development Centers'  
 representatives  
 Federal Economic Development Administration  
 Federal Small Business Administration  
 Federal Department of Housing and Urban Development  
 Federal Farmers Home Administration

V. Experts in such fields as revenue bonding, exports, and banking shall be called upon by the Committee for advice as is necessary to carry out its charge.

VI. The Committee shall meet on a regular basis and as is necessary to accomplish the objectives of this Executive Order. The Chairperson, to be selected by the Governor, shall be responsible for calling meetings and preparing meeting agendas with the advice of the membership.

VII. The Committee shall annually recommend to the Governor actions or policies which could further coordinate economic development responsibilities.



IN TESTIMONY WHEREOF, I have hereunto  
 subscribed my name, and caused the  
 Great Seal of the State of Iowa to be  
 affixed. Done at Des Moines this  
29th day of January  
 in the year of our Lord one thousand  
 nine hundred and eighty-five.

*Terry E. Branstad*  
 GOVERNOR

*Mary Jane O'Neil*  
 SECRETARY OF STATE

## SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

December 1984

ADMINISTRATIVE LAW

Schools; Appeals. Iowa Code § 290.1 (1983). Iowa Code § 290.1 is a statute of limitation for filing appeals with the State Board of Public Instruction. The word "filed" in § 290.1 means actually received by the agency in the absence of a rule that an affidavit of appeal is deemed to be filed when mailed. The State Board could provide by rule that an affidavit of appeal is deemed to be filed when mailed. (Fleming to Benton, State Superintendent of Public Instruction, 12/14/84) #84-12-7(L)

COUNTIES AND COUNTY OFFICERS

Prisoners; Board and Care Costs. Iowa Code §§ 356.30 as amended by S.F. 2269, Acts of the 70th G.A. 1983, 331.322(10), 331.658(2), 356.26, and 356.31 (1983). The statutory authorization in § 356.30 (1983) for a sheriff to charge a prisoner released on work release under § 356.26 (1983) for the cost of "board" allows the sheriff to charge the prisoner for lodging and other expenses. Such charges are subject to the restrictions imposed by §§ 356.30 and 356.31. (Hansen to Zenor, Clay County Attorney, 12/20/84) #84-12-10(L)

CRIMINAL LAW

Public Records; Public Safety, Department Of: Criminal history in control of youth service agencies. Iowa Code §§ 692.6 and 692.7 (1983); Acts of the 70th General Assembly, 1984 Session, House File 2380. Nothing in Iowa Code Ch. 692 (1983) permits youth service agencies receiving criminal history data pursuant to Acts of the 70th General Assembly, 1984 Session, House File 2380, to redisseminate such data. Any redissemination of criminal history data by a youth service agency would violate Iowa Code § 692.7 (1983) and could subject the persons to civil liability under Iowa Code § 692.6 (1983). Youth service agencies receiving criminal history data are subject to applicable rules promulgated by the Iowa Department of Public Safety. The agency should seek advice of counsel to determine whether grounds exist to resist legal process or subpoena of criminal history data. (Hayward to Taylor, State Senator, and Varn, State Representative, 12/20/84) #84-12-8(L)

HUMAN SERVICES, DEPARTMENT OF

Custodians; Foster Care. Iowa Code Supplement sections 232.2(I0), 232.2(I8), 600A.2(7), 600A.2(8) (1983). The Department of Human Services, as custodians for a child, has the authority to sign the consent forms necessary for the child to take part in school activities, get a driver's license and obtain certain types of medical care. (Phillips to Mayer, Assistant Clinton County Attorney, 12/20/84) #84-12-9(L)

INSURANCE

Public Employees: Group Health Insurance Plans. Iowa Code §§ 97B.41(3), 97B.42, 97B.45-.47 (1983); House File 2528 § 25 (1984 Session). The meaning of "retired," as used in House File 2528 § 25 (1984 Session), is defined by the applicable retirement systems for which a particular public employee is eligible. (Walding to Bauch, Black Hawk County Attorney, 12/11/84) #84-12-3(L)

