IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 1404 to 1452 include **ARC 5418** to **ARC 5442**

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PREFACE

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

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

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

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

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

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

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
22	Friday, April 5, 1985	April 24, 1985
23	Friday, April 19, 1985	May 8, 1985
24	Friday, May 3, 1985	May 22, 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
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Iowa Administrative Code Supplement - $137.00 plus $5.48 sales tax
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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

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RULEMAKING SCHEDULE

[Note: This schedule has been revised. Please disregard previous publications]

Schedule for Rulemaking
1985

FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 11	Jan. 30	Feb. 19	Mar. 6	Mar. 27	May 1	July 29
Jan. 25	Feb. 13	Mar. 5	Mar. 20	Apr. 10	May 15	Aug. 12
Feb. 8	Feb. 27	Mar. 19	Apr. 3	Apr. 24	May 29	Aug. 26
Feb. 22	Mar. 13	Apr. 2	Apr. 17	May 8	June 12	Sep. 9
Mar. 8	Mar. 27	Apr. 16	May 1	May 22	June 26	Sep. 23
Mar. 22	Apr. 10	Apr. 30	May 15	June 5	July 10	Oct. 7
Apr. 5	Apr. 24	May 14	May 29	June 19	July 24	Oct. 21
Apr. 19	May 8	May 28	June 12	July 3	Aug. 7	Nov. 4
May 3	May 22	June 11	June 26	July 17	Aug. 21	Nov. 18
May 17	June 5	June 25	July 10	July 31	Sep. 4	Dec. 2
May 31	June 19	July 9	July 24	Aug. 14	Sep. 18	Dec. 16
June 14	July 3	July 23	Aug. 7	Aug. 28	Oct. 2	Dec. 30
June 28	July 17	Aug. 6	Aug. 21	Sep. 11	Oct. 16	Jan. 13 '86
July 12	July 31	Aug. 20	Sep. 4	Sep. 25	Oct. 30	Jan. 27 '86
July 26	Aug. 14	Sep. 3	Sep. 18	Oct. 9	Nov. 13	Feb. 10 '86
Aug. 9	Aug. 28	Sep. 17	Oct. 2	Oct. 23	Nov. 27	Feb. 24 '86
Aug. 23	Sep. 11	Oct. 1	Oct. 16	Nov. 6	Dec. 11	Mar. 10 '86
Sep. 6	Sep. 25	Oct. 15	Oct. 30	Nov. 20	Dec. 25	Mar. 24 '86
Sep. 20	Oct. 9	Oct. 29	Nov. 13	Dec. 4	Jan. 8 '86	Apr. 7 '86
Oct. 4	Oct. 23	Nov. 12	Nov. 27	Dec. 18	Jan. 22 '86	Apr. 21 '86
Oct. 18	Nov. 6	Nov. 26	Dec. 11	Jan. 1 '86	Feb. 5 '86	May 5 '86
Nov. 1	Nov. 20	Dec. 10	Dec. 25	Jan. 15 '86	Feb. 19 '86	May 19 '86
Nov. 15	Dec. 4	Dec. 24	Jan. 8 '86	Jan. 29 '86	Mar. 5 '86	June 2 '86
Nov. 29	Dec. 18	Jan. 7 '86	Jan. 22 '86	Feb. 12 '86	Mar. 19 '86	June 16 '86
Dec. 13	Jan. 1 '86	Jan. 21 '86	Feb. 5 '86	Feb. 26 '86	Apr. 2 '86	June 30 '86
Dec. 27	Jan. 15 '86	Feb. 4 '86	Feb. 19 '86	Mar. 12 '86	Apr. 16 '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 See 17A.4(1)"b." If the agency does not adopt rules within this time frame, the Notice should be terminated.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CONSERVATION COMMISSION[290]		
Falconry regulations for hunting game, ch 100 IAB 2/27/85 **ARC 5357**	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 **ARC 5358**	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 **ARC 5359**	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 **ARC 5349**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 20, 1985 10:00 a.m.
Deer hunting regulations, ch 106 IAB 2/27/85 **ARC 5350**	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 **ARC 5351**	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 **ARC 5352**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 20, 1985 10:00 a.m.
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.
Waterfowl hunting on Forney Lake and Riverton Area, 14.1, 14.2 IAB 3/27/85 **ARC 5402**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 20, 1985 10:00 a.m.
HEALTH DEPARTMENT[470]		
Advanced emergency medical care, amendments to ch 132 IAB 3/27/85 **ARC 5400**	Third Floor Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 16, 1985 1:00 p.m.
HOUSING FINANCE AUTHORITY[495]		
Small business loan program, 5.22(4) IAB 3/27/85 **ARC 5410**	Authority Offices Suite 550 Liberty Bldg. 6th and Grand Des Moines, Iowa	April 16, 1985 10:30 a.m.
PUBLIC SAFETY, DEPARTMENT OF[680]		
Crime victim reparation, 17.3(2) IAB 4/10/85 **ARC 5421**	Conference Room Third Floor Wallace State Office Bldg. Des Moines, Iowa	April 30, 1985 10:00 a.m.
REGENTS, BOARD OF[720]		
Temporary suspension, 2.36(5) IAB 4/10/85 **ARC 5426**	Board Office Lucas State Office Bldg. Des Moines, Iowa	May 6, 1985 10:00 a.m. (If requested)

SOIL CONSERVATION DEPARTMENT[780]		
Surface coal mining and reclamation operations; amendments to ch 4 IAB 3/27/85 **ARC 5417**	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 19, 1985 10:00 a.m.
TRANSPORTATION, DEPARTMENT OF[820]		
Driver licenses, amendments to, [07,C] ch 13 IAB 2/27/85 **ARC 5331**	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	April 16, 1985
Financial responsibility, amendments to, [07,C] ch 14 IAB 2/27/85 **ARC 5332**	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	April 16, 1985
Financial assistance, [09,B] 1.3(2)"a" IAB 2/27/85 **ARC 5333**	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	April 16, 1985

ARC 5442

COMMERCE COMMISSION[250]

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.

The Iowa State Commerce Commission hereby gives notice that on March 20, 1985, the Commission issued an order in Docket No. RMU-85-5, In Re: Metering Requirements, Iowa Administrative Code 250, "Order Commencing Rulemaking," pursuant to the authority of Iowa Code sections 474.5 and 476.2, amending Iowa Administrative Code 250—subrules 19.3(1) and 20.3(1). Our present rules allow a number of exceptions to the requirement that utility service to multioccupancy premises be measured and sold on the basis of individual meters. One of these exceptions provides that where service initiated prior to January 1, 1979, is delivered to premises and resold as an undefined part of a fixed rental or lease payment, individual metering is not required.

The Commission is concerned that the section of the rule dealing with the resale of utility service as an undefined part of a fixed rental or lease payment could be interpreted to imply Commission authority over rental payments. This is not the intention of the Commission. When a landlord is simply passing on utility costs to tenants and not remetering or repricing utility service, the allocation of those costs should not be considered a utility function. We therefore propose to delete from 19.3(1)"b" and 20.3(1)"b" language that might be interpreted otherwise.

We further propose to streamline the rules by deleting or restating the superfluous sections of 19.3(1) and 20.3(1). The proposed revisions will result in more efficient, less complex rules governing metering of gas and electric service.

Pursuant to the authority of Iowa Code sections 17A.4(1)"a" and 17A.4(1)"b," all interested persons may file written comments on the proposed rules no later than April 30, 1985, by filing an original and ten copies of the comments substantially complying with the form prescribed in Iowa Administrative Code 250—subrule 2.2(2). All comments and requests shall clearly indicate the author's name and address and refer to this docket and the rule upon which comment is submitted. All communications shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319.

Oral presentation in this matter may be requested as set forth in Iowa Code section 17A.4(1)"b" and Iowa Administrative Code 250—rule 3.6(17A,474).

ITEM 1. Amend Iowa Administrative Code 250—subrule 19.3(1) to read as follows:

19.3(1) Disposition of gas. ~~In all cases~~ *T*~~t~~he meter and any service line pressure regulator shall be owned by the utility. The utility shall place a visible seal~~; such as wire or lead,~~ on all meters and service line regulators in customer use, such that the seal must be broken to gain entry.

a. All gas sold by a utility shall be on the basis of meter measurement except:

(1) Where the consumption of gas may be readily computed without metering; or

(2) For temporary service installations.

b. All gas delivered to multioccupancy premises ~~at which~~ *where* units ~~of such premises~~ are separately rented~~, leased~~ or owned shall be sold by a utility on the basis of individual meter measurement for each ~~such occupancy~~ unit except:

~~(1)~~ *f*~~F~~or that gas used in centralized heating, cooling, *or* water-heating ~~or ventilation~~ systems;,

~~(2)~~ *w*~~W~~here individual metering is impractical, ~~unreasonable or uneconomical;~~ *or*

~~(3)~~ *w*~~W~~here submetering or resale of service was permitted prior to ~~July 12,~~ 1966 ~~by rule, order or other act of the commission; or~~.

~~(4) Where gas service, initiated prior to January 1, 1979, is delivered to premises and resold as an undefined part of a fixed rental or lease payment.~~

c. This rule shall not be construed to prohibit any utility from requiring more extensive individual metering than otherwise required by this rule if pursuant to tariffs filed with and approved by the commission.

d. All gas consumed ~~within~~ *by* the utility ~~itself~~ shall be on the basis of meter measurement except:

~~(1)~~ *w*~~W~~here ~~the~~ consumption ~~of gas~~ may be readily computed without metering; or

~~(2)~~ *w*~~W~~here metering is impractical~~, unreasonable or uneconomical~~.

ITEM 2. Amend Iowa Administrative Code 250—subrule 20.3(1) to read as follows:

20.3(1) Disposition of electricity. ~~In all cases~~ *T*~~t~~he meter and associated instrument transformers shall be owned by the utility. The wiring between the instrument transformers and the meter shall be owned or controlled by the utility. The utility shall place a visible seal~~; such as wire and lead,~~ on all meters in customer use, such that the seal must be broken to gain entry.

a. All electricity sold by a utility shall be on the basis of meter measurement except:

(1) Where the consumption of electricity may be readily computed without metering; or

(2) For temporary service installations.

b. All electricity delivered to multioccupancy premises ~~at which~~ *where* units ~~of such premises~~ are separately rented~~, leased~~ or owned shall be sold by a utility on the basis of individual meter measurement for each ~~such occupancy~~ unit except:

~~(1)~~ *f*~~F~~or that electricity used in centralized heating, cooling, water-heating or ventilation systems;,

~~(2)~~ *w*~~W~~here individual metering is impractical, ~~unreasonable or uneconomical;~~ *or*

~~(3)~~ *w*~~W~~here submetering or resale of service was permitted prior to ~~July 12,~~ 1966 ~~by rule, order or other act of the commission; or~~.

~~(4) Where electric service, initiated prior to January 1, 1979, is delivered to premises and resold as an undefined part of a fixed rental or lease payment.~~

c. This rule shall not be construed to prohibit any utility from requiring more extensive individual metering than otherwise required by this rule if pursuant to tariffs filed with and approved by the commission.

d. All electricity consumed ~~within~~ *by* the utility ~~itself~~ shall be on the basis of meter measurement except:

~~(1)~~ *w*~~W~~here ~~the~~ consumption ~~of electricity~~ may be readily computed without metering; or

~~(2)~~ *w*~~W~~here metering is impractical~~, unreasonable or uneconomical~~.

ARC 5441

COMMERCE COMMISSION[250]

NOTICE OF TERMINATION

The Iowa State Commerce Commission gives notice, in accordance with Iowa Code section 17A.4(1)"b," that on March 22, 1985, the Commission issued an order in Docket No. RMU-84-21, In Re: Credit procedures and accounting practices for uncollectibles, "Order Terminating Rulemaking."

The Commission commenced this rulemaking to amend Iowa Administrative Code 250—Chapters 16, 19, 20 and 22. The changes were proposed to ensure that utilities would employ adequate credit screening and collection practices in their handling of customer accounts. The proposed rulemaking also required a utility to account below the line for that portion of its bad debt expense and uncollectible revenues due to inadequate credit or collection practices.

The Notice of Intended Action was published on August 15, 1984 in the Iowa Administrative Bulletin as **ARC 4912**. The deadline for written comments was September 4, 1984.

The following parties filed written comments in this proceeding: AT&T Communications of the Midwest, Central Telephone Company, Eastern Iowa Light and Power Cooperative, Great River Gas Company, Interstate Power Company, Iowa Electric Light and Power Company, Iowa Gas Company, Iowa-Illinois Gas and Electric Company, Iowa Power Company, Iowa Public Service Company, Iowa Southern Utilities Company, Iowa Telephone Association, Northwestern Bell Telephone Company, Office of Consumer Advocate, Peoples Natural Gas Company, Union Electric Company, United Telephone System, Iowa Association of Municipal Utilities, Iowa Ratepayers Association, Community Action Research Group, United Neighbors Incorporated and Woodbury Community Action Agency. A hearing on this matter was held on September 24, 1984.

Most parties filing comments, or participating in the oral presentation, believed the rules as proposed would not be cost effective in reducing the level of bad debt expense incurred by a utility. Concerns were also raised about the effect of the proposed rules on a utility's ability to provide prompt service to its customers. Based upon these and other comments received, the Commission has decided not to adopt the proposed rules at this time. The rulemaking has been terminated.

ARC 5436

HUMAN SERVICES DEPARTMENT[498]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 96, "Nonassistance Child Support Recovery Program," appearing in the Iowa Administrative Code. The Department is authorized to recommend to the Council for adoption such rules as are necessary to carry into practice the programs of the various divisions.

The Child Support Amendments of 1984 and proposed federal regulations, dated September 19, 1984, require states to provide five months of free nonassistance support services to individuals who are canceled from the Aid to Dependent Children (ADC) program. Final regulations have not been published but Iowa has chosen to proceed with providing the services at this time.

These amendments describe the services available to canceled ADC recipients, method of notification that support services are to be continued, and the rights of the individual to request termination of services or to reapply for services after requesting termination.

The Child Support Amendments of 1984 also allow for the first time claims against federal income tax refunds for delinquent support owed to nonassistance recipients of support services, beginning with calendar year 1986. Cases must be certified to the Internal Revenue Service by October 1, 1985. Federal regulations mandate that before a case is certified, the absent parent's name, social security number, and the amount of the delinquency must be verified by the state.

Therefore, it is necessary that the individuals receiving nonassistance services report the amounts of support they receive. These amendments provide a method for the individuals to report the information, thus allowing for certification to be made to set off federal taxes.

The state has been required to report nonassistance collections in the past, but the information has not been accurate. A variety of means were used to collect the information, including calling clerks of court and clients. At the current time the incentive paid to the state by the federal government for collections received has been based solely on collections for ADC recipients. Effective October 1, 1985, the incentive the state receives will be based on both collections for ADC recipients and nonassistance cases, which will also require more accurate information on nonassistance collections.

These amendments make other minor additions and corrections to the rules, including:

1. Giving examples of the kinds of legal and administrative tools used to collect delinquent support;
2. Eliminating the requirement for notification of the individual when the case changes from a nonassistance to assistance case since services are not interrupted as they were previously; and
3. Correcting the reference to the form used to apply for nonassistance support services.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before May 1, 1985.

These rules are intended to implement Iowa Code section 252B.4.

ITEM 1. Amend rule 498—96.1(252B) as follows:

498—96.1(252B) Services available. The child support collection or paternity determination services established by the department for collection of child support from the absent parents of children receiving aid to dependent children shall be made available to any individual not otherwise eligible for ~~those services~~ *aid to dependent children.* The services shall be made available to individ-

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

uals upon the *completion and* filing of an application with the child support recovery unit *except for those individuals who are eligible for services under rule 498—96.10(252B).*

The child support recovery unit shall provide the following services for the individual not otherwise eligible for the services as a public assistance recipient:

96.1(1) The location of the absent parent who owes a liability of support to any child in the custody of said individual, to be used for the enforcement and collection of child support and only from sources that permit the disclosure of information by the child support recovery unit.

96.1(2) Establishment of the paternity of any child of the caretaker ~~individual~~.

96.1(3) Contacting the absent parent in regard to a support obligation in an attempt to secure voluntary compliance with said obligation.

96.1(4) Enforcing the court ordered obligation of the absent parent through contempt or other proceedings and initiating a uniform reciprocal enforcement of support action for reducing an obligation of support to court order where no such order is in existence.

96.1(5) The use of other legal and administrative tools as warranted *including but not limited to income withholding, garnishment, attachment of a lien, execution of a lien, and income tax setoff* to ~~obtain~~ *collect* the support payments.

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

ITEM 2. Amend subrule **96.3(2)**, paragraph "b," as follows:

b. ~~The recipient~~ *An individual* shall ~~also~~ *not* be notified ~~in writing~~ when the status of ~~a~~ *the* case changes from a *nonassistance* case ~~not receiving aid to dependent children~~ to a case receiving aid to dependent children *since support services are not interrupted.*

ITEM 3. Rescind rule 498—96.4(252B) and insert the following in lieu thereof:

498—96.4(252B) Application for services. An individual requesting services under this section, except for those individuals eligible to receive support services in accordance with rule 498—96.10(252B), shall complete and return Form 470-0188, Application for Nonassistance Support Services, to the child support recovery unit serving the county where the individual resides.

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

ITEM 4. Amend 498—chapter 96 by adding the following new rule:

498—96.10(252B) Services available to canceled aid-to-dependent-children recipients. Support services shall automatically be provided for the five months immediately following cancellation, without application or fee, to individuals who were eligible to receive support services as recipients of aid to dependent children and who were canceled from aid to dependent children. Continued support services shall not be provided to an individual who has been canceled from aid to dependent children when a claim of good cause, as defined in subrule 41.2(8) was valid at the time benefits were canceled.

Services shall also be automatically provided continuously to these individuals without application following the five months immediately following cancellation subject to any applicable fees.

96.10(1) Notice of services. Within forty-five days from the date aid-to-dependent-children benefits are canceled or within fifteen days from the date the unit is notified of the cancellation of benefits, the department shall forward Form CS-1113, Notice of Continued Support Services, to an individual's last known address to inform the individual of eligibility for and duration of the continued services.

96.10(2) Termination of services. Individuals receiving five months of continued support services shall not have the services terminated by the department prior to the end of the five-month period unless the individual becomes eligible for aid to dependent children or the individual requests termination of services.

An individual may request the department to terminate support services during or at any time after the five months of continued services by the completion and return of the bottom portion of Form CS-1113, or in any other form of written communication, to the child support recovery unit.

96.10(3) Reapplication for services. An individual who requests termination of support services during or at any time after the five months of continued services may again receive the services of the unit by being eligible for aid to dependent children or by completion and submittal of the application for nonassistance support services described in rule 498—96.4(252B), and the payment of any application fee charged by the department.

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

ITEM 5. Amend 498—chapter 96 by adding the following new rule:

498—96.11(252B) Responsibilities of recipients. The individual receiving nonassistance support services shall co-operate by giving complete and accurate information needed to establish and enforce a support obligation.

Form CS-1115, Report of Monthly Support Received, shall be forwarded to each individual receiving nonassistance support services at the end of each month with a postage-paid return envelope. The individual shall complete, sign, and return Form CS-1115 to the Child Support Recovery Unit, 5th Floor, Hoover Building, Des Moines, Iowa 50319 by the tenth calendar day of each month to report whether support was received in the preceding month and the amount of support received.

Failure of the individual to return the completed form shall result in support services being suspended by the child support recovery unit until the requested information is received.

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

ARC 5421

PUBLIC SAFETY DEPARTMENT[680]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 912.3, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 17, "Crime Victim Reparation," Iowa Administrative Code.

The present rules of the Department allow conviction and revocation as evidence of a violation of Iowa Code section 321.281 for the purpose of victim reparation. The Department feels this should be expanded to allow other probative evidence.

Any interested person may make written suggestions or comments on this proposed rule amendment prior to April 30, 1985. Such written materials should be directed to the Director, Administrative Services Division, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Director, Administrative Services Division at 515-281-3211 or in the Administrative Services Division offices on the third floor of the Wallace State Office Building. Also, there will be a public hearing on Tuesday, April 30, 1985, at 10:00 a.m. in the conference room on the third floor of the Wallace State Office Building. Persons may present their views at this public hearing either orally or in writing.

Persons who wish to make oral presentations at the public hearing should contact the director of the Administrative Services Division at least one day prior to the date of the public hearing.

This rule is intended to implement Iowa Code chapter 912.

The following amendment is proposed:

Subrule **17.3(2)** shall be amended by adding a new item 5.

5. Other probative evidence as is relevant to the issue of intoxication.

ARC 5426

REGENTS, BOARD OF[720]

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 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 2, "Supplemental Specific Rules for Each Institution."

The proposed amendments will continue suspension of the parietal rule at the University of Northern Iowa through May 1987. The rules presently state that the parietal rule is suspended for freshman and sophomore students through May 1985. All of these actions are taken with the understanding that the Board of Regents will publish notice before any enforcement of the parietal rule. A public hearing will be scheduled no less than twenty days after the published notice. A record of all written and oral statements made at the public hearing will be presented to the Board of Regents prior to enforcement of the parietal rule.

Any interested person may submit written suggestions or comment on the proposed rule on or before May 3, 1985. Written materials should be sent to R. Wayne Richey, Executive Secretary, State Board of Regents, Lucas State Office Building, Des Moines, Iowa 50319. If a request is received for an opportunity to make an oral presentation as provided in Iowa section 17A.4, subsection 1, paragraph "b," by May 3, 1985, the presentation may be made at the above-named office on May 6, 1985 at 10:00 a.m.

This rule is intended to implement Iowa Code section 262.9, subsection 11.

The following amendment is proposed:

2.36(5) Temporary suspension. This rule is suspended for freshman and sophomore students through May ~~1985~~ *1987*. ~~The rules shall be automatically reinstated after May 1985, unless the board of regents takes action to extend the period of suspension.~~ *The board of regents will publish notice before any enforcement of the parietal rule. A public hearing will be scheduled no less than twenty days after published notice. A record of all written and oral statements made at the public hearing will be presented to the board of regents prior to enforcement of the parietal rule.*

ARC 5419

SECRETARY OF STATE[750]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 47.1, the Secretary of State gives Notice of Intended Action to amend 750—Chapter 11, "Election Forms and Instructions," Iowa Administrative Code.

The purpose of the proposed amendment is to provide a method for including interested persons in the preparation of the description to be printed on the ballots for proposed constitutional amendments and statewide public measures.

SECRETARY OF STATE[750] *(cont'd)*

Any interested persons may make written suggestions or comments on this proposed rule prior to April 30, 1985. Such written materials should be directed to the Secretary of State, State Capitol Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 49.44.

Rule 11.2(49) is amended by adding the following new subrule:

11.2(3) The words describing proposed constitutional amendments and statewide public measures when they appear on the ballot shall be determined by the state commissioner. The state commissioner shall select the words describing the proposed constitutional amendments and statewide public measures in the following manner:

a. Not less than one hundred fifty days prior to the election at which a proposed constitutional amendment or statewide public measure is to be voted on by the voters, the state commissioner shall prepare a proposed description to be used on the ballots in administrative rule form and shall file the proposed rules with the administrative rules coordinator for publication in the Iowa administrative bulletin.

b. The rules shall provide that written comments regarding the proposed description will be accepted by the state commissioner for a period of time not less than twenty days after the date of publication in the Iowa administrative bulletin.

c. The state commissioner shall review any written comments which have been timely received and make any changes deemed to be warranted in the description to be printed on the ballots.

ARC 5437

WATER, AIR AND WASTE MANAGEMENT[900]

WATER, AIR AND WASTE MANAGEMENT COMMISSION

TERMINATION OF NOTICE

Pursuant to Iowa Code sections 455B.105 and 455B.109, the Water, Air and Waste Management Commission gives notice that at its meeting on March 19, 1985 it terminated the Notice of Intended Action proposing to adopt a new 900—Chapter 10, pertaining to the department's compliance and enforcement practices and the assessment of administrative penalties for minor violations. The Commission intends to initiate new rulemaking in this area in the near future. The prior notice was published on January 16, 1985 as **ARC 5242**. Due to comments from the public and the Iowa Attorney General, the Commission decided to start the rulemaking process over.

ARC 5428

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services hereby amends Chapter 41, "Granting Assistance," and Chapter 46, "Recoupment," appearing in the Iowa Administrative Code. The Department has the authority to promulgate such rules and regulations as may be necessary to make administration of the Aid to Dependent Children (ADC) program uniform in all the counties of the state.

The Council on Human Services adopted these rules March 20, 1985. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin February 13, 1985, as **ARC 5310**.

The United States Congress passed the Deficit Reduction Act of 1984 (DEFRA) on June 27, 1984. The Act was signed by President Reagan on July 18, 1984. The Department implemented changes mandated by DEFRA having a positive impact on clients on October 1, 1984 and those having a negative impact on clients on December 1, 1984.

The Deficit Reduction Act also allows states various options in the administration of the aid to dependent children program. These amendments implement three of the options provided by DEFRA, as follows:

1. Families must currently undergo a three-step eligibility determination for ADC: a. Total gross income must not exceed 185 percent of the state's standard of need. b. Total net income after deduction of allowable work expenses must be less than the standard of need. c. Total net income after deductions of allowable work expenses and earned income disregards must be less than the payment standard. Currently, earnings of a child who is a full-time student are disregarded in determining the amount of payment to the family, step c, only.

Under DEFRA, states are permitted to exclude for up to six months all or any part of the earned income of a dependent child who is a full-time student in determining whether the family's income exceeds 185 percent of the state's standard of need and in determining whether the family's income equals or exceeds the standard of need without allowable earned income disregards. The Department chose to exclude all of the child's earnings for the entire six months per calendar year as permitted.

2. Under current rules, the period of ineligibility due to the receipt of lump sum income by ADC clients may be shortened when the expenditure of the funds has been made for: a. Medical services for members of the eligible group or their dependents. b. Cost of repairs necessary to maintain habitability of the home. c. Cost of the replacement of exempt resources due to fire, tornado, or other natural disaster. d. Funeral or burial expenses for members of the former eligible group or their dependents.

Under DEFRA, states are permitted to shorten the period of ineligibility caused by the receipt of lump sum income in three situations: a. An event occurs which would have affected the amount payable if the family were receiving aid. b. The lump sum, or a portion of the lump sum becomes unavailable to the family for a reason that is beyond the family's control. c. A family member incurs and pays for medical expenses. Iowa had already chosen to allow option c as a life threatening circumstance under current rules. These rules shorten the period of ineligibility when: a. The schedule of living costs increases or b. The lump sum or a portion of the lump sum becomes unavailable to the eligible group.

3. Current rules require recoupment on all overpayments. Under DEFRA, states are permitted to not recover overpayments for individuals no longer receiving aid, except for cases involving fraud, when the cost to collect the overpayment would equal or exceed the amount of the overpayment. States may elect to not take action to recover ADC overpayments of less than $35.00, the amount currently in effect for the food stamp program. At $35.00 or above, the state must attempt to notify the individual no longer receiving aid of the amount and the reason for the overpayment and request that repayment be made. After that effort, the state may elect to not pursue recovery if it determines that such action would not be cost effective. The state must maintain information for three years concerning former recipients who received overpayments since if one or more of these individuals again receives assistance the state agency is required to make the recovery (including overpayments less than $35.00).

The Department has chosen to suspend recoupment on closed cases when the overpayment is less than $35.00, and the overpayment is not due to fraud. When a claim has been in suspense for three years, recoupment will be waived.

The Department of Human Services finds that these changes confer a benefit on the public by excluding certain earnings of children when determining eligibility, shortening the period of ineligibility caused by the receipt of lump sum income in certain situations and suspending recoupment in certain cases. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

Subrule 41.7(9), paragraph "c," subparagraph (2) was changed to correct a rule reference.

These rules are intended to implement Iowa Code sections 239.5 and 239.17.

These rules became effective April 1, 1985.

ITEM 1. Amend rule **498—41.7(239)** as follows:

Amend subrule **41.7(2)** paragraph "e" as follows:

e. The earnings as defined in 41.7(2) of an eligible child are disregarded as income when the child is a full-time student as defined in 41.4(1)"a"(1) and (2) or a part-time student who is not a full-time employee, as defined in 41.7(2)"b." A student is one who is attending a school, college or university, or a course of vocational or technical training designed to fit the person for gainful employment and includes a participant in the Job Corps program. Initial eligibility is determined without application of this disregard; *and* ~~The~~ *the* earned income of the eligible child shall be considered income in the one hundred eighty-five percent eligibility test prescribed in 41.7(239), *unless the income is exempt under 41.7(7).*

Amend subrule **41.7(7)** by adding the following new paragraph:

y. Earnings of a child who is a full-time student as defined in 41.7(2)"e" for six calendar months in a calendar year. This exemption does not apply to earnings under Job Training Partnership Act of 1982.

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

Amend subrule **41.7(9)** paragraph "c" by rescinding subparagraph (2) and inserting the following in lieu thereof:

(2) Nonrecurring lump sum income. Nonrecurring lump sum income, except as specified in 41.7(7)"c" and 41.7(8)"b," shall be treated in accordance with this rule. Nonrecurring lump sum income shall be considered as income in the budget month, and counted in computing eligibility and the amount of the grant for the payment month. Nonrecurring lump sum unearned income is defined as a retroactive payment of benefits, such as social security, job insurance or workers' compensation. A lump sum payment of earned income credit shall be treated as a nonrecurring lump sum payment of earned income. When countable income, exclusive of the aid-to-dependent-children grant but including countable lump sum income, exceeds the needs of the eligible group, the case shall be canceled or the application rejected. The eligible group shall be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter.

The period of ineligibility shall be shortened when the schedule of living costs as defined in 41.8(2) increases.

The period of ineligibility shall be shortened by the amount which is no longer available to the eligible group due to a loss, a theft or because the person controlling the lump sum no longer resides with the eligible group and the lump sum is no longer available to the eligible group.

The period of ineligibility shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their dependents for services listed in 498—chapters 78, 81, 82 and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over twenty-five dollars per incident; cost of replacement of exempt resources as defined in subrule 41.6(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

When countable income, including the lump sum income, is less than the needs of the eligible group, the lump sum shall be counted as income for the budget month. For purposes of applying the lump sum provision, the eligible group is defined as all eligible persons and any other individual whose lump sum income is counted in determining the period of ineligibility. During the period of ineligibility, individuals not in the eligible group when the lump sum income was received may be eligible for aid to dependent children as a separate eligible group. Income of this eligible group plus income, excluding the lump sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant.

ITEM 2. Amend rule 498—46.7(239) by adding the following new subrule:

46.7(6) Suspension and waiver. Recoupment will be suspended on nonfraud overpayments when the case is canceled and the amount of the overpayment is less than $35.00. If the case if reopened within three years, recoupment is initiated again. Recoupment will be waived on overpayments which have been held in suspense for three years.

[Filed emergency after Notice 3/22/85, effective 4/1/85]
[Published 4/10/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5429

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.

The Continuing Resolution (Public Law 98-107) of 1983 expanded food stamp participation to residents of both private, nonprofit organizations and publicly operated community mental health centers. The residents of private, nonprofit drug addiction and alcohol treatment centers had been allowed to participate for a number of years.

The Department was notified by the Regional Office in January that the Continuing Resolution expired October 1, 1984. Clarification was requested and received from the Regional Office on February 11, 1985, that the expiration of the Continuing Resolution only removed residents of publicly operated community mental health centers.

This amendment clarifies that publicly operated community mental health centers and residents are not eligible to participate in the food stamp program.

The Department of Human Services finds that public comment is unnecessary. The Department must comply with federal regulations. Therefore, this rule is filed pursuant to rule 498—1.5(17A) and Iowa Code section 17A.4(2).

