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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, regulatory flexibility analyses 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.

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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
19	Friday, February 20, 1987	March 11, 1987
20	Friday, March 6, 1987	March 25, 1987
21	Friday, March 20, 1987	April 8, 1987

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

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Fourth quarter	April 1, 1987, to June 30, 1987	\$ 33.50 plus \$1.34 sales tax

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Iowa Administrative Code

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

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

Iowa Administrative Code - \$700.00 plus \$28.00 sales tax
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Schedule for Rule Making 1987

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. 9	Jan. 28	Feb. 17	Mar. 4	Mar. 25	Apr. 29	July 27
Jan. 23	Feb. 11	Mar. 3	Mar. 18	Apr. 8	May 13	Aug. 10
Feb. 6	Feb. 25	Mar. 17	Apr. 1	Apr. 22	May 27	Aug. 24
Feb. 20	Mar. 11	Mar. 31	Apr. 15	May 6	June 10	Sep. 7
Mar. 6	Mar. 25	Apr. 14	Apr. 29	May 20	June 24	Sep. 21
Mar. 20	Apr. 8	Apr. 28	May 13	June 3	July 8	Oct. 5
Apr. 3	Apr. 22	May 12	May 27	June 17	July 22	Oct. 19
Apr. 17	May 6	May 26	June 10	July 1	Aug. 5	Nov. 2
May 1	May 20	June 9	June 24	July 15	Aug. 19	Nov. 16
May 15	June 3	June 23	July 8	July 29	Sep. 2	Nov. 30
May 29	June 17	July 7	July 22	Aug. 12	Sep. 16	Dec. 14
June 12	July 1	July 21	Aug. 5	Aug. 26	Sep. 30	Dec. 28
June 26	July 15	Aug. 4	Aug. 19	Sep. 9	Oct. 14	Jan. 11 '88
July 10	July 29	Aug. 18	Sep. 2	Sep. 23	Oct. 28	Jan. 25 '88
July 24	Aug. 12	Sep. 1	Sep. 16	Oct. 7	Nov. 11	Feb. 8 '88
Aug. 7	Aug. 26	Sep. 15	Sep. 30	Oct. 21	Nov. 25	Feb. 22 '88
Aug. 21	Sep. 9	Sep. 29	Oct. 14	Nov. 4	Dec. 9	Mar. 7 '88
Sep. 4	Sep. 23	Oct. 13	Oct. 28	Nov. 18	Dec. 23	Mar. 21 '88
Sep. 18	Oct. 7	Oct. 27	Nov. 11	Dec. 2	Jan. 6 '88	Apr. 4 '88
Oct. 2	Oct. 21	Nov. 10	Nov. 25	Dec. 16	Jan. 20 '88	Apr. 18 '88
Oct. 16	Nov. 4	Nov. 24	Dec. 9	Dec. 30	Feb. 3 '88	May 2 '88
Oct. 30	Nov. 18	Dec. 8	Dec. 23	Jan. 13 '88	Feb. 17 '88	May 16 '88
Nov. 13	Dec. 2	Dec. 22	Jan. 6 '88	Jan. 27 '88	Mar. 2 '88	May 30 '88
Nov. 27	Dec. 16	Jan. 5 '88	Jan. 20 '88	Feb. 10 '88	Mar. 16 '88	June 13 '88
Dec. 11	Dec. 30	Jan. 19 '88	Feb. 3 '88	Feb. 24 '88	Mar. 30 '88	June 27 '88
Dec. 25	Jan. 13 '88	Feb. 2 '88	Feb. 17 '88	Mar. 9 '88	Apr. 13 '88	July 11 '88

- 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.

NOTICE

Beginning on June 14, 1985, the deadline for filing rules with the office of the Administrative Rules Coordinator will be **12 o'clock noon** rather than 4:30 p.m.

Rules will not be accepted after 12 o'clock noon on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

UNIFORM RULES OF STATE AGENCY PROCEDURE

Governor Terry E. Branstad appointed a nine-member Task Force in the summer of 1985 to draft uniform rules of agency procedure.

On December 5, 1986, the Task Force presented a report to the Governor. The Governor has accepted the Task Force recommendations on agency procedure for rule making which have been printed at the front of the Iowa Administrative Code for adoption by state agencies. [Green Tab — Uniform Rules]

The Administrative Rules Review Committee will hold a special meeting Monday, March 9, 1987, 7:30 a.m. and Tuesday, March 10, 1987, 7:30 a.m. in Committee Room 24, State Capitol. This meeting will be held in lieu of the statutory date. The following rules will be reviewed:

DIVISION I		Bulletin
Rules under Notice and Filed Emergency Rules		
AGRICULTURE AND LAND STEWARDSHIP, DEPARTMENT OF[21]		
Registration of Iowa-foaled horses and Iowa-whelped dogs, 14.41	ARC 7391	2/25/87
BANKING DIVISION[187]		
Amendments, transfer rules 140—chs 1 to 4, 8, 9 and 21 and 130—ch 1 to agency number 187, renumber 140—ch 21 as 187—ch 15 and 130—ch 1 as 187—ch 16, new chs 5 and 6	ARC 7399	2/25/87
COLLEGE AID COMMISSION[245]		
Iowa guaranteed student loan program, amendment to preamble, 10.2(1), 10.2(3), 10.3, 10.24, 10.59, 10.62	ARC 7360, also filed emergency (except 10.2(3))	2/11/87
Rule making and declaratory rules, rescinds 13.3	ARC 7343	2/11/87
ELDER AFFAIRS, DEPARTMENT OF[321]		
Rescinds 20—chs 1 to 11, 321—ch 12, new chs 1 to 18	ARC 7403	2/25/87
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Declaratory rulings, ch 6	ARC 7364	2/11/87
HUMAN SERVICES DEPARTMENT[441]		
Transfer rules 498—chs 1 to 209 to 441—chs 1 to 209, also miscellaneous amendments, filed emergency	ARC 7350	2/11/87
ADC—granting assistance, 41.7(5)“b,” 41.7(7)“z,” 41.7(8)“c,” 41.8(2)“b”(2), filed emergency	ARC 7351	2/11/87
Unemployed parent, 42.4(3), 42.4(4)	ARC 7372	2/11/87
Food stamp program, 65.3, 65.29(3), filed emergency	ARC 7352	2/11/87
Treatment of Medicaid qualifying trusts, 75.9	ARC 7354 (also filed without notice ARC 7353)	2/11/87
Collection services center, ch 97	ARC 7373	2/11/87
Purchase of adoption services, 157.1, 157.2(3), 157.2(4), 157.3(5), 157.4, 157.5	ARC 7374	2/11/87
NURSING, BOARD OF[590]		
Administrative and regulatory authority, 1.1, 1.3, 1.4, 1.5	ARC 7385	2/25/87
License to practice—Registered nurse/licensed practical nurse, 3.5(3)“b”(4)	ARC 7387	2/25/87
PUBLIC HEALTH DEPARTMENT[470]		
Venereal disease prophylactics, 6.1, 6.6	ARC 7392	2/25/87
Advanced emergency medical care, 132.15	ARC 7339	2/11/87
Chiropractic examiners—temporary certificate, utilization and cost control review, 141.18, 141.19	ARC 7393	2/25/87
RACING AND GAMING DIVISION[195]		
Greyhound rules, 7.9(1)“b” and “c,” 7.9(2)“d”	ARC 7344	2/11/87
Mutuel departments, minimum wager and payoff, 8.6, filed emergency	ARC 7345	2/11/87
REAL ESTATE COMMISSION[700]		
Prelicense education and CE, 3.4(2)“5”	ARC 7355	2/11/87
REVENUE AND FINANCE, DEPARTMENT OF[701]		
Practice and procedure, 7.1, 7.2, 7.6, 7.8, 7.14, 7.23(2), 7.25	ARC 7394	2/25/87
TREASURER OF STATE[781]		
Reporting on state and local government bonding activities, ch 7	ARC 7361	2/11/87
UTILITIES DIVISION[199]		
Purchased gas adjustments, annual review of gas procurement practices, 19.10, 19.11, 19.2(4)“b,” amended notice	ARC 7404	2/25/87
Tax reform revenue adjustment, ch 30	ARC 7406	2/25/87

DIVISION II		Bulletin
Filed Rules		

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Participation in grain indemnity fund, ch 62	ARC 7398	2/25/87
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Tuition grant review, 4.2(1), 4.2(5)“a”	ARC 7342	2/11/87
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Victim notification, 20.15	ARC 7395	2/25/87

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Prescribing, administering, and dispensing drugs, ch 16	ARC 7367	2/11/87
Nitrous oxide inhalation analgesia, 29.6(2)	ARC 7368	2/11/87
Grounds for discipline, 30.4	ARC 7369	2/11/87

ENVIRONMENTAL PROTECTION COMMISSION[567]

Public and confidential information, ch 2, rescinds 900—4.1 to 4.4	ARC 7365	2/11/87
Submission of information and complaints—investigations, ch 3, rescinds 900—4.5	ARC 7366	2/11/87

HUMAN SERVICES DEPARTMENT[441]

Fair hearings and appeals, 7.1, 7.5(1), 7.5(3), 7.8(5), 7.10(4), 7.13(2), 7.16(6), 7.18(1)	ARC 7346	2/11/87
Unemployed parent workfare program, 59.5(4), 59.6(2)"f"	ARC 7347	2/11/87
Administration of food stamp program, 65.3, 65.27, 65.28	ARC 7348	2/11/87
Treatment of Medicaid qualifying trusts, 75.9, filed without Notice	ARC 7353	2/11/87
Child day care services, ch 170	ARC 7349	2/11/87

INDUSTRIAL SERVICES, DIVISION OF[343]

Petition for declaratory rulings and rule making, chs 5 and 7	ARC 7370	2/11/87
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INSPECTIONS AND APPEALS, DEPARTMENT OF[481]

Administration, rule making, declaratory rulings, contested case hearings, investigations, Medicaid provider audits, chs 1 to 7	ARC 7401	2/25/87
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INSURANCE DIVISION[191]