IOWA CONSUMER CREDIT CODE

Exemptions for charges authorized by the Iowa Higher Education Loan Authority. Iowa Code §§ 261A.23, .24, 537.2401, .2509, and .2510 (1983). I.H.E.L.A. loans to participating educational institutions are not subject to the consumer credit code because they do not meet the definition of a consumer loan. Assuming that loans made by participating institutions to their students are subject to the consumer credit code, said institution may nevertheless charge and receive any amount or rate of interest or compensation for these loans provided that said charges are pursuant to reasonable rules adopted by the I.H.E.L.A. (Brammer to Williams, 12/5/84) #84-12-1(L)

LICENSING

Duplicate Licenses for Health Professionals. Iowa Code §§ 147.7 and 147.80(19) (1983). The Code does not prohibit the issuance of a duplicate license to be displayed in a branch office. (Hart to Pawlewski, Commissioner of Health, 12/14/84) #84-12-6(L)

MUNICIPALITIES

Utility Boards. Authority. Iowa Code Chapter 388 (1983); Iowa Code §§ 28.25-.29, 384.80(6), 384.84, 384.89, 388.1(2), 388.4, and 388.5 (1983); 250 I.A.C. § 16.2(8). A utility board may participate in activities of a local non-profit development corporation but cannot provide financial contributions to the local development corporation. (Walding to Van Gerpen, State Representative, 12/20/84) #84-12-11(L)

RACING COMMISSION

Horse Track Pari-Mutuel Tax. Iowa Code Supp. § 99D.15 (1983), as amended by the Acts of the 70th General Assembly, 1984 Session, Senate File 2328, Section 17. The tax credit created by Acts of the 70th General Assembly, 1984 Session, Senate File 2328, Section 17, would be applicable to the tax on all wagers made under the auspices of a license granted a single licensee for dog and horse races at the same facility. Any distinction between dog and horse racing in tax provisions arguably based upon policy or practical distinctions between such racing would be constitutional. (Hayward to Davis, Scott County Attorney, 12/11/84) #84-12-2(L)

STATE OFFICERS AND DEPARTMENTS

Government Contracts: Retained Funds. 1983 Iowa Code Supp. Ch. 593. The law limits the retainage for payment of claims of subcontractors on public contracts to five percent. A governmental body could provide expressly by contract for a greater amount but such a requirement is unnecessary. (Fleming to Richey, Executive Secretary, 12/14/84) #84-12-4(L)

Tort Liability: Liability of Governmental Units for Injuries to Offender Performing Unpaid Community Service. Iowa Code sections 25A, 85.59, 907.13 (1983). Governmental units or other entities using offenders performing unpaid community service work may be liable for workers' compensation or under general tort law for injuries to such workers. Offenders performing unpaid community service work are not relieved of all liability for torts they commit while performing the work. (Peters to Herrig, Dubuque County Attorney, 12/14/84) #84-12-5(L)

TAXATION

Property Tax; Property Acquisition by Farmer's Home Administration. 42 U.S.C. § 1490h, 7 C.F.R. §§ 1955.63, 1955.107, Iowa Code §§ 427.1(1), 445.37 (1983). The interaction of Iowa Code § 427.1(1) and 42 U.S.C. § 1490h requires Farmer's Home Administration to pay current taxes on property acquired by it through foreclosure proceedings. These provisions also require Farmer's Home Administration to satisfy any delinquent property tax liens that are outstanding against the property when it is acquired by foreclosure. If such current and delinquent taxes are not paid, they continue to constitute liens upon the property and the taxes are collectible by the tax sale procedure in Iowa Code Ch. 446 (1983). (Nelson to Wibe, Cherokee County Attorney, 12/26/84) #84-12-12(L)