The Department finds that this rule confers a benefit on the public by assuring continued federal funding and allowing the program to remain in operation. Currently there are no participants in the food stamp program from publicly operated community mental health centers. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted this rule on March 20, 1985.

This rule is intended to implement Iowa Code section 234.12.

This rule became effective April 1, 1985.

Amend rule 498—65.9(234) as follows:

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

498—65.9(234) Treatment centers. Alcoholic or drug treatment or rehabilitation centers shall provide the local office with a certified list of residents currently participating in the food stamp program on a monthly basis. *Publicly operated community mental health centers and residents are not eligible to participate in the food stamp program.*

[Filed emergency 3/22/85, effective 4/1/85]
[Published 4/10/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5430

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code. The Department has the authority to make rules to determine the method and level of reimbursement for medical services.

The Deficit Reduction Act of 1984 (DEFRA) provides for the deeming of Medicaid eligibility for nine months to persons canceled from Aid to Dependent Children (ADC) solely because they are no longer eligible for the earned income disregards. DEFRA also provided for a special application period to end no later than the end of the sixth month after the month in which final regulations implementing the Act were published. This special application period allows persons canceled from ADC between October 1, 1981 and September 1, 1984 solely due to loss of the $30.00 and one-third earned income disregard to apply for the nine months of Medicaid coverage.

The current rule which grants the special application period was based on the wording in DEFRA. No specific time frame was indicated for the expiration of the application period.

The final regulations were published September 10, 1984, therefore, March 31, 1985 is the last day former recipients can apply for this extended Medicaid coverage. The Department took two steps in September 1984 to inform canceled ADC and Medicaid recipients that they may be eligible for nine months of additional medical benefits:

1. A news release was distributed to all Iowa daily and weekly newspapers and radio and television stations.

2. Announcements were printed and delivered to all Department county and district offices for posting. In addition the end of February 1985, the Department sent letters to advocate groups reminding them to urge persons who might be eligible to apply before April 1, 1985.

This amendment rescinds the rule granting the special application period effective April 1, 1985.

The Department of Human Services finds that notice and public participation are unnecessary and impracticable. The Department has no choice but to end the application period March 31, 1985 as implied by the current rule. Therefore, this rule is filed pursuant to rule 498—1.5(17A) and Iowa Code section 17A.4(2).

The Department of Human Services finds that deletion of this rule effective April 1, 1985 confers a benefit on the public by avoiding possible confusion by alerting the public that the time frames for application have expired. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted this rule on March 20, 1985.

This rule is intended to implement Iowa Code section 249A.3.

This rule became effective April 1, 1985.

Rescind and reserve subrule **75.1(20)**.

[Filed emergency 3/22/85, effective 4/1/85]
[Published 4/10/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5427

INSURANCE DEPARTMENT[510]

Pursuant to the authority of Iowa Code sections 505.8, 87.4, 87.11 and 87.20, the Iowa Insurance Department emergency adopts and implements amendments to portions of 510—Chapter 56, "Workers' Compensation Group Self-Insurance," to conform their requirements to the Attorney General's opinion issued on July 9, 1984 regarding the premium tax which is to be collected from workers' compensation self-insurance groups.

In compliance with Iowa Code section 17A.4(2), the department finds that public notice and participation are unnecessary and impracticable because the changes are merely bringing the chapter in compliance with the Attorney General's opinion so that it completely states the scope of regulation of workers' compensation group self-insurers.

The department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1) that the normal effective date of this rule thirty-five days after publication should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on March 22, 1985 as our rules could be construed to be in conflict with a statute and the clarification is necessary to ensure proper compliance with the statute.

These rules implement Iowa Code section 432.1.

ITEM 1. Rules 56.1(1) and 56.13(2) are amended to read as follows:

56.1(1) Associations which are issued a certificate of approval by the commissioner shall not be deemed to be ~~insurers or~~ insurance companies and shall not be subject to the provisions of the insurance laws and regulations *contained in Title XX of the Iowa Code* except as otherwise provided in this chapter or by statute. *Associations are subject to the premium tax under Iowa Code section 432.1.*

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

a. A statement of financial condition audited by an independent certified public accountant on or before the last day of the second month following the end of the calendar year. The financial statement shall be on a form prescribed by the commissioner and shall include, but not be limited to, actuarially appropriate reserves for (1) known claims and expenses associated therewith, (2)

INSURANCE DEPARTMENT[510] *(cont'd)*

claims incurred but not reported and expenses associated therewith, (3) unearned premiums and (4) bad debts, which reserves shall be shown as liabilities. An actuarial opinion regarding reserves for items (1) and (2) above shall be included in the audited financial statement. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

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

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

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

b. Proof of excess insurance;

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

d. The required renewal fee; *and*

e. The premium taxes due pursuant to Iowa Code section 432.1.

ITEM 2. Subrule 56.19(8) is added to read as follows:

56.19(8) *Failure to remit the proper amount of premium tax in a timely manner, as required by Iowa Code section 432.1.*

These rules implement Iowa Code section 432.1.

[Filed emergency 3/22/85, effective 3/22/85]
[Published 4/10/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5420

EXECUTIVE COUNCIL[420]

Pursuant to the authority of Iowa Code Chapter 509A, the Executive Council on March 18, 1985, adopted the following rules, Chapter 6, "Health Maintenance Organizations," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, Volume VII, Number 16, on January 30, 1985, as **ARC 5257**.

These rules establish guidelines and requirements for health maintenance organizations seeking to provide health care benefits to state of Iowa employees. There are no changes from the Notice of Intended Action.

These rules implement Iowa Code chapter 509A as it relates to health maintenance organizations, and shall become effective on April 24, 1985.

The following chapter is adopted:

CHAPTER 6
HEALTH MAINTENANCE ORGANIZATIONS

420—6.1(509A) Definitions. As used in the rules contained herein, the following definitions apply:

"HMO" means health maintenance organization and shall be abbreviated as HMO in these rules.

"State employees" means any employee of the state of Iowa covered by Iowa Code chapter 509A.

420—6.2(509A) Intent. The intent is to provide state employees with the opportunity to be covered by health care benefit programs which may differ from standard fee for service group health insurance programs. The executive council of Iowa may contract with any HMO to provide health care benefits to state of Iowa employees which is:

6.2(1) Able to provide evidence that the secretary of health and human services has determined it to be a qualified HMO in accordance with section 1310(d) of Public Health Service Act, 42 U.S.C. 300e-300e-17; or

6.2(2) Licensed to do business in the state by the appropriate licensing authority.

420—6.3(509A) Compliance. Each HMO shall adhere to and comply with the following:

6.3(1) The rules and regulations as enumerated in subpart "H" of subchapter "J," health care delivery systems, Title 42, Code of Federal Regulations except 110.803(c)(1); and

6.3(2) Furnish annual utilization reports as mutually agreed by the HMO and the executive council.

420—6.4(509A) Remuneration. The executive council will determine the amount of the state's contribution toward each individual employee's premium cost and will authorize the remaining premium cost to be deducted from the employee's gross pay. Payments to the HMO will be made monthly in accordance with the established procedures.

420—6.5(509A) Administration. The executive council may authorize the state comptroller or designee to administer the provisions of this rule.

[Filed 3/21/85, effective 5/15/85]
[Published 4/10/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5431

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services hereby amends Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," Chapter 46, "Recoupment," and Chapter 59, "Unemployed Parent Workfare Program," appearing in the Iowa Administrative Code. The Department has the authority to promulgate rules and regulations as may be necessary to make administration of the Aid to Dependent Children (ADC) program uniform in all the counties of the state.

Under current policy, when an incapacitated parent recovers or an absent parent returns to the home, the family can apply to have the recovered or returning parent added to the ADC grant for a three-month adjustment period. In July of 1984 the Department received a letter from federal regional officials in Kansas City stating that although regulations do allow the Department to make assistance payments for the existing eligible group during a three-month adjustment period, regulations do not allow the state to include the recovered or returning parent in the assistance payment.

In an attempt to maintain current policy, the Department revised the State Plan to incorporate the needs of the recovered or returned parent as a special need. However, a verbal response has now been received from federal officials that they will disapprove that section of the State Plan.

Therefore, these amendments specify that when an incapacitated parent recovers or when the absent parent returns to the home, assistance shall continue, for the existing eligible group only, for a period not to exceed the issuance of three warrants. An incapacitated parent already in the eligible group will remain in the eligible group during the adjustment period. Concurrent changes specify that an application shall be required when a parent enters the household and a procedural error results when an application was not obtained. The application will not be used to add the absent parent to the eligible group, but will be used to aid the local office in obtaining information to determine eligibility for the adjustment period.

The Department made an emergency rule change to subrule 42.1(1) effective January 1, 1985, because of an out-of-court settlement on the Paul Allen vs. Iowa Department of Human Services petition for judicial review. This change specified that the determination of hours of employment for self-employed aid-to-dependent-children-unemployed-parent (ADC-UP) applicants and recipients will be based on actual hours worked, as verified by a third party, or on the basis of net monthly self-employment income, divided by the federal minimum wage. Prior to the change, the determination of hours was made by dividing the gross monthly self-employment income by the federal minimum wage.

Current rules for computing the hours of employment which are used to determine the allowable work deduction for care expenses and Work Incentive Program (WIN) and Community Work Experience Program (CWEP) participation status require gross monthly self-employment income to be divided by the federal minimum wage.

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

These amendments change those rules so that hours of employment for determining care deductions and WIN participation status are computed by dividing the net, rather than gross, monthly self-employment income by the federal minimum wage. Since the CWEP program deals solely with ADC-UP recipients, the hours of employment considered for CWEP participation status shall be determined by the same method chosen by that individual for determining the hours of employment for ADC-UP.

These changes are being made to eliminate the inconsistency in the Department's rules which could be misinterpreted by the local offices, thus resulting in a higher error rate. Failure to change the rules could result in some applicants and recipients being found eligible for ADC-UP, but exempt from WIN and CWEP participation.

Some individuals may only be allowed the part-time care deduction of $159.00 instead of the full-time deduction of $160.00 because they will be determined to be working fewer hours. The reduction in hours will also change the employment status of some persons from full time to part time which in turn may require them to participate in WIN or CWEP. Persons working full time as defined in the rules are exempt from participation in WIN and CWEP.

Items 1, 4 and 5 of these rules were published without notice as **ARC 5283** published in the Iowa Administrative Bulletin on February 13, 1985. Notice of Intended Action to solicit comment on that submission was published in the Iowa Administrative Bulletin on February 13, 1985, as **ARC 5284**. Notice of Intended Action regarding items 2, 3 and 6 of these rules was published in the Iowa Administrative Bulletin on January 30, 1985, as **ARC 5272**.

These rules are identical to those placed under Notice of Intended Action.

The Council on Human Services adopted these rules March 20, 1985. These rules are intended to implement Iowa Code section 239.5 and chapter 249C.

These rules shall become effective June 1, 1985.

ITEM 1. Amend subrule 40.2(4) as follows:

40.2(4) A new application shall be made whenever a person is added to the eligible group or when a *parent or a* stepparent becomes a member of the household.

ITEM 2. Amend subrule **41.4(1)**, paragraph "g" as follows:

g. A person who is employed in nonsubsidized employment for one hundred twenty-nine hours or more per month. For self-employed persons, hours shall be determined by dividing the average ~~total~~ *net* monthly income from self-employment by the federal minimum wage~~, before any deductions for business expenses~~. *"Net monthly income" means income in a month remaining after deduction of allowable business expenses as described in subrule 41.7(2), paragraphs "k," "l," "m," "n" and "o."*

ITEM 3. Amend subrule **41.7(2)**, paragraph "b," subparagraph (2) as follows:

(2) Full-time employment shall be defined as employment of one hundred twenty-nine or more hours per month. Part-time employment shall be defined as employment fewer than one hundred twenty-nine hours per month. The determination as to whether self-employment income is full time or part time shall be made on the basis of whether the average ~~total~~ *net* monthly income from self-employment~~, before any deductions for business expenses,~~ is at least equal to the federal minimum wage multiplied by one hundred twenty-nine hours a month. *"Net monthly income" means income in a month remaining after deduction of allowable business expenses as described in subrule 41.7(2), paragraphs "k," "l," "m," "n" and "o."*

ITEM 4. Amend subrule 41.8(4) as follows:

41.8(4) Period of adjustment. When a parent recovers from the condition which caused incapacity, or when the absent parent and parent establish or reestablish a home for the child, assistance shall continue *for the existing eligible group*, if there is need, for a period not to exceed the issuance of three warrants.

ITEM 5. Amend rule **498—46.1(239)** as follows:

Amend the definition of "Procedural error" as follows:

"Procedural error" means: A technical error which does not in and of itself result in an overpayment. Procedural errors include:

Failure to secure a properly signed application at the time of initial application or reapplication.

Failure to require an application when a new person is added to the eligible group or when a *parent or a* stepparent becomes a member of the household.

Failure of the local office to conduct the face-to-face interviews described in subrules 40.4(2) and 40.7(1).

Failure to request a Public Assistance Eligibility Report at the time of a monthly or six-month review.

Failure of local office staff to cancel aid to dependent children when the client submits a Public Assistance Eligibility Report which is not complete as defined in 40.7(4)"b." However overpayments of grants as defined above based on incomplete reports are subject to recoupment.

ITEM 6. Amend rule 498—59.3(70GA,ch201) as follows:

498—59.3(70GA,ch201) Exemptions. Unemployed parent recipients shall be exempt if:

59.3(1) A recipient is not the principal wage earner.

59.3(2) The principal wage earner is employed in nonsubsidized employment for eighty or more hours per month. For *a* self-employed persons, *the* hours *of employment* shall be determined by ~~dividing gross earnings by the prevailing state or federal minimum wage (whichever is higher)~~ *the same option chosen by that person to establish the hours of employment for aid-to-dependent-children-unemployed-parent assistance in accordance with subrule 42.1(1).*

59.3(3) An unemployed parent family receives a zero grant because the family is eligible for less than ten dollars per month.

59.3(4) The principal wage earner is participating in a department approved training program as defined in ~~770—42.1(239)~~ *subrule 42.1(8)*, excluding the work incentive program.

59.3(5) It has been medically determined that the woman is in the sixth month or more of pregnancy.

[Filed 3/22/85, effective 6/1/85]
[Published 4/10/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5433

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code sections 249A.4 and 217.6, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," and Chapter 51, "Eligibility," appearing in the Iowa Administrative Code.

Current rules do not require applicants or recipients of Medicaid to furnish a social security number as a condition of eligibility.

The Deficit Reduction Act of 1984 (DEFRA) mandates that furnishing of social security numbers be a condition of eligibility for Medicaid effective April 1, 1985. These amendments make furnishing of social security numbers a condition of eligibility for Medicaid as mandated by DEFRA.

In order for state supplementary assistance policy to be consistent with Medicaid policy, the Department is also requiring a social security number as a condition of eligibility for state supplementary assistance.

These rules were previously submitted without notice as **ARC 5296** published in the Iowa Administrative Bulletin on February 13, 1985. Notice of Intended Action to solicit comment on that submission was published in the Iowa Administrative Bulletin on February 13, 1985, as **ARC 5297**.

These rules are identical to those placed under Notice of Intended Action.

The Council on Human Services adopted these rules on March 20, 1985. These rules are intended to implement Iowa Code sections 249A.3, 249.3 and 249.4.

These rules shall become effective June 1, 1985.

ITEM 1. Amend rule 498—75.1(249A) as follows:

Rescind subrule **75.1(3)**.

Amend subrule 75.1(14) as follows:

75.1(14) Aid to dependent children—pregnant women. Medical assistance shall be available to pregnant women who would be eligible for aid to dependent children if the child were born.

The pregnancy shall be verified in writing by a licensed physician. The verification shall attest to the fact of pregnancy and establish the probable date of conception. When an examination is required and other medical resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment.

a. Eligibility for medical assistance under this rule shall begin no earlier than the first of the month in which conception occurred, and in accordance with ~~770~~ *498*—76.5(249A).

b. Financial eligibility shall be established using the income and resource standards in effect in the aid to dependent children program.

c. An individual shall not be ineligible for medical assistance under this rule for failure to co-operate in establishing paternity or obtaining support, ~~securing a social security number,~~ or for failure to register for the work incentive program.

d. Eligibility for medical assistance under this rule shall end when the pregnancy terminates.

ITEM 2. Add the following new rule:

498—75.7(249A) Furnishing of social security number. As a condition of eligibility applicants or recipients of Medicaid must furnish their social security account numbers or proof of application for such numbers if they have not been issued or are not known and provide their numbers upon receipt.

75.7(1) Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of such numbers when the applicants or recipients are co-operating in providing information necessary for issuance of their social security numbers.

75.7(2) The mother of a newborn child shall have until the second month following the mother's discharge from the hospital to apply for a social security account number for the child.

This rule is intended to implement Iowa Code section 249A.3.

ITEM 3. Add the following new rule:

498—51.8(249) Furnishing of social security number. As a condition of eligibility applicants or recipients of state supplementary assistance must furnish their social security account numbers or proof of application for such numbers if they have not been issued or are not known and provide their numbers upon receipt.

Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of such numbers when the applicants or recipients are co-operating in providing information necessary for issuance of their social security numbers.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

[Filed 3/22/85, effective 6/1/85]
[Published 4/10/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5432

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 234.6, 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.

The Council on Human Services adopted this rule on March 20, 1985. Notice of Intended Action regarding this rule was published in the Iowa Administrative Bulletin on February 13, 1985 as **ARC 5311**.

Questions have arisen regarding the manner in which the Department is administering the job search requirements for the food stamp program.

Congress declared by passage of the relevant provisions of the Food Stamp Act that eligibility for food stamps would be conditioned upon compliance with job search requirements. Regulations promulgated by the Secretary of the United States Department of Agriculture (USDA), in compliance with the Food Stamp Act, mandate job search for persons not exempt from work registration as a condition of eligibility. By action of the Council on Human Services through proper rulemaking procedures, the federal rules on job search have been adopted by reference.

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

Historically, the administration of job search was charged to the Department of Labor via contract with USDA. USDA severed that contractual relationship, reclaimed responsibility for administration of the program, and began to establish contractual relationships with the various state programs for administration of the statutory mandate.

Iowa has, by contract, entered a relationship with USDA and requires job search as a condition of eligibility. Other states are not conditioning eligibility upon job search requirements. The Department, however, does not believe that job search is a federal option and that a contrary operation in other states precludes a federal audit of this state's practice.

This rule is being promulgated to clarify job search requirements and to resolve any questions as to whether these requirements are optional.

This rule also provides for a random selection of mandatory registrants for job search if funding does not permit referral for assessment of all mandatory work registrants.

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

This rule is intended to implement Iowa Code section 234.12.

This rule shall become effective June 1, 1985.

Adopt the following new rule:

498—65.28(234) Job search.

65.28(1) "Job search requirements" for mandatory work registrants in accordance with federal regulation, Title 7, Part 273.7(d) through (h), as amended to December 31, 1984, shall include:

a. Undergoing assessment and other required interviews with the Iowa department of job service.

b. Conducting up to an eight-week job search and other job interviews as required by the Iowa department of job service.

c. Contacting up to twenty-four employers as required by the Iowa department of job service.

65.28(2) Failure to comply with job search requirements shall result in disqualification of the registrant's household from the food stamp program for up to two months.

65.28(3) Mandatory work registrants shall be referred for job search. If not all mandatory registrants can be served due to insufficient funds, registrants will be randomly selected for referral up to the limit the funding can accommodate.

[Filed 3/22/85, effective June 1, 1985]
[Published 4/10/85]

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ARC 5434

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 200, "Adoption Services," appearing in the Iowa Administrative Code and adopts Chapter 107, "Certification of Adoption Investigators."

The Department has been given the authority to certify or approve persons as being capable of conducting adoption investigations.

The Council on Human Services adopted these rules on March 20, 1985. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on October 24, 1984, as **ARC 5058**.

These rules are being promulgated because of concern that requirements and monitoring of investigators are inadequate to protect children and other parties to adoptions.

These rules were previously published as a Notice of Intended Action, **ARC 4671**, in the May 23, 1984 Iowa Administrative Bulletin. As a result of comments received substantive changes were made to the rule and it was decided that the rules should be renoticed. Therefore, **ARC 4671** was terminated on October 24, 1984.

Certified adoption investigators and adoption agencies provide similar services of preplacement and postplacement investigations. Agencies must comply with specific licensing laws and administrative rules but at present there is no routine monitoring of certified investigators' activities. These rules will help to ensure that investigators are qualified and providing services according to law and rule. These rules provide requirements similar to those of licensed child placing agencies.

1. They provide more flexibility in recognizing adoption work experience. Current rules do not take into account any time of less than fifty percent of the workload.

2. They provide additional conditions for revocation or denial of renewal of certification. Current rules do not address providing incomplete or inadequate reports, or failing to meet all requirements of the rules.

3. They require more recordkeeping and provide for review of the records. Current rules do not address records or provide for reading records to determine the adequacy of the investigators' work.

4. They expand the description of the services provided and what must be contained in the reports. Current rules would allow reports that may not be adequate to meet the need.

5. They require reporting of legal violations in adoption activities. No reporting requirements have been imposed before.

The following changes were made in the rules in response to comments from the Council on Human Services and the Administrative Rules Review Committee:

1. "Qualifications for certification" was changed to "Requirements for certification" in rule 498—107.4(600).

2. The residency requirements in subrule 107.4(1) were changed to indicate the applicant shall be a resident of Iowa or the applicant's principal place of business shall be within twenty-five miles of Iowa to allow for easy access to the applicant's records.

3. Subrule 107.4(3) was changed to require the applicant to provide a record of all adoptive work experience and to make it clear that the applicant must provide two personal references in addition to any names of employers necessary to enable the Department to verify the applicant's work experience.

4. Subrule 107.5(1) was incorporated as a subrule under rule 498—107.4(600) to clarify that the statement is a requirement for certification and some of the wording was changed to clarify the meaning in the subrule and paragraphs "a," "b," and "e."

5. A new requirement for a child abuse registry check was added at the suggestion of the Council in subrule 107.4(5).

6. The conditions for granting, denial, or revocation of certification were reorganized to provide for the move of subrule 107.5(1) to 107.4(4) and to include record checks as a possible condition for denial or revocation of certification.

7. Subrule 107.5(3), paragraph "e," now 107.5(2)"a"(4), was revised to remove "reports of repeated poor judgment" and "inability to relate to people" which would be difficult to substantiate.

8. The requirement to include in the assessment the types of children who would not be appropriate for placement with the family was deleted.

9. The phrase "or the child to be adopted" was added to subrule 107.8(2) to clarify that the background information investigation is on the child and not the adoptive parents.

10. Rule 498—107.10(600) was reworded to clarify that reports of violations shall be in writing.

These rules are intended to implement Iowa Code chapter 600.

These rules shall become effective June 1, 1985.

ITEM 1. Rules **498—200.4(600)** and **498—200.5(600)** are rescinded and reserved.

ITEM 2. Rule 498—200.11(600) is amended to read as follows:

498—200.11(600) Appeals. ~~Certified investigators or applicants may appeal decisions of the department and prospective~~ *Prospective* adoptive parents may appeal nonapproval by the person making the investigation according to rules in 498—chapter 7.

ITEM 3. The following rules are adopted:

CHAPTER 107
CERTIFICATION OF ADOPTION INVESTIGATORS

498—107.1(600) Introduction. Persons with adoption work experience are certified by the department to provide adoption placement investigations and reports to the court.

498—107.2(600) Definitions.

"Adoption work experience" means employment in adoption services. For employment, of which only a portion of time was spent on adoptions, only the percent of time related to direct provision of adoption services shall be included as adoption work experience.

"Certified adoption investigator" means a person authorized by the department to provide adoption placement investigations and reports to the court.

"Department" means the department of human services.

"Independent placer" means a person, other than the prospective adoptive parent or an adoption worker acting on behalf of a private child placing agency or the department, who selects the family for placement of a minor for purposes of adoption.

498—107.3(600) Application.

107.3(1) Application form. Application for certification as an adoption investigator shall be made on Form SS-6105-0, Application for Certification of Adoption Investigator. This form may be obtained from the Licensing Section, Bureau of Adult, Children, and Family Services, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319.

107.3(2) Employees of licensed child placing agencies and the department of human services. Persons employed as social workers in licensed child placing agencies or the department of human services who meet the requirements for certification in rule 498—107.4(600) are eligible to apply for certification as adoption investigators for services provided outside of their current job duties. Employees of the department of human services will not be certified when their current job duties include any of the following:

a. Any of the activities described in rule 498—107.8(600).

b. Immediate supervision of employees engaged in activities described in rule 498—107.8(600).

c. Certification of adoption investigators.

d. Placement of children for adoption.

498—107.4(600) Requirements for certification.

107.4(1) Residency. The applicant shall be a resident of Iowa or the applicant's principal place of business shall be within twenty-five miles of Iowa.

107.4(2) Education and experience. The applicant shall have one of the following combinations of education and experience:

a. Graduation from an accredited four-year college or university and adoption work experience equivalent to a total of three years, full-time experience.

b. A bachelor's degree in social work from an accredited four-year college or university in a program accredited by the council on social work education and adoption work experience equivalent to a total of two years, full-time experience.

c. A master's degree in social work from an accredited college or university in a program accredited by the council on social work education and adoption work experience equivalent to a total of one year, full-time experience.

107.4(3) Verification of qualifications.

a. The applicant shall provide a transcript of college credits, and

b. The applicant shall provide a record of all adoption work experience including dates and location, and

c. The applicant shall provide the name(s) of employer(s) and supervisor(s) to enable the department to verify the applicant's adoption work experience, and

d. The applicant shall give names of at least two additional persons as character references who shall be contacted by the certifier.

107.4(4) Statement of activities and duties. Prior to certification, the applicant shall prepare a written statement identifying the proposed activities, duties and fees of the applicant as a certified adoption investigator.

a. The statement shall indicate that the services described in rule 498—107.8(600) are being provided by the individual investigator, not a child placing agency, and are not provided in the course of the individual investigator's employment with a child placing agency or the department of human services.

b. The activities and duties identified in the statement cannot exceed the scope of an investigator's services as defined in rule 498—107.8(600).

c. The statement shall include the fee schedule to be used in the determination of a charge for investigative services.

d. A copy of the statement shall be provided to the department to be maintained as a public record.

e. Upon request, this statement shall be provided by the investigator to persons requesting services from the investigator.

107.4(5) Record checks.

a. For all new applicants, there shall be a check to determine if a child abuse report exists.

b. Adoption investigators applying for renewal of certification may be subject to the same check as new applicants when there is reason to believe that verified abuse has occurred.

498—107.5(600) Granting, denial, or revocation of certification.

107.5(1) Granting of certification. When all of the requirements of this chapter are met, certification shall be granted.

107.5(2) Denial or revocation of certification.

a. Certification or recertification shall be denied or revoked when one or more of the following conditions exist:

(1) The applicant does not meet the requirements listed in subrules 107.4(1), 107.4(2), and 107.4(4).

(2) The applicant does not provide information required in subrule 107.4(3).

(3) The applicant has willfully or knowingly misrepresented information regarding qualifications for certification.

(4) When information about the certified investigator is received and verified by the department such as, but not limited to, failure to carry out the activities and duties as stated in this chapter, charging fees in excess of those specified in subrule 107.8(5) and breaches of confidentiality, and the effect of the investigator's actions would be unreasonably detrimental to any of the parties to the adoption. Complaints involving the reasonable exercise of professional judgment in the denial or approval of a preplacement investigation are not grounds for decertification.

(5) The investigator provided incomplete or inadequate information or misrepresented information in required reports as described in rule 498—107.8(600).

(6) The investigator fails to comply with the requirements of rules 498—107.9(600) and 498—107.10(600).

b. Certification or recertification may be denied or revoked based on information from the record checks required in subrule 107.4(5).

498—107.6(600) Certificate.

107.6(1) Contents. Form SS-1204-0, Certificate of Adoption Investigator, shall contain the name of the investigator and the expiration date of the certificate and be signed by a person designated by the commissioner.

107.6(2) Time limit. The investigator shall be certified for two years. Certification shall expire at the end of two years unless the investigator has made timely application for recertification. No provisional certificates shall be issued.

107.6(3) Records of certifications.

a. The department shall keep records of certifications including the application and verifications.

b. The department shall keep an alphabetical list of certified investigators, by department districts, which shall be updated at least semiannually. Lists of certified investigators shall be furnished to all district offices of the department and to any person who requests a list.

498—107.7(600) Renewal of certification.

107.7(1) Request for renewal. A currently certified investigator who wishes to be recertified shall notify the department in writing at least thirty days but no more than sixty days prior to the expiration of the certificate. To be recertified, the person shall submit a new application on Form SS-6105-0, Application for Certification of Adoption Investigator. If no application is submitted, the certification shall expire.

107.7(2) Evaluation of investigator. Upon timely receipt of the request for recertification, the department shall evaluate the investigator to determine whether the requirements of these rules have been met. This evaluation shall include the review of at least ten percent, but no fewer than three (unless fewer than three constitutes one hundred percent), of the adoption records opened since the last certification.

107.7(3) Notification. The department shall notify the investigator of the decision on the application. When the request for recertification is not received prior to the date of expiration, the department shall inform the investigator that the certification has expired.

498—107.8(600) Investigative services.

107.8(1) Preplacement investigations. When an adoption investigator provides a preplacement investigation of a proposed adoptive family, the investigation shall meet the requirements of Iowa Code section 600.8(1)"a," and include an assessment of the family's ability to parent a child.

a. The preplacement investigation shall include at least one face-to-face interview with each member of the household and at least one home visit.

b. The investigator shall have on file a written assessment of the adoptive home which shall include the following:

(1) Motivation for adoption;

(2) Family and extended family's attitude toward accepting an adoptive child, and plan for discussing adoption with the child;

(3) The attitude towards adoption of significant other people involved with the family;

(4) Emotional stability, physical health, and compatibility of adoptive parent(s);

(5) Ability to cope with problems, stress, frustrations, crises, and loss;

(6) Medical or health conditions which would affect the applicant's ability to parent a child;

(7) Ability to provide for the child's physical and emotional needs;

(8) Adjustment of own children and previously adopted children, if any, including school reports;

(9) Feelings about parenting a child not their own;

(10) Capacity to give and receive affection;

(11) Types of children desired and kinds of handicaps acceptable;

(12) Statements from references;

(13) Attitudes of the adoptive applicants towards the birth parent(s) and the birth parent's(s') reason(s) for placing child for adoption; and

(14) Recommendations for number, age, sex, characteristics, and special needs of or for children best served by this family.

107.8(2) Background information investigation. When an adoption investigator completes a background information investigation on the child to be adopted, the investigation shall include a complete family medical history and developmental history of the child to be adopted. A personal interview with both parents of the child, or at least one birth parent if the identity or whereabouts of the other is unknown, must be made to obtain information for this report.

107.8(3) Postplacement investigation. When an adoption investigator completes a postplacement investigation, at least two visits to the adoptive parent's(s') home and personal observation of the child are required.

107.8(4) Reports of investigations. The adoption investigator is authorized to provide reports to the courts concerning the above investigations and reports to the independent placer about these investigations.

107.8(5) Fees for services. Certified investigators may charge a fee for the services described in subrules 107.8(1), 107.8(2), and 107.8(3). The department shall, by December 31 of each year, be informed by the investigator of the total amount of fees for services charged any family during the calendar year. The report of fees for services shall be accompanied by an itemized statement of charges. Information shall also be given for any fees charged to a family by another party and collected by the investigator. Information on fees shall be addressed to the Licensing Section, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319.

498—107.9(600) Adoption records.