Declaratory rulings and rule making, chs 2 and 4, (existing rules renumbered — 2.1 to 15.94, 2.3—2.5 to 4.5—4.7, 2.2 and 2.6 rescinded)	ARC 7371	2/11/87
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NATURAL RESOURCE COMMISSION[571]

Recreation/tourism grants to county conservation boards, 24.1, 24.4(1), 24.4(3), 24.5(4), 24.6(1), 24.6(2), 24.6(5), 24.6(6), 24.7(1), 24.7(3)"f," 24.8, 24.9, 24.10, 24.11, 24.12(1), 24.12(3), 24.15(1), 24.15(4), 24.15(5), 24.15(6), 24.16, 24.17(1), 24.18, 24.20(1), 24.20(2), 24.20(3)	ARC 7402	2/25/87
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NURSING, BOARD OF[590]

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PHARMACY EXAMINERS, BOARD OF[620]

Licensure, 1.14(1)	ARC 7378	2/25/87
Pharmacy business licenses, 2.6	ARC 7379	2/25/87
License fees, 4.2	ARC 7380	2/25/87
Licensure by reciprocity, new ch 5	ARC 7381	2/25/87
Minimum standards for the practice of pharmacy, 6.1, 6.5(7)	ARC 7382	2/25/87
Controlled substances, 8.13(9), 8.15, 8.19, rescind 620—ch 12	ARC 7383	2/25/87
License reinstatement and surrender of license, 9.3, 9.4	ARC 7384	2/25/87

PUBLIC HEALTH DEPARTMENT[470]

Mass gatherings, 19.1(2), 19.4(1)"b," 19.4(3)"c" and "f," 19.4(8)	ARC 7358	2/11/87
Hospitals separate license required, 51.3(1)	ARC 7356	2/11/87
Health facilities, dietetic service supervisor, 58.24(2)"d," 59.29(2)"d," 64.32(2)"d"	ARC 7396	2/25/87
Intermediate care facilities and skilled nursing facilities, 58.39(2), 59.44(2)	ARC 7397	2/25/87
Statewide indigent obstetrical patient care, 75.1	ARC 7363	2/11/87
Financial assistance to end-stage renal disease patients, 111.1, 111.4(4), 111.5(1), 111.5(2), 111.5(5), 111.5(6), 111.6(1), 111.7(5), 111.7(6), 111.9(6), Table 1, Table 2, rescind 111.10	ARC 7340	2/11/87
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Barber examiners, inspection report, 153.17	ARC 7341	2/11/87

REVENUE AND FINANCE DEPARTMENT[701]

Sales and use tax, 12.10, 15.3(1), 15.3(2), 18.5(3), 18.25(3), 26.42(1), 26.49	ARC 7376	2/11/87
Delinquent cigarette, motor fuel, sales or use tax, revocation of license, 13.7, 13.17, 30.1, 63.26(4), 81.13(3)	ARC 7377	2/11/87

SUBSTANCE ABUSE DIVISION[805]

Licensure standards for correctional facilities, new ch 6	ARC 7362	2/11/87
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TRANSPORTATION, DEPARTMENT OF[820]

Targeted small business procurement, (01,B) 2.3(4), 2.4(1)"a," 2.4(8)"c"	ARC 7389	2/25/87
Signing manual, (06,K) 2.1	ARC 7388	2/25/87
Designated highway system, (07,A) 1.3, 1.4, 1.5	ARC 7357	2/11/87
Regulations applicable to carriers, (07,F) 8.1(1)"a" and "b"	ARC 7390	2/25/87

UTILITIES DIVISION[199]

Tax reform revenue adjustment, ch 30, filed without Notice	ARC 7405	2/25/87
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To All Agencies:

At its December meeting the Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b" by allowing the opportunity for oral presentation (hearing) to be held at least twenty days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ELDER AFFAIRS, DEPARTMENT OF[321]		
Amend and transfer rules from Commission on the Aging[20] to Elder Affairs Department[321], chs 1 to 11 IAB 2/25/87 ARC 7403	Crawford Co. Senior Center 201 South Main Denison, Iowa	March 17, 1987 2 to 4 p.m.
	Wallace State Office Bldg. East Ninth and Grand Ave. Des Moines, Iowa	March 18, 1987 9 to 12 noon
	Exercise Room Johnson Co./Iowa County Senior Center 28 South Linn St. Iowa City, Iowa	March 19, 1987 10 to 12 noon
HUMAN SERVICES DEPARTMENT[441]		
Employed parent, amendments to ch 42 IAB 2/11/87 ARC 7372	Cedar Rapids District Office Conference Room 6th Floor 221 4th Ave. S.E. Cedar Rapids, Iowa	March 4, 1987 10 a.m.
	Council Bluffs District Office 417 E. Kanesville Boulevard Lower Level Council Bluffs, Iowa	March 5, 1987 10 a.m.
	Davenport District Office 5th Floor Conference Room 428 Western Avenue Davenport, Iowa	March 4, 1987 10 a.m.
	Des Moines District Office City View Plaza Conference Room 100 1200 University Des Moines, Iowa	March 4, 1987 1:30 p.m.
	Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, Iowa	March 5, 1987 10 a.m.
	Ottumwa District Office 4th Floor Conference Room 226 West Main Ottumwa, Iowa	March 4, 1987 10 a.m.
	Sioux City District Office 2nd Floor Conference Room 808 5th Street Sioux City, Iowa	March 5, 1987 1:30 p.m.
	Waterloo District Office Black Hawk County Conference Room 2nd Floor - KWWL Building 500 East 4th Waterloo, Iowa	March 4, 1987 10:30 a.m.
Collection services center, ch 97 IAB 2/11/87 ARC 7373	Conference Room First Floor Hoover State Office Bldg. Des Moines, Iowa	March 5, 1987 1 p.m.