STATUTES CONSTRUED

<u>Code, 1983</u>	<u>Opinion</u>	<u>Ia. Admns. Code</u>	<u>Opinion</u>
25A	84-12-5 (L)	24 I.A.C. § 16.2(8)	84-12-11 (L)
28.25-.29	84-12-11 (L)		
85.59	84-12-5 (L)	7 C.F.R. §§ 1955.63,	84-12-12 (L)
97B.41(3)	84-12-3 (L)	1955.107	
97B.42	84-12-3 (L)		
97B.45-.47	84-12-3 (L)		
99D.15	84-12-2 (L)		
147.7	94-12-6 (L)		
147.80(19)	84-12-6 (L)		
232.2(10), (18)	84-12-9 (L)		
290.1	84-12-7 (L)		
331.322(10)	84-12-10 (L)		
331.658(2)	84-12-10 (L)		
356.26	84-12-10 (L)		
356.30	84-12-10 (L)		
356.31	84-12-10 (L)		
384.84	84-12-11 (L)		
384.89	84-12-11 (L)		
388.1(2)	84-12-11 (L)		
388.4	84-12-11 (L)		
388.5	84-12-11 (L)		
427.1(1)	84-12-12 (L)		
445.37	84-12-12 (L)		
537.2401-.2409	84-12-1 (L)		
537.24010	84-12-1 (L)		
593	84-12-4 (L)		
600A.2(7), (8)	84-12-9 (L)		
-692.6	84-12-8 (L)		
692.7	84-12-8 (L)		
<u>70th G.A.</u>	<u>Opinion</u>		
H.F. 2380	84-12-8 (L)		
H.F. 2548, § 25	84-12-3 (L)		
S.F. 2328	84-12-2 (L)		
<u>U.S. Const.</u>	<u>Opinion</u>		
§ 1490(h)	84-12-12 (L)		

## SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

January 1985

AUDITOR, COUNTY

Filing Fees; Clerk's Transfer of Title. Iowa Code sections 331.507(2)(a), 558.66, 602.8102(79) (1983); Iowa Code section 333.15 (1979); 1984 Iowa Acts, H.F. 4. County auditors are entitled to receive the five dollar per-parcel-or-lot fee provided in section 331.507(2)(a), as amended by 1984 Iowa Acts, H.F. 4, as well as the one dollar fee provided in Iowa Code sections 558.66 (1983) and 602.8102(79) (Supp. 83) for certificates of transfer of title by clerks of court. (Ovrom to Short, Lee County Attorney, 1/7/85) #85-1-3(L)

COMPTROLLER, STATE

Allowable growth formula. Iowa Code § 442.7(7)(i). Comptroller's process of adding 1982-83 per pupil share of temporary school funds to basic allowable growth for the year beginning July 1, 1985 is consistent with Iowa Code § 442.7(7)(i). (Galenbeck to Krahl, State Comptroller, 1/25/85) #85-1-11(L)

CONSTITUTIONAL LAW

Separation of powers; Executive power of appointment. Iowa Const. Art. III § 1; Iowa Const. Art. IV §§ 1, 9, 10, 16; Ch. 2, § 2.32. It is likely that both statutes conditioning gubernatorial appointments to positions within the executive branch of government on senate confirmation and statutes providing procedures for senate confirmation would be upheld as constitutional if these statutes were challenged in court as violative of the separation of powers doctrine. (Pottorff to Ritsema, State Senator, 1/30/85) #85-1-14

COUNTIES AND COUNTY OFFICERS

Community Action Programs; 28E Agreements. Iowa Code §§ 7A.21-.28; Ch. 28E; § 331.302(1); § 331.304(1); § 331.756(7); § 364.5. (1) A public agency or combination may establish a community action agency by ordinance or resolution under § 7A.21. (2) Public agencies should amend or terminate a Chapter 28E agreement where a significant provision is not being followed. (3) Whether employees of a community action agency are employees of a public agency is dependent upon the specific relationship in question. (4) While § 7A.22 does not require that the establishment of an advisory board or a contract with a delegate agency board be in writing, § 331.302(1) would require that a county acting as the public agency do so by motion, resolution, or ordinance. (5) The governing board of a public agency acting as a community action agency has some oversight authority over the duties of an advisory or delegate agency board under §§ 7A.22(2) and 7A.23(1). (6) We cannot determine in the abstract whether an entity which administers certain grant funds for a public agency

under § 7A.22(2) can independently control other grant funds from separate sources. (7) A county board of supervisors which acts as the governing body of a community action agency by virtue of their position as county supervisors are not thereby a separate and distinct entity from the board of supervisors. (8) A county board of supervisors acting as the governing body for a community action agency may obtain advice from the county attorney upon matters in which the county is interested, but the community action agency may also engage legal counsel for the agency and the governing board as part of its authority to administer the community action program under § 7A.25. (Osenbaugh to Glaser, Delaware County Attorney, 1/7/85) #85-1-6(L)