107.9(1) Retention of records. The adoption investigator shall maintain a record of each family or child when one or more of the required reports have been completed. The record shall contain copies of all completed reports and a statement of fees charged by the investigator.

a. The provisions regarding sealing of and access to adoption records in Iowa Code section 600.16, shall be followed, except that access under subrule 107.9(2) for recertification is permitted.

b. Upon revocation, denial of renewal, or expiration of certification, all sealed records held by investigators shall be given to the department for permanent retention.

107.9(2) Access for recertification. Authorized representatives of the department shall have access to all records of reports completed within a two-year period prior to recertification for purposes of recertification. Authorized representatives shall respect the confidential nature of these records.

498—107.10(600) Reporting of legal violations. All violations or suspected violations under Iowa Code chapter 600 or 600A which come to the attention of the investigator shall be reported in writing to the district court having jurisdiction of the matter and to the department of human services.

498—107.11(600) Appeals. Certified investigators or applicants may appeal decisions of the department according to rules in 498—chapter 7.

These rules are intended to implement Iowa Code chapter 600.

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ARC 5424

INDUSTRIAL COMMISSIONER[500]

Pursuant to the authority of Iowa Code section 86.8, the Industrial Commissioner hereby amends Chapter 4, "Contested Cases," Iowa Administrative Code.

These rules are identical to those published in Iowa Administrative Bulletin, January 2, 1985, as **ARC 5208** except that in Item 4 the words "dentists," "nurses" and "podiatrists" have been included at the suggestion of the Administrative Rules Review Committee.

Iowa Code section 86.18, which governs contested case proceedings before the Industrial Commissioner, states that proceedings within the agency shall be as summary as practicable. The following amendments are designed to simplify and shorten the proceedings as follows:

Item 1 clarifies when certain issues will be heard.

Item 2 facilitates an orderly acceptance of evidence.

Item 3 eliminates the necessity of filing, processing and retaining documents not needed to facilitate the conduct of contested case proceedings.

Item 4 more clearly defines medical reports and records and states the time limits for serving them on the opposing party.

These rules were adopted February 6, 1985 and will become effective May 15, 1985.

These rules are intended to implement Iowa Code section 86.18.

The following amendments are adopted:

ITEM 1. Rule 500—4.2(86) first paragraph, is amended to read as follows:

500—4.2(86) Separate evidentiary hearing or consolidation of proceedings. In addition to applying the provision of Iowa Rule of Civil Procedure 105, a person presiding over a contested case proceeding in a workers' compensation matter may conduct a separate evidentiary hearing for determination of any issue in the contested case proceeding which goes to the whole or any material part of the case. An order determining the issue presented shall be issued before a hearing is held on the remaining issues. The issue determined in the separate evidentiary hearing shall ~~not~~ be ~~questioned~~ *precluded* at the hearing of the remaining issues. If the order on the separate issue does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal.

ITEM 2. Rule **500—4.2(86)** is further amended by adding a new unnumbered paragraph to read as follows:

Any time a claimant pleads the issue of entitlement to benefits under Iowa Code section 86.13, prior to the determination by the agency that claimant is entitled to temporary total, temporary partial, healing period, permanent partial, permanent total or death benefits which form the basis on which claimant pleads the 86.13 issue, the 86.13 issue shall be bifurcated and tried in a subsequent hearing after claimant has proved an entitlement to benefits under Iowa Code chapter 85, 85A or 85B. No discovery relative to information regarding benefits under Iowa Code section 86.13 shall be allowed until after the decision on the other issues.

This rule is intended to implement Iowa Code sections 86.13, 86.18 and 86.24.

ITEM 3. Rescind rule 500—4.14(86) and insert in lieu thereof the following:

500—4.14(86) Filing of documents and papers. All documents and papers required to be served on a party under rule 4.12(86) shall be filed with the industrial commissioner either before service or within a reasonable time thereafter. However, unless otherwise ordered by the industrial commissioner or deputy industrial commissioner, no deposition, notice of deposition, interrogatories, request for production of documents, request for admission, notice of medical records and reports required to be served by 4.17(86), and answers and responses

thereto shall be filed with or accepted for filing by the industrial commissioner unless its use becomes otherwise necessary in the action, in which case it shall be attached to the motion or response to motion requiring its use, or unless offered as evidence at hearing of the contested case.

This rule is intended to implement Iowa Code section 86.18.

ITEM 4. Rescind rule 500—4.17(85,86,17A) and insert in lieu thereof the following:

500—4.17(85,86,17A) Service of medical records and reports. Each party to a contested case shall serve all medical records and reports concerning the injured worker in the possession of the party upon each opposing party not later than twenty days following filing of an answer, or if not then in possession of a party, within ten days of receipt. Medical records and reports are records of medical practitioners and institutions concerning the injured worker. Medical practitioners and institutions are medical doctors, osteopaths, chiropractors, dentists, nurses, podiatrists, psychiatrists, psychologists, counselors, hospitals, clinics, persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation, all other practitioners of the healing arts or sciences, and all other institutions in which the healing arts or sciences are practiced. Each party shall serve a notice accompanying the records and reports identifying the records and reports served by the name of the practitioner or institution and date of the records and reports, and if served later than twenty days following filing of the answer, stating the date when the records and reports were received by the party serving them. Pursuant to 4.14(86), the notice and records and reports shall not be filed with the industrial commissioner. A party failing to comply with the provisions of this rule shall, if the failure is prejudicial to an opposing party, be subject to the provisions of 4.36(86).

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

[Filed 3/21/85, effective 5/15/85]
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ARC 5425

INDUSTRIAL COMMISSIONER[500]

Pursuant to the authority of Iowa Code section 86.8, the Industrial Commissioner adopts amendment to Chapter 6, "Settlements and Commutations," Iowa Administrative Code. Iowa Code section 85.35, which governs compromise settlements, requires written evidence to show that a bona fide dispute exists. The rule clarifies the matters in dispute and reduces the documentation to be filed, processed and retained by the agency.

Notice of Intended Action regarding this rule amendment was published in the Iowa Administrative Bulletin on January 2, 1985, as **ARC 5209**.

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

The rule was adopted February 6, 1985, and will become effective on May 15, 1985.

This rule is intended to implement Iowa Code section 85.35.

Rule 500—6.1(85,86) is amended to read as follows:

500—6.1(85,86) Compromise settlements. All agreements providing for the final compromise settlement of a case where liability under the ~~Workmen's~~ *Workers'* Compensation Act is disputed shall be reduced to writing and submitted to the industrial commissioner for approval, together with such testimony or other evidence as may be required to establish that a bona fide dispute exists *under Iowa Code section 85.35.* ~~and that liability is doubtful.~~ *Unless otherwise ordered by the industrial commissioner or deputy industrial commissioner an application for approval of compromise settlement shall not be accepted for filing if accompanied by documentation in excess of twenty pages. An order approving an application accompanied by unauthorized documentary evidence in excess of twenty pages is nevertheless valid, and is neither void nor voidable.* Any such settlement, when approved by the industrial commissioner, shall be binding upon the parties thereto and not subject to review under *Iowa Code* section ~~86.34~~ *85.26(2)* ~~of the Code~~.

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ARC 5435

LABOR, BUREAU OF[530]

Pursuant to the authority of Iowa Code chapter 88B, the Bureau of Labor hereby adopts Chapter 81, "Asbestos Control Procedure, and Chapter 82, "Licensing of Business Entities," Licensing of Training Courses, and Worker Certification."

The rule adoption sets forth in chapter 81 asbestos control procedures mandated under provisions adopted by the U.S. Department of Labor, Occupational Safety and Health Administration, the U.S. Environmental Protection Agency, the Iowa Bureau of Labor and the Iowa Department of Water, Air and Waste Management. Removal and encapsulation procedures include the method of removal, on-site handling, on-site cleaning and monitoring, and waste disposal.

The rule adoption sets forth in chapter 82 provisions for licensing of business entities who will be engaged in the removal or encapsulation of asbestos, the procedures, methods and fees required to apply for a license, notification to the bureau of labor, exposure data to be maintained, course criteria for certification of workers who will remove or encapsulate asbestos and procedures to obtain a certification by the worker.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on November 7, 1984 as **ARC 5080**.

A public hearing to receive oral comments was held on November 29, 1984.

The Bureau of Labor is required by Iowa Code chapter 88B to adopt asbestos removal and licensing rules based on federal and state rules. The applicable federal rules are the EPA rules, as contained in 40 CFR Part 61, and the OSHA rules, as contained in 29 CFR 1910.1001 and 29 CFR 1910.134. These rules are an integration of the federal EPA and OSHA rules.

Oral and written comments were presented. The comments suggested that air-line respirators and self-contained breathing apparatus can be hazardous and should not be used. It was also suggested that a person with facial hair be exempt from the respirator fit testing requirement. These suggestions were rejected because of state and federal OSHA rules specifically require air-line respirators and self-contained breathing apparatus, as well as respirator fit testing. A suggestion to allow the usage of disposable respirators was not adopted because the federal rules do not permit the use of disposable respirators.

The comments voiced a concern that building a decontamination facility may not be feasible with certain types of removal projects. The agency recognizes that the rules may not anticipate all contingencies and that some situations may make it difficult to comply with the rules. When confronted with a situation which is not covered by the rules, the business entity involved with the asbestos removal can obtain approval of alternate procedures by following the procedures contained in Iowa Code section 88B.9.

It was pointed out that some employees may have participated in asbestos removal courses outside the state of Iowa, which would not be licensed by the agency. When a worker has participated in a training course outside the state of Iowa, the participant, or his employer, can ask for approval of the course by submitting documentation requested by the agency.

Comments were made that the rules did not adequately address the situation where only small quantities of asbestos are involved. It was suggested that the rules are overly stringent when small quantities of asbestos are involved. The agency recognized that not all asbestos projects involved quantities of asbestos which would require the use of removal procedures as contained in 81.3(2) and 81.3(3). Therefore, in the Notice of Intended Action 81.3(8) contained general procedures for removal when dealing with small quantities of asbestos. In addition to 81.3(8) the rules now contain 81.3(8)"f" which provides for asbestos removal by the glovebag technique. The rules also contain 81.3(3)"b" which provides for the sealing off of a small area around the asbestos source rather than sealing off an entire room.

In conjunction with the added removal procedures contained in 81.3(8)"f" and 81.3(3)"b," the rules in 82.9(3) provide an alternate training method by the use of approved videotapes for workers involved with the removal of asbestos using the glovebag method.

It was suggested that the method of enclosure be included as a means of controlling asbestos. This method is now contained in the definition of "encapsulate."

A question was raised as to when the responsibility of a business entity involved with the removal of asbestos ends. Once the asbestos is unloaded at an approved disposal site, the business entity is no longer responsible for the removed asbestos.

A request for regulatory flexibility analysis was made on November 29, 1984, at the public hearing by Mr. Dennis P. Hogan, Sheet Metal Contractors of Iowa, Inc., and Mr. Harlan Von Seggern, Master Builders of Iowa, Inc. The request was withdrawn on January 3, 1985, in writing by Mr. Hogan and Mr. Von Seggern.

These rules are intended to implement Iowa Code chapter 88B. These rules shall become effective on May 15, 1985, except for subrule 82.10(1) which shall become effective on July 1, 1985.

CHAPTER 81
ASBESTOS CONTROL PROCEDURES

530—81.1(88B) Definitions.

"Asbestos" means the fibrous forms of amosite, chrysotile, crocidolite, actinolite, anthophyllite, and tremolite.

"Asbestos project" means any activity involving the removal or encapsulation of friable asbestos materials or other releases of asbestos by sawing or substantial alteration.

"Bureau" means the bureau of labor.

"Business entity" means a partnership, firm, association, corporation, sole proprietorship, or other business concern. This definition does not apply to a business entity which uses its own employees in removing or encapsulating asbestos for the purpose of renovating, maintaining or repairing its own facilities, except that a business entity exempted from Iowa Code chapter 88B, who assigns an employee to remove or encapsulate asbestos shall provide training on the health and safety aspects of the removal or encapsulation including the federal and state standards applicable to the asbestos project.

"Certificate" means an authorization issued by the bureau permitting an individual person to work on an asbestos project.

"Commissioner" means the labor commissioner or the commissioner's designee.

"Contact damage" means areas in which physical contact with encapsulated asbestos from people or equipment is likely to occur.

"Curtained doorway" means a device to allow ingress or egress from one room to another while permitting minimal air movement between the rooms, typically constructed by placing two overlapping sheets of plastic over an existing or temporarily framed doorway and by securing each along the top of the doorway, the vertical edge of one along one vertical side of the doorway, and the vertical edge of the other along the opposite vertical side. Two curtained doorways should be spaced a minimum of six feet (two meters) apart to form an airlock.

"Decontamination enclosure system" includes existing rooms connected with framed-in tunnels if necessary and lined with plastic sealed with tape at all lap joints in the plastic for all enclosures and decontamination enclosure system rooms. Access between contaminated and uncontaminated rooms or areas shall be through an airlock. Access between any two rooms within the decontamination enclosure shall be through a curtained doorway.

"Delamination" means the breaking away of layers of material from the underlying surface.

"Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.

"Encapsulate" means to coat, bind, resurface or construct an impermeable enclosure on walls, ceilings, pipes or other structures to prevent friable asbestos from becoming airborne.

"EPA" means the United States Environmental Protection Agency.

"Friable asbestos material" means any material containing more than one percent asbestos by weight and that can be crumbled, pulverized, or reduced to powder when dry by hand pressure.

"Glovebag technique" means a method with limited applications for removing small amounts of friable asbestos-containing material from ducts, short piping runs, valves, joints, elbows, and other nonplanar surfaces

in a noncontained work area. The glovebag assembly is a manufactured or fabricated device consisting of a glovebag (typically constructed of six mil transparent regulite plastic), two inward projecting longsleeve rubber gloves, one inward projecting waterwand sleeve, an internal tool pouch, and an attached, labeled receptacle for asbestos waste. The glovebag is constructed and installed in such a manner that it surrounds the object or area to be decontaminated and contains all asbestos fibers released during the removal process.

"HEPA" means high efficiency particulate air.

"Impermeable" means a barrier or enclosure which will prevent asbestos fibers from passing through.

"IOSH exposure level" means asbestos fibers longer than five micrometers in concentrations greater than two fibers per cubic centimeter for an eight-hour time-weighted average or the ceiling concentration level of ten fibers as specified in 29 CFR 1910.1001 as of January 1, 1985.

"License" means an authorization issued by the bureau permitting a business entity to remove or encapsulate asbestos.

"NESHAP source" (National Emission Standards for Hazardous Air Pollutants source) means any source of asbestos where more than eighty meters (approximately 260 feet) of pipe covered or coated with friable asbestos materials are stripped or removed or more than fifteen square meters (approximately 160 square feet) of friable asbestos materials used to cover or coat any duct, boiler, tank, reactor, turbine, furnace, or structural member are stripped or removed.

"Probable water damage" means areas which might be exposed to water.

"Removal" means the demolition or stripping of friable asbestos materials or dislodging of any asbestos fibers from the original location such as a pipe, duct, boiler, tank, reactor, turbine, furnace, or structural member.

"Structural member" means any load-supporting member of a facility, such as beams and load-supporting walls; or any nonload-supporting member, such as ceilings, subfloors, and nonload-supporting walls.

"Surfactant" means a solution containing one fluid ounce of surfactant mixed with five gallons of water. Surfactants containing fifty percent polyoxyethylene ester and fifty percent polyoxyethylene ether, or equivalent, are considered acceptable.

"Visible residue" means any residue containing particulate asbestos material that is visually detectable without the aid of instruments.

"Wet," "wetted," or "wetting" means sufficiently mixed or coated with water or surfactant to prevent dust emissions.

"Work area" means any area of potential asbestos exposure.

530—81.2(88B) Control of NESHAP sources. A person shall not modify or cause to be modified any NESHAP source which results or will result in violation of any provisions of 40 CFR Part 61, subpart M, 1984 editions (April 5, 1984).

530—81.3(88B) Control of asbestos.

81.3(1) Applicability.

a. These rules apply to any person engaged in an asbestos project within Iowa.

b. If a provision of rule 81.3(88B) conflicts with rule 81.2(88B), rule 81.2(88B) takes precedence.

81.3(2) Demolition procedures for an IOSH exposure source or a NESHAP source. A person engaged in demolition shall comply with the following:

a. Caution signs. Signs shall be provided and displayed in accordance with rule 10.20(88), specifically 29 CFR 1910.1001(g) as of January 1, 1985.

b. Before beginning any demolition project, cover all windows, doors, and other openings with plastic sheeting and seal with tape.

c. If a structure or building is to be partially demolished, construct a barrier of plastic sheeting sealed with tape to prevent asbestos from entering any portion of the structure or building not to be demolished, shut down all ventilation systems, and seal all ducts, including air conditioning and heat ducts, prior to wetting and removal.

d. Plastic sheeting shall be six mils thick or equivalent on the floors and four mils thick or equivalent on walls. Tape shall be either duct tape or equivalent method to ensure impermeability.

e. Wet all components that contain or may contain asbestos with surfactant before stripping the asbestos or before removing those portions of supports which are to be removed and assure that the asbestos material remains wet during removal, loading, and transportation.

f. The business entity shall ensure that there is no smoking, eating or drinking in a work area.

g. Whenever a type C positive respirator is used by an employee, a negative air pressure shall be maintained in the work area. Air exhausted from the contamination area shall pass through a HEPA filter before being exhausted to the atmosphere.

h. Employee asbestos exposure levels shall be monitored during demolition using the National Institute for Occupational Safety and Health (NIOSH) Analytical Method No. 7400, Asbestos Fibers in Air procedure or NIOSH Analytical Method No. 239, P & CAM.

i. Employee exposure records shall be maintained in accordance with rule 82.6(88B).

j. All asbestos in the building or portion thereof being demolished shall be removed in accordance with subrule 81.3(4) prior to demolition of the building or portion thereof.

81.3(3) Removal procedures for an IOSH exposure source or a NESHAP source. A person engaged in renovation shall comply with the following:

a. Caution signs. Signs twenty by fourteen inches shall be provided and displayed in accordance with rule 10.20(88), specifically 29 CFR 1910.1001(g) as of January 1, 1985.

b. Before beginning any removal project, wet wipe with surfactant all surfaces and vacuum all floors in the work area with a HEPA vacuum in order to remove any accumulated asbestos fibers. Remove ceiling mounted objects, such as lights, partitions, other fixtures not previously sealed off. Remove all movable objects from the work area and cover all nonmovable objects with plastic sheeting and tape securely in place. Cover floor and wall surfaces with plastic sheeting and seal with tape. Cover floors first so that plastic extends at least twelve inches (three hundred mm) up on the walls, then cover walls with plastic sheeting to the floor level thus overlapping the floor material by a minimum of twelve inches. Maintain emergency and fire exits from the work areas. An impermeable enclosure may be formed around a small area containing asbestos in order to remove asbestos from that portion of a room.

c. Construct double barriers of plastic sheeting at all entrances and exits to work area.

d. Plastic sheeting shall be six mils thick or equivalent on the floors and four mils thick or equivalent on the walls. Tape shall be either duct tape or equivalent method to ensure impermeability.

e. Wet all areas or surfaces that contain or may contain friable asbestos. Assure that the asbestos-containing materials remain wet during the removal process.

f. The business entity shall ensure that there is no smoking, eating or drinking in a work area.

g. Whenever a type C positive pressure respirator is used by an employee, a negative air pressure shall be maintained in the work area. Air exhausted from the contamination area shall pass through a HEPA filter before being exhausted to the atmosphere.

h. Employee asbestos exposure levels shall be monitored during removal using the National Institute for Occupational Safety and Health (NIOSH) Analytical Method No. 7400, Asbestos Fibers in Air procedure or the NIOSH Analytical Method No. 239, P & CAM.

i. Employee exposure records shall be maintained in accordance with rule 82.6(88B).

81.3(4) On-site handling.

a. All friable asbestos materials that have been removed or stripped shall be adequately wetted to ensure that materials remain wet during the remaining stages of demolition or removal and related handling operations. All friable asbestos materials shall be bagged and sealed immediately in an impermeable container. The materials shall not be dropped or thrown to the ground or a lower floor. The materials that have been removed or stripped more than fifty feet above ground level, except those materials removed as units or in sections, shall be transported to the ground by dust-tight chutes or containers.

b. Pipes, ducts, boilers, tanks, reactors, turbines, furnaces, or structural members that are covered or coated with friable asbestos materials may be taken out as units or in sections from any building, structure, facility, or installation. The friable asbestos materials exposed during cutting or disjoining shall be adequately wetted during the operation. The units or sections shall not be dropped intentionally or thrown to the ground, but shall be carefully lowered to the ground level.

81.3(5) On-site cleaning and monitoring.

a. Buildings or structures which are to be completely demolished under subrule 81.3(2). After removing any asbestos materials, clean the work area until no residue of asbestos material is visible.

b. Any other asbestos projects which are subject to subrule 81.3(2) or subrule 81.3(3).

(1) For surfaces from which asbestos cannot be removed using the surfactant, a nylon brush shall be used to loosen the fibers. The fibers shall be vacuumed using a HEPA vacuum equipped with a HEPA filter. Areas in which the use of a HEPA vacuum is difficult, the fibers shall be encapsulated using a water-based sealant. After removing any asbestos materials, clean by wet mopping all surfaces in the work area using the surfactant. When the surface has dried, vacuum any remaining dry residue on all surfaces using a HEPA vacuum equipped with a HEPA filter. All liquids used in the wetting and cleaning process shall be collected and filtered prior to disposal of the liquids in order to remove any asbestos fibers which may be present.

(2) Repeat the sequence of wet mopping and vacuuming in twenty-four-hour intervals until no residue is visible and the airborne concentration of asbestos fibers longer than five microns is less than 0.1 fibers per cubic centimeter (eight-hour time-weighted average). Monitoring shall be conducted using the following procedures.

1. The National Institute for Occupational Safety and Health (NIOSH) Analytical Method No. 7400, "A" rules, Asbestos Fibers in Air, or

2. The National Institute for Occupational Safety and Health (NIOSH) Analytical Method 239 P & CAM, or

3. The GCA FAM-1 fibrous aerosol monitor or equivalent using a one hundred minute sampling time to ensure that the airborne concentration of fibers longer than five microns is less than 0.1 fibers per cubic centimeter. The measurements shall be made in accordance with the operating procedures for the GCA FAM-1 or equivalent as contained in DHEW (NIOSH) Publication No. 78-125, Development and Fabrication of a Prototype Fibrous Aerosol Monitor (FAM).

81.3(6) Waste disposal.

a. Deposit all asbestos wastes, sealing tape, plastic, mop heads, sponges, filters and disposable clothing in clearly labeled impermeable containers.

b. Wet large structural components containing asbestos material that cannot be placed in containers before loading. Cover the load before transporting to the disposal site.

c. No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted or enclosed, to effectively prevent the release of airborne asbestos fibers.

d. Transport and dispose of asbestos waste in a manner to prevent asbestos from becoming airborne. If disposing of asbestos waste within this state, use a landfill or site approved by the department of water, air and waste management.

81.3(7) Worker decontamination enclosure system. Construct a worker decontamination enclosure system outside of the work area consisting of three totally enclosed chambers as follows:

a. Equipment room. An equipment room with two curtained doorways, one to the work area and one to the shower room. The equipment room shall be of sufficient size to accommodate at least one worker, allowing enough room to remove protective clothing and foot wear, as well as a 6 mil (0.15 mm.) disposal bag and container and any other equipment which the contractor wishes to store when not in use. The equipment room shall conform to the requirements of applicable regulations.

b. Shower room. A shower room with two curtained doorways, one to the equipment room and one to the clean room. The shower room should contain at least one shower with hot and cold or warm water. Careful attention shall be paid to the shower to ensure against leaking of any kind. The contractor shall supply soap at all times in the shower room. The business entity shall require all persons exiting the worker decontamination enclosure system to shower before leaving.

c. Clean room. A clean room with one curtain doorway into the shower and one entrance or exit to noncontaminated areas of the building. The clean room shall provide sufficient space for storage of the worker's street clothes, towels, and other noncontaminated items so that all items are kept off the floor.

Provide and post, in the equipment room and the clean room, the decontamination and work procedures to be followed by workers.

81.3(8) Control of asbestos from any other asbestos project. A person engaged in any other asbestos project not subject to subrule 81.3(2) or subrule 81.3(3) shall take reasonable precautions to prevent asbestos from becoming airborne, which include:

a. Wetting any asbestos (except asbestos to be encapsulated);

b. Taking measures such as sealing the work area and using appropriate work practices to minimize the dispersal of particulate asbestos;

c. Leaving no visible residue of asbestos after completing the project;

d. Sealing asbestos waste in an appropriate container; and

e. Disposing of the asbestos at a site or landfill approved by the department of water, air and waste management in a manner that prevents asbestos from becoming airborne.

f. A small quantity asbestos source which can be enclosed by the glovebag technique, shall be removed according to the following method:

(1) Insert surfactant source or surfactant source opening and tools into the bag.

(2) Enclose the asbestos source with the bag and seal with tape.

(3) Wet the asbestos with the surfactant.

(4) Dislodge the asbestos into the bag.

(5) Remove the bag and decontaminate the tools by washing the tools over the bag.

(6) Seal to ensure impermeability.

(7) Label the bag and dispose of properly.

(8) Seal exposed edges of asbestos material with proper sealants.

81.3(9) Encapsulation.

a. Encapsulation shall be used only when the asbestos fibers are firmly bonded to the underlying surface or the asbestos is not accumulable for removal.

b. Encapsulation shall not be used on material that is deteriorated or delaminated, that shows extensive damage, in areas where contact damage may occur, or areas with actual or probable water damage.

c. Sealants shall be applied with airless spray equipment at low pressure settings.

d. All encapsulated asbestos sources shall be subject to continuing inspection. Sealant shall be reapplied periodically wherever there is a danger of airborne asbestos fibers.

e. All previously encapsulated asbestos materials shall be removed prior to demolition of any building.

f. Accurate records on the type of sealant used and the nature of the material and substrate encapsulated shall be maintained and provided to the owner of the building.

g. Whenever solvent-based sealants are used, the employees shall use an appropriate respirator to be provided by the business entity.

h. Latex paint as a sealant.

(1) Only latex paint with a vehicle content of at least sixty percent by weight and vehicle resin solids of at least twenty-five percent by weight shall be used. Coverage shall not exceed one hundred square feet per gallon.

(2) An initial light (mist) coat shall be applied with additional coats applied at a ninety degree angle to direction of the previous coat. All additional coats shall be applied only after the previous coat has dried. Coats of contrasting color are recommended.

(3) All monitoring of airborne asbestos levels shall comply with 81.3(5)"b"(2)"1" and "2."

i. Other encapsulation methods. Other methods may be used provided the method constructs an impermeable enclosure to prevent friable asbestos from becoming airborne.

j. Appropriate personal protective equipment including appropriate respirators shall be used to prevent employee exposure to airborne asbestos.

CHAPTER 82
LICENSING OF BUSINESS ENTITIES, LICENSING OF TRAINING COURSES, AND WORKER CERTIFICATION

530—82.1(88B) Definitions. The definitions contained in rule 81.1(88B) shall be applicable to this chapter to the extent of their applicability.

530—82.2(88B) Business entity licensing. A business entity may not engage in any asbestos project unless it is licensed by the bureau under this chapter.

530—82.3(88B) License application.

82.3(1) To apply for or to renew a license, a business entity shall:

a. Submit a completed application to the bureau on forms provided by the bureau which shall include:

(1) The name and address of the business entity.

(2) A description of the protective clothing and respirators that the business entity will use.

(3) A copy of the business entity's respiratory protection program.

(4) The name and address of at least one asbestos disposal site that the business entity will use.

(5) A description of the site decontamination procedures that the business entity will use.

(6) A description of the removal and encapsulation methods that the business entity will use.

(7) A description of the procedures that the business entity will use for handling waste containing asbestos.

(8) A description of the air monitoring procedures that the business entity will use.

(9) A description of the procedures that the business entity will use in cleaning up after completion of the project.

(10) An affirmation that the business entity will ensure that each employee or agent of the business entity who will come in contact with asbestos or will be responsible for an asbestos project is certified by the bureau.

(11) The name of the workers' compensation and liability insurance company providing coverage for the asbestos removal projects.

(12) The signature of the chief executive officer of the business entity or the chief executive officer's designee.

b. Payment of the fee specified in subrule 82.3(2).

82.3(2) License fee.

Number of employees to be engaged in asbestos project	License Fee
2 or less	$ 50
3 to 5	$200
6 or more	$300

82.3(3) Action on an application.

a. Within twenty days after receiving an application, the bureau will acknowledge receipt of the application and notify the applicant of any deficiency in the application. Within sixty days after receiving a completed application, including all additional information requested by the bureau, the bureau will issue a license or deny the application.

b. When a licensee is involved in an activity of a continuing nature and the licensee has made timely and sufficient application for the renewal of a license or a new license, the existing license does not expire until the application has been finally determined by the bureau. In case the application is denied or the the terms of the new license limited, the existing license shall continue to be in effect until the last day for seeking judicial review of the bureau's order or a later date fixed by order of the bureau or the reviewing court.

c. A license issued by the bureau under these rules shall be valid for one year from the date of issuance.

82.3(4) Denial or revocation. The bureau will deny an application or revoke an issued license if a determination is made that the applicant has not demonstrated the ability to comply fully with applicable requirements, procedures, and standards established by:

a. The bureau in rule 10.20(88), specifically 29 CFR 1910.1001 as of January 1, 1985;

b. The EPA in 40 CFR Part 61 as of January 1, 1985; and

c. The bureau in chapters 81 and 82 of their rules.

530—82.4(88B) Notification.

82.4(1) Schools containing asbestos. A person who intends to engage in an asbestos project in a school shall notify the bureau at least seven days before beginning the project. The notice shall be sent by certified mail or by postage prepaid first class mail with a certification of mailing.

82.4(2) All other asbestos projects. After obtaining or renewing a license, a business entity shall notify the bureau at least seven days before beginning each of its first two planned asbestos projects. A business entity shall notify the bureau of additional asbestos projects upon request by the bureau. All notifications shall be sent by certified mail.

530—82.5(88B) Removal or encapsulation project records. The licensee shall keep a record of each asbestos project it performs and shall make the record available to the bureau at any reasonable time. Records required by these rules shall be kept for at least six years. The records shall include:

1. The name, address and certificate number of the individual who supervised the asbestos project and of each employee or agent who worked on the project.
2. The location of and a description of the project and the amount of asbestos material that was removed.
3. The starting and completion dates of each instance of removal or encapsulation.
4. A summary of the procedures that were used to comply with all applicable standards.
5. The name and address of each asbestos disposal site where the waste, containing asbestos, was deposited.
6. A receipt from the asbestos disposal site shall be kept indicating the amount of asbestos which was deposited and the date of the deposit.

530—82.6(88B) Employee exposure records.

82.6(1) Record maintenance. Every business entity shall maintain records of any personal or environmental monitoring for at least twenty years in accordance with rule 10.20(88), specifically 29 CFR 1910.1001(h) (i) as of January 1, 1985.

82.6(2) Employee access. Every employee and former employee shall have reasonable access to any record required to be maintained which indicates the employee's exposure to asbestos fibers.

82.6(3) Employee notification. Any employee found to have been exposed at any time to airborne concentrations of asbestos fibers in excess of the limits prescribed in subrule 81.3(3) shall be notified in writing of the exposure as soon as practicable but not later than five days of the finding. The employee shall be notified at the same time of the corrective action being taken.

530—82.7(88B) Medical examinations required for licensure.

82.7(1) General. The employer shall provide or make available at the employer's cost, medical examinations relative to exposure to asbestos required by this rule.

82.7(2) Preplacement. The employer shall provide or make available to each employee, within thirty calendar days following first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior-anterior fourteen by seventeen inches), a history of elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second ($FEV_{1.0}$).