PUBLIC HEALTH DEPARTMENT[470]

Advanced emergency medical
care, 132.15
IAB 2/11/87 ARC 7339

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

March 9, 1987
1 p.m.

Chiropractic examiners,
temporary certificate, 141.18;
Utilization and cost control
review, 141.19
IAB 2/25/87 ARC 7393

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

March 17, 1987
1:30 p.m.

RACING AND GAMING DIVISION[195]

Greyhound, 7.9(1), 7.9(2)
IAB 2/11/87 ARC 7344

Division Office
1918 S.E. Hulsizer Ave.
Ankeny, Iowa

March 3, 1987
9 a.m.

REAL ESTATE COMMISSION[700]

Prelicense education and
continuing education, 3.4(2)
IAB 2/11/87 ARC 7355

Commission Office
1918 S.E. Hulsizer Ave.
Ankeny, Iowa

March 19, 1987
9 a.m.

TREASURER OF STATE[781]

Reporting on state and
local government bonding
activities, ch 7
IAB 2/11/87 ARC 7361

Room 116
First Floor
Capitol Bldg.
Des Moines, Iowa

March 3, 1987
8 a.m.

UTILITIES DIVISION[199]

Tax reform revenue
adjustment, ch 30
IAB 2/25/87 ARC 7406

Hearing Room
First Floor
Lucas State Office Bldg.
Des Moines, Iowa

March 26, 1987
10 a.m.

ARC 7400

UTILITIES DIVISION [199].
NOTICE OF INVESTIGATION

Pursuant to Iowa Code section 476.1 and 199 Iowa Admin. Code rule 5, the Utilities Board (Board) gives notice that on February 5, 1987, the Board issued an "Order Deregulating Certain Billing and Collection Services," in Docket No. INU-86-10. On June 18, 1986, the Board initiated a rulemaking proceeding proposing to amend its rules to prevent the detariffing of intrastate billing and collection services. See In Re: Intrastate Billing and Collection Service Tariffs, Docket No. RMU-86-16. The filed comments in that docket, however, opposed the proposed Board action, and so on August 22, 1986, the Board gave notice that, based on that record, at least parts of the billing and collection services would be deregulated. On November 13, 1986, an order was issued initiating Docket No. INU-86-10. Notice was published in the Iowa Administrative Bulletin on December 3, 1986, identified as ARC 7194. Written comments were filed on or before December 23, 1986.

Deregulation of all billing and collection services except the recording function was supported by all commentors. The local exchange carriers which performed the billing and collection services favored deregulation of the recording function also, while AT&T Communications Company of Midwest, Inc., and the Consumer Advocate Division of the Department of Justice opposed deregulation of the recording function.

Based on this record, the Board finds the majority of billing and collection services (all except the recording function) are subject to competition for purposes of Iowa Code section 476.1 and should be deregulated. Pursuant to 199 Iowa Admin. Code subrule 5.7, this deregulation will be effective upon Board approval of the accounting separation plans to be filed by the local exchange carriers on or before March 1, 1987. It should be emphasized that this deregulation means only that regulated telephone utilities will be able to offer billing and collection services to interexchange carriers without filing tariffs for these

services. This action does not mean that a telecommunications utility's bills to its customers are not subject to Board regulation. For example, all legal requirements pertaining to customer rights, disconnection for nonpayment, and the Board's complainant jurisdiction remain in full force and effect. This deregulation affects only the relationship between the local exchange carrier and the interexchange carrier.

The Board finds the recording function is not subject to sufficient competition to permit deregulation at this time. The recording function is the data collection phase of the billing and collection service. As a part of this function, the local exchange carrier records the identity of the customer initiating the call, the duration of the call, and the time of day (but not the content of the call). Without this data, it would be impossible to render a bill for the services used by the customers. Some interexchange carriers are able to record this data for themselves. However, in many instances involving the use of a particular type of access (FGC), it is impossible for the interexchange carrier to perform its own recording, because the information is "stripped" from the call before the interexchange carrier receives it. In these situations, only the local exchange carrier is able to record this raw data. The Board cannot deregulate this function of the billing and collection process, because this bottleneck precludes the possibility of competition. In fact, without access to this data, there would be no competition for any of the other billing and collection functions. For that reason and in order to allow meaningful competition for the other functions, the Board will require that the local exchange carrier permit any interexchange carrier to purchase (at regulated, cost-based rates) the raw data concerning that carrier's customers, in order to permit the interexchange carrier to process its own bills. As equal access or other systems spread, permitting the interexchange carrier to record its own call information, the Board will re-examine the issue of deregulating the recording function. Until that time, however, the Board will continue full rate regulation of the recording function.