County Conservation Board. Iowa Code §§ 68B.2, 331.342 (1983). County conservation board members are county officers governed by the conflict of interest prohibition in § 331.342. (Smith to Heitland, Hardin County Attorney, 1/11/85) #85-1-8(L)

Dissolution of County Library District. Iowa Code Ch. 358B (1983); Iowa Code §§ 331.425, 358B.2, 358B.4, 358B.8(8), 358B.10, 358B.11, 358B.12, and 358B.16 (1983); Senate File 2122 (1984 Session). 1. The effective dates for county withdrawal and termination of a county library district are not specified in Iowa Code Ch. 358B. 2. A city council which moves or a board of supervisors which calls for the withdrawal from a county library district must assure that a plan for continuing adequate library services is presented, which plan must be implemented. 3. A proposition of termination requires neither a public hearing nor a plan for continuing adequate library services. 4. While county withdrawal must be approved by a majority of the voters voting on the issue, district termination and city withdrawal require the approval of a majority of the total votes cast at a general or city election and not just a majority of the votes cast on the issue. (Walding to Welsh, State Senator, 1/7/85) #85-1-4(L)

Local Board of Health; Child Care Centers; Licensing: Regulation of Child Care Center by Local Board of Health. Iowa Const. Art. III, § 39A; §§ 137.6, 137.21, 331.301, 331.302, 237A.4, 237A.12, The Code 1983. A local board of health may promulgate more stringent regulations regarding child care centers than those promulgated by the Department of Human Services. Those regulations may be promulgated as rules, pursuant to Chapter 137, or as ordinances, pursuant to Chapter 331. A local board of health may charge fees for inspections of child care centers. (Phillips to Bauch, Black Hawk County Attorney, Burk, Assistant Black Hawk County Attorney, 1/25/85) #85-1-9(L)

#### DRAINAGE DISTRICTS

Investment of Public Funds. Iowa Code Chs. 453 and 455 (1983); Iowa Code §§ 452.10, 453.9 and 455.77; 1984 Iowa Acts Ch. 1230, §§ 3 and 14. A county may not invest otherwise idle funds in drainage district warrants or improvement certificates. (Lyman to Thole, Osceola County Attorney, 1/25/85) #85-1-12(L)

ENVIRONMENTAL LAW

Licenses. Iowa Code §§ 109.1, 109.38, 109.40 (1983); 1984 Acts, Ch. 406, § 12. A fur harvester's license does not authorize hunting of coyote or groundhog. In order for a hunter to legally take, by means of hunting, coyote or groundhog, he or she must have a hunting license. (Sarcone to Wilson, Director, State Conservation Commission, 1/7/85) #85-1-2(L)

HIGHWAYS

Weeds. Under County Home Rule, the county may include bushes and shrubs as noxious weeds under county weed ordinance. Trees are not noxious weeds. The responsibility for maintenance of secondary road right-of-way is on the county board of supervisors, § 317.11. Landowners have no duty to maintain right-of-ways except as provided by § 317.10 and § 317.18. The appropriate action by a private party to force the maintenance of the right-of-way would be to file a complaint with the county attorney's office. Section 317.24. (Peters to Hultman, State Senator and Andersen, Audubon County Attorney, 1/25/85) #85-1-10(L)

HOUSING

Zoning: Manufactured Homes. S.F. 2228 §§ 1, 2. Enforcement of a zoning ordinance which restricts residential districts to residential structures that comply with Uniform Building Code standards and operates to exclude from residential districts manufactured homes that meet federal construction and safety standards under § 5401 et. seq. violates Senate File 2228 if the exclusion is based solely on the variation between Uniform Building Code standards and federal construction and safety standards governing the same aspect of performance. (Pottorff to Davis, Scott County Attorney, 1/10/85) #85-1-7(L)

MUNICIPALITIES

Governmental Zoning Immunity. Iowa Code §§ 384.24(3)(d) and 384.25 (1983). A city is authorized to construct a sewage treatment plant and extension outside the corporate limits of the city. While under the test applied by the Iowa Supreme Court a city would not be subject to county zoning ordinances in the construction of such a sewage treatment plant, the city's site selection and any deviation from substantive county zoning requirements should have a reasonable basis. (Walding to Hammond, State Representative, 1/7/85) #85-1-1(L)