82.7(3) Annual examinations. Every employer shall annually provide or make available comprehensive medical examinations to each employee engaged in an occupation exposed to airborne concentrations of asbestos fibers. The annual examination shall include all procedures and tests required for a preplacement medical examination.

82.7(4) Termination of employment. The employer shall provide or make available within thirty calendar days before or after termination of employment of any employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include all procedures and tests required for a preplacement medical examination.

82.7(5) Recent examinations. No medical examination is required of any employee if adequate records show that the employee has been examined in accordance with this rule within the past one-year period.

82.7(6) Maintenance of and access to medical examination records.

a. Maintenance. Employers of employees examined pursuant to this rule shall maintain complete and accurate records of all medical examinations. Records shall be retained by employers for at least twenty years in accordance with rule 10.20(88), specifically 29 CFR 1910.1001(j) (6) as of January 1, 1985.

b. Access. The content of the records of the medical examinations required by this rule shall be made available, for inspection and copying, to the commissioner, to authorized physicians and medical consultants of the commissioner and upon the request of employee or former employee, to the employee's physician. Any physician who conducts a medical examination required by

this rule shall furnish to the employer of the examined employee all the information specifically required and any other medical information related to occupational exposure to asbestos fibers.

530—82.8(88B) Respiratory protection program required for licensure. A business entity, prior to engaging in an asbestos protect, shall prepare a written respiratory protection program as defined in rule 10.20(88), specifically 29 CFR 1910.1001(d)(2)(iv) and 29 CFR 1910.134 as of January 1, 1985, which shall include annual qualitative fit testing utilizing irritant smoke in an enclosure, and make the program available to the bureau and employees.

530—82.9(88B) Safety and health training courses licensing.

82.9(1) Application for approval of a training course. A person may apply for approval of a course on the health and safety aspects of asbestos demolition, removal, and encapsulation by submitting a written application on forms provided by the bureau.

82.9(2) Criteria for course. In order to obtain bureau approval, a person sponsoring a course shall prepare and submit to the bureau a curriculum which provides at least five hours of instruction which shall substantially satisfy the following criteria and topics:

a. Recognition of asbestos, including its physical characteristics and uses;

b. Health hazards, including the relationships between asbestos exposure, smoking, and diseases;

c. Worker protection, including respiratory protection, protective clothing, safety equipment, air monitoring, medical surveillance and personal hygiene;

d. A detailed description of respirators and their use and care, including the degree of protection afforded, fitting and testing procedures, and maintenance and cleaning;

e. Work practices, including area preparation, decontamination, and waste disposal;

f. Worker's rights of access to medical records and records required to be maintained by the employer as required by rule 82.7(88B);

g. Requirements, procedures, and standards established by:

(1) The bureau in rule 10.20(88), specifically 29 CFR 1910.1001 as of January 1, 1985;

(2) The EPA in 40 CFR Part 61, subparts A and B as of January 1, 1985; and

(3) The bureau in chapters 81 and 82 of their rules.

h. Provide each student at least fifteen minutes of individual instruction consisting of individual respirator fit tests and an opportunity to use respirators.

82.9(3) Licensing of training course for only the glovebag method of removal. A training course can be limited to procedures involving the glovebag method of removal. The course shall contain all of the requirements of 82.9(2), but be limited in its application and instruction to only the glovebag method of removal. Participants in the course would receive a special limited certification for the removal of small quantities of asbestos incidental to the employee's normal job duties and limited to the glovebag method of removal. Videotape training courses may be submitted to the bureau for approval. The videotape course shall include demonstrations in the use of the glovebag in the type of operations likely to be encountered by the employee receiving the training. The application for the course shall also include a description of the method the instructor will use for "hands-on" training of attendees in the use of the glovebag.

82.9(4) Supplementary procedures. Each person sponsoring a training course shall:

a. Maintain a list of students trained, the student's social security number and the dates on which training occurred. This information shall be provided to the bureau within ten days of the completion of the training course.

b. Provide an opportunity for students to complete written course evaluations.

c. Issue to each student who completes the course a certification of attendance containing the name of the sponsor and the course, the date of the course and the location of the course.

82.9(5) Action on an application of course approval. Within twenty days after receiving an application, the bureau will acknowledge receipt of the application and notify the applicant of any deficiency in the application. Within ninety days after receiving a completed application, including all additional information requested by the bureau, the bureau will issue a course approval or deny the application.

530—82.10(88B) Worker certification.

82.10(1) Applicability. A worker shall not be involved in the removal or encapsulation of asbestos unless the worker is certified by the bureau. An employer shall take precautions to ensure that workers who are not certified do not come into contact with asbestos.

82.10(2) Certification procedures.

a. Application. To apply for or to renew a certificate, a worker shall pay the application fee of $5.00 and submit the following:

(1) A copy of a certificate of completion from an asbestos removal training course licensed by the bureau. Attendance at the training course shall be within the prior twelve months of the date of application. For employees who have attended asbestos removal training courses outside the state of Iowa, the employer can submit requested documentation regarding the out-of-state school to the bureau and ask for approval.

(2) A completed application to the bureau on forms provided by the bureau which shall include:

1. The name and address of the asbestos removal training course;
2. The sponsor of the course; and
3. The course attendance dates.

b. Action on an application. Within twenty days after receiving a completed application, the bureau will issue a certificate or deny the application.

c. Denial. The bureau will deny an application if it determines that the applicant has not successfully completed an asbestos removal training course licensed by the bureau.

d. Duration. A certificate issued by the bureau under this rule shall be valid for one year from the date of issuance. To renew the certificate, the applicant must comply with all aspects of paragraph 82.10(2)"a."

e. A worker certified to only remove small quantities of asbestos by the glovebag technique shall not be involved in any asbestos project in which asbestos is not removed by the glovebag technique.

530—82.11(88B) Effective date. Subrule 82.10(1) shall become effective on July 1, 1985.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5418

LAW ENFORCEMENT ACADEMY[550]

Pursuant to authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy hereby adopts a new Chapter 6 entitled "Decertification." Iowa Code section 80B.13 sets forth guidelines and procedures for revocation of a law enforcement officer's certification in the state of Iowa by the Iowa Law Enforcement Academy Council.

Editorial changes have been incorporated in these rules to renumber existing chapters and to transfer all definitions to rule 1.1(80B).

These rules are essentially identical to those published as a Notice of Intended Action on January 2, 1985 in the Iowa Administrative Bulletin as **ARC 5227**.

At its January 8, 1985 meeting, the Administrative Rules Review Committee recommended that the term "presiding officer" be substituted for "hearing officer" to better reflect the meaning of that term as it would relate to the Administrative Procedure Act. These rules were amended accordingly.

These rules in their final form were approved by the Iowa Law Enforcement Academy Council at their October 31, 1984 meeting and are intended to implement Iowa Code section 80B.13. They will become effective May 15, 1985.

The following rules are adopted:

Chapters 5 and 6 as Chapter 1

Chapter 1 as Chapter 2; the Code Editor is authorized to make gender corrections in newly renumbered rule 2.1(80B).

Chapter 2 as Chapter 3

Chapter 3 as Chapter 4

Chapter 4 as Chapter 5

Also, transfer the definitions from the old numbered rules 3.1(80B), 4.1(80B), and 5.1(80B) to 1.1(80B) and entitle them "Definitions" and renumber remaining rules accordingly.

ITEM 1. The following new definitions should be added to 1.1(80B). These definitions should be consolidated with the existing definitions incorporated to rule 1.1(80B) from old numbered rules 3.1(80B), 4.1(80B), and 5.1(80B). These definitions shall be arranged in alphabetical sequence without assigned numbers.

550—1.1(80B) Definitions. In regards to the definitions as used in the rules contained herein, the following definitions apply, unless the context otherwise requires:

"Act" means the Iowa Administrative Procedure Act.

"Certificate" means the document issued to a law enforcement officer when documentation has established compliance with the minimum hiring standards and successful completion of the training requirements.

"Certification" means the issuing of a certificate to a law enforcement officer upon documentation that the officer has been employed and trained in compliance with the established minimum standards.

"Contested case" means a proceeding in which the legal rights of a party to continue to be certified as a law enforcement officer in the state of Iowa are determined by the council or its designee after an opportunity for an evidentiary hearing.

"Employing agency" means any state, county, or municipal government or governmental body that employs law enforcement officers.

"Felony" means a criminal offense classified as a felony in the jurisdiction in which it was committed.

"Good cause" means employer initiated termination of employment for any of the following reasons:

1. Gross negligence: Where the officer's act or failure to act creates a danger or risk to persons, property, or to the efficient operation of the department, recognizable as a gross deviation from the standard of care that a reasonable officer would observe in a similar circumstance.

2. Insubordination: A refusal by an employee to comply with a rule or order where the rule or order was reasonably related to the orderly, efficient, or safe operation of the employer's business and where the employee's refusal to comply with the rule or order constitutes breach of duties.

3. Incompetence or gross misconduct: In determining what constitutes "incompetence or gross misconduct," the council may take into account sources as practices generally followed in the profession, current teaching at law enforcement training facilities and technical reports and literature relevant to the field of law enforcement.

"Party" means each person or agency named or admitted as a party properly seeking and entitled as of right to be admitted as a party.

"Person" means any individual, corporation or association covered by the "Act" other than an agency.

"Pleadings" means a protest, motion, answer, reply or other document filed in a contested case proceeding.

"Presiding officer" means the person or group presiding over a contested case.

"Recommendation" means a request by an employing agency asking the council to revoke the certification of a past or present law enforcement officer.

"Revocation" means the process by which the council withdraws an individual's certification. A person remains under revocation until the time it can be demonstrated to the council that the grounds for revocation no longer exist and the officer's certification is reinstated.

The following language should be added at the end of the definitional rule of 1.1(80B):

Unless otherwise specifically stated, the terms used in these rules promulgated by the council shall have the meaning defined by this chapter.

These rules are intended to implement Iowa Code section 80B.13.

ITEM 2. Add a new chapter 6 as follows:

CHAPTER 6
DECERTIFICATION

PRACTICE AND PROCEDURE

550—6.1(80B) Scope of rules. The rules contained in this chapter pertaining to practices and procedures are designed to implement the requirements of Iowa Code

chapters 80B and 17A. These rules shall govern the practice, procedures, and conduct of contested case proceedings held in the revocation of a law enforcement officer's certification.

6.1(1) The computation of time and filing of documents shall be in compliance with Iowa Code section 4.1(22).

6.1(2) Business hours. The principal office of the Iowa Law Enforcement Academy Council shall be Camp Dodge, Iowa. Business hours shall be between the hours of 8:00 a.m. and 4:30 p.m. each weekday except Saturdays, Sundays, and legal holidays as prescribed in the Code, for the purpose of receiving protests, pleadings, petitions, motions, requests for public information, copies of official documents, or for the opportunity to inspect public records.

All documents or papers required to be filed with the council by these rules shall be filed with the director or designee at the Iowa Law Enforcement Academy, Camp Dodge, Iowa.

All documents or papers required to be filed with the council shall be delivered to the council's (principal) office within time limits as prescribed by law or by rules or orders of the council. No papers shall be considered filed until actually received by the director or designee.

In all cases where the time for filing of a protest or an appeal or the performance of any other act shall be fixed by law, the time so fixed by law shall prevail over the time fixed in these rules.

6.1(3) Form and style of paper. All pleadings, briefs, and motions or other documents filed with the council shall be typewritten, shall have a proper caption and a signature and copies as herein provided or as specified in some other rule. The proper caption shall be placed in full upon the first paper filed.

The signature of the petitioner, party, or other authorized representative, shall be subscribed in writing to the original of all pleadings, petitions, briefs or motions and shall be an individual and not a firm name. The name and mailing address of the party or representative actually signing shall be typed or printed immediately beneath the written signature. The signature shall constitute a certification that the signer has read the written document; that to the best of the signer's knowledge, information and belief every statement contained in the document is true and no statement is misleading; and that it is not interposed for delay.

Every pleading, brief or motion shall bear a proof of service upon the opposing party as provided by the Iowa rules of civil procedure. Except as otherwise provided in these rules or ordered by the council, an original and three copies of every pleading, brief, motion or petition shall be filed. This shall not be construed to apply to exhibits, documents or papers offered as evidence.

550—6.2(80B) Grounds for revocation.

6.2(1) Mandatory revocation. The council shall revoke a law enforcement officer's certification if the officer has been convicted of a felony.

6.2(2) Discretionary revocation. The council, at its discretion, upon receiving a recommendation from an employing agency, may revoke a law enforcement officer's certification under any of the following circumstances:

a. A law enforcement officer has been convicted of a crime involving moral turpitude as defined in rule 550—1.1(80B).

b. The law enforcement officer has been discharged for "good cause" from employment as a law enforcement officer.

c. The law enforcement officer leaves or voluntarily quits when disciplinary action was imminent or pending which could have resulted in the law enforcement officer being discharged for "good cause."

550—6.3(80B) Prehearing procedures.

6.3(1) Subpoenas. Prior to the commencement of a contested case, the council may exercise the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred upon it by law.

6.3(2) Commencement of contested case proceedings. Contested case proceedings shall be commenced by the filing of a notice by the council or its designee requiring the affected law enforcement officer to appear and show cause why certification to be a law enforcement officer in the state of Iowa should not be revoked. Notice shall be by certified mail, return receipt requested, and shall be sent no fewer than thirty days before the date set for the hearing. The petition shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is held.
3. A reference to the particular sections of the statutes and rules involved.
4. A short and plain statement of the grounds for revocation and all other relevant facts.

Notice shall also be sent in the manner aforementioned to any other interested party. After the delivery of the notice commencing the contested case proceedings, the presiding officer may allow further response of pleadings by the party as in the presiding officer's discretion is deemed necessary and appropriate.

6.3(3) Discovery. The rules of the Iowa supreme court applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and request for admission shall apply to discovery procedures in contested case proceedings.

All applications for the taking of discovery shall be submitted to the presiding officer who shall determine the frequency of use of these discovery methods as in the presiding officer's discretion is deemed necessary or appropriate to aid the parties in preparation of the contested case proceeding, narrowing issues or valid reasons. When the council relies on a witness in a contested case, whether or not associated with the council, who has made prior statements or reports with respect to the subject matter of the witness's testimony, it shall, on request, make such statements or reports available to a party for use on cross-examination. Identifiable council records that are relevant to disputed material facts involved in a contested case, shall, upon request, promptly be made available to the party.

Evidence obtained in such discovery may be used in contested case proceedings if the evidence would otherwise be admissible in the contested case proceedings.

6.3(4) Prehearing conference. The council or its designee, acting as presiding officer, upon the presiding officer's own motion or upon the written request of one of the parties may, in the presiding officer's discretion and

upon written notice, direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

a. The possibility or desirability of waiving any provision of these rules relating to contested case proceedings by written stipulation representing an informed mutual consent.

b. A necessity or desirability of setting a new date for hearing.

c. The simplification of issues.

d. The necessity or desirability of amending the pleadings for purposes of clarification, amplification or limitation.

e. The possibility of agreeing to the admission of facts, documents or records not substantially controverted, to avoid unnecessary introduction of proof.

f. The procedure at the hearing.

g. Limiting the number of witnesses.

h. The names and identification of witnesses and the facts each party will attempt to prove at the hearing.

i. Other matters as may aid in, expedite or simplify the disposition of the proceeding.

Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not or should not fairly be in dispute. Any action taken at the prehearing conference shall be recorded in an appropriate manner unless the parties enter into a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

When an order is issued at determination of a prehearing conference, a reasonable time shall be allowed to the parties to present objections on the ground that it does not fully or correctly embody the agreements at the conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters it includes unless modified to prevent manifest injustice.

550—6.4(80B) Hearing procedure.

6.4(1) Contested case proceeding. Unless the parties to a contested case proceeding have by written stipulation representing an informed mutual consent waived the provisions of the Act relating to the proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public. Evidentiary hearings shall be held at the council's principal office, Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, except that a case may be assigned for hearing elsewhere when deemed necessary to afford a party an opportunity to appear at the hearing with as little inconvenience and expense as practicable. Parties shall have been notified of the date and place of the hearing at least thirty days prior thereto.

6.4(2) Conduct of the proceedings. A proceeding shall be conducted by a presiding officer who, among other things, shall:

1. Open the record and receive appearances;
2. Administer oaths and issue subpoenas;
3. Enter the notice of hearing into the record;
4. Receive testimony and exhibits presented by the parties;
5. In the officer's discretion, interrogate witnesses;
6. Rule on objections and motions;
7. Close the hearing;
8. Issue an order containing findings of fact and conclusions of law. This ruling shall be no later than sixty days after the conclusion of the hearing.

a. Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the council for at least five years from the date of the decision.

b. An opportunity shall be afforded to the parties to respond and argue on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order:

1. Council designee.
2. Law enforcement officer.
3. Rebuttal by council designee.
4. Oral argument by parties (if necessary).

c. If the law enforcement officer is not represented by anyone qualified by these rules to make an appearance, the presiding officer shall explain to the law enforcement officer the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when a law enforcement officer has a representative qualified to appear. It should be the purpose of the presiding officer to assist any law enforcement officer who appears without a representative to the extent necessary to allow a fair presentation of evidence, testimony and arguments on the issues.

d. If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner or in accordance with the terms of the waiver agreement.

e. If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, upon the officer's own motion or upon the motion of a party who has appeared, adjourn the hearing or proceed with the hearing and make a decision in the absence of the party.

f. Contemptuous conduct by any person appearing at a hearing shall be grounds for that person's exclusion from the hearing by the presiding officer.

6.4(3) Rules of evidence. In evaluating evidence, the presiding officer's experience, technical competence, and specialized knowledge may be utilized.

6.4(4) Oath. All testimony presented before the presiding officer shall be given under oath which the presiding officer has authority to administer.

6.4(5) Production of evidence and testimony. The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records or other real evidence.

a. When the council initially presides at a hearing, or considers an appeal from or review of the administrative presiding officer's decision, the order becomes the final order of the council for purposes of judicial review or rehearing. When the presiding officer makes a ruling pursuant to a contested case proceeding, that ruling or order becomes the final order of the council for purposes of rehearing unless there is an appeal to or review on motion of the council within twenty days. In such an appeal or review the council has all the power which the

council would initially have had in making the decision. However, the council will only consider those issues or selected issues presented before the presiding officer. The parties will be notified of those issues which will be considered by the council.

b. The council may, however, allow a complete de novo hearing of the contested case in its discretion.

c. Orders will be issued within sixty days of the conclusion of the hearing unless good cause exists for a further period of time, not to exceed a reasonable period. Parties shall be promptly notified of each order by personal service by certified mail, return receipt requested.

6.4(6) Record. The record in a contested case shall include:

1. All pleadings, motions, and rulings;
2. All evidence received or considered and all other submissions;
3. A statement of all matters officially noticed;
4. All questions and offers of proof, objections, and rulings thereon;
5. All proposed findings and exceptions;
6. The order of the presiding officer.

6.4(7) Rehearing. Any party may file application for rehearing from a final decision of the council within twenty days of the issuance of a final decision in a contested case. Application is deemed denied unless granted within twenty days of filing.

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ARC 5440

MERIT EMPLOYMENT DEPARTMENT[570]

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Merit Employment Department adopts amendments to Chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 17 and 19, Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 24, 1984 as **ARC 5059**. The Iowa Merit Employment Commission adopted these rules at a regularly scheduled meeting on March 14, 1985.

Rules have been changed that address pay issues surrounding employees whose pay exceeds the maximum (red-circled); pay for employees who demote, promote or transfer; the establishment of merit/step pay increase eligibility dates peculiar to various situations; examination and certification of applicants; reinstatement eligibility of former employees; internship appointments; the probationary status of employees, disciplinary actions and their appeal rights; and all other rules that these changes impact upon. Included also is a new provision regarding election leave for state employees acted upon by the 1984 Legislature.

Changes from the Notice of Intended Action include: Wording to improve readability; all rules pertaining to "red-circled salaries" were combined into one rule; removed provision requiring a mandatory six-month probationary period on promotion; amended rule 8.3(19A) to provide that project appointments be limited to classes that are not covered by a collective bargaining agreement; amended rule 17.4(19A) to provide for examination and copying of records, subject to costs to be paid in advance; amended rule 19.1(19A) to provide for delegation of powers and duties of the office of the director to other employees.

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

These rules will become effective on May 15, 1985.

The following amendments are adopted.

ITEM 1. Amend rule **1.1(19A)** by deleting the subrule numbers preceding each definition, arranging the definitions in alphabetical order, amending the following definitions and adding new definitions:

"Demotion" means the change of a permanent or probationary employee from one class to another having a lower pay grade. Demotions of permanent employees may be disciplinary, in lieu of layoff, or voluntary. Demotions of probationary employees may be disciplinary or voluntary.

"Nonstate employment" means services rendered by professionals under contract to the state which are not subject to the provisions of Iowa Code chapter 19A and these rules.

"Permanent employee" means an employee who has completed the required *period of* probationary *status*, ~~period~~ or who has acquired permanent status *as otherwise provided for in these rules or by the department* ~~in conformity with the merit employment Act~~.

"Probationary employee" means a person ~~certified from a list of eligibles or employed through a work test appointment and~~ *who is* serving a *period of* probationary *status* ~~period~~ *following an original appointment and prior to the granting of permanent status.*

Definition for "probationary period" is rescinded.

"Promotion" means the change of a probationary or permanent employee to a class having a higher pay grade.

"Red-circled salary" means an employee's salary that exceeds the maximum salary for the pay grade to which the employee's class is assigned.

"Same pay grade" means those pay grades having the same pay grade number and also those pay grades using a three-step pay range where those steps correspond to the top three steps of a six-step range. The three-step pay grades shall be considered identical to the corresponding six-step pay grades in determining whether an action is a promotion, demotion or transfer.

"Special duty assignment" means the temporary assignment of a permanent employee to a position in another class.

"Transfer" means the position change of a probationary or permanent employee within the same class or to another class in the same pay grade.

"Veteran" means any person honorably separated from active duty with the armed forces of the United States who served in any war, campaign or expedition during the dates specified in Iowa Code section 70.1.

ITEM 2. Rule 570—2.3(19A) is rescinded and the following rule adopted in lieu thereof:

570—2.3(19A) Professional services contracts. Professional services rendered under an authorized contract to the state shall be designated as nonstate employment and not subject to other provisions of these rules. Prior to signing a professional services contract, the appointing authority shall submit a request for approval to the director.

MERIT EMPLOYMENT DEPARTMENT[570] *(cont'd)*

ITEM 3. Rule 570—3.1(19A) is rescinded and the following adopted in lieu thereof:

570—3.1(19A) Adoption and administration of the classification plan.

3.1(1) The commission shall adopt a classification plan that shall be applied uniformly and equitably to all positions in the state merit employment system. The plan shall set forth the class title and pay grade for each class.

3.1(2) The director, in co-operation and co-ordination with the agencies, shall periodically review the classification plan and may add, combine, divide or delete classes as the need arises. These changes shall be approved by the commission and the Iowa executive council before becoming effective.

3.1(3) The classification plan shall be developed and administered so that all positions which are substantially similar and comparable with respect to kind, difficulty and responsibility of work may be included in the same class; that the same or similar examination method may be used in filling all positions within a class; and, that the same pay plan may be applied to all positions in a class.

3.1(4) The director shall determine the proper allocation of positions to classes in the classification plan. Individual position reviews may be initiated by the appointing authority, by the incumbent employee, or by the director. Agency or employee initiated reviews shall be evaluated within one hundred twenty calendar days after the request is received by the director. When additional supporting documentation is required, it shall be submitted in the format prescribed by the director. In the event that the director requires additional supporting documentation, the one-hundred-twenty-calendar-day response period shall not begin until all requested documentation has been received. Both the appointing authority and the employee shall be notified of the director's tentative allocation decision. The tentative allocation decision shall become final unless the appointing authority or the employee files a request for reconsideration. The request for reconsideration must be in writing, set forth the reasons for the request, and be received by the director within thirty calendar days following the date of issuance of the tentative allocation decision. A final allocation decision shall be issued by the director within thirty calendar days following receipt of the request for reconsideration.

The maximum time periods at any step in the position allocation process may be extended when mutually agreed to by the parties. In the event that the director fails to meet any of the deadlines, the appointing authority or the employee may proceed with a request for a classification committee hearing.

3.1(5) The appointing authority or the employee may appeal the director's final allocation decision to a classification appeal committee. The request for an appeal must be in writing, state the reasons for the appeal and the classification(s) requested, and be received by the director within thirty calendar days following the date of issuance of the final allocation decision.

Classification appeal committee hearings shall be scheduled by the director as the need requires and shall be held during the department's regular business hours. Unless significant changes in duties and responsibilities can be shown or unless judicial review is sought as provided for in Iowa Code chapter 17A, decisions of the classification appeal committee shall be binding on the parties for a period of one year following the date of the committee's decision.

Rules **570—3.2(19A)** and **3.3(19A)** are rescinded and the numbers are reserved for future use.

Subrule 3.4(1) is amended to read as follows:

3.4(1) A probationary or permanent employee shall not be required to meet the minimum qualifications ~~or~~, compete for the position, *nor have the right to a reduction in force* ~~if the~~ *when a* reallocation is the result of the correction of a classification ~~allocation~~ error, a class or series revision, *or* the gradual evolution of changes in the position~~, or~~

~~w~~*W*hen ~~additional functions or~~ *a reallocation results from duties* ~~tasks are~~ assigned due to legislative action or other external forces clearly outside the control of the appointing authority, *the incumbent employee shall not be required to meet the minimum qualifications nor compete for the position.*

ITEM 4. Subrule 4.4(3) is rescinded and the following adopted in lieu thereof:

4.4(3) Pay for professional/managerial employees. Pay adjustments for professional/managerial employees will be determined by the appointing authority within parameters set by the director.

Upon completion of the period of probationary status, the appointing authority may grant a professional/managerial employee up to a five percent pay increase but not to exceed the maximum for the pay grade. The effective date shall be the beginning of the first pay period on or after the attainment of permanent status.

Subrule **4.5(1)**, paragraph "g" is rescinded and the following adopted in lieu thereof:

g. Pay for internship appointments. When an appointment is made to the administrative intern class, the employee may be paid the minimum or any rate less in the pay plan for that class. Requests to pay above the minimum will be administered in accordance with paragraph 4.5(1)"b" of these rules.

When an appointment is made to the highway engineer trainee class, the employee shall be paid in accordance with a fiscal year pay schedule approved by the director.

Subrule 4.5(3) is rescinded and the following adopted in lieu thereof:

4.5(3) Pay for exceptional job performance. Extra pay, not to exceed five percent of the employee's current annual salary, may be given to a permanent employee for exceptional job performance with the approval of the director. Written justification setting forth the nature of the exceptional job performance in the current class and position shall be submitted in advance to the director. Requirements for approval shall include the following:

a. The employee shall have served at least six months in the class and position occupied at the time the request is submitted.

b. No more than one request shall be approved for the same employee during a twelve-month period.

c. Pay for exceptional job performance shall not be authorized for any employee covered by a collective bargaining agreement unless determination has been made by the employment relations division that it is not prohibited.

Subrule 4.5(4) is rescinded and the following adopted in lieu thereof:

4.5(4) Pay upon promotion.

a. The pay of an employee promoted to a class covered by a different pay plan with steps shall first be adjusted to the nearest step in the new pay plan that is no less than the current pay. If applicable, pay shall be further adjusted in accordance with this subrule.

MERIT EMPLOYMENT DEPARTMENT[570] *(cont'd)*

b. An employee promoted to a class covered by a pay plan with steps shall be given a one-step pay increase or be brought to the minimum of the new pay grade, whichever is greater, if the promotion is between classes with a one or two pay grade difference. For promotions between classes with a three or more pay grade difference, the employee may either be given a one- or two-step pay increase or be brought to the minimum of the new pay grade, whichever is greater.

c. An employee promoted to a class covered by the professional/managerial pay plan may, at the discretion of the appointing authority, be given a pay increase not to exceed ten percent of the employee's base pay before the promotion. If the promotional pay is below the minimum of the new pay grade, the pay shall be brought to the minimum.

d. For promotions that require a change of duty station beyond twenty-five miles, the director may, upon request from the appointing authority, approve a one-step pay increase, or up to a five percent pay increase for employees promoted to a class covered by the professional/managerial pay plan, in addition to any other promotional pay increase provided for in these rules. Subsequent changes in the location of the duty station may justify a request by the appointing authority to remove the extra pay previously granted under this paragraph.

Change in duty station pay shall not be authorized for any employee covered by a collective bargaining agreement unless determination has been made by the employment relations division that it is not prohibited.

e. An employee who is promoted following a voluntary or disciplinary demotion shall not be eligible for a promotional pay increase until six months after the effective date of the demotion except as otherwise provided in this paragraph. The promotional pay to be in effect at the end of the six-month period shall be determined at the time of the promotion and the employee and the director notified.

If the employee's pay is below the minimum for the new class or needs adjustment to a step in a different pay plan, that portion of the promotional pay increase shall be given at the time of the promotion. The remaining increase shall be given at the end of the six-month period. The merit/step pay increase eligibility date shall be set at the time of the promotion based on the salary to be in effect at the end of the six-month period.

A promotional pay increase shall be given at the time of the promotion if:

(1) The employee's pay was reduced at the time of the demotion in an amount equal to or greater than the amount of the promotional pay increase; or

(2) The promotional pay increase is no more than if the employee had been promoted from the class held prior to the demotion.

f. If an employee's pay was "red-circled" prior to a promotion, the pay shall be administered in accordance with subrule 4.5(17).

Subrule 4.5(6) is amended to read as follows:

4.5(6) Pay upon assignment to special duty. A permanent employee assigned to special duty may receive extra pay only when the assignment is to a ~~higher~~ class *in a higher pay grade* or from a nonsupervisory to a supervisory class in the same ~~or comparable~~ pay grade. Requests for extra pay shall require prior approval from the director and shall be *set* ~~fixed~~ in accordance with these rules governing pay upon promotion to the class to which assigned for the duration of the special duty assignment. The class to which the employee is temporarily assigned shall be controlling for all pay purposes including overtime, shift differential, standby, ~~reporting,~~ call-back and leadworker pay eligibility.

a. A ~~temporary~~ *special duty* pay increase ~~may~~ *shall* not affect the employee's eligibility to receive a merit/*step* ~~automatic~~ pay increase in the employee's regular position during the period of special duty assignment~~, as provided for in policy by the department~~. *When an employee receives a merit/step pay increase while on a special duty assignment, the extra pay shall be recalculated from the new base salary.*

b. At the expiration of the assignment to special duty, the employee's pay shall revert to the authorized ~~step or rate of~~ pay ~~in~~ *for* the employee's regular position.

Subrule 4.5(7) is rescinded and the following adopted in lieu thereof:

4.5(7) Pay upon demotion.

a. When an employee is disciplinarily demoted, pay shall be set by the appointing authority at any step/rate within the pay grade of the class to which demoted that does not exceed the current pay, unless the pay must be increased to the minimum for the new class. If the current pay exceeds the maximum for the new class, it shall be reduced to at least the maximum, even if previously red-circled.

b. When an employee demotes voluntarily, pay shall be set by the appointing authority at any step/rate within the pay grade of the class to which demoted that does not exceed the current pay except in the following instances:

(1) If the pay is less than the minimum for the new class, it shall be increased to that minimum;

(2) If the demotion is to a class in a different pay plan with steps, the appointing authority shall adjust the pay to the nearest higher or lower step in the new pay plan; or

(3) If the current pay exceeds the maximum for the new class, or was previously red-circled, pay shall be administered in accordance with 4.5(17).

c. When a permanent employee demotes in lieu of reduction in force, the pay shall not change except in the following instances:

(1) If the pay is less than the minimum for the new class, it shall be adjusted to that minimum;

(2) If the demotion is to a class in a different pay plan with steps, the appointing authority shall adjust the pay to the nearest step in the new pay plan that is no less than the current pay; or

(3) If the current pay exceeds the maximum for the new class or was previously red-circled, it shall be administered in accordance with 4.5(17).

d. When an employee is demoted, the merit/step pay increase eligibility date shall not change except in the following instances:

(1) If the period of time until the current eligibility date in the previous class exceeds the period of time required for progression on the new step, a new eligibility date shall be set;

(2) If the pay is increased to the minimum for the new class as provided for in "b"(1) or "c"(1) of this subrule, a new eligibility date shall be set;

(3) If the employee is disciplinarily demoted as provided for in paragraph "a" of this subrule, a new eligibility date shall be set; or

(4) If the new step requires a longer period of time for progression, the eligibility date shall be adjusted but credit shall be given for time already spent on the step.