ARC 7391

**AGRICULTURE AND
LAND STEWARDSHIP,
DEPARTMENT OF[21]
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 159.5(11), the Iowa Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend 30—Chapter 14, "Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs," Iowa Administrative Code.

The present rules of the Department require clarification regarding the litter acknowledgment to be provided to the Department. Further, the proposed rule change provides a mechanism whereby the Department can verify that any greyhound dog to be registered as an Iowa-whelped dog was in the state at the time of whelping, as per the requirements of rule 30—14.40(99D), and the owner qualifies as a two-year resident of Iowa prior to whelping.

Any interested person may make written suggestions or comments on this amendment prior to March 17, 1987. Such written materials should be directed to Dale M. Cochran, Secretary of Agriculture, Henry A. Wallace Building, Des Moines, Iowa 50319.

Oral presentation may be requested as set forth in Iowa Code section 17A.4(1)"b".

This rule is intended to implement Iowa Code section 99D.22.

The following amendment is proposed:

Amend rule 30—14.41(99D), introductory paragraph, to read as follows:

30—14.41(99D) Procedures for registration. Within fifteen (15) days after litter registration with the National Greyhound Association, a copy of the original litter acknowledgment and a copy of the breeding acknowledgment must be received by the department. A copy of the driver's license or voter registration of all first-time litter applicants must accompany the litter acknowledgment. Any late registrations will be assessed a penalty of twenty-five dollars (\$25.00). All litter registrations over one year old will not be accepted. When application for individual dog registration is made to the National Greyhound Association, the onionskin copy shall be provided to the department.

ARC 7399

**BANKING DIVISION[187]
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 1986 Iowa Acts, chapter 1245, sections 702 and 703, and Iowa Code sections 17A.3, 524.213, 536.21, and 536A.28, the Banking Division of the Department of Commerce hereby gives Notice of Intended Action to amend and transfer rules of Banking Department [140]—Chapters 1 to 4, 8, 9, and 21, and Auditor of State [130]—Chapter 1 to Banking Division [187] and to renumber 140—Chapter 21 as 187—Chapter 15, and 130—Chapter 1 as 187—Chapter 16, Iowa Administrative Code.

Interested persons may comment or submit requests for an oral presentation by writing the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, Suite 300, 200 East Grand Avenue, Des Moines, Iowa 50309 on or before March 18, 1987.

These rules implement Iowa Code chapters 524, 536, and 536A as amended by 1986 Iowa Acts, chapter 1245, sections 747 to 749 and 757 to 759.

The following amendments are adopted:

ITEM 1. Transfer Chapters 1 to 4, 8, 9, and 21 of Banking Department [140] to Banking Division [187] and Chapter 1 of Auditor of State [130] to Banking Division [187] as Chapter 16. Renumber 140—Chapter 21 as 187—Chapter 15.

ITEM 2. Amend renumbered 187—Chapters 1 and 15 by striking the word "department" and inserting "division" wherever it appears.

ITEM 3. Amend renumbered 187—Chapters 1 and 4 by striking "530 Liberty Building, 418 Sixth Avenue" and inserting "Suite 300, 200 East Grand Avenue" wherever it appears.

ITEM 4. Amend renumbered rule 187—1.3(17A,524) as follows:

Rescind the introductory paragraph and insert in lieu thereof the following:

187—1.3(17A,524) Division of banking. The division is the office of the superintendent and consists of the superintendent and those employees who discharge the duties and responsibilities imposed upon the superintendent by the laws of this state. The superintendent has general control, supervision and regulatory authority over all state chartered banks, regulated loan companies, industrial loan companies, persons licensed to engage in the business of debt management and persons licensed to engage in the business of selling written instruments for the transmission or payment of money. The division consists of two separate bureaus. The bank bureau has primary responsibility relating to the supervision, regulation and chartering of state banks. The finance company bureau has primary responsibilities relating to the supervision, regulation and licensing of regulated loan companies, industrial loan companies, persons

BANKING DIVISION[187] (cont'd)

engaged in the business of selling written instruments, and persons engaged in the business of debt management.

Amend subrule 1.3(1) by rescinding paragraph "b" and inserting in lieu thereof the following:

b. Assistants to the superintendent. Three assistants to the superintendent perform such duties as the superintendent prescribes, including general supervision of all bank examining personnel and scheduling, general supervision of all matters relating to bank and bank office applications, and renewals and amendments to articles of incorporation, and general supervision of the bank examination process, for which each is responsible.

Further amend subrule 1.3(1) by rescinding paragraph "c," relettering paragraph "d" as "c," and rescinding paragraph "e" and inserting the following:

d. Bureau chief. The bureau chief performs such duties as the superintendent prescribes, including general supervision over all matters relating to regulated loan companies, industrial loan companies, persons engaged in the business of debt management and persons engaged in the sale of written instruments.