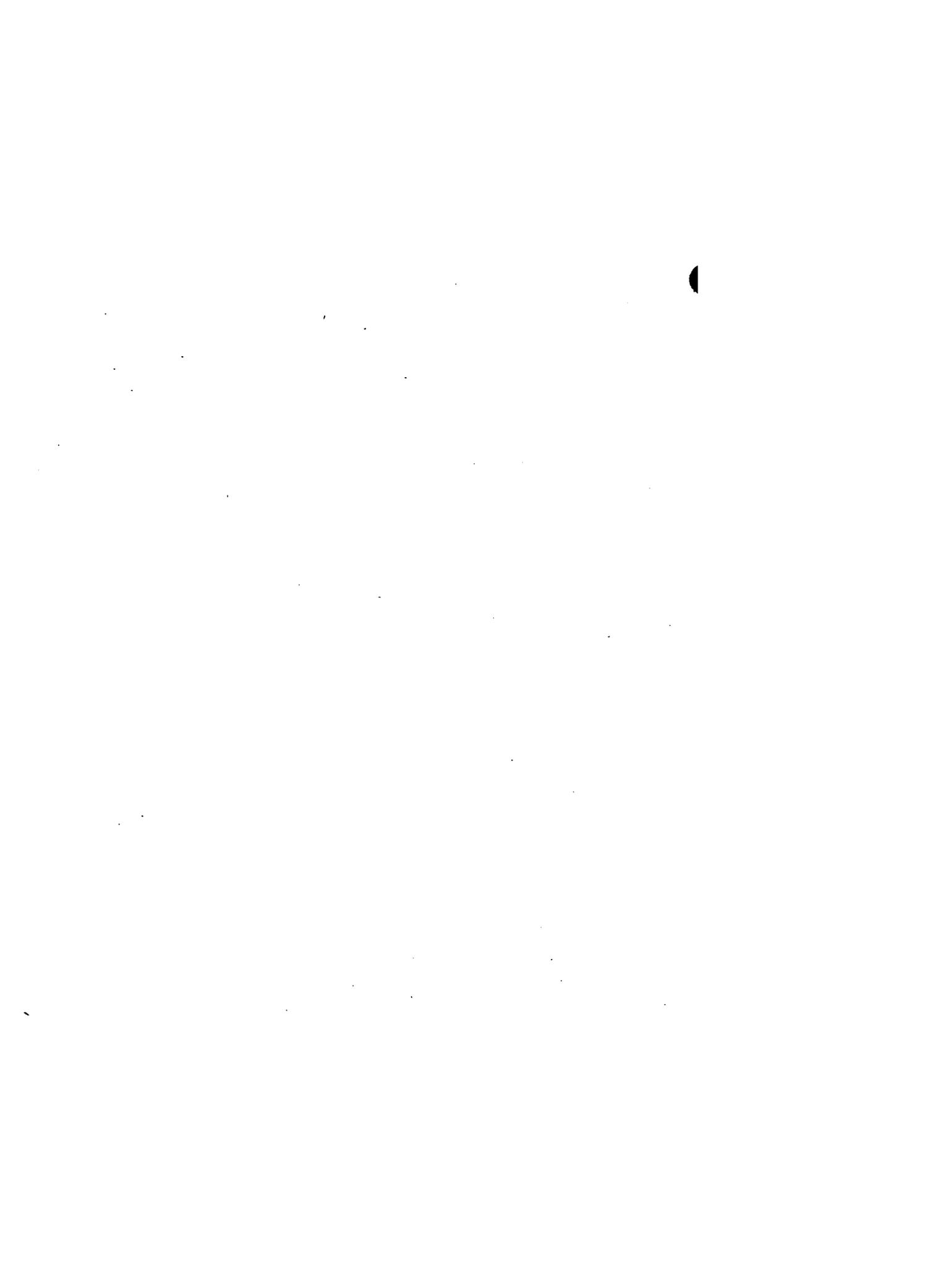
Medical Payments; Pensions. Iowa Code §§ 85.27, 410.8, 410.18, 411.6, and 411.15 (1983). A city must pay for medical treatment for work-related injuries and diseases for members of its police and fire departments receiving accidental disability pensions for injuries and diseases incurred in the performance of duty. (Hansen to Pavich, State Representative, 1/7/85) #85-1-5(L)