MERIT EMPLOYMENT DEPARTMENT[570] *(cont'd)*

Subrule 4.5(8) is rescinded and the following adopted in lieu thereof:

4.5(8) Pay upon change to the classification plan or the pay plans. When an employee's current pay exceeds the maximum for the class to which assigned as a result of a change to the classification plan or the pay plans, or was previously red-circled, the pay shall be administered in accordance with subrule 4.5(17). When the current pay does not exceed the maximum, neither the pay nor the merit/step pay increase eligibility date shall change except in the following instances:

a. If the change results in the employee being paid from a different pay plan with steps, the pay shall first be adjusted to the nearest step in the new pay plan that is no less than the current pay.

If the change results in the employee being paid from the same pay plan with steps, but the current pay is "red-circled" off-step, the pay shall be adjusted to the nearest step in the new pay plan that is no less than the current pay. If applicable the pay shall be further adjusted in accordance with this subrule.

b. If the current pay is less than the minimum for the new class or pay grade, the pay shall be increased to that minimum. The pay of employees covered by the professional/managerial pay plan may be further adjusted in accordance with paragraph "d" of this subrule.

c. If the change results in the employee being paid in a higher pay grade and the class is not covered by the professional/managerial pay plan, the employee may, at the discretion of the appointing authority, be given a one-step pay increase, unless previously adjusted in accordance with paragraph "b" of this subrule.

d. If the change results in the employee being paid in a higher pay grade and the class is covered by the professional/managerial pay plan, the employee may, at the discretion of the appointing authority, be given up to a five percent pay increase. A pay increase given in accordance with paragraph "b" of this subrule shall be included when determining the pay increase provided by this paragraph.

e. Merit/step pay increase eligibility dates shall change in the following instances:

(1) If the employee receives a pay increase in accordance with paragraph "b" or "c" of this subrule, a new merit/step pay increase eligibility date shall be set.

(2) If the employee does not receive a pay increase in accordance with paragraph "b" or "c" of this subrule, but the change results in the employee being paid from a step requiring a longer period of time for progression, the eligibility date shall be adjusted, but with credit given for the time already spent on the previous step.

(3) If the period of time until the employee's current eligibility date exceeds the period of time required for progression on the new step, a new eligibility date shall be set.

Subrule 4.5(9) is rescinded and the following adopted in lieu thereof:

4.5(9) Pay upon transfer. When an employee's pay exceeds the maximum of the class to which assigned as a result of a transfer, or the pay was previously red-circled, pay shall be administered in accordance with subrule 4.5(17). When the pay does not exceed the maximum, neither the pay nor the merit/step pay increase eligibility date shall change except in the following instances:

a. If the transfer is to a different agency, a lower step/rate of pay within the pay grade may be agreed upon and the director notified in writing.

b. If the transfer results in the employee being paid from a different pay plan with steps, the pay shall first be adjusted to the nearest step in the new pay plan that is no less than the current pay except as provided in paragraph "a" of this subrule. If applicable, the pay shall be further adjusted in accordance with paragraph "c" or "d" of this subrule.

c. If the pay is less than the minimum for the new class, it shall be increased to that minimum.

d. If the transfer is for the convenience of the agency and involves a change in duty station beyond twenty-five miles, the appointing authority may request the director's approval of a one-step pay increase for classes not covered by the professional/managerial pay plan, or up to a five percent pay increase for classes covered by the professional/managerial pay plan. Future changes in the location of the employee's duty station may justify a request by the appointing authority to have the pay increase removed.

A pay increase as provided for in this paragraph shall not be authorized for any employee covered by a collective bargaining agreement, unless determination has been made by the employment relations division that it is not prohibited.

e. If an employee is transferred from a nonsupervisory to a supervisory class in the same pay grade, the pay shall be administered in accordance with subrule 4.5(4).

f. Merit/step pay increase eligibility dates shall change in the following instances:

(1) If the employee receives a pay increase in accordance with paragraph "c" or "e" of this subrule, a new merit/step pay increase eligibility date shall be set.

(2) If the employee only receives a pay increase in accordance with paragraph "d" of this subrule, but the change results in the employee being paid from a step with a different period of time for progression, the eligibility date shall be adjusted, but with credit given for the time already spent on the previous step.

(3) If the employee does not receive a pay increase but the transfer results in the employee being paid from a step requiring a longer period of time for progression, the eligibility date shall be adjusted, but with credit given for the time already spent on the previous step.

(4) If the period of time until the employee's current eligibility date exceeds the period of time required for progression on the new step, a new eligibility date shall be set.

Subrule 4.5(10) is amended to read as follows:

4.5(10) Pay upon reallocation. When a position is reallocated, the ~~incumbent's~~ *employee's* pay shall be ~~fixed~~ *set* in accordance with these rules governing pay upon promotion, demotion or transfer, whichever is applicable. A pay increase given ~~an incumbent~~ as a result of a reallocation shall establish a new merit/*step* pay increase eligibility date.

When a position is reallocated downward and the reallocation is neither disciplinary, voluntary nor the result of a reduction in force, it shall not be considered a demotion, but the pay shall be handled as provided for in 4.5(7)"c."

Rule **570—4.5(19A)** is amended by adding the following new subrules:

4.5(16) Pay for cost-of-living or economic adjustments. The director shall provide for the administration of cost-of-living or economic pay adjustments in accordance with Acts of the General Assembly. No employee who is red-circled shall receive a cost-of-living or economic pay increase unless it is specifically authorized by Acts of the General Assembly.

MERIT EMPLOYMENT DEPARTMENT[570] *(cont'd)*

4.5(17) Pay upon red-circling. When an employee's pay is red-circled, the appointing authority shall notify the employee in writing of the expiration date of the red-circled period, and, in the case of a voluntary demotion, the pay following expiration. The appointing authority shall send a copy to the director. Red-circling shall be administered as follows:

a. When an employee's current pay is red-circled and the employee's classification, pay grade or pay plan changes, the pay shall be reduced to the maximum of the current pay grade before applying other pay rules.

When an employee's current pay is red-circled and the employee transfers within the agency to another position in the same class, the salary shall continue to be red-circled. When an employee's current pay is red-circled and the employee transfers to a position in another agency in the same class, the red-circled salary may, at the discretion of the appointing authority, be reduced to the maximum of the pay grade.

b. When an employee is disciplinarily demoted and the pay exceeds the maximum for the class to which demoted, the pay shall not be red-circled and any previously approved red-circled rate shall be removed.

c. When an employee demotes voluntarily or in lieu of reduction in force, or is reallocated, and the pay exceeds the maximum for the class to which demoted or reallocated, the pay may, at the discretion of the appointing authority, be red-circled for up to two years.

d. When an employee transfers to a class in a different pay plan and the pay exceeds the maximum for the class to which assigned, the pay may, at the discretion of the appointing authority, be red-circled for up to two years.

e. When as a result of a change to the classification plan or the pay plans, an employee's pay exceeds the maximum for the class to which assigned, the pay shall be red-circled for two years.

Rule 570—4.7(19A) is rescinded and the following adopted in lieu thereof:

570—4.7(19A) Pay for extraordinary duty. The director may authorize a reasonable amount of additional pay for an employee who is assigned and performs duties extraordinary for the employee's class. This extra pay must be given in step increments except for employees covered by the professional/managerial pay plan. This extra pay may exceed the maximum pay for the class, and shall be paid only as long as the circumstances continue which have caused the assignment of extraordinary duties. Requests for extraordinary duty pay shall be submitted to the director in writing setting forth the justification for the additional pay amount and the period of time requested. The appointing authority may temporarily assign duties extraordinary for the employee's class without adjusting compensation for a period not to exceed six pay periods in a calendar year without the approval of the director.

Extraordinary duty pay shall not be authorized for any employee covered by a collective bargaining agreement unless determination has been made by the employment relations division that it is not prohibited.

Extraordinary duty pay shall not affect the employee's eligibility to receive a merit/step pay increase. However, when an employee receives a merit/step pay increase while receiving extraordinary duty pay, the extraordinary duty pay shall be recalculated from the new base salary.

ITEM 5. Subrule **5.5(9)**, unnumbered paragraph is rescinded and the following is adopted in lieu thereof:

Applicants disqualified or removed from the eligible list under this rule shall be notified in writing by the director. Applicants may appeal the decision to the commission under subrule 12.2(4).

Subrule **5.8(2)**, paragraph "f" is rescinded and the following adopted in lieu thereof:

f. Retaking examinations. Applicants, or employees who are applicants, may not retake the same written examination or one with the same or similar content until at least thirty calendar days have elapsed, or as otherwise provided in rule 5.12(19A), if the class is open to application. Employees who are applicants may retake written examinations for classes that are not open to application with the approval of the director. Applicants, or employees who are applicants, may retake performance examinations at seven calendar day intervals. Waiting period violation shall result in that examination score being voided and an additional waiting period being imposed. The last examination taken shall be used to determine the applicant's score on the eligible list and the eligibility expiration date.

Rule 570—5.12(19A) is amended to read as follows:

570—5.12(19A) Review of *written (division A) examination* ~~ratings~~ *questions*. Any applicant may request ~~of the director~~ to review the *questions answered incorrectly* ~~rating of~~ *on* the applicant's examination, provided the request is filed *with the director* within fifteen *calendar* days ~~of~~ *following* the date the notice of examination results was issued. ~~Review of examination ratings shall be limited to the applicant and the appointing authority to whom the applicant has been certified for appointment.~~ The review shall be *subject to costs determined by the director and* allowed only during regular business hours in the offices of the department.

Any person who reviews ~~an~~ *written* examination *questions* may not ~~participate~~ *take in that examination or* another examination ~~in the same series or~~ with *the same or* similar ~~examination~~ content until ninety calendar days have elapsed after the review. ~~Attempts to do so~~ *Waiting period violation* ~~will~~ *shall* result in ~~all~~ *that* ~~prior~~ *examination* scores ~~for that job class~~ being voided and an additional ninety-day waiting period being imposed; ~~as well as ineligibility for certification from that list until the examination is retaken~~.

ITEM 6. Subrule 6.6(9) and the paragraph following are rescinded and the following adopted in lieu thereof:

6.6(9) Violation of any of the provisions of Iowa Code chapter 19A, or the rules promulgated thereunder.

Applicants removed from the eligible list under this rule shall be notified in writing by the director. Applicants may appeal the decision to the commission under subrule 12.2(4).

ITEM 7. Rule 570—7.8(19A) is amended to read as follows:

570—7.8(19A) *Expiration* ~~Life~~ of a certificate of *applicants* ~~eligibles~~. The ~~life~~ *expiration* of a certificate shall be *sixty calendar days* ~~one month~~ from the date of issue *unless otherwise approved by the director*. ~~Certificate extensions may be requested, but no extension granted shall exceed two weeks beyond the certificate's original expiration date.~~ All appointments must be reported *to the director* ~~during the life~~ *before the expiration date* of the

certificate. Effective dates of appointments must be no later than sixty days after the expiration date of the certificate ~~or the appointment is void~~ *unless otherwise approved by the director*, except that *appointments* ~~persons appointed~~ "pending graduation" or "pending license" shall be allowed *to be effective* up to eight months ~~from~~ *following* the *expiration* date ~~issuance~~ of the certificate.

Rule 570—7.9(19A) is rescinded and the following adopted in lieu thereof:

570—7.9(19A) Omission of the name of an applicant after three referrals. If the appointing authority passes over the name of an applicant on three separate certificates in connection with three separate appointments from the same eligible list, from which another person with a lower certified score was hired, the appointing authority may request that the director not refer that applicant to that appointing authority from the same eligible list for future vacancies for a period of two years from the date removed. If approved, the director shall notify the applicant of the action. Appeal from removal shall be in accordance with chapter 12 of these rules.

Rule 570—7.15(19A) is adopted to read as follows:

570—7.15(19A) Referral and appointment of "conditional" applicants. The names of applicants who are on the eligible list for a class "pending graduation" or "pending license" are considered to be "conditional." In order to have these applicants referred on a certificate, the appointing authority must explain in writing the need and the efforts to recruit and consider qualified applicants. Upon approval, the scores of both "conditional" and qualified applicants will be referred to the agency. If a "conditional" applicant is selected, the appointment shall be effective no sooner than when the requirements for qualification have been met. Appointment shall be made in accordance with rule 7.8(19A).

ITEM 8. Rule 570—8.3(19A) is amended to read as follows:

570—8.3(19A) Project appointment. When a particular job, project, grant, contract or other temporary employment situation is of limited duration or funding, project appointments may be made to unauthorized positions *in job classes not covered by collective bargaining agreements*, provided the director approves the project determination and the comptroller certifies that funds are available. Certification shall be made in accordance with chapter 7 of these rules. Project appointment shall not confer any right of position, transfer, demotion, promotion or appeal, but incumbents shall be eligible for vacation and sick leave and other employee benefits. An appointment of an individual to any one particular project will be approved for no more than one year, except the director, on the basis of limited specific need that could not otherwise be efficiently and effectively met, may extend the appointment for a reasonable period not to exceed twelve months.

Rule 570—8.7(19A) is rescinded and the following adopted in lieu thereof:

570—8.7(19A) Reinstatement. A former permanent employee who resigned while in good standing or who was separated for other than just/good cause may be reinstated at the discretion of an appointing authority. Reinstatement eligibility shall be to the class held at the time of separation, to a class in the same pay grade, or to a class in a lower pay grade. The person must be determined by the director to be eligible for appointment to the class, but need not be certified from a list of eligibles. The period of reinstatement eligibility shall be equal to the period of continuous state employment immediately prior to the employee's separation, to a maximum of two years.

A permanent employee occupying a position that has been exempted from the state merit employment system shall be eligible for reinstatement during the period of exempt service and for a period equal to the period of the employee's continuous state service, not to exceed two years, following separation from the exempt service.

Rule 570—8.11(19A) is rescinded and the following adopted in lieu thereof:

570—8.11(19A) Internship appointment. The director may authorize an appointing authority to make internship appointments to established positions or, if approved by the comptroller's office that funds are available, to unauthorized positions.

8.11(1) Internship appointments to the class of administrative intern may be made for a period not to exceed one year unless otherwise authorized by the director. Internship appointments to the class of highway engineer trainee shall expire no later than attainment of an undergraduate degree.

8.11(2) Internship appointments shall not confer any right of appeal, position, promotion, demotion, transfer, recall, reinstatement nor any other rights given to permanent or probationary employees under these rules. The intern shall not accrue vacation or sick leave nor be entitled to other benefits of state employment, nor shall credit be given for future vacation accrual purposes.

ITEM 9. Rule 570—9.1(19A) is rescinded and the following adopted in lieu thereof:

570—9.1(19A) Duration. All original permanent appointments made as provided for in these rules shall require a six-month period of probationary status. A period of probationary status of six months may, at the discretion of the appointing authority with notice to the employee and the director, be required upon reinstatement, and all rules requiring probationary status shall apply during that period.

Rule 570—9.2(19A) is rescinded and the following adopted in lieu thereof:

570—9.2(19A) Disciplinary actions.

9.2(1) In addition to less severe progressive discipline measures, the appointing authority may demote, suspend, reduce pay within the same pay grade or discharge an employee during the period of probationary status without right of appeal to the commission. The appointing authority shall notify the employee in writing of the effective date of the action, and in the case of a suspension or reduction in pay, the duration of the action. A copy of the notice shall be sent to the director by the appointing authority.

9.2(2) A probationary employee may be disciplinarily demoted to a lower class in the same class series, in the same location, and under the same conditions under which the employee was originally certified. Otherwise, disciplinary demotion during the period of probationary status shall require eligibility for appointment from a list of eligibles in accordance with subrule 7.3(2). A probationary employee may be demoted to a work-test (division C) class without regard to class series, location or other

similar conditions as long as the employee meets the minimum qualifications required for the class. The total required period of probationary status shall include the time spent in the higher class. The pay shall be set in accordance with subrule 4.5(7).

Rule 570—9.3(19A) is rescinded and the following adopted in lieu thereof:

570—9.3(19A) Voluntary demotion. When a probationary employee submits a written request for a demotion to a lower class, the appointing authority may grant the demotion. Voluntary demotion during the period of probationary status shall require eligibility for appointment from a list of eligibles in accordance with subrule 7.3(2). A probationary employee may voluntarily demote to a work-test (division C) class without regard to class series, location or other similar conditions as long as the employee meets the minimum qualifications required for the class. The total required period of probationary status shall include the time spent in the lower class. The pay shall be set in accordance with subrule 4.5(7).

Rule 570—9.8(19A) is rescinded and the following adopted in lieu thereof:

570—9.8(19A) Probationary period for promoted permanent employees. This rule shall only apply to promotion within an appointing authority's jurisdiction.

A permanent employee may be required to serve a six-month probationary period in the class to which promoted before the promotion becomes permanent.

At any time during the promotional probationary period the appointing authority may return the employee to the formerly held class. Return under this rule shall not be considered a demotion and there shall be no appeal to the commission. The former salary and pay increase eligibility date shall be restored with credit allowed for the time spent in the higher class.

Rule **570—9.9(19A)** is rescinded.

ITEM 10. Rule **570—10.1(19A)** is amended by rescinding subrule **10.1(1)**.

Rule 570—10.3(19A) is rescinded and the following adopted in lieu thereof:

570—10.3(19A) Special duty assignment. An appointing authority may assign a permanent employee to special duty when the services of that employee are temporarily needed in another position in another class. This assignment shall be without prejudice to the employee's rights in and to the regularly assigned position. Unless there is a statutory requirement to the contrary, the employee need not be qualified for, nor certified to the class to which temporarily assigned.

10.3(1) When a special duty assignment is to a class in a higher pay grade or from a nonsupervisory to a supervisory class having the same pay grade, additional compensation may be requested by the appointing authority. Requests shall be submitted to the director in writing setting forth the need for the assignment and the period of time requested. Pay shall be in accordance with subrule 4.5(6).

10.3(2) An appointing authority may temporarily assign an employee to special duty without adjusting compensation for a period not to exceed six pay periods in a calendar year without the approval of the director. Assignments beyond six pay periods shall require the approval of the director.

10.3(3) A special duty assignment shall not be authorized for any employee covered by a collective bargaining agreement unless determination has been made by the employment relations division that it is not prohibited.

Rule 570—10.4(19A) is rescinded and the following adopted in lieu thereof:

570—10.4(19A) Voluntary demotion. When a permanent employee submits a written request for a demotion to a lower class, the appointing authority may grant the demotion. However, no demotion shall be made to a lower class not in the same series until the employee is approved by the director as being eligible for appointment. A copy of the approved request shall be sent by the appointing authority to the director. Voluntary demotion may be either interagency or intra-agency, and shall not be subject to appeal under these rules.

Voluntary demotions of employees with probationary status shall be in accordance with subrule 9.2(3).

ITEM 11. Rule 570—11.2(19A) is amended to read as follows:

570—11.2(19A) Disciplinary actions. In addition to less severe progressive discipline measures, any employee is subject to suspension, ~~pay~~ reduction *of pay* within the *same* pay grade, *disciplinary* demotion or discharge. Suspension, ~~pay~~ reduction *of pay* within the *same* pay grade, *disciplinary* demotion or discharge of a permanent employee shall be based upon any of the following reasons: Inefficiency, insubordination, less than competent job performance, failure to perform assigned duties, inadequacy in the performance of assigned duties, ~~narcotics addiction,~~ dishonesty, improper use of leave, unrehabilitated ~~alcoholism~~ *substance abuse*, negligence, conduct which adversely affects the employee's *job* performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct or any other just/good cause. Attainment of permanent status is not to be construed as a guarantee of the right to a position regardless of performance or conduct.

11.2(1) Suspension. An appointing authority may suspend an employee ~~without pay~~ for *a* length of time considered appropriate not to exceed thirty calendar days. *Suspension shall be without pay.* A written notice of the reasons for the suspension and its duration shall be sent to the *permanent* employee within ~~three working days~~ *twenty-four hours* after the effective date of the action and a copy shall be sent to the director by the appointing authority at the same time.

11.2(2) Reduction *of pay* within *the same* pay grade. An appointing authority may reduce the pay of an employee to a lower step/rate of pay within the *same* pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the *permanent* employee within ~~three working days~~ *twenty-four hours* after the effective date of the action and a copy shall be sent to the director by the appointing authority at the same time.

11.2(3) *Disciplinary d*~~D~~emotion. An appointing authority may *disciplinarily* demote an employee to a vacant position. In the absence of a vacant position, the appointing authority may effect the same disciplinary result by removing duties and responsibilities from the employee's position sufficient to cause it to be reallocated downward. A permanent employee must be eligible for

appointment to the class to which the demotion is made when the class is not in the same class series. *Disciplinary d*~~D~~emotion of employees who ~~are~~ *do* not *have* permanent *status* shall be ~~as set forth~~ in *accordance with* rule ~~9.3~~ *9.2*(19A). A written statement of the reasons for the *disciplinary* demotion shall be sent to the *permanent* employee within ~~three working days~~ *twenty-four hours* after the effective date of the action and a copy shall be sent to the director by the appointing authority at the same time.

Subrules 11.2(4) and 11.2(5) are rescinded and the following adopted in lieu thereof:

11.2(4) Discharge. An appointing authority may discharge an employee. A written statement of the reasons for the discharge shall be sent to the permanent employee within twenty-four hours after the effective date of the action and a copy shall be sent to the director by the appointing authority at the same time.

When an employee has been appointed with a temporary work permit and that permit is revoked, or when a required license expires or is revoked, the employee shall either be discharged for failure to meet or maintain license requirements, or otherwise appointed to another position in accordance with these rules. This action shall be effective no later than the pay period following the failure to obtain, revocation, or expiration of, the permit or license.

11.2(5) An appeal of a suspension, reduction of pay within the same pay grade, disciplinary demotion or discharge of a permanent employee shall be in accordance with chapter 12 of these rules.

Rule 570—11.3(19A), first paragraph and subrule 11.3(1) are rescinded and the following adopted in lieu thereof:

570—11.3(19A) Reduction in force. A reduction in force shall be required whenever the appointing authority reduces the number of permanent employees in a class or the number of hours worked by permanent employees in a class except as provided in subrule 11.3(1).

11.3(1) The following agency actions shall not constitute a reduction in force nor require application of these reduction in force rules:

a. An interruption of employment for no more than 120 hours in a fiscal year.

b. Interruptions in the employment of school term employees during breaks in the academic year or during the summer, or other seasonal interruptions that are a condition of employment.

c. The promotion or reallocation of an employee to a class in a higher pay grade.

d. The reallocation of an employee's position to a class in a lower pay grade that results from the correction of a classification error, a class or series revision or the gradual evolution of changes in the position.

e. A disciplinary or voluntary demotion of an employee to a class in a lower pay grade.

f. The transfer of an employee to another position in the same class or a class in the same pay grade.

ITEM 12. Subrule **12.1(4)**, paragraph "b," is rescinded and the following adopted in lieu thereof:

b. The grievant, an employee who is the grievant's representative, and other employees allowed to attend the grievance meeting by the appointing authority shall be in paid status for that time spent at and traveling to and from the grievance meeting during their regularly scheduled hours of work. In addition, those employees required to attend the meeting by the appointing authority shall be in paid status, and if eligible for overtime compensation, shall also be in paid status for that time spent at and traveling to and from the grievance meeting outside of their regularly scheduled hours of work.

Subrule 12.2(8) is amended to read as follows:

12.2(8) Appeal of ~~suspension, reduction in pay step/rate within pay grade,~~ disciplinary *actions* ~~demotion, or discharge~~. A permanent employee who is suspended, reduced in pay ~~step/rate~~ within *the same* pay grade, disciplinarily demoted, or discharged may appeal *in writing directly* to the appointing authority ~~and if not satisfied may appeal in writing to the commission~~ *within seven calendar days after the effective date of the action. The appointing authority shall give its written decision to the employee within fourteen calendar days after the receipt of the appeal. If not satisfied with the decision of the appointing authority, the employee then may appeal to the commission.* Right of appeal to the commission shall expire unless the employee files the written appeal with the commission within thirty calendar days after the effective date of the suspension, disciplinary demotion, reduction ~~in~~ *of* pay ~~step/rate~~ within *the same* pay grade or discharge by the appointing authority.

Disciplinary actions not covered by this subrule are not appealable to the commission, but may be filed as grievances in accordance with rule 12.1(19A).

Subrule 12.5(1) is rescinded and the following adopted in lieu thereof:

12.5(1) An employee who is either a party to the hearing, the party's representative or a witness who testifies at the hearing shall be in paid status for that time spent at and traveling to and from the hearing during regularly scheduled hours of work. In addition, those employees required to attend the hearing by the appointing authority shall be in paid status and, if eligible for overtime compensation, shall also be in paid status for that time spent at and traveling to and from the appeal hearing outside of their regularly scheduled hours of work. In the case of group appeals, only one of the appellants shall be in paid status.

Subrule 12.5(3) is amended to read as follows:

12.5(3) The ~~appellant~~ *parties* shall be held liable for the cost of representation and witness fees *and expenses* for persons who are subpoenaed by the ~~appellant~~ *parties* under paragraph 12.3(1)"o" of these rules. Witness fees *and expenses* shall be limited to the amounts provided in Iowa Code section 622.69.

ITEM 13. Rule **570—14.7(19A)** is rescinded.

Rule 570—14.13(19A) is rescinded and the following adopted in lieu thereof:

570—14.13(19A) Election leave. An employee who is not covered by the federal Hatch Act and who becomes a candidate for paid, partisan elective office shall be placed in a leave status thirty calendar days before the primary election and, if nominated, thirty calendar days before the general election. The employee may choose to use accrued vacation leave, accrued compensatory leave, or leave without pay to cover these periods.

An employee who is elected to a paid, partisan office shall, upon written request to the appointing authority, be granted a leave of absence to serve in that office, except where prohibited by federal law. The use of accrued vacation leave, accrued compensatory leave, or leave without pay to cover this period shall be at the discretion of the appointing authority. The leave of absence provided for in

MERIT EMPLOYMENT DEPARTMENT[570] *(cont'd)*

this rule need not exceed six years. An employee shall not be prohibited from returning to employment before the expiration of the period for which the leave of absence was granted.

ITEM 14. Rule 570—17.4(19A) is rescinded and the following adopted in lieu thereof:

570—17.4(19A) Records of the department. All records of the department, except for those specified by the director as confidential in accordance with Iowa Code section 19A.15, may be examined and copied at the department during regular business hours. Examination and copying will be subject to costs determined by the director in accordance with the provisions of Iowa Code section 22.3. Costs shall be paid in advance unless otherwise authorized by the director.

Administration of this chapter and other relevant portions of Iowa Code chapter 22 is delegated by the director to the supervisor of the department's support services section.

ITEM 15. Rule 570—14.13(19A) is rescinded and the following adopted in lieu thereof.

570—19.1(19A) Personnel administration. The *state* merit system of personnel administration is established and governed by ~~chapter 19A, the~~ *Iowa* Code, *chapter 19A* and *the* rules promulgated thereunder. The operational unit is the merit employment department. ~~through the director.~~ The merit employment commission members are appointed by the governor subject to confirmation by the senate. The commission is responsible for duties prescribed ~~by~~ *in the* statute and the promulgate~~d~~*ion of* rules. The department is responsible for the administration, co-ordination and recommendation of personnel programs set forth in chapter 19A, and its operational structure is composed of divisions deemed necessary by the director to carry out the purposes of *the* Act within the budget funds provided. *The powers and duties conferred upon the director may be delegated by the director to employees of the department. An employee of the department shall be designated by the director to carry out the powers and duties of the director in the absence of, or the inability of the director to do so.* Information requests, materials submissions or inquir~~y~~*ies* concerning any operation or function of the department or the commission should be addressed to the *Director, Iowa Merit Employment Department,* Grimes State Office Building, ~~State Capitol,~~ Des Moines, Iowa 50319. Telephone inquiry to the department~~'s units~~ may be made through listings provided in the City of Des Moines telephone directory ~~of~~ *or* the Iowa Capitol Complex telephone directory ~~listings~~.

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ARC 5422

PUBLIC SAFETY DEPARTMENT[680]

Pursuant to the authority of Iowa Code Chapter 101, the Iowa Department of Public Safety, State Fire Marshal Division hereby adopts amendments to Chapter 5 "Fire Marshal," Iowa Administrative Code.

Notice of Intended Action was published in the November 21, 1984, Iowa Administrative Bulletin as **ARC 5114**.

Changes from the notice are as follows: The date of October 23, 1980 was changed to October 7, 1982.

This amendment will become effective on May 15, 1985.

This rule is intended to implement Iowa Code Chapter 101.

The following amendment is adopted:

Rule **680—5.275(101)** shall be amended by adding the following:

The standard of "Liquefied Natural Gas Facilities: Federal Safety Standards" 49 CFR, Part 193, October 7, 1982, shall be the rules governing liquefied natural gas facilities in the state of Iowa.

[Filed 3/21/85, effective 5/15/85]
[Published 4/10/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5423

PUBLIC SAFETY DEPARTMENT[680]

Pursuant to the authority of Iowa Code sections 17A.3, 80.39 and Chapter 691, the Iowa Department of Public Safety adopts a new Chapter 18 entitled "Disposition of Ammunition and Firearms," Iowa Administrative Code.

Notice of Intended Action was published in the November 21, 1984, Iowa Administrative Bulletin as **ARC 5115**.

Changes from the notice are as follows: 680—18.4 last sentence changed "the calendar year" to "one calendar year." 680—18.5 next to last sentence, changed "the calendar year" to "one calendar year."

This rule will become effective on May 15, 1985.

CHAPTER 18
DISPOSITION OF AMMUNITION AND FIREARMS

680—18.1(17A,80,691) Deposit of ammunition and firearms. The division of criminal investigation criminalistics laboratory (DCI laboratory) shall examine, evaluate, and utilize, for proper purposes, all ammunition and firearms submitted to the laboratory. All firearms submitted to the laboratory, pursuant to the provisions of Iowa Code section 691.9 shall be evaluated and disposed of as provided by that section of the Code in accordance with these rules.

680—18.2(17A,80,691) DCI laboratory firearms inventory. All transactions of any nature covered by any of the provisions noted below shall be recorded as and made a part of the continuous DCI laboratory inventory with regard to its firearms reference file. This inventory shall be kept up to date on a monthly basis, with regard to receipt of firearms and on an annual basis with regard to distribution, destruction and sale. Said inventory shall be kept by the DCI laboratory and shall be kept in effect and current for a period not to exceed twenty years for any individual entry. Entries in the inventory older than twenty years, which do not refer to firearms maintained in the DCI laboratory firearms reference file, may be purged at the discretion of the commissioner of public safety.

680—18.3(17A,80,691) Disposition of firearms and ammunition in the DCI laboratory reference file. All firearms and ammunition will be evaluated as to their usefulness as a standard for retention in DCI laboratory firearms and ammunition reference file. Any firearms and ammunition deemed useful for such purpose will be so deposited.