Amend subrule 1.3(2), paragraph "a," to read as follows:

a. Bank examination territories. ~~Twelve~~ *Thirteen (13)* bank examination territories are located throughout the state. Each territory is headed by a senior examiner who is assisted by three (3) ~~to five or more~~ junior examiners. All bank examiners perform such duties as the superintendent prescribes, including general supervision over the banks located in the territory to which they are assigned. Senior examiners also have general supervision over the junior examiners under them.

Further amend subrule 1.3(2) by rescinding paragraphs "b" and "c," and inserting in lieu thereof the following:

b. Trust examination. Trust examiners perform duties as the superintendent prescribes, including general supervision over bank trust examinations and junior examiners who may be assigned to assist in such examinations.

c. Finance company examination. The examiners perform duties as the superintendent prescribes, including general supervision of regulated loan companies, industrial loan companies and persons engaged in the business of debt management.

ITEM 5. Amend subrule 1.4(1) as follows:

Amend subrule 1.4(1), paragraph "a," by changing "division" to "bureau" and in subparagraphs (1) to (82) by changing "BD" to "BB".

Amend subrule 1.4(1), paragraph "b," by changing "Small loan division" to "Finance company bureau"; in subparagraphs (1) to (4) by changing "SL" to "RL"; and in subparagraph (4) by striking "Small" and inserting in lieu thereof "Regulated".

ITEM 6. Rescind and reserve Chapter 3.

ITEM 7. Adopt Chapters 5 and 6 as follows:

Adopt the petition for rule-making segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code with the following amendments:

CHAPTER 5

PETITION FOR RULE MAKING

187-5.1(17A) **Petition for rule making.** In lieu of the words "the agency at (designate office)" insert "the

Superintendent of Banking, Iowa Department of Commerce, Division of Banking, Suite 300, 200 East Grand Avenue, Des Moines, Iowa 50309." In lieu of the words "AGENCY NAME," the heading on the petition should read:

BEFORE THE DIVISION OF BANKING

187-5.3(17A) **Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, Suite 300, 200 East Grand Avenue, Des Moines, Iowa 50309.

Adopt the petition for declaratory rulings segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code, with the following amendments:

CHAPTER 6

PETITION FOR DECLARATORY RULINGS

187-6.1(17A) **Petition for declaratory rulings.** In lieu of the words "the agency at (designate office)" insert "the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, Suite 300, 200 East Grand Avenue, Des Moines, Iowa 50309." In lieu of the words "AGENCY NAME," the heading on the petition should read:

BEFORE THE DIVISION OF BANKING

187-6.3(17A) **Inquiries.** Inquiries concerning the status of a petition for a declaratory ruling may be made to the Superintendent of Banking, Iowa Department of Commerce, Division of Banking, Suite 300, 200 East Grand Avenue, Des Moines, Iowa 50309.

Chapters 7 and 10 to 14 are reserved.

ITEM 8. Amend subrule 15.1(1) as follows:

15.1(1) Form used. Printed copies of application for license shall be obtained from the Superintendent, ~~Department~~ *Division* of Banking, State of Iowa, *Suite 300, 200 East Grand*, Des Moines, Iowa. The printed application form shall be used by each applicant when applying for a license. All questions shall be answered in full and whenever space is inadequate a rider may be attached giving in full the information required.

ITEM 9. Amend subrule 15.4(3) as follows:

15.4(3) Splitting loans. An individual, copartnership, association or corporation holding more than one license shall not induce or permit any borrower or any husband and wife, individually or jointly, to be indebted ~~to him~~ under more than one contract of loan at the same time at any ~~one or more~~ of his licensed offices.

ITEM 10. Amend rule 16.2(536A) as follows:

187-16.2(536A) **Multiple business authorization.** This regulation shall be known as the "Multiple Business Regulation." Any authorization granted by this regulation shall be conditional upon full compliance with all parts thereof. Printed copies of the "Application for Multiple Business Authorization" shall be obtained from the office of ~~Auditor of State, Division of Industrial Loan Audits, State Capitol Building, Des Moines, Iowa 50319~~ *Superintendent of Banking, Division of Banking, Suite 300, 200 East Grand, Des Moines, Iowa 50309*. The printed application form shall be used by each licensee when applying for multiple business authorization. All information shall be supplied in full and where space is inadequate for a full answer, a rider shall be attached.

BANKING DIVISION[187] (cont'd)

ITEM 11. Amend 187—Chapter 16 by striking “auditor of state” and “auditor” and inserting “superintendent” and by striking “auditor’s” and “his” and inserting “superintendent’s” wherever they appear in the following rules:

16.3(536A)

16.4(536A)

16.12(536A)

16.15(536A), except for subrule 16.15(3), paragraph “b,” where “his” changes to “the”

16.27(536A)

16.28(536A)

16.30(536A)

Further amend 187—Chapter 16 by striking “small” and inserting in lieu thereof “regulated” wherever it appears in rules 16.5(536A), 16.8(536A), 16.9(536A), and 16.10(536A).

Further amend 187—Chapter 16 by striking “Iowa housing finance authority” and inserting “Iowa finance authority” wherever it appears in rules 16.27(536A) and 16.30(536A).

Further amend 187—Chapter 16 by rescinding subrule 16.30(1), paragraph “d,” and inserting in lieu thereof the following:

d. “Superintendent” shall mean that as defined in Iowa Code section 524.103(21).