PUBLIC RECORDS

Reasonable Access; Parole Board; Department of Corrections; Visitor's Application. Iowa Code §§ 17A.2(7)(f), 28A.2(3), 28A.5, 28A.8(1), Ch. 68A, §§ 68A.3, 692.3; 291 I.A.C. 20.3(1)(f)(1-7), 291 I.A.C. § 20.13(2). The Department of Corrections has, by requiring a limited category of persons to submit to prior approval before attending Parole Board meetings, reasonably provided public access to on-site Parole Board meetings held in secure correctional institutions consistent with § 28A.5. Neither the appeal of the denial of entry into a correctional facility to visit an inmate or to attend a Parole Board meeting is a matter which must be decided by an agency after notice and an opportunity for evidentiary hearing. The only avenue for appeal of the refusal of the Department of Corrections to permit attendance at a Parole Board meeting is an original Ch. 28A action. That statute gives some latitude under the reasonable access language to governmental bodies in reasonably tailoring restrictions regarding attendance at meetings. (Morgan to Angrick, 1/25/85) #85-1-13(L)

## STATUTES CONSTRUED

<u>Code, 1983</u>	<u>Opinion</u>	<u>70th G.A.</u>	<u>Opinion</u>
7A.21-.28	85-1-6(L)	H.F. 4	85-1-3(L)
17A.2(7)(f)	85-1-13(L)	S.F. 2112	85-1-4(L)
28A.2(3)	85-1-13(L)	S.F. 2228, §§ 1,2	85-1-7(L)
28A.5	85-1-13(L)		
28A.8(1)	85-1-13(L)	<u>Code, 1979</u>	<u>Opinion</u>
28E	85-1-6(L)		
68A.3	85-1-13(L)	333.15	85-1-3(L)
68B.2	85-1-8(L)		
85.27	85-1-5(L)	<u>Iowa Acts</u>	
109.1	85-1-2(L)		
109.38	85-1-2(L)	1230, §§ 3 & 14	85-1-12(L)
109.40	85-1-2(L)		
137.6	85-1-9(L)	<u>Ia. Adms. Code</u>	<u>Opinion</u>
137.21	85-1-9(L)		
237A.4	85-1-9(L)	291, § 20.3(1)(f)(1-7)	85-1-13(L)
237A.12	85-1-9(L)	291, § 20.13(2)	85-1-13(L)
317.10	85-1-10(L)		
317.18	85-1-10(L)		
317.24	85-1-10(L)		
331.301	85-1-9(L)		
331.302	85-1-9(L)		
331.302(L)	85-1-6(L)		
331.304(1)	85-1-6(L)		
331.425	85-1-4(L)		
331.342	85-1-8(L)		
331.507(2)(a)	85-1-3(L)		
331.756(7)	85-1-6(L)		
358B.2	85-1-4(L)		
358B.4	85-1-4(L)		
358B.8(8)	85-1-4(L)		
358B.10	85-1-4(L)		
358B.11	85-1-4(L)		
358B.12	85-1-4(L)		
358B.16	85-1-4(L)		
364.5	85-1-6(L)		
384.24(3)(d)	85-1-1(L)		
384.25	85-1-1(L)		
410.8	85-1-5(L)		
410.18	85-1-5(L)		
411.6	85-1-5(L)		
411.15	85-1-5(L)		
442.7(7)(i)	85-1-11(L)		
452.10	85-1-12(L)		
453.9	85-1-12(L)		
455.77	85-1-12(L)		
558.66	85-1-3(L)		
602.8102	85-1-3(L)		
692.3	85-1-13(L)		





# IOWA ADMINISTRATIVE BULLETIN

Iowa State Printing Division  
Grimes State Office Building  
Des Moines, Iowa 50319

---

Bulk Rate  
U.S. Postage  
**PAID**  
Des Moines, Iowa  
Permit No. 1195