680—18.4(17A,80,691) Disposition of firearms and ammunition (interstate). All firearms and ammunition still in the possession of the DCI laboratory (subsequent to 680—18.3(17A,80,691)) will be evaluated for possible distribution to other state or federal crime laboratories. All firearms and ammunition deemed appropriate for distribution by the commissioner of public safety shall be so offered. The transfer of these firearms and ammunition shall be made within one calendar year of evaluation.

680—18.5(17A,80,691) Disposition of firearms and ammunition (intrastate). All firearms and ammunition still in the possession of the DCI laboratory (subsequent to 680—18.4(17A,80,691)) shall be evaluated for usefulness to Iowa law enforcement agencies.

All firearms which are deemed useable for law enforcement purposes (service use by police agencies or firearms safety training purposes) may be distributed to law enforcement agencies which have made a request for the firearms. This distribution shall be made within one calendar year of evaluation. The distribution shall be made in accordance with the reasonable needs of the agency as determined by the commissioner of public safety.

680—18.6(17A,80,691) Sale of firearms and ammunition by the state of Iowa. All firearms and ammunition still in the possession of the DCI laboratory after the aforementioned evaluation (680—18.5(17A,80,691)), will be evaluated for sale. Those firearms found suitable by the commissioner of public safety for sale shall be sold at public auction.

Sale of firearms shall be subject to the following qualifications:

1. No firearms deemed to be offensive weapons under Iowa Code section 724.1 may be sold at public auction.
2. No firearms shall be sold which fall under the purview of Title II of the Federal Gun Control Act of 1968. Examples of such firearms are outlined in the United States Department of Treasury/Internal Revenue Service/Alcohol, Tobacco and Firearms Division, Publication 674(10-69).
3. No handguns will be sold.
4. The sale of all firearms shall be documented by completing the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, Firearms Transaction Record Part 1, ATF F 4473 (5300.9) Part 1 (11-81) form.

680—18.7(17A,80,691) Final disposition and destruction. All firearms not disposed of by these rules (subsequent to 680—18.6(17A,80,691)) shall be destroyed. Destruction shall be accomplished by grinding and chopping at a scrap metal facility or melt down at a suitable foundry operation. All destruction shall be supervised and conducted by the staff of the DCI laboratory with the authorization of the commissioner of public safety. Documentation of the destruction shall be made.

680—18.8(17A,80,691) Claims. Any disputed claim of ownership or right of possession of a firearm or of ammunition subject to these rules shall be adjudicated in accordance with the rules regarding contested case procedures set forth in chapter 10 of these rules.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5438

WATER, AIR AND WASTE MANAGEMENT[900]

WATER, AIR AND WASTE MANAGEMENT COMMISSION

Pursuant to the authority of Iowa Code sections 17A.3, 455B.105 and 455B.183 the Water, Air and Waste Management Commission adopts amendments to Chapter 9, "Delegation of Construction Permitting Authority"; Chapter 40, "Scope of Division - Definitions - Forms - Rules of Practice"; and Chapter 41, "Water Supplies"; pertaining to the Safe Drinking Water Program.

Notice of Intended Action was published in the September 12, 1984, Iowa Administrative Bulletin as **ARC 4957**. Changes from said notice are as follows:

1. Subrule 40.4(1) - Item 8. Language was clarified.
2. Subrule 41.3(4) - Item 13. Proposals to rescind 41.3(4) "a"(1), "b"(1), and "c"(1) were dropped due to objections from EPA. A new paragraph "e" is added to replace proposed rules on bacterial compliance, consistent with EPA requirements.
3. Subrule 41.4(1) - Item 14. The proposal to strike paragraph "h" and add a new paragraph "k" was dropped due to objections from EPA. Language was added to new paragraph "d" to clarify in response to comments that regional water systems have to sample for bacteria at least as frequently as the population served called for under paragraph "b."
4. Subrule 41.4(11), paragraph "d" - Item 20. In response to public comments, this paragraph was changed to allow certified laboratories two more days to report sample results to the department, to require certified labs to report sample results to the water supplier as well as the department, and to reassert that the supplier has to report violations of standards to the department.
5. Subrule 41.4(15) - Item 20. In response to public comments, the criteria under which the department would require monitoring of "other" contaminates are tightened up substantially.
6. Subrule 41.5(2) - Item 22. Language was clarified in subparagraph "b"(3) - "corrected promptly" in the proposed rule now reads "corrected within 30 days of being notified by the department." Subparagraph (4) was struck because of objections from EPA, and other changes in public notice requirements were made in response to public and EPA requirements.
7. Rule 41.14(455B) - Item 25. Language was clarified in response to comments in 41.14(1), 41.14(2) and 41.14(3), last unnumbered paragraph.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

These rules will become effective on May 15, 1985.

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

ITEM 1. Amend rule 900—9.1(455B) as follows:

900—9.1(455B) Scope. Iowa Code section 455B.183 ~~authorizes the department to~~ delegates construction permitting authority over *certain* sewer and water main extensions to qualified local public works departments. This chapter describes the manner and criteria under which the department *oversees* ~~exercises~~ this authority.

ITEM 2. Amend rule 900—9.2(455B, 17A) as follows:

900—9.2(455B, 17A) Forms. The following forms are *to be* used by local agencies ~~seeking and~~ implementing ~~such~~ *this* authority.

WAWM 1 - ~~application for delegation of water main/sewer extension permitting authority~~ *(reserved)*

WAWM 2 - ~~statement of engineer's qualifications~~ *(reserved)*

WAWM 3 - review checklist for water main extensions

WAWM 4 - review checklist for sewer extensions

WAWM 5 - permitting authority quarterly report

ITEM 3. Amend rule 900—9.3(455B) as follows:

900—9.3(455B) ~~Application~~ p*P*rocedures. A local public works department ~~requesting~~ *exercising* permitting authority for sewer or water supply distribution system extensions under Iowa Code section 455B.183 shall ~~apply in writing to~~ *notify* the executive director ~~on forms WAWM 1 and WAWM 2. The application forms include specific statements of agreement to comply with the requirements of 9.4(455B), and other information necessary to determine the scope of delegation sought and areas of jurisdiction and to verify the qualifications of the applicant, including the qualifications of the reviewing engineer~~ *in writing prior to the first permit issuance.* Additional information may be requested by the executive director.

ITEM 4. Amend rule 900—9.4(455B), by striking paragraphs "a," "b" and "c" of subrule 9.4(2), and further amending the rule as follows:

900—9.4(455B) Criteria for ~~granting~~ authority. The requirements for ~~delegation of~~ permitting authority ~~and requirements applicable to local public works departments which have been delegated permitting authority~~ are as follows:

9.4(1) Permitting authority applies only to extensions which:

a. Primarily serve residential consumers and will not result in an increase greater than five percent of the capacity of the treatment works or system, or will serve fewer than two hundred and fifty dwelling units.

b. In the case of sewer extensions, will not exceed the capacity of any treatment works which received a federal or state monetary grant after 1972.

c. In the case of water main extensions, will not exceed the production capacity of any system constructed after 1972.

9.4(~~1~~2) (Same)

9.4(~~2~~3) The reviewing engineer shall be *registered as a professional engineer in Iowa and shall be* employed or retained by the governmental subdivision. ~~and have the following qualifications:~~

9.4(~~3~~4) (Same)

9.4(~~4~~5) (Same)

9.4(~~5~~6) (Same)

9.4(~~6~~7) (Same)

ITEM 5. Rescind rule **900—9.5(455B).**

ITEM 6. Amend rule **900—40.2 (455B)** by transferring the definitions from **900—41.1 (455B)**, unnumbered and in alphabetical order, except for **41.1(17)**, which is stricken. **900—41.1 (455B)** is reserved. In addition, the following new definitions to 40.2(455B) are being added in alphabetical order.

"Antisiphon device" means a device which will prevent back siphonage by means of a relief valve which automatically opens to the atmosphere, preventing the creation of subatmospheric pressure within a pipe, thereby preventing water from reversing its flow.

"Backflow" means the flow of water or other liquids, mixtures, or substances into the distribution system of a potable water supply from any source other than its permitted source.

"Backflow preventer" is a device or means to prevent backflow into a potable water system.

"Back siphon" means the flowing back of used, contaminated, or polluted water, from a plumbing fixture or vessel as a result of negative or subatmospheric pressure within the distribution system.

"Corrosive water" means a water which due to its physical and chemical characteristics may cause leaching or dissolving of the constituents of the transporting system in which it is contained.

"Cross connection" means any actual or potential connection between a potable water supply and any other source or system through which it is possible to introduce into the potable system any used water, industrial fluid, gas, or other substance other than the intended potable water with which the system is supplied.

"Regional water system" means a public water supply system in which the projected number of service connections in at least fifty percent of the length of the distribution system does not average more than eight service connections per linear mile of water main.

Further amend the definition of "Ten States Standards" by substituting "1976" with "1982."

ITEM 7. Amend subrule **40.3(1)** by adding schedule 1b, after 1a, as follows:

"1b" - Certification of Project Design.

ITEM 8. Amend **40.4(1)** by adding the following new language:

The department may review submitted project plans and specifications and provide comments and recommendations to the applicant. Departmental comments and recommendations are advisory, except when departmental review determines that a facility does not comply with the plans or specifications as approved by the department or comply with the design standards pursuant to the criteria for certification of project design. The owner of the system must correct the deficiency in a timely manner as set forth by the department.

ITEM 9. Add a new subrule 40.4(4), as follows:

40.4(4) Certification of project design. A permit shall be issued for the construction, installation or modification of a public water supply system or part of a system or for a water supply distribution system extension if a qualified, registered engineer certifies that the plans and specifications comply with federal and state law and regulations or that a variance to standards has been granted by the department. Form WAWM12 - Schedule 1b.

ITEM 10. Amend subrule 41.2(1) introductory paragraph as follows and rescind **41.2(2)**.

41.2(1) Coverage. Rules 41.3(455B) to 41.~~7~~5(455B) shall apply to each public water supply system, unless the public water supply system meets all of the following conditions:

ITEM 11. Subrule **41.3(1)** is amended by striking paragraph "c" and amending "a" and "b" as follows:

a. The maximum contaminant level for nitrate is applicable to ~~both community water systems and noncommunity water systems~~ *all public water supply systems except, at the department's discretion, a noncommunity water supply may be allowed to exceed the maximum contaminant level, up to twice the MCL, if all the following conditions are met:*

(1) The supply does not make water available to infants less than six months of age.

(2) The facility continuously posts a notice, or provides other public notification required by the department, indicating the maximum contaminant level has been exceeded, who may be affected and potential health effects resulting from exposure.

(3) The facility continues to comply with the special monitoring program required by the department.

(4) No adverse health effects shall result.

The levels for the other inorganic chemicals apply only to community water systems. Compliance with maximum contaminant levels for inorganic chemicals is calculated pursuant to 41.4(3).

b. The following are the maximum contaminant levels for inorganic chemicals ~~other than fluoride~~:

Contaminant	Level Milligrams Per Liter
Arsenic	0.05
Barium	~~1.~~ *1*
Cadmium	0.010
Chromium	0.05
**Fluoride*	*2.2*
Lead	0.05
Mercury	0.002
Nitrate (as N)	10
***Nitrate (as NO_3)*	*45*
Selenium	0.01
Silver	0.05

**The recommended fluoride level is 1.1 milligrams per liter. At this optimum level in drinking water fluoride has been shown to have beneficial effects in reducing the occurrence of tooth decay.*

***Nitrate analytical results reported as 45 mg/l as NO_3 is equivalent to 10 mg/l as N.*

ITEM 12. Amend subrule **41.3(3)** by striking the text of "b" and renumbering "c" as "b."

ITEM 13. Amend subrule **41.3(4)** by adding paragraph "e":

e. Suppliers required to take ten or fewer samples per month may, at the discretion of the department, be authorized to exclude one positive routine sample when determining compliance with 41.3(4)"a"(1), 41.3(4)"b"(1) or 41.3(4)"c"(1). In allowing exclusion of one positive routine sample the department will consider, but not be limited to, information obtained through sanitary survey, the suppliers ability to maintain an active disinfectant residual and the suppliers previous history of water quality. In excluding any positive routine sample the supplier shall comply with the following:

(1) The supplier shall initiate a check sample on each of two consecutive days from the sampling point within twenty-four hours after notification that the routine sample is positive, and each of these check samples is negative;

(2) The original positive routine sample is reported by the supplier pursuant to 41.5(1)"b."

(3) Another routine sample must be analyzed for the purpose of determining compliance.

This provision may be used only once during two consecutive compliance periods.

ITEM 14. Subrule **41.4(1)** is amended by renumbering "d" as "e," renumbering "e" as "f," renumbering "f" as "g," renumbering "g" as "h," renumbering "h" as "i," renumbering "i" as "j," renumbering "j" as "k" and amending "a," "b," "c," "d," "h" and "j" as follows:

a. Suppliers of water for community water systems and noncommunity water systems shall analyze for coliform bacteria for the purpose of determining compliance with 41.3(4). Analyses shall be conducted in accordance with the analytical recommendations set forth in "Standard Method," ~~pp. 913-942,~~ *Method 908A, Paragraphs 1, 2 and 3 - pp. 916-918; Method 908D, Table 908:I -pp. 923; Method 909A, pp. 928-935, or "Microbiological Methods for Monitoring the Environment, Water and Wastes," U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 - EPA - 600/8-78-017, December 1978, Part III, Section B 1.0 through 2.6.2, pp. 108-112; 2.7 through 2.7.2(c), pp. 112-113; Part III, Section B 4.0 through 4.6.4(c), pp. 114-118,* except that a standard sample size shall be employed and all samples shall be analyzed if received and set up within forty-eight hours of collection. If samples are received or set up more than thirty hours after collection, the laboratory must indicate that the data may be invalid because of excessive delay before sample processing. The standard sample used in the membrane filter procedure shall be 100 milliliters. The standard sample used in the 5 tube most probable number (MPN) procedure (fermentation tube method) shall be five times the standard portion. The standard portion is either 10 milliliters or 100 milliliters as described in 41.3(4)"b," *and* 41.3(4)"c" ~~and 41.3(4)"d."~~[2] The samples shall be taken at points which are representative of the conditions within the distribution system.

b. The supplier of water for a community water system *other than a regional water system* and for a noncommunity water system serving a school shall take coliform density samples at regular time intervals, and in number proportionate to the population served by the system. In no event, *while the system is providing water to the public,* shall the *sampling* frequency be less than as set forth below.

(No change in the population vs. samples required table.)

c. The supplier of water for a noncommunity water system not serving a school shall sample for coliform bacteria in each calendar quarter during which the system provides water to the public. ~~Such sampling shall begin by June 24, 1979.~~ If the department, on the basis of a sanitary survey, determines that some greater frequency is more appropriate, that frequency shall be the frequency required under these regulations. ~~Such~~ *This* frequency shall be confirmed or changed on the basis of subsequent surveys.

d. The supplier of water for a regional water system as defined in 40.2(455B) shall sample for coliform bacteria at a frequency indicated in the following chart, but in no case

shall the sampling frequency for a regional water system be less than the population equivalent as set forth in 41.4(1)"b." The following chart represents sampling frequency per miles of distribution system and is determined by calculating ½ the square root of the miles of pipe.

Miles of Pipe	*Minimum Number of Samples per Month*
0 - 9	*1*
10 - 25	*2*
26 - 49	*3*
50 - 81	*4*
82 - 121	*5*
122 - 169	*6*
170 - 225	*7*
226 - 289	*8*
290 - 361	*9*
362 - 441	*10*
442 - 529	*11*
530 - 625	*12*
626 - 729	*13*
730 - 841	*14*
842 - 961	*15*
962 - 1,089	*16*
1,090 - 1,225	*17*
1,226 - 1,364	*18*
1,365 - 1,521	*19*
1,522 - 1,681	*20*
1,682 - 1,849	*21*
1,850 - 2,025	*22*
2,026 - 2,209	*23*
2,210 - 2,401	*24*
2,402 - 2,601	*25*
2,602 - 3,249	*28*
3,250 - 3,721	*30*
3,722 - 4,489	*33*
4,490 - 5,041	*35*

~~g.~~*h.* The location at which the check samples were taken pursuant to paragraph ~~"d," "e," or "f"~~ *"e," "f," or "g"* of this subrule shall not be eliminated from future sampling without approval of the department. The results from all coliform bacterial analysis performed pursuant to this rule, except those obtained from check samples and special purposes samples, shall be used to determine compliance with the maximum contaminant level for coliform bacteria as established in 41.3(4). Check samples shall not be included in calculating the total number of samples taken each month to determine compliance with 41.4(1)"b," ~~or~~ 41.4(1)"c" *or 41.4(1)"d."*

~~i.~~ *j.* When a maximum contaminant level set forth in paragraph "a," "b," "c" or "d" of 41.3(4) is exceeded, the supplier of water shall ~~report to the department and~~ notify the public as prescribed in ~~41.5(1) and~~ 41.5(2).

ITEM 15. Subrule **41.4(2)** is amended by striking paragraph "e" and amending paragraphs "b," "c," and "d" as follows:

b. A supplier of water serving a population or population equivalent of greater than 10,000 persons shall provide a continuous or rotating cycle turbidity monitoring and recording device or take hourly grab samples to determine compliance with ~~41.3(3)"b"~~ *41.3(3).*

c. *For the purpose of making turbidity measurements to determine compliance with 41.3(3),* S samples shall be taken by the suppliers of water for both community water systems and noncommunity water systems at a representative entry point(s) to the water distribution system at least once per day, ~~(except systems required to be monitored under 41.4(2)"b,") for the purpose of making turbidity measurements to determine compliance with 41.3(3).~~ *except under the following conditions:*

(1) Systems required to be monitored under 41.4(2)"b"; or

(2) Noncommunity systems, upon approval by the department, may be permitted to reduce their sampling frequency if they can demonstrate that no risk to health will result and they are maintaining a continuous chlorine residual as specified in 41.13(2)"a."

~~The~~ *All turbidity* measurement shall be made by the nephelometric method in accordance with the recommendations set forth in "Standard Methods," pp. 132-134; or ~~"EPA Methods," pp. 295-298~~ *"Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, March 1979, Method 180.1—Nephelometric Method. Calibration of the turbidimeter shall be made either by the use of a formazin standard as specified in the cited reference or a styrene divinylbenzene polymer standard (Amco-AEPA-1 Polymer) commercially available from Amco Standards International, Inc., 230 Polaris Avenue, No. C. Mountain View, California 94043.*

d. If the results (other than results monitored under 41.4(2)"b") of a turbidity analysis indicate that the maximum allowable limit has been exceeded, the sampling and measurements shall be confirmed by resampling as soon as practicable and preferably within one hour. If the repeat sample confirms that the maximum allowable limit has been exceeded, the supplier of water shall report to the department within forty-eight hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two samples taken on consecutive days exceeds 5 TU, ~~or, for a system required to be monitored under 41.4(2)"b", if the average of the daily turbidity exceeds 2 TU,~~ the supplier of water shall report to the department and notify the public as directed in 41.5(1) and 41.5(2).

ITEM 16. Subrule 41.4(3) is amended by striking "e" and "f," renumbering "g" as "e" and amending to read as follows:

41.4(3) Inorganic chemical sampling and analytical requirements.

a. Analyses for the purpose of determining compliance with 41.3(1) are required as follows:

(1) Analyses for all community water systems utilizing surface water sources shall be completed ~~by June 24, 1978. These analyses shall be repeated~~ at yearly intervals.

(2) Analyses for all community water systems utilizing only ground water sources shall be completed ~~by June 21, 1979. These analyses shall be repeated~~ at three-year intervals.

(3) For noncommunity water systems, whether supplied by surface or ground water sources, analyses for nitrate shall be completed ~~by June 24, 1979. These analyses shall be repeated~~ at three-year intervals.

b. If the results of an analysis made pursuant to paragraph "a" indicate that the level of nitrate is greater than ~~one-half of the maximum contaminant level~~ (5 mg/1 as N~~)~~, *or 22 mg/1 as NO_3,* analyses shall be completed each calendar quarter ~~for at least one year and~~ until:

(1) The results of four ~~or more~~ *consecutive* quarterly analyses indicate that the maximum contaminant level

has not been exceeded *in any sample* ~~during any quarter of the past year~~; and

(2) The average nitrate level as determined by four *consecutive* quarterly samples ~~during the past year~~ does not exceed ~~one-half the maximum contaminant level~~ *5 mg/1 as N, or 22 mg/1 as NO_3.*

c. If the result of an analysis made pursuant to paragraph "a" indicates that the level of any contaminant listed in 41.3(1), *with the exception of nitrate,* exceeds the maximum contaminant level, the supplier of water shall ~~report to the department within seven days and~~ initiate three additional analyses at the same sampling point within one month. *The original and the three rechecks will then be used to determine compliance pursuant to paragraph "d." If the result of an analysis made pursuant to paragraph "a" indicates the nitrate maximum contaminant level has been exceeded, a second analysis shall be initiated within twenty-four hours after receipt of the recheck container.*

d. When the average of ~~four~~ *the* analyses made pursuant to paragraph "c," rounded to the same number of significant figures as the maximum contaminant level for the substance in question, exceeds the maximum contaminant level, the supplier of water shall ~~notify the department pursuant to 41.5(1) and~~ give notice to the public pursuant to 41.5(2). Monitoring after public notification shall be at a frequency designated by the department and shall continue until the maximum contaminant level has not been exceeded in two successive samples or until a monitoring schedule as a condition to an operation permit or enforcement action shall become effective.

~~g.~~*e.* Analyses conducted to determine compliance with 41.3(1) shall be made in accordance with the following methods:

(1) Arsenic — *Method[1] 206.2,* Atomic Absorption ~~Method, "EPA Methods", pp. 95-96~~ *Furnace Technique; or Method[1] 206.3, or Method[4] D-2972-78A, or Method 301.A VII, pp. 159-162, or Method[3] I-1062-78, pp. 62-63, Atomic Absorption — Gaseous Hydride; or Method[1] 206.4, or Method[4] D-2972-78A, or Method[2] 404-A and 404-B(4), Spectrophotometric, Silver Diethyldithiocarbonate.*

(2) Barium — *Method[1] 208.1, or Method[2] 301-A IV, pp. 152-155,* Atomic Absorption ~~Method, "Standard Methods, pp. 144-162, or "EPA Methods", pp. 97-98~~ — *Direct Aspiration; or Method[1] 208.2, Atomic Absorption Furnace Technique.*

(3) Cadmium — *Method[1] 213.1, or Method[4] 3557-78A or B, or Method[2] 301-A II or III, pp. 148-152,* Atomic Absorption ~~Method, "Standard Methods", 144-162, or "EPA Methods" pp. 105-106~~ — *Direct Aspiration; or Method[1] 213.2, Atomic Absorption Furnace Technique.*

(4) Chromium — *Method[1] 218.1, or Method[4] D-1687-77D, or Method 301.A II or III, pp. 148-152,* Atomic Absorption ~~Method, "Standard Methods", 144-162, or "EPA Methods", pp. 105-106~~ — *Direct Aspiration; or Chromium — Method[1] 218.2, Atomic Absorption Furnace Technique.*

~~(10)~~ *(5)* Fluoride — Electrode Method, ~~"Standard Methods", pp. 391-393, or "EPA Methods", pp. 65-67~~ *or SPADNS Method, Method 414-B and C, pp. 391-394, or Method[1] 340.1, "Colorimetric SPADNS with Bellack Distillation," or Method[1] 340.2, "Potentimetric Ion Selective Electrode"; or ASTM Method[4] D-1179-72; ~~or Colorimetric Method with Preliminary Distillation, "Standard Methods", pp. 389-390 and 393-394, or "EPA Methods", pp. 59-60~~ Method[2] 603, Automated Complexone Method (Alizarin Fluoride Blue) pp. 614-616; or Automated Electrode Method, "Fluoride in Water and Wastewater," Industrial Method #380-75WE, Technicon Industrial Systems, Tarrytown, New York 10591, February 1976, or "Fluoride in Water and Wastewater Industrial Method #129-71W," Technicon Industrial Systems, Tarrytown, New York 10591, December 1972; or Fluoride, total Colorimetric, Zirconium — Eriochrome Cyanine R Method[3] — I-3325-78, pp. 365-367.*

~~(5)~~ *(6)* Lead — *Method[1] 239.1, or Method[4] D-3559-78A or B, or Method[2] 301-A II or III, pp. 148-152,* Atomic Absorption ~~Method, "Standard Methods", pp. 144-162 or "EPA Methods", pp. 112-113~~ — *Direct Aspiration; or Method[1] 239.2, Atomic Absorption Furnace Technique.*

~~(6)~~ *(7)* Mercury — ~~Flameless Atomic Absorption Method[1] "EPA Methods", pp. 118-126~~ *245.1, or Method[4] D-3223-79, or Method[2] 301-A VI, pp. 156-159, Manual Cold Vapor Technique; or Method[1] 245.2, Automated Cold Vapor Technique.*

~~(7)~~ *(8)* Nitrate — *Method[1] 352.1, or Method[4] D-992-71, or Method[2] 419-D, pp. 427-429,* Brucine Colorimetric ~~Method, "Standard Methods", pp. 427-429~~ *Brucine; or Method 353.3, or Method[4] D-3867-79B,* or *Method[2] 419-C, pp. 423-427, Spectrometric,* Cadmium Reduction; Method[1] ~~"EPA Methods", pp. 201-206~~ *353.1, Automated Hydrazine Reduction; or Method[1] 353.2, or Method[4] D-3867-79A, or Method[2] 605, pp. 620-624, Automated Cadmium Reduction.*

~~(8)~~ *(9)* Selenium — *Method[1] 270.2,* Atomic Absorption ~~Method, "EPA Methods", p. 145~~ *Technique; or Method[1] 270.3, or Method[3] I-1667-78, pp. 237-239, or Method[4] D-3859-79, or Method[2] 301 — A VII, pp. 159-162, Hydride Generation — Atomic Absorption Spectrophotometry.*

~~(9)~~ *(10)* Silver — *Method[1] 272.1, or Method[2] 301-A II,* Atomic Absorption ~~Method, "Standard Methods", pp. 142-162, or "EPA Methods",~~ p. 146 — *Direct Aspiration; or Method[1] 272.2, Atomic Absorption Techniques Furnace Technique.*

[1]"Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA — 600/4-79-020), March 1979. Available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268. For approved analytical procedures for metals, the technique applicable to total metals must be used.

[2]"Standard Methods."

[3]"Techniques of Water — Resources Investigation of the United States Geological Survey, Chapter A-1," "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," Book 5, 1979, Stock #024-001-03177-9. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

[4]"Annual Book of ASTM Standards," Part 31, Water, American Society for Testing and Materials, 1976, Race Street, Philadelphia, Pennsylvania 19103.

ITEM 17. Subrule 41.4(4) is amended to read as follows:

41.4(4) Organic chemical other than trihalomethane sampling and analytical requirements.

a. An analysis of substances for the purpose of determining compliance with 41.3(2)"a" and "b" shall be made as follows:

(1) For all community water systems utilizing surface water sources, ~~analyses shall be completed by June 24, 1978. S~~samples analyzed shall be collected during the period of the year designated by the department as the period when contamination by pesticides is most likely to occur. These analyses shall be repeated at intervals

specified by the department but in no event less frequently than at three-year intervals.

(2) (No change.)

b. If the result of an analysis made pursuant to paragraph "a" indicates that the level of any contaminant listed in 41.3(2)"a" and "b" exceeds the maximum contaminant level, the supplier of water shall ~~report to the department within seven days and~~ initiate three additional analyses within one month.

c. When the average of four analyses made pursuant to paragraph "b," rounded to the same number of significant figures as the maximum contaminant level for the substance in question, exceeds the maximum contaminant level, the supplier of water shall ~~report to the department pursuant to 41.5(1) and~~ give notice to the public pursuant to 41.5(2). Monitoring after public notification shall be at a frequency designated by the department and shall continue until the maximum contaminant level has not been exceeded in two successive samples or until a monitoring schedule as a condition to an operation permit or enforcement action shall become effective.

d. (No change.)

e. Analyses made to determine compliance with 41.3(2)"a" shall be made in accordance with "Methods for Organochlorine Pesticides *and Chlorophenoxy Acid Herbicides* in ~~Industrial Effluents~~ *Drinking Water and Raw Source Water," available from ORD Publications, CERI, ~~MDQARL, Environmental Protection Agency~~ EPA*, Cincinnati, Ohio 45268; ~~(November 28, 1973)~~ or *"Organochlorine Pesticides in Water," 1977 Annual Book of ASTM Standards, Part 31, Water, Method D-3088; or Method 509-A, pp. 555-565[2]; or Gas Chromatographic Methods for Analysis of Organic Substances in Water[5], USGS, Book 5, Chapter 4-3, pp. 24-39.*

f. Analyses made to determine compliance with 41.3(2)"b" shall be conducted in accordance with "Methods for ~~Chlorinated Phenoxy Acid Herbicides in Industrial Effluents~~" *Organochlorine Pesticides and Chlorophenoxy Acid Herbicides in Drinking Water and Raw Source Water," available from ORD Publications, CERI, EPA, ~~MDQARL, Environment Protection Agency,~~* Cincinnati, Ohio 45268; ~~(November 28, 1973)~~ *or "Chlorinated Phenoxy Acid Herbicides in Water," 1977 Annual Book of ASTM Standards, Part 31, Method D-3478; or Method 509-B, pp. 555-569[2]; or Gas Chromatographic Methods for Analysis of Organic Substances in Water[5], USGS, Book 5.*

[2]*"Standard Methods."*

[5]*"Techniques of Water — Resources Investigation of the United States Geological Survey, Chapter A-3," Methods for Analysis of Organic Substances in Water, Book 5, 1972, Stock #2401-1227. Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.*

ITEM 18. Subrule **41.4(5)**, paragraphs "b"(1), "c"(1), and "d" are amended as follows:

b. General sampling requirements.

(1) For all community water systems utilizing surface water sources in whole or in part, and for all community water systems utilizing only ground water sources that have not been determined by the department to qualify for the monitoring requirements of paragraph "c" of this subrule, analyses for total trihalomethanes shall be performed at quarterly intervals on at least four water samples for each treatment plant used by the system. At least 25 percent of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining 75 percent shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water and different treatment methods employed. The results of all analyses per quarter shall be arithmetically averaged ~~and reported to the department within 30 days of the system's receipt of such results~~. All samples collected shall be used in the computation of the average, unless the analytical results are invalidated for technical reasons. Sampling and analyses shall be conducted in accordance with the methods listed in paragraph "e" of this subrule.

c. Ground water sampling requirements.

(1) The department may allow a community water system utilizing only ground water sources to reduce the monitoring frequency required by 41.4(5)"b"(1) to a minimum of one sample for maximum TTHM potential per year for each treatment plant used by the system taken at a point in the distribution system reflecting maximum residence time of the water in the system. ~~The system shall submit to the department the results of at least one sample analyzed for maximum TTHM potential for each treatment plant used by the system taken at a point in the distribution system reflecting the maximum residence time of the water in the system.~~ The system's monitoring frequency may only be reduced upon a determination by the department that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than 0.10 mg/1 and that, based upon an assessment of the local conditions of the system, the system is not likely to approach or exceed the maximum contaminant level for TTHMs. ~~The result of all analyses shall be reported to the department within 30 days of the system's receipt of such results.~~ All samples collected shall be used for determining whether the system must comply with the monitoring requirements of 41.4(5)"b," unless the analytical results are invalidated for technical reasons. Sampling and analyses shall be conducted in accordance with the methods listed in 41.4(5)"e."

d. Compliance with 41.3(2)"c" shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in 41.4(5)"b"(1) or 41.4(5)"b"(2). If the average of samples covering any 12-month period exceeds the maximum contaminant level, the supplier of water shall ~~report to the department pursuant to 41.5(1) and~~ notify the public pursuant to 41.5(2). Monitoring after public notification shall be at a frequency designated by the department and shall continue until a monitoring schedule as a condition to an operation permit or enforcement action shall become effective.