NOTICE — AGRICULTURAL CREDIT CORPORATION MAXIMUM LOAN RATE

In accordance with the provisions of Iowa Code section 535.12, the Superintendent of Banking has determined that the maximum rate of interest that may be charged on loans by Agricultural Credit Corporations as defined in Iowa Code section 535.12, subsection 4, shall be:

October 1, 1985 — October 31, 1985	14.65%
November 1, 1985 — November 30, 1985	14.65%
December 1, 1985 — December 31, 1985	14.60%
January 1, 1986 — January 31, 1986	14.60%
February 1, 1986 — February 28, 1986	14.75%
March 1, 1986 — March 31, 1986	14.95%
April 1, 1986 — April 30, 1986	14.95%
May 1, 1986 — May 31, 1986	14.90%
June 1, 1986 — June 30, 1986	14.85%
July 1, 1986 — July 31, 1986	11.90%
August 1, 1986 — August 31, 1986	11.70%
September 1, 1986 — September 30, 1986	11.25%
October 1, 1986 — October 31, 1986	11.20%
November 1, 1986 — November 30, 1986	11.20%
December 1, 1986 — December 31, 1986	11.20%
January 1, 1987 — January 31, 1987	10.90%
February 1, 1987 — February 28, 1987	10.90%

ARC 7403

ELDER AFFAIRS, DEPARTMENT OF[321] 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 1986 Iowa Acts, chapter 1245, section 1008, the Department of Elder Affairs hereby gives Notice of Intended Action to rescind 20 — Chapters 1 to 11 and 321—Chapter 12 and to adopt 321—Chapters 1 to 18 to implement the provisions of 1986 Iowa Acts, chapter 1245, sections 1001 to 1026 and provide for the effective administration of the Department of Elder Affairs.

The Department was created effective July 1, 1986, by 1986 Iowa Acts, chapter 1245, section 1009. Rules for programs for Iowa’s elders were previously promulgated and implemented by the Iowa Commission on the Aging [20] pursuant to Iowa Code chapters 249B and 17A. The Department of Elder Affairs is authorized to adopt rules, pursuant to Iowa Code chapter 17A, necessary to provide for the effective administration of Iowa Code chapter 249D as established by 1986 Iowa Acts, chapter 1245, sections 1001 to 1026.

The Department of Elder Affairs proposes to rescind the current 20—Chapters 1 to 11, retaining the essence of the rules, formerly approved and adopted, in a reorganized and renumbered form. The proposed rules have several substantive changes, as follows:

Rule 321—4.1(249D), concerning the state plan on aging, has been reformatted and contains considerable additional detail on analysis of need, resource allocation, organizational policies, service delivery, and advocacy plans.

Rules 321—4.2(249D) to 4.13(249D), concerning the designation of planning and service areas and area agencies on aging, provide specific detail for clarification of the process, as do rules 4.14(249D) through 4.16(249D) concerning withdrawal of area agencies on aging designation.

Rule 4.20(249D), concerning the multiyear area plan, provides for biannual application for federal and state funds administered by the Department by area agencies on aging, superseding the previous practice of annual applications.

Language describing the composition and duties of the state advisory council has been deleted to allow the Commission of the Department to utilize the experience and expertise of elders selected by area agencies on aging and other groups of elders for assistance on various specific areas of concern.

Rule 5.12(249D), concerning records and reports, allows area agencies on aging to submit fiscal and performance reports to the Department on a quarterly basis instead of monthly. Procedures for treatment of delinquent reports in the same rule have also been simplified and provide for individualized assistance.

Rule 6.6(249D), concerning preference in service delivery, provides greater detail and clarity concerning

ELDER AFFAIRS, DEPARTMENT OF[321] (cont'd)

the manner in which area agencies give preference in the delivery of service to frail and minority elders, and in their documentation of the preference to the Department. Standards are established for performance.

Chapter 8 and Chapter 9 of these proposed rules pertain to administration of the long-term care resident's advocate program and the care review committee system and provide comprehensive program policies and procedures. Significant changes from existing practice include subrule 8.4(2), which clarifies the complaint referral; subrule 9.1(1), which provides for the size of care review to be adjusted for very large, long-term care facilities in order to distribute the increased workload among individual members; subrule 9.6(2), paragraph "c," which requires the secretary of each care review committee to submit meeting minutes to the Department in order to permit efficient monitoring of care review committee performance; subrule 9.7(2), paragraph "c," which requires each care review committee member to attend at least one training session approved by the Department per year; and rule 9.14(249D), which provides procedures for the Department approval of training sessions proposed to assist care review committees to meet the ongoing training requirement.

Rule 15.3(249D), concerning the elderly services program, provides eligibility criteria consistent with other services to elders.

The Department also proposes to adopt the Uniform Administrative Rules that appear in the front of Volume 1 of the Iowa Administrative Code, "Petition for Rule Making" as Chapter 17 and "Declaratory Rulings" as Chapter 18, with several nonsubstantive amendments. These rules are intended to implement Iowa Code sections 17A.7 and 17A.9.