ITEM 19. Subrule **41.4(7)** is amended by correcting the references in subparagraph "a"(3), third and fifth unnumbered paragraphs, by replacing "41.4(6)'a'(1)" with "41.4(7)'a'(1)." This subrule is further amended by amending subparagraphs "a"(4), "b"(1), first unnumbered paragraph, "b"(4), first unnumbered paragraph, and "b"(5), as follows:

(4) If the average annual maximum contaminant level for gross alpha particle activity or total radium as set forth in 41.3(5) is exceeded, the supplier of a community water system shall ~~give notice to the department pursuant to 41.5(1) and~~ notify the public as required by 41.5(2). Monitoring at quarterly intervals shall be continued until the annual average concentration no longer

exceeds the maximum contaminant level or until a monitoring schedule as a condition *of an operation permit* ~~to a variance, exemption~~ or enforcement action shall become effective.

(1) ~~By June 24, 1979, s~~Systems using surface water sources and serving more than 100,000 persons and such other community water systems as are designated by the department shall be monitored for compliance with 41.3(6) by analysis of a composite of four consecutive quarterly samples. Compliance with 41.3(6) may be assumed without further analysis if the average annual concentration of gross beta particle activity is less than 50 pCi/l and if the average annual concentrations of tritium and strontium-90 are less than those listed in Table A, provided, that if both radionuclides are present the sum of their annual dose equivalents to bone marrow shall not exceed 4 millirem/year.

(4) ~~By June 24, 1979, t~~The supplier of any community water system designated by the department as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine-131 radioactivity and annual monitoring for strontium-90 and tritium.

(5) If the average annual maximum contaminant level for man-made radioactivity set forth in 41.3(6) is exceeded, the operator of a community water system shall give notice ~~to the department pursuant to 41.5(1) and~~ to the public as required by 41.5(2). Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition *of an operation permit* ~~to a variance, exemption~~ or enforcement action ~~shall~~ becomes effective.

ITEM 20. Rule **900—41.4(455B)** is amended by renumbering subrule **41.4(9)** as **41.4(12)**, renumbering subrule **41.4(10)** as **41.4(11)**, and renumbering subrule 41.4(11) as **41.4(13)**. This rule is further amended by adding new subrules 41.4(9), 41.4(10), 41.4(14) and 41.4(15), and amending renumbered subrule 41.4(11), as follows:

41.4(9) *Special monitoring for sodium. Suppliers of water for community public water systems shall collect and have analyzed one sample per source or plant, for the purpose of determining the sodium concentration in the distribution system. Systems utilizing multiple wells, drawing raw water from a single aquifer may, with departmental approval, be considered as one source for determining the minimum number of samples to be collected. Sampling frequency and approved analytical methods are as follows:*

a. Systems utilizing a surface water source, in whole or in part, shall monitor for sodium at least once annually;

b. Systems utilizing ground water sources shall monitor at least once every three years;

c. Suppliers may be required to monitor more frequently where sodium levels are variable;

d. Analyses for sodium shall be performed using the flame photometric method in accordance with the procedures described in "Standard Methods," pp. 250-253; or by Method 273.1, Atomic Absorption — Direct Aspiration or Method 273.2, Atomic Absorption — Graphite Furnace, in "Methods for Chemical Analysis of Water and Waste," EMSL, Cincinnati, EPA, 1979; or by Method D1428-64(a) in Annual Book of ASTM Standards, Part 31, Water.

41.4(10) *Special monitoring for corrosivity characteristics. Suppliers of water for community public water systems shall collect samples from a representative entry point to the water distribution system for the purpose of analysis to determine the corrosivity characteristics of the water. The determination of corrosivity characteristics of water shall only include one round of sampling, except in cases where the department concludes additional monitoring is necessary due to variability of the raw water sources. Sampling requirements and approved analytical methods are as follows:*

a. Systems utilizing a surface water source either in whole or in part, shall collect two samples per plant for the purpose of determining the corrosivity characteristics. One of these samples is to be collected during the midwinter months and the other during midsummer.

b. Systems utilizing ground water sources shall collect one sample per plant or source, except systems with multiple plants that do not alter the corrosivity characteristics identified in 41.4(10)"c" or systems served by multiple wells drawing raw water from a single aquifer may, with departmental approval, be considered one treatment plant or source when determining the number of samples required.

c. Determination of corrosivity characteristics of water shall include measurements of pH, calcium hardness, alkalinity, temperature, total dissolved solids (total filterable residue), and calculation of the Langelier Index. In addition, sulfate and chloride monitoring may be required by the department.

At the department's discretion, the Aggressive Index test may be substituted for the Langelier Index test. The following analytical methods must be used by an approved laboratory, except for temperature which should be measured by the supplier using the approved method.

(1) Langelier Index — "Standard Methods," Method 203, pp. 61-63.

(2) Aggressive Index — "AWWA Standard for Asbestos-Cement Pipe, 4 in. through 24 in. for Water and Other Liquids," AWWA C400-77, Revision of C400-75, AWWA, Denver, Colorado.

(3) Total Filterable Residue — "Standard Methods," Method 208B, pp. 92-93; or "Methods for Chemical Analysis of Water and Wastes," Method 160.1.

(4) Temperature — "Standard Methods," Method 212, pp. 125-126.

(5) Calcium — EDTA Titrimetric Method "Standard Methods," Method 306C, pp. 189-191; or "Annual Book of ASTM Standards," Method D1126-67(8); "Methods for Chemical Analysis of Water and Waste," Method 215.2.

(6) Alkalinity — Methyl Orange and paint pH 4.5. "Standard Methods," Method 403, pp. 278-281; or "Annual Book of ASTM Standards," Method D1067-70B; or "Methods for Chemical Analysis of Water and Wastes," Method 310.1.

(7) pH — "Standard Methods," Method 424, pp. 460-485; or "Methods for Chemical Analysis of Water and Wastes," Method 150.1; or "Annual Book of ASTM Standards," Method D129378 A or B.

(8) Chloride — Potentiometric Method, "Standard Methods," p. 306.

(9) Sulfate — Turbidimetric Method, "Methods for Chemical Analysis of Water and Wastes," pp. 277-278, EPA, Office of Technology Transfer, Washington, D.C. 20460, 1974, or "Standard Methods," pp. 496-498.

d. Community water supply systems shall, when requested by the department and where records are available, identify whether the following construction materials are present in their distribution system and report to the department:

(1) Lead from piping, solder, caulking, interior lining of distribution mains, alloys and home plumbing.

(2) Copper from piping and alloys, service lines, and home plumbing.

(3) Galvanized piping, service lines, and home plumbing.

(4) Ferrous piping materials such as cast iron and steel.

(5) Asbestos cement pipe.

(6) Vinyl lined asbestos cement pipe.

(7) Coal tar lined pipes and tanks.

41.4~~(10)~~*(11)* ~~Approved~~ *Certification of* laboratories. For the purpose of determining compliance with 41.4(1) to ~~41.4(8)~~ *41.4(10)*, samples may be considered only if they have been analyzed by a laboratory *currently* certified by the department except that measurements for turbidity, *temperature, pH* and free chlorine residual may be performed by any person acceptable to the department.

a. Procedure for laboratory certification. Upon written request to the department by a laboratory desiring certification, a representative of the executive director will contact the laboratory and a date will be established for an on-site survey. The on-site survey requirements will be waived for out-of-state laboratories desiring certification where the resident state has been granted approval authority by EPA, or EPA has conducted a survey and a copy can be provided to the department.

If it is determined that the physical facilities and equipment of the laboratory meet all of the requirements set forth in the "Manual for the Certification of Laboratories Analyzing Drinking Water," EPA document 570/9-82-002, October 1982 and the laboratory personnel have properly demonstrated proficiency with the procedures specified in "Standard Methods," or other analytical procedures approved by the department, the laboratory will be issued a letter of certification. The letter of certification shall state the parameters, personnel and analytical procedures for which the laboratory is certified.

b. Period of validity. Certification under 41.4(11)"a" shall be valid for a period not to exceed two years from the date of issuance without a renewal, except in the case of reciprocal certification of an out-of-state laboratory. Certification in this case shall be valid for a period equal to that of the resident state in which they perform analytical work.

c. Revocation of laboratory certification. The executive director may revoke a laboratory certification if it is determined:

(1) The laboratory has failed to maintain adequate physical facilities or equipment;

(2) Laboratory personnel have failed to conform to requirements or procedures specified in "Standard Methods" or other analytical procedures approved by the director;

(3) The laboratory fails to report analytical results as described in 41.4(11)"d"; or

(4) The individual approved as the laboratory supervisor is no longer in charge and the laboratory fails to notify the designated laboratory appraisal officer or the department.

d. Reporting requirements. Certified laboratories must report to the department or an approved designee, on forms provided by the department, all analytical test results for public water supplies. Certified laboratories must also report all analytical test results to the supplier of water for which the analysis was performed. Results must be reported by the seventh of the month following the month in which the samples were analyzed except for positive coliform bacteria samples and their associated recheck samples; these samples must be reported to the department and the supplier of water for whom they were analyzed, within twenty-four hours of analyses.

41.4~~(9)~~*(12)* Alternative analytical techniques. With the written permission of the department, concurred in by the Administrator of the U.S. Environmental Protection Agency, an alternative analytical technique may be employed. An alternative technique shall be acceptable only if it is substantially equivalent to the prescribed test in both precision and accuracy as it relates to the determination of compliance with any maximum contaminant level. The use of the alternative analytical technique shall not decrease the frequency of monitoring required by 41.4(455B).

41.4~~(11)~~*(13)* Monitoring of interconnected public water supply systems. When a public water supply system supplies water to one or more other public water supply systems, the department may modify the monitoring requirements imposed by this part to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the department and concurred in by the Administrator of the U.S. Environmental Protection Agency.

41.4(14) *Department analytical results used to determine compliance. Analytical results or other information compiled by departmental staff may be used to determine compliance with the maximum contaminant levels listed in 41.3(455B) or for initiating remedial action with respect to these violations.*

41.4(15) *Monitoring of other contaminants. If the department determines that other contaminants are present in a public water supply, and the contaminants are known to pose or scientific evidence strongly suggests that they pose a threat to human health, the supplier of water may be required to monitor for such contaminants. The supplier of water will monitor at a frequency and in a manner which will adequately identify the magnitude and extent of the contamination. The monitoring frequency and sampling location will be determined by the department. All analytical results will be obtained using approved EPA methods and all analytical results will be submitted to the department for review and evaluation. Any monitoring required under this paragraph will be incorporated into an operation permit or an order.*

ITEM 21. Subrule **41.5(1)** is amended by striking paragraph "c" and amending paragraphs "a" and "b" as follows:

a. ~~Except where a shorter reporting period is specified in this rule,~~ *When required by the department* the supplier of water shall report to the department, within ~~forty~~ *ten* days following a test, measurement or analysis required to be made by this chapter, the results of that test, measurement or analysis in the form and manner prescribed by the department.

b. The supplier of water shall report to the department within forty-eight hours after the ~~analysis is completed~~ *compliance date, any failure to comply with the monitoring requirements* ~~the failure to comply with any primary drinking water regulation (including failure to comply with monitoring requirements)~~ set forth in ~~this~~ rule *41.4(455B). The supplier of water shall also notify the department within forty-eight hours of failure to comply with any primary drinking water regulation.*

ITEM 22. Subrule 41.5(2) is amended to read as follows:

41.5(2) Public notification requirements.

a. The supplier of water shall notify the public whenever the supplier's public water supply system fails to comply with a maximum contaminant level or is issued a permit or modified permit pursuant to 41.7(455B); ~~or~~ fails to comply with a schedule for contaminant levels prescribed in ~~such~~ *the* permit; *fails to perform any monitoring as required by 41.4(455B); or, an unregulated contaminant is detected and the department advises that public notification is necessary.*

b. In the case of a community water system (as defined in ~~41.1(25)"a"~~ *40.2(455B)*, ~~such~~ notification shall *be implemented as follows and given each quarter thereafter until the problem is corrected:* ~~include~~ a ~~notice in the first set of water bills of the system issued after the failure or grant. In the case of a failure to comply with a maximum contaminant level, such written notice shall be repeated not less than once every three months so long as such failure continues; if the system issues water bills less frequently than quarterly, or does not issue water bills, the notice shall be made or supplemented by another form of direct mail. In the case of a failure to comply with a maximum contaminant level which is not corrected promptly after discovery, the supplier of water must give other general public notice of the failure, in addition to notice by direct mail. in a manner required by the department. The additional notice required by the department may consist of notice by newspaper advertisement, by press release or other appropriate means.~~

(1) If a supplier of water fails to perform any monitoring as required in rule 41.4(455B), or fails to comply with a schedule prescribed pursuant to an operation permit or enforcement action, the supplier must notify the public of the failure. This notification will consist of a direct mail notice no later than ninety days after the violation has been identified.

(2) If a water supplier is in violation of a maximum contaminant level, public notification shall be given either by newspaper or direct mail within fourteen days of being notified of the violation by the department. If the violation is not corrected within thirty days of being notified by the department, additional notification must be given by the alternative method to that used for the initial notice. The additional notice must be given no later than ninety days after being notified by the department of the violation.

(3) Institutional facilities may satisfy the public notification requirement by issuing a posted notice.

c. If the public water supply system is a noncommunity water system (as defined in ~~41.1(25)"b"~~ *40.2(455B)*, the notice shall be given ~~by conspicuous posting, in a location where it can be seen by consumers, rather than in the manner specified in paragraph "b" of this subrule~~ *immediately after being informed of the violation. The notification shall be given by posted notice or by some other method approved by the department, which ensures the public using the system is adequately informed.*

d. Notices given pursuant to this section shall be written in a manner reasonably designed to *fully* inform ~~fully~~ the users of the system. The notice shall be conspicuous and shall not use unduly technical language, unduly small print or other methods which would frustrate the purpose of the notice. The notice shall disclose all material facts regarding the subject including the ~~nature of the problem and, where appropriate, a clear statement that a primary drinking water regulation has been violated and any preventive measures that should be taken by the public.~~ *name of the water supply or notifying agency in violation, when the violation occurred, name of the authority whose standard has been exceeded (Department of Water, Air and Waste Management), maximum contaminant level exceeded and the analytical results, associated health effects, any action being taken by the supplier to correct the problem, and the name, address and phone numbers of the person to contact if there are questions.* Where appropriate, or where designated by the department, bilingual notice shall be given. ~~Notices may include a balanced explanation of the significance or seriousness to the public health of the subject of the notice, a fair explanation of steps taken by the system to correct any problem and the results of any additional sampling.~~ *Public notification shall be given as directed by the department. The department will generally require one or more of the following types of public notification, but may under certain conditions require additional notification if the supplier of water has not provided a notice appropriate to protect the public health. If additional notification is required, the department will provide special notification instruction.*

(1) Newspaper notice: The notice must be published in a newspaper of general circulation in the area for no less than three consecutive days. If no daily paper is available the notice must be published in a weekly paper (or possibly a local shopper) for no less than three consecutive weeks. If no newspaper serves the area, the notice must be posted in a post office or other conspicuous location within the area served. The notice must be posted for as long as the violation exists, but in no case for less than seven days.

After the first notice has been issued as directed by the department, additional notices must be repeated once every three months until the violation has been corrected.

(2) Direct mail notice: The notice may be included with water bills. If the supplier does not bill some other form of direct notification must be used. This can either be by a special mailing or a notice hand carried to water users.

After the first notice has been issued as directed by the department, additional notices must be repeated once every three months until the violation has been corrected.

(3) Posted notice: The notice must be posted at all locations where drinking water is available for noncommunity supplies and in a post office or other conspicuous locations when used by a community supply. The notice must be posted for as long as the violation exists, but in no case for less than seven days.

e. Notices required by this section may be issued by the department *in cases where the facility fails to adequately meet the notification requirements. Such notification shall indicate the facility's failure to comply with 41.5(2).*

f. ~~A supplier of water may be required to give additional public notice when circumstances make more immediate or broader notice appropriate to protect public health.~~ *The supplier, within ten days of completion of each public notification required pursuant to 41.5(2)"a," shall submit to this department a representative copy of each type of notice distributed, published, posted, or made available to the consumer.*

ITEM 23. Rule 900—41.12(455B) is amended by striking all of **41.12(8)** through **41.12(11)** and amending the remainder as follows:

41.12(1) Standards for public water supplies. Any *public water* supply that does not meet the drinking water standards contained in 41.3(455B) shall make the altera-

tions in accordance with the standards for construction ~~and operation~~ contained in 41.12(2) necessary to comply with the drinking water standards unless ~~such system~~ *the public water supply* has been granted a variance, ~~or exemption~~ from a maximum contaminant level or treatment technique *as a provision of its operation permit* pursuant to 41.6(455B), provided that the public water supply ~~must~~ meets the schedule established pursuant to 41.6(455B). Any *public water* supply that, in the opinion of the executive director, contains a potential hazard shall make the alterations in accordance with the standards for construction ~~and operation~~ contained in 41.12(2) necessary to eliminate or minimize that hazard.

41.12(2) Standards for construction ~~and operation~~.

a. The standards for a project are the department's "Iowa Water Supply Facility Design Standards," the Ten States Standards, the American Water Works Association (AWWA) Standards as ~~promulgated~~ *adopted* through ~~June 1, 1978~~ *1982* and ~~41.12(5) and~~ 41.12(7) to ~~41.12(13)~~ *41.12(9)*. To the extent of any conflict between the Ten States Standards or the American Water Works Association Standards and the "Iowa Water Supply Facility Design Standards," ~~41.12(5)~~ and 41.12(7) to ~~41.12(13)~~ *41.12(9)*, the standards of the "Iowa Water Supply Facility Design Standards," ~~41.12(5)~~ and 41.12(7) to ~~41.12(13)~~ *41.12(9)* shall prevail.

b. (No change.)

c. (No change.)

~~41.12(3) Rescinded, effective June 24, 1977.~~

41.12~~(4)~~*(3)* *Construction permits.* No person shall construct, install or modify any project without first obtaining, or contrary to any condition of, a construction permit issued by the executive director or by a local public works department authorized to issue ~~such~~ permits under chapter 9 except as provided in *41.12(3)"b," 41.12(4)* and 41.12(6).

a. (No change.)

b. Application for any project shall be submitted to the department at least thirty days prior to the proposed date for commencing construction or awarding of contracts. *This requirement may be waived when it is determined by the department that an imminent health hazard exists to the consumers of a public water supply. Under this waiver, construction, installation, or modification may be allowed by the department prior to review and issuance of a permit if all the following conditions are met:*

(1) The construction, installation or modification will alleviate the health hazard;

(2) The construction is done in accordance with the standards for construction pursuant to 41.12(2);

(3) Plans and specifications are submitted within thirty days after construction;

(4) An engineer, registered in the state of Iowa, supervises the construction; and

(5) The supplier of water receives approval of this waiver prior to any construction, installation or modification.

~~and after January 1, 1983.~~ *All applications* shall be accompanied by a nonrefundable fee, as specified below:

(No change in table.)

41.12(4) *Waiver from engineering requirements. The requirement for plans and specifications prepared by a registered engineer may be waived for the following types of projects, provided the improvement complies with the standards for construction pursuant to 42.12(2). This waiver does not relieve the supplier of water from meeting the application and permit requirements pursuant to 41.12(3), except that the applicant need not obtain a written permit prior to installing the equipment.*

a. Simple chemical feed, if all the following conditions are met:

(1) The improvement consists only of a simple chemical solution application or installation, which in no way affects the performance of a larger treatment process, or is included as part of a larger treatment project;

(2) The chemical application is by a positive displacement pump;

(3) The supplier of water provides the department with a schematic of the installation and manufacturer's specifications sufficient enough to determine if the simple chemical feed installation meets, where applicable, standards for construction pursuant to 41.12(2); and

(4) The final installation is approved based on an onsite review and inspection by department staff.

b. Self-contained treatment unit, if all the following conditions are met:

(1) The installation is proposed for the purpose of eliminating a maximum contaminant level violation and is of a type which can be purchased off the shelf, is self-contained requiring only a piping hook-up for installation and operates throughout a range of 35 to 80 pounds per square inch;

(2) The plant is designed to serve no more than an average of 250 individuals per day;

(3) The department receives adequate information from the supplier of water on the type of treatment unit, such as manufacturer's specifications, a schematic indicating the installation's location within the system and any other information necessary for review by the department to determine if the installation will alleviate the maximum contaminant level violation; and

(4) The final installation is approved based on an onsite inspection by department staff.

41.12(5) (No change.)

41.12(6) (No change.)

41.12(7)"a" (No change.)

41.12(7)"b"(1) (No change.)

(2) The applicant must submit proof, including analysis of four consecutive quarterly samples, that a proposed surface water source can, through readily available treatment, comply with 41.3(455B) and that the raw water source is adequately protected against potential health hazards, including but not limited to point source discharges, hazardous chemical spills, and the potential sources of contamination listed in Table C.

The quarterly samples for all proposed surface water sources shall be collected in March, June, September and December, unless otherwise specified by the department. Samples shall be collected at a location representative of the raw water at the point of withdrawal. The June sample shall be analyzed for the contaminants listed in 41.3(1)"b," 41.3(2)"a" and "b," 41.3(5) and 41.3(6). All quarterly samples shall be analyzed for specific conductance, solids (filterable, nonfilterable, volatile, fixed and settleable), turbidity, hardness, alkalinity, pH, color, algae (qualitative and quantitative), total organic carbon, biochemical oxygen demand (five day), dissolved oxygen, surfactants, nitrogen series (organic, ammonia, nitrite and nitrate), phosphate, calcium, chloride, ~~fluoride,~~ iron, magnesium, manganese, sodium, sulfate, carbonate and bicarbonate.

No change in last unnumbered paragraph.

(3) (No change.)

(4) (No change.)
41.12~~(12)~~*(8)* (No change.)
41.12~~(13)~~*(9)* (No change.)

ITEM 24. Rules 900—41.13 (reserved) and 41.14(455B) are amended as follows:

~~41.13(455B) Reserved.~~

41.~~14~~*13*(455B) **Certification of completion.** Within thirty days after completion of construction, installation or modification of any project, the permitholder shall submit a certification by a registered professional engineer that the project was completed in accordance with the approved plans and specifications *except pursuant to 41.12(4).*

ITEM 25. Adopt a new rule 900—41.14(455B) as follows:

900—41.14(455B) Operation and maintenance for public water supplies.

41.14(1) Records of operation required.

a. Monthly records of operation shall be completed by all public water supplies, on forms provided by the department or on similar forms, unless a public water supply meets all of the following conditions:

(1) Supplies an annual average of not more than 25,000 gpd or serves no more than an average of 250 individuals daily;

(2) Does not provide any type of treatment;

(3) Does not utilize surface water either in whole or in part as a water source.

The reports shall be completed as described in 41.14(1)"b" and maintained at the facility for inspection by the department for a period of five years.

b. Monthly operation reports shall be completed as follows:

(1) Pumpage. Noncommunity supplies shall measure and record the total water used each week. It is recommended that a daily measurement and recording be made. Community supplies shall measure and record daily water used. Reporting of pumpage may be required in an operation permit where needed to verify MCL compliance.

(2) Treatment effectiveness. Where treatment is practiced, the intended effect of the treatment shall be measured at locations and by methods which best indicate effectiveness of the treatment process. These measurements shall be made pursuant to Table D of this rule.

(3) Treatment effectiveness for a primary standard. Where the raw water does not comply with 41.3(455B) and treatment is practiced for the purpose of complying with a primary drinking water standard, daily measurement of the primary standard constituent or an appropriate indicator constituent designated by the department shall be recorded. The department may require reporting of these results in the operation permit to verify MCL compliance.

(4) Treatment effectiveness for a secondary standard. Where treatment is practiced for the purpose of achieving the recommended level of any constituent designated in the federal secondary standards, measurements shall be recorded as specified in Table D.

(5) Chemical application. Chemicals such as fluoride, iodine, bromine and chlorine, which are potentially toxic in excessive concentration, shall be measured and recorded daily. Reporting shall include the amount of chemical applied each day. Where the supplier of water is attempting to maintain a residual of the chemical throughout the system, such as fluoride or chlorine, the residual in the system shall be recorded daily. The quantity of all other chemicals applied shall be measured and recorded at least once each week.

(6) Static water levels and pumping water levels must be measured and recorded once per month for all ground water sources in accordance with guidelines provided by the department. More or less frequent measurements may be approved by the department where historical data justifies it.

41.14(2) Chemical application. The supplier of water shall keep a record of all chemicals used. This record should include a clear identification of the chemical by brand or generic name and the dosage rate. When chemical treatment is applied with intent of obtaining an in-system residual, the residuals will be monitored regularly. When chemical treatment is applied and in-system residuals are not expected, the effectiveness of the treatment will be monitored through an appropriate indicative parameter.

a. Continuous disinfection.

(1) When required. Continuous disinfection must be provided at all public water supply systems, except for: Ground water supplies that have no treatment facilities or have only fluoride, sodium hydroxide or soda ash addition and that meet the bacterial standards as provided in 41.3(455B) and do not show other actual or potential hazardous contamination by microorganisms.

(2) Method. Chlorine is the preferred disinfecting agent. Chlorination may be accomplished with liquid chlorine, calcium or sodium hypochlorites or chlorine dioxide. Other disinfecting agents will be considered, provided a residual can be maintained in the distribution system, reliable application equipment is available and testing procedures for a residual are recognized in "Standard Methods."

(3) Chlorine residual. A minimum free available chlorine residual of 0.3 mg/1 or a minimum total available chlorine residual of 1.5 mg/1 must be continuously maintained throughout the water distribution system, except for those points on the distribution system that terminate as dead ends or areas that represent very low use when compared to usage throughout the rest of the distribution system.

(4) Test kit. A test kit capable of measuring free and combined chlorine residuals in increments no greater than 0.1 mg/1 in the range below 0.5 mg/1, and in increments no greater than 0.2 mg/1 in the range from 0.5 mg/1 to 1.0 mg/1, and in increments no greater than 0.3 mg/1 in the range from 1.0 mg/1 to 2.0 mg/1 must be provided at all chlorination facilities. The test kit must use a method of analysis that is recognized in "Standard Methods."

(5) Leak detection, control and operator protection. A bottle of at least fifty-six percent ammonium hydroxide must be provided at all gas chlorination installations for leak detection. Leak repair kits must be available where ton chlorine cylinders are used.

(6) Other disinfectant residuals. If an alternative disinfecting agent is approved by this department the residual levels and type of test kit used will be assigned by the department in accordance with and based upon analytical methods contained in "Standard Methods."

b. Phosphate compounds.

(1) When phosphate compounds are to be added to any public water supply system which includes iron or manganese removal or ion exchange softening, such compounds must be applied after the iron or manganese removal or ion exchange softening treatment units, unless the executive director has received and approved an

engineering report demonstrating the suitability for addition prior to these units in accordance with the provisions of subrule 41.12(2). The department may require the discontinuance of phosphate addition where it interferes with other treatment processes, the operation of the water system or if there is a significant increase in biological populations associated with phosphate application.

(2) The total phosphate concentration in the finished water must not exceed 10 mg/1 as PO_4.

(3) Chlorine shall be applied to the phosphate solution in sufficient quantity to give an initial concentration of 10 mg/1 in the phosphate solution. A chlorine residual must be maintained in the phosphate solution at all times.

(4) Test kits capable of measuring polyphosphate and orthophosphate in a range from 0.0 to 10.0 mg/1 in increments no greater than 2.0 mg/1 must be provided.

(5) Continuous application or injection of phosphate compounds directly into a well is prohibited.

c. Hydrofluosilicic acid. Where hydrofluosilicic acid is added to a public water supply, the operator shall be equipped with a fluoride test kit with a minimum range of from 0.0 to 2.0 mg/1 in increments no greater than 0.1 mg/1. Distilled water and standard fluoride solutions of 0.2 mg/1 and 1.0 mg/1 must be provided.

41.14(3) *Cross-connection control. To prevent backflow or backsiphonage of contaminants into a public water supply, connection shall not be permitted between a public water supply and any other system which does not meet the monitoring or drinking water standards required by this chapter except as provided below in "a" and "b."*

a. Piping systems or plumbing equipment carrying nonpotable water, contaminated water, stagnant water, liquids, mixtures or waste mixtures shall not be connected to a public water supply unless properly equipped with an antisiphon device or backflow preventer approved by the department.

b. Positive separation shall be provided through the use of an air gap separation or an approved backflow preventer at all loading stations for bulk transport tanks.

(1) The minimum required air gap shall be twice the diameter of the discharge pipe.

(2) An approved backflow preventer for this application shall be a reduced pressure backflow preventer or an antisiphon device which complies with the standards of the American Water Works Association and has been approved by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California.

When, in the opinion of the department, evidence clearly indicates the source of contamination within the system is the result of a cross-connection, the department may require a public water supply to identify and eliminate the connection.

TABLE C
SEPARATION DISTANCES FROM WELLS

(No Change)

TABLE D

Minimum Self-Monitoring Requirements
Public Water Supply Systems

CATEGORY	TREATMENT TYPE WATER PUMPAGE[1]	PLANT GRADE	MONITORING PARAMETER	MONITORING FREQUENCY	SAMPLE LOCATION
1.	Iron or manganese removal; aeration; chlorination; fluoridation; stabilization; any other chemical addition; or any combination of these processes.		Flow	daily	Raw, Final
			Residual Chlorine	daily	Final, Distr. System
			Fluoride	daily	Final
			Fluoride	1/month	Raw
			Iron	1/week	Raw, Final
			Manganese	1/week	Raw, Final
	0.025 to less than 0.1 MGD	I	pH	1/week	Final
			Phosphate (PO_4)	1/week	Final
1.	Iron or manganese removal; aeration; chlorination; fluoridation; stabilization; any other chemical addition; or any combination of these processes.		Flow	daily	Raw, Final
			Residual Chlorine	daily	Final, Distr. System
			Fluoride	daily	Final
			Fluoride	1/month	Raw
			Iron	2/week	Raw, Final
			Manganese	2/week	Raw, Final
	0.1 to 1.5 MGD	II	pH	2/week	Final
			Phosphate (PO_4)	2/week	Final
1.	Iron or manganese removal; aeration; chlorination; fluoridation; stabilization; any other chemical addition; or any combination of these processes.		Flow	daily	Raw, Final
			Residual Chlorine	daily	Final, Distr. System
			Fluoride	daily	Final
			Fluoride	2/month	Raw
			Iron	daily	Raw, Final
			Manganese	daily	Raw, Final
	greater than 1.5 MGD	III	pH	daily	Final
			Phosphate (PO_4)	daily	Final
2.	Ion exchange softening.	II	pH	2/week	Final
			Hardness	2/week	Raw, Final
	0.025 to 0.5 MGD		Alkalinity	1/week	Raw, Final
			Flow	daily	Raw, Bypass, Final
			Sodium	annual	or Treated
2.	Ion exchange softening.		pH	daily	Final
			Hardness	daily	Raw, Final
	Greater than 0.5 MGD	III	Alkalinity	daily	Raw, Final
			Flow	daily	Raw, Bypass or
			Sodium	annual	Treated, Final

1. Where the pumpage is unknown, the plant grade will be determined from the population and an evaluation of industrial users.

TABLE D (Continued)

Minimum Self-Monitoring Requirements
Public Water Supply Systems

CATEGORY	TREATMENT TYPE WATER PUMPAGE[1]	PLANT GRADE	MONITORING PARAMETER	MONITORING FREQUENCY	SAMPLE LOCATION
3.	Direct surface water filtration.		Turbidity	daily	Final
				2/week	Raw
	0.025 to 0.5 MGD	II	pH	daily	Raw, Final
			Flow	daily	Raw, Final
			Temperature	daily	Raw
			Alkalinity	daily	Raw, Final
3.	Direct surface water filtration.		Turbidity	daily	Raw, Final
			pH	daily	Raw, Final
	Greater than 0.5 MGD	III	Flow	daily	Raw, Final
			Temperature	daily	Raw
			Alkalinity	daily	Raw, Final
4.	Utilization of lime, soda ash or other chemical additions for pH adjustment in the precipitation and coagulation of iron or manganese.		Flow	daily	Raw, Final
			Iron	1/week	Raw, Final
			Manganese	1/week	Raw, Final
			pH	daily	Final
			pH	1/week	Raw
	0.025 to 0.5 MGD	II	Alkalinity	1/week	Final
4.	Utilization of lime, soda ash or other chemical additions for pH adjustment in the precipitation and coagulation of iron or manganese.		Flow	daily	Raw, Final
			Iron	1/week	Raw
			Iron	daily	Final
			Manganese	1/week	Raw
			Manganese	daily	Final
	Greater than 0.5 MGD	III	pH	1/week	Raw
			pH	daily	Final
			Alkalinity		
5.	Complete surface water clarification or lime softening of surface water.		Flow	daily	Raw, Final
			Turbidity	daily	Raw, Final
			pH	daily	Raw, Final
	0.0 to less than 0.1 MGD	III	Color	daily	Final
			Odor	daily	Final
5.	Complete surface water clarification or lime softening of surface water.		Flow	daily	Raw, Final
			Turbidity	daily	Raw, Final
			pH	daily	Raw, Final
	0.1 to 1.5 MGD	III	Color	daily	Final
	Greater than 1.5 MGD	IV	Odor	daily	Final
			Temperature	daily	Raw
			Alkalinity (P&M)	daily	Raw, Final
			Hardness	daily	Raw, Final
5.	Lime softening of groundwater.		Flow	daily	Raw, Final
			pH	1/week	Raw
	0.0 to 1.5 MGD	III	pH	daily	Final
	Greater than 1.5	IV	Temperature	1/week	Raw
			Alkalinity	1/week	Raw
			Alkalinity	daily	Final
			Hardness	1/week	Raw
			Hardness	daily	Final
			Fluoride[2]	daily	Raw, Final
6.	Reverse osmosis and electrodialysis.		Flow	daily	Raw, Reject, Final
			TDS (filterable residue)	daily	Raw, Final
	0.025 to less than 0.5 MGD	II	pH	1/week	Raw
	0.5 to 1.5 MGD	III	pH	daily	Final
	Greater than 1.5 MGD	IV	Alkalinity (P&M)	daily	Final
			Hardness (T)	1/week	Raw
			Hardness (T)	daily	Final
			Designated by department	X	X

2. Sampling required if fluoride reduction is being utilized to comply with the MCL.

TABLE D (Continued)

Minimum Self-Monitoring Requirements
Public Water Supply Systems

CATEGORY	TREATMENT TYPE WATER PUMPAGE[1]	PLANT GRADE	MONITORING PARAMETER	MONITORING FREQUENCY	SAMPLE LOCATION
7.	Demineralization or NO_3 reduction by ion exchange.		Flow	daily	Raw, Bypass, Final
			NO_3	daily	Raw, Final
			SO_4	1/week	Raw, Final
	0.025 to less than 0.5 MGD	II	pH	1/week	Raw, Final
	0.5 to 1.5 MGD	III	Designated by department	X	X
	Greater than 1.5 MGD	IV			
8.	Activated carbon for THM or synthetic organics removal.		Total organic carbon as designated by department	1/3 mo. X	Raw, Final X
	0.025 to 1.5 MGD	III			
	Greater than 1.5 MGD	IV			

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

[Filed 3/22/85, effective 5/15/85]
[Published 4/10/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/10/85.

ARC 5439

WATER, AIR AND WASTE MANAGEMENT[900]

WATER, AIR AND WASTE MANAGEMENT COMMISSION

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Water, Air and Waste Management Commission amends 900—Chapter 64, "Wastewater Construction and Operation Permits," pertaining to design standards for wastewater construction permits.

Notice of Intended Action was published in the January 16, 1985, Iowa Administrative Bulletin, as **ARC 5243**, and this rule change was adopted on March 19, 1985. There were several changes in the proposed standards made in response to comments from consulting engineers. These changes were minor corrections and clarifications, or to provide more flexibility to design engineers. The commentors have been made aware of the department's responses and a summary of the changes has been provided to the Code Editor. A copy may be obtained upon request to the department.

These rules will become effective on May 15, 1985.

Amend subrule **64.2(9)**, paragraph "b," Chapter 13, by striking the word "Reserved" and inserting "March 19, 1985."

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SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - March 20, 1985

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

No. 83-489. STATE v. TODDEN.
Appeal from the Iowa District Court for Polk County, M. J. V. Hayden and Gene L. Needles, Judges. Affirmed on both appeals. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Reynoldson, C.J. (11 pages $4.40)

Kenneth Allen Todden appeals from his conviction of first-degree murder and from the denial of his application for postconviction relief. OPINION HOLDS: I. Todden's brief concedes there are no grounds for his direct appeal. We find no merit in Todden's contentions in his postconviction appeal that he was denied his due process rights (1) because the prosecution's case included perjured testimony of which the prosecution was or should have been aware, or (2) because the prosecution failed to comply with Todden's general request for exculpatory evidence. The testimony of the department of criminal investigation agent regarding whose bedroom in defendant's residence he seized certain evidence from was not false; the agent merely mislabeled the evidence tags and receipts and search warrant summary. Even assuming the testimony was false, Todden waived his right to complain because before trial he had the evidence which reflected the mislabeling. For this same reason, there was no suppression of exculpatory evidence. II. We find no merit in Todden's contention that a jury, not the postconviction court, should have decided whether the DCI agent made a labeling error or, as Todden alleged in his application for postconviction relief, perjured himself; the court was required to determine whether or not Todden had sustained his burden of proving this allegation.

NO. 84-707. STOCKDALE v. BAKER.
Appeal from the Iowa District Court for Dickinson County, Murray S. Underwood, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Larson, J. (9 pages $3.60)

Plaintiff appeals from order denying deficiency judgment against cosigner of promissory note on ground plaintiff failed to serve notice of proposed sale of collateral under Iowa Code section 554.9504(3) (1983). OPINION HOLDS: I. A cosigner with no ownership rights in the collateral is a "debtor" entitled to notice of proposed disposition of

collateral under Iowa Code section 554.9504(3). The purpose of such notice is to allow the debtor to protect himself from an inadequate sale. We believe this rationale applies to a cosigner who is a nonowner since such person may still wish to bid on the property or encourage others to do so in order to minimize or eliminate a deficiency judgment. II. We adhere to the rule that service of notice of a proposed disposition is a condition precedent to recovery of a deficiency judgment against a cosignor as well as the principal debtor. III. The district court did not err in refusing to consider plaintiff's late-filed affidavits in its hearing on the motion to reconsider its order granting summary judgment to defendant.

NO. 84-426. ALLIED GAS AND CHEMICAL CO., INC. v. FEDERATED MUTUAL INSURANCE COMPANY.

Appeal from the Iowa District Court for Mahaska County, James D. Jenkins and Richard J. Vogel, Judges. Affirmed in part, reversed in part, and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Larson, J. (13 pages $5.20)

Plaintiff appeals from an order dismissing the case under Iowa Rule of Civil Procedure 215.1 and from an order allowing withdrawal of prior admissions. OPINION HOLDS: I. When a previous application for interlocutory appeal had been granted this case was on "appeal" under the meaning of rule 215.1 and, under the circumstances of this case, the requirement of a finding to that effect was substantially supplied by the district court record. The effect of an order granting an interlocutory appeal is to stay further district court proceedings, including those under rule 215.1. II. If there is an appeal, or if other rule-215.1 grounds for exemption are established, rule 215.1 is inapplicable. In that situation, a notice under rule 215.1 must be sent anew after the grounds for exemption are removed. III. The district court did not abuse its discretion in allowing defendant to withdraw its admissions earlier made. IV. Under Iowa Rule of Civil Procedure 134, a party may be granted reasonable attorney fees in connection with appeal as well as proceedings in the district court.

NO. 84-772. WESTERN OUTDOOR ADVERTISING CO. v. BOARD OF REVIEW.

Appeal from the Iowa District Court for Mills County, Leo F. Connolly, Judge. Reversed. Considered by Harris, P.J., and McGiverin, Schultz, Carter, and Wolle, JJ. Opinion by Carter, J. Dissent by Schultz, J. (7 pages $2.80)

County board of review appeals from the district court decree establishing that outdoor advertising signs may not be assessed as real property. OPINION HOLDS: The district court erred in finding that plaintiff's signs were not real property by reason of a proviso contained in Iowa Code section 427A.1(3) excepting structures or improvements which

will ordinarily be removed. We agree with the board of review that the district court reached this improper result because of misplaced reliance on Cowles Communications, Inc. v. Board of Review, 266 N.W.2d 626 (Iowa 1978). Between the time of the assessment in Cowles and our decision, section 427A.1(3) was amended. We believe the present amendment highlights a legislative intent that the proviso in subsection 3 not be viewed as a description of property not subject to assessment. It is, rather, merely an exception to the definition of "attached" property under subsection 2. With respect to plaintiff's signs, we find that they were properly assessed as real property without regard to that definition by reason of other language in the statute which mandates assessment of structures or improvements "constructed on or in the land." Iowa Code § 427A.1 (1)(c). Nothing in the proviso affects that conclusion. DISSENT ASSERTS: I cannot interpret section 427A.1 to provide for assessment of advertising signs as real estate.

NO. 84-383. SIDLES DISTRIBUTING CO. and AETNA CASUALTY AND SURETY v. HEATH.

Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge. Affirmed in part, reversed in part, and remanded. Considered by Harris, P.J., and McGiverin, Schultz, Carter, and Wolle, JJ. Opinion by Carter, J. (9 pages $3.60)

The employer and its insurance carrier have appealed from a district court decision upholding a decision of the industrial commissioner commuting previously established workers' compensation benefits from weekly benefits to a lump sum. OPINION HOLDS: I. We find no basis to disturb the commutation ordered by the commissioner on the ground that he did not properly determine the period during which compensation is payable. We believe the commissioner properly considered the period of the employee's disability to be his physical life expectancy rather than his "work-life expectancy." To the extent that appellants separately argue that the period during which compensation is payable is not capable of being "definitely determined," so as to render commutation inappropriate as a result of section 85.45(1), that argument must also fail because the use of mortality tables is mandated by statute. II. We believe the commissioner should have used compound rather than simple interest in computing the discount rate to be employed in reducing the future benefits to present worth. As to this issue, we remand to the commissioner for further proceedings consistent with this opinion.

No. 84-24. PATTERSON v. KELEHER.

Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by Reynoldson, C.J. (11 pages $4.40)

The plaintiff is a child's maternal grandmother and the defendant is the child's natural father. The child's mother, the daughter of the plaintiff, is deceased. A judicial decree placed the child in the father's custody and awarded the grandmother visitation rights. Subsequently the father's wife adopted the child; the grandmother received no notice of the adoption. The father then denied the grandmother visitation, and the grandmother filed an application to have him cited for contempt of court. The trial court dismissed this application, and the grandmother has appealed. OPINION HOLDS: A stepparent adoption, without notice to a grandparent holding judicially decreed visitation rights, does not automatically extinguish the grandparent's visitation rights. A grandparent with such rights is a "custodian" entitled to notice of adoption under Iowa Code section 600.10(2) (1983). The trial court's reliance on In re Adoption of Gardiner, 287 N.W.2d 555 (Iowa 1980), requires reversal; the case is remanded for further proceedings in the contempt proceeding, in light of this opinion.

No. 84-133. IN THE INTEREST OF D. W. K.
Appeal from the Iowa District Court for Palo Alto County, James D. Hart, Juvenile Court Referee. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Reynoldson, C.J. (8 pages $3.20)

A father appeals from the dismissal of his petition for voluntary termination of his parental rights under section 600A.8 of the Code. OPINION HOLDS: I. Parties are not required to seek a juvenile court judge's review of a referee's decision in order to render it final for purposes of review. Because no review was requested in this case, the referee's order is final and we have jurisdiction of the appeal. II. Where a parent petitions for voluntary termination of parental rights and establishes one or more of the grounds for termination stated in Iowa Code section 600A.8, the juvenile court may still decline to terminate if it finds that termination is not in the child's best interests.

NO. 84-144. TELECONNECT CO. v. IOWA STATE COMMERCE COMMISSION.
Appeal from the Iowa District Court for Linn County, August F. Honsell, Judge. Reversed and remanded. Considered en banc. Opinion by Harris, J. (9 pages $3.60)

Respondent commission appeals with permission from an ex parte order granting a stay of temporary rules relating to telephone access charges in a judicial review proceeding. OPINION HOLDS: I. At the time in question the district court was not without authority or jurisdiction to act on the ex parte application. II. Under the four factor test for determining the propriety of a stay it was

an abuse of discretion to enter the ex parte stay order. III. Infirmities which clouded the ex parte order were not cleared by the commission's participation in a subsequent hearing.

NO. 84-151. KAWAMURA v. CAMLIN.
Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. Affirmed and remanded. Considered by Harris, P.J., and McGiverin, Schultz, Carter, and Wolle, JJ. Per curiam. (4 pages $1.60)

Plaintiffs appeal after defendant was granted a new trial following a jury verdict in a tort suit. OPINION HOLDS: I. The trial court's ruling that plaintiffs were required to elect between the contract and tort theories was not challenged on appeal. II. Plaintiffs failed to show that they suffered emotional distress of the severity required under the Bossuyt and Harsha tests. Therefore, we cannnot reach plaintiff's contention that they should be allowed to recover for negligent infliction of emotional distress.

NO. 84-548. STATE EX REL. PALMER v. BOARD OF SUPERVISORS.
Appeal from the Iowa District Court for Polk County, Anthony M. Critelli, Judge. Affirmed. Considered by Harris, P.J., and McGiverin, Schultz, Carter, and Wolle, JJ. Opinion by Harris, J. (7 pages $2.80)

The county appeals from summary judgment for the state in a declaratory judgment action to compel the county to contribute a statutory share of treatment expenses for substance abusers in state mental health institutes. OPINION HOLDS: A county board of supervisors is given the statutory discretion to refuse to pay the twenty-five percent share of the costs for services rendered to substance abusers at private facilities. Iowa Code section 125.45 does not also give boards the discretion to refuse in cases where the substance abuser has received the care at a state mental health institute.

No. 84-590. BAKER V. STATE.
Appeal from the Iowa District Court for Lee County, John C. Miller, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by McGiverin, J. (5 pages $2.00)

Respondent State of Iowa appeals from a summary judgment and order in a postconviction proceeding directing expungement of a disciplinary report from the file of petitioner, an inmate of the Iowa State Penitentiary who is currently on parole. Petitioner was adjudicated to be guilty of escape in violation of a penitentiary rule. Shortly after he filed an application for postconviction relief, prison officials administratively reversed the disciplinary committee's adjudication of guilt and restored all of his good time and honor time. The disciplinary report pertaining to the charge of

escape was not expunged from his prison record, which indicates that a disciplinary sanction was imposed but subsequently dismissed. Petitioner contends that expungement was required under penitentiary rule 804E because prison officials had violated another part of rule 804 by placing him in administrative segregation for several days prior to the short-lived adjudication of guilt. OPINION HOLDS: The segregation alleged to constitute a rule 804 violation was insubstantial and nonprejudicial and therefore did not require expungement of the record.

No. 84-348 FRATERNAL ORDER OF EAGLES V. ILLINOIS CASUALTY CO.
Appeal from the Iowa District Court for Black Hawk County, James L. Beeghly, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by McGiverin, J. (13 pages $5.20)

Plaintiff and intervenor appeal from judgment for defendant insurer in declaratory action seeking to increase defendant's liability to plaintiff under dram shop insurance policy for intervenor's judgment in prior wrongful death action. OPINION HOLDS: I. The relevant principles of interpretation leave no room for genuine uncertainty as to the meaning of the phrase "injured in person" as it appears in the insurance policy. We believe it was the intent of the parties to provide plaintiff with insurance coverage that was, within the policy limits, coextensive with plaintiff's potential liability under Iowa Code section 123.92. We, therefore, interpret the phrase "injured in person" to refer only to bodily injury, as it does in section 123.92. Intervenor was not, in her individual capacity, injured in person. The district court was correct in finding that defendant had discharged all of its liability to intervenor.

No. 84-198. LOUGHLIN V. CHEROKEE COUNTY.
Appeal from the Iowa District Court for Cherokee County, Richard W. Cooper, Judge. Reversed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by McCormick, J. (6 pages $2.40)

Defendant county appeals from a district court decision on judicial review holding that plaintiff is covered by IPERS. OPINION HOLDS: A part-time judicial hospitalization referee was not eligible for IPERS benefits before adoption of the 1984 express exclusion.

No. 83-642. STATE V. LEISINGER.
Appeal from the Iowa District Court for Lee County, John C. Miller, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by McCormick, J. (6 pages $2.40)

Defendant appeals from her conviction for possession of an offensive weapon in violation of Iowa Code section 724.3

(1981). OPINION HOLDS: I. Unserviceability of the weapon is an exception to the offense on which defendant bears the burden of production of evidence as with affirmative defenses generally. The State need not negate such an exception unless substantial evidence is produced from some source that the exception applies. II. The State must prove knowing possession of a shotgun having the requisite physical characteristics but is not required to prove that the defendant knew that the weapon had characteristics that are proscribed by statute. Trial counsel's failure to object to the marshaling instruction because it did not require the State to prove knowledge of the offensive character of the weapon fails to establish a claim of ineffective assistance.

No. 84-586. FISCHER V. HAYES.
Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by McCormick, J. (6 pages $2.40)

Plaintiffs appeal from adverse declaratory judgment in their action attacking the method used by Dubuque County in leasing office space. OPINION HOLDS: I. The district court did not err in ruling that the lease was not construction work to be paid for by funds of the county within the meaning of the statutory definition of public improvements. The present transaction was a lease in substance as well as in form and thus, the public bidding statutes did not apply. II. Because Iowa Code section 384.99 did not apply, the county was not obligated to accept the lowest bid.

NO. 84-375. BROWN v. GARMAN.
Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Affirmed in part; reversed in part. Considered by Harris, P.J., and McGiverin, Schultz, Carter, and Wolle, JJ. Opinion by Wolle, J. (19 pages $7.60)

This is an interlocutory appeal from the dismissal of two common-law tort claims held to be preempted by federal labor law. OPINION HOLDS: I. The district court erred in sustaining the motion to dismiss the plaintiff's claim based on intentional infliction of emotional distress. Generally, state causes of action are preempted if they concern conduct that is actually or arguably prohibited or protected by the National Labor Relations Act. However, plaintiff's claim for intentional infliction of emotional distress falls squarely within the local-interest exception to the pre-emption rule. II. The district court did not err in finding that it lacked jurisdiction over plaintiff's claim for intentional interference with contractual relations and employment opportunities. This cause of action would require the district court to resolve the precise issues concerning hiring hall violations that the NLRB would consider if an unfair labor practice charge had been filed. III. Defen-

dant Baker was not entitled to the protection provided individual union members by section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185(b), because plaintiff's claims were based entirely on state common law and not dependent on a federal statute. The district court correctly denied Baker's contention that section 301(b) precluded plaintiff from bringing suit against him.

NO. 84-468. STATE v. FINCHUM.

Appeal from the Iowa District Court for Pottawattamie County, Paul H. Sulhoff, Judge. REVERSED AND REMANDED. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Uhlenhopp, J. (7 pages $2.80)

Defendant appeals from his conviction of second-degree burglary. OPINION HOLDS: I. The trial court should not have admitted evidence of defendant's other crimes, which was used to demonstrate that defendant was a bad person. Iowa Rule of Evidence 404(6) prohibits evidence of other crimes, wrongs, or acts, except to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. The evidence did not fit into any of these exceptions. The error necessitates a new trial. II. At the time defendant was arrested for the burglary, he was on parole for another offense. The trial court erred in holding that consecutive sentences for the two offenses were mandatory for defendant under Iowa Code section 901.8 (sentence for offense perpetrated by defendant while committed shall begin at expiration of existing sentence). A parolee is no longer "committed".

No. 83-702. STATE V. SPARGO.

Appeal from the Iowa District Court for Scott County, David D. Sohr, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by McGiverin, J. (17 pages $6.80)

Defendant appeals from his conviction, after a jury trial, of assault with intent to commit sexual abuse, in violation of Iowa Code section 709.11 (1983). OPINION HOLDS: I. The trial court did not abuse its discretion in overruling defendant's motion for change of venue based on pretrial publicity. The total of all the pretrial publicity of record falls short of exhibiting the extensiveness and hostility to defendant that is required to give rise to a presumption of jury prejudice, and defendant makes no argument regarding actual jury prejudice. A change of venue was thus not required under Iowa Rule of Criminal Procedure 10(10)(b) or the due process clause of the Fourteenth Amendment. II. The trial court did not abuse its discretion in admitting the testimony of one of the State's witnesses regarding defendant's prior sex acts with young boys other than the victim. The testimony showed defendant's pattern of conduct toward the boys, with whom he later engaged in sex acts; it was offered to prove defendant intended to engage in a sex act with the victim on

the date in question. The probative value of the testimony outweighed the danger of unfair prejudice to defendant. III. There was sufficient evidence to support defendant's conviction of assault with intent to commit sexual abuse, and in particular, to support the finding of intent to commit a sex act. IV. The trial court did not err in refusing to submit defendant's requested jury instruction regarding the intent to commit a sex act; the substance of the instruction was adequately incorporated in the instructions which were given to the jury. The trial court did not err in refusing to submit defendant's requested jury instruction that consent of the victim is a defense to the charge of assault with intent to commit sexual abuse; a person cannot consent to an assault made with intent to perform an act which is prohibited by law regardless of consent.

NO. 83-1619. WOODRUFF v. ASSOCIATED GROCERS OF IOWA, INC.
Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. REVERSED AND REMANDED. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Uhlenhopp, J. (7 pages $2.80)

A former employee filed a suit against his former employer, alleging wrongful discharge. The employer moved for summary judgment, alleging that the suit was precluded by an earlier binding arbitration decision that just cause existed for the employee's discharge. The trial court denied the motion for summary judgment; the employer then sought and received permission to file this interlocutory appeal. OPINION HOLDS: The trial court should have granted the employer a summary judgment. The binding arbitration decision precluded this lawsuit.

NOS. 83-343, 83-1164. CLARK v. MINCKS.
Appeals from Linn District Court, William R. Eads and Paul J. Kilburg, Judges. REVERSED AND REMANDED. Considered en banc. Opinion by Uhlenhopp, J.; Dissent in part and concurrence in part by McGiverin, J. (22 pages $8.80)

The plaintiffs' daughter, a small child, was a passenger in a van driven by an intoxicated person; the van was involved in an accident and the child was killed. The plaintiffs then sued several persons, including an adult fellow passenger and the "social hosts" who had served alcohol to the driver. The district court sustained the social hosts' motion to dismiss but denied the fellow passenger's motion for summary judgment. These two rulings resulted in two separate interlocutory appeals, which have been consolidated. OPINION HOLDS: I. We decide today that, in certain limited circumstances, a social host may be held liable for furnishing intoxicants to an intoxicated guest who then injures a third person by operating a motor vehicle. A plaintiff seeking recovery against a social host under this theory must introduce substantial evidence showing (1) the guest was intoxicated, (2) the host personally was actually aware the guest was intoxicated, (3) the host then made intoxicating beverages available to the guest, (4)

the guest drank the beverages, (5) the guest, while intoxicated, then operated a motor vehicle, and (6) by reason of the intoxication, the guest operated the vehicle in a manner which caused injury to the plaintiff (or the death of the plaintiff's decedent). II. The plaintiffs did not present substantial evidence that the adult fellow passenger had voluntarily taken custody of the child. Such evidence was necessary before the passenger could be held liable on a theory that he had an affirmative duty to protect the child from the danger of an intoxicated driver. Therefore the district court should have sustained the passenger's motion for summary judgment. DISSENT IN PART, CONCURRENCE IN PART ASSERTS: I concur in Division II of the majority opinion. However, I dissent from Division I; I do not believe we should judicially impose liability on a "social host" even under the criteria delineated by the majority.

NO. 84-694. STATE v. MUNDORF.

On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, District Associate Judge. Decision of Court of Appeals Vacated and Judgment of District Court Affirmed. Considered by Uhlenhopp, P.J., and McCormick, Schultz, Carter and Wolle, JJ. Per Curiam. (3 pages $1.20)

Defendant appeals from the imposition of sentences following his guilty plea in two cases. He was charged in each case with operating while intoxicated (OWI), second offense, in violation of Iowa Code section 321.281. OPINION HOLDS: This appeal is governed by our recent holdings in State v. Pettit and State v. Blood which were announced after the Court of Appeals decision in this case. The trial court correctly followed the statutory requirements by ordering defendant's license to be revoked for six years.

NO. 83-1334. WAGNER v. STATE.

Appeal from the Iowa District Court for Lee County, John C. Miller and Harlan W. Bainter, Judges. Affirmed. Considered by Harris, P.J., and McGiverin, Schultz, Carter, and Wolle, J. Opinion by Schultz, J. (13 pages $5.20)

Applicant appeals from the district court's dismissal of his application for postconviction relief under Iowa Code chapter 663A. Applicant, an inmate at the Iowa state

penitentiary, challenged the revocation of earned good time pursuant to Iowa Code section 246.41(5). OPINION HOLDS: I. Due process. A. We find the notice of misconduct properly informed applicant of the violations which led to the revocation of his good time. B. Applicant's complaint that his due process rights were violated because the institution failed to follow its own rules must fail for several reasons. He failed to establish that the employee's manual was binding on the warden or that it should be allowed to contravene the rule 804 policy established by federal court order. Additionally, our interpretation of the language in the employee's manual is that it places no limitation on the statutory authority of the warden to suspend good time with the approval of the director. C. The warden is not prevented from exercising the authority that he is given under subsection 246.41(5) prior to the expiration of the time for appeal, especially in this case when exigent circumstances dictated that the warden act promptly. D. We conclude that any agreement for immunity or amnesty that is produced by unlawful threats, such as the hostage situation in this case, is contrary to public policy and void. E. We find no exercise of partiality on the part of the warden and director. II. Ex parte communication. We find no impropriety or appearance of impropriety on the part of the district court judge in ruling on the motion for new trial and an enlargement of the findings of fact. There is no evidence or hint of evidence that the district court judge initiated or considered ex parte communications in ruling on this case.

NO. 83-1105. SEVERSON v. PETERSON.

Appeal from the Iowa District Court for Winnebago County, John F. Stone, Judge. Affirmed on both appeals. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Larson, J.

(8 pages $3.20)

The plaintiffs have sought discretionary review in a small claims action asserting error in magistrate's refusal to vacate judgment under Iowa Rules of Civil Procedure 252 and 253. The defendants have cross-appealed raising the failure of magistrate to allow attorneys fees for defendants. OPINION HOLDS: I. The magistrate, and the district court, correctly held that the petition to vacate under Iowa Rules of Civil Procedure 252 and 253 was not an available proceeding in small claims court. II. A discretionary review of a small claims proceeding does permit cross-appeal of other issues. We agree with the magistrate and the district court that there is no authority for allowance of attorneys fees to the defendants under these circumstances.

NO. 83-1413. IN RE MARRIAGE OF HOAK.
Appeal from the Iowa District Court for Polk County, M.C. Herrick, Judge. Affirmed as Modified and Remanded. Considered by Reynoldson, C.J., and McGiverin, Larson, Schultz, and Wolle, JJ. Opinion by Schultz, J.
(22 pages $8.80)

Respondent wife appeals from the provisions of a dissolution decree regarding the support of the children, the distribution of property, and the payment of fees. OPINION HOLDS: I. The trial court erred in ordering, in lieu of parental child support, that the assets of the parties' children, accumulated from gifts under the Uniform Gifts to Minors Act (Iowa Code chapter 565A), be used to create a trust for the children's support. When the parents have significant assets and income to support their children, gifts to minors should not be used to provide day-to-day support, in the absence of contrary intent by the donor or other factors indicating that use for support is proper. In addition, we are concerned that this trust was created without the participation of the children through an appointed lawyer or guardian ad litem. The decree is modified to eliminate the trust and to provide instead for petitioner husband to pay child support of $500 per month per child. II. The trial court undervalued certain of the assets it awarded to petitioner husband and overvalued certain of the assets it awarded to respondent wife. The trial court's property division was inequitable; it must be adjusted to require petitioner husband to pay $125,000 to respondent wife. III. The trial court's holding in regard to payment of the fees of respondent wife's attorney and her appraiser is affirmed. Our modification of the property division equips respondent wife to pay her own fees on appeal. All court costs at trial and on appeal are assessed to petitioner husband.

NO. 83-1492. SWANSON v. SHOCKLEY.
Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge. Affirmed. Considered by Harris, P.J., and McGiverin, Schultz, Carter, and Wolle, JJ. Opinion by Carter. J. (9 pages $3.60)

For many years the plaintiff has been minority shareholder of a corporation and the defendant has been majority shareholder. When the defendant sold his majority holding to an outsider, the plaintiff objected on the ground a former bylaw of the corporation (since repealed) had given him a vested contractual right of first refusal. The plaintiff filed this action for damages; the trial court ruled in favor of the defendant, and both parties appealed. OPINION HOLDS: A former bylaw of the corporation did not give the plaintiff a contractual right of first refusal, as the plaintiff had contended. There is no evidence that the plaintiff relied on the bylaw or parted with valuable consideration in exchange for the bylaw. In addition, the enforcement of the supposed right of first refusal would work an unreasonable hardship on other stockholders.

NO. 84-434. KYLE v. STATE.

Appeal from the Iowa District Court for Black Hawk County, C.W. Antes, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Schultz, and Wolle, JJ. Opinion by Schultz, J. (17 pages $6.80)

In 1964 the applicant pleaded guilty to an open charge of murder. Following a degree of guilt hearing, he was convicted of first degree murder and was sentenced to life imprisonment. Many years later he applied for postconviction relief; he now appeals from the district court's dismissal of that application. OPINION HOLDS: I. Guilty plea. We agree with the trial court's determination in our de novo review and find that the plea was intelligently and voluntarily made. There is no showing of ineffective assistance of counsel to affect the voluntariness of applicant's guilty plea. II. Ineffective assistance of counsel. A. Applicant has not shown prejudice from counsel's failure to file a motion for a bill of particulars. B. We find no merit in the claims that trial counsel was confused about the charges against applicant and that because of his confusion he failed to move for a directed verdict. Applicant is unable to make a showing of prejudice resulting from his counsel's alleged misconstruction of the law regarding the elements of rape. Counsel was not ineffective for his failure to object to testimony from a doctor concerning applicant's statements about the homicide. C. There is no merit in applicant's claim that counsel failed to investigate the circumstances surrounding applicant's confession and the applicable law and consequently failed to object to admissiblity. D. The claim that counsel violated his loyalty to applicant has not been established. E. We find that counsel's advice concerning applicant's appeal, as given in 1964, has not been shown to constitute ineffective assistance of counsel. III. Due process. In the applicant's 1964 degree-of-guilt hearing the burden was placed on him to disprove specific intent by showing intoxication. In 1977 this court held for the first time that a defendant should not be required to bear that burden; however, this decision is not retroactive and therefore does not help the applicant.

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