The following discussion is provided to aid the public's review of the proposed rules and to provide information requested by the Administrative Rules Review Committee in reviewing previously proposed rules for Chapters 8 and 9.

Background

The federal Older Americans Act of 1965, as amended, establishes a program of federal financial assistance to aid states and local communities in ensuring that older people have opportunities to attain and maintain maximum independence and freedom of choice, including access to legal rights and benefits. 1986 Iowa Acts, chapter 1245, created Iowa Code chapter 249D which parallels the authority provided in the federal Older Americans Act of 1965, as amended. These proposed rules codify administrative procedures to implement the duties imposed by these federal and state laws. The following section discusses each of the significant policy changes proposed, identifying the origin of the proposed change and the estimated economic impact of each proposed change.

Analysis of Policy Changes

Rule 4.1(249D), concerning the state plan on aging, provides specific guidance on the content of the state plan on aging required by the Older Americans Act of 1965, as amended, and by 1986 Iowa Acts, chapter 1245. The changes provide additional guidance only as the requirement for a state plan on aging is current policy. The need for this change arises from a desire to strengthen the relevance of the state plan and clarify its content so that the public will be better able to participate in the development of the state plan on aging. No fiscal or economic impact is expected.

Rules 4.2(249D) to 4.13(249D) provide specific policies and procedures for the designation of planning and service areas and the designation of area agencies on aging to plan and administer services to elders in each planning and service area. The proposed policy changes arose from the provisions of 1986 Iowa Acts, chapter 1245, requiring the Department to designate the same area agencies as existed on July 1, 1985, and from the desire to avoid disruptive and abrupt changes in the designated planning and service areas and area agencies on aging without substantially limiting the rights of other organizations, as provided in the Older Americans Act of 1965, as amended, to suggest alternative administrative arrangements. Economic impact cannot be estimated, as any conclusion would be highly speculative and based on assumptions regarding the frequency with which applications would be made to alter existing planning and service area boundaries. The proposed rules also contain specific criteria for withdrawal of area agency designation as well as a process of technical assistance and corrective action to avoid withdrawal of the area agency designation.

Rule 4.20(249D), concerning the multiyear area plan, provides for a biennial area plan and application for grant award, rather than the current annual application. This policy change arose from the desire to decrease the frequency with which area plans are prepared, thereby reducing the administrative burden on area agencies and the Department. The economic impact of this rule change cannot be estimated at this time, but would be expected to reduce the allocation of administrative staff time to preparing and reviewing area plans.

Rule 5.12(249D), concerning records and reports, requires area agencies to submit performance and fiscal reports each quarter for all programs provided under the area plan on aging. This reduces the number of times reports are submitted from twelve (12) to four (4) per year. This will reduce, somewhat, the administrative burden of the area agencies, but the economic effect of the change cannot be precisely estimated.

Rule 6.6(249D), concerning preference in service delivery, provides a standard for the delivery of services to older people with the greatest social and economic need. The standard is applied to both area agency plans and to actual service performance. The standard requires the area agency to serve various categories of older people considered to have greater social and economic needs in a proportion equal to the proportion the group represents in the general older population. If the area agency does not comply with the standard, the Department provides technical assistance and monitors performance and efforts by the area agency. If the standard is not met, the Commission may withdraw the designation of an area agency. The cost of recording and reporting information is the primary economic impact of this standard. These data are currently recorded and reported by area agencies. There is no additional cost over current practice to implement this policy. In fall 1985, the Department requested cost estimates from area agencies on the implementation of a reporting system to support the standard. Most of the estimates received were vague and based on unreliable assumptions. These could not be used, and no estimate is possible at this time.

Chapters 8 and 9, as proposed, codify existing procedures and practices of care review committees and the long-term care resident's advocate program. The

ELDER AFFAIRS, DEPARTMENT OF [321] (cont'd)

long-term care resident's advocate program is required by the Older Americans Act of 1965, as amended, and the Department is assigned responsibility for the care review committee program in 1986 Iowa Acts, chapter 1245. When the Iowa General Assembly assigned the responsibility for appointment and supervision of care review committees to the Commission on the Aging in 1983, the program had been operating by historical procedures. These proposed rules, in the main, codify these historical procedures. To enable the Department to monitor the program and ensure its effectiveness, it is necessary to adopt additional procedures beyond current practice. Rules were proposed in January 1985 (ARC 5252) and again in October 1985 (ARC 6037). Due to objections to the proposed rules and the need to acquire additional data on the economic impact of the proposed rules at the request of the Administrative Rules Review Committee, the proposed rules were withdrawn. Since that time, the proposed rules were reviewed and modified by an advisory committee with representatives of long-term care facilities, area agencies, care review committees, residents' families, older people, the department of public health, and the department of human services. Long-term care facility associations were requested, in January of 1985, to provide estimates of the economic impact of the rules proposed in ARC 6037 on long-term care facilities. No specific estimates were provided; therefore, no estimate is possible at this time. The Department is of the opinion that the rules proposed here impose no additional burden on long-term care facilities or area agencies on aging. Subrule 9.1(2), will have a beneficial effect on members of care review committees for large facilities, as it provides an option to reduce individual workloads of the volunteers. Subrule 9.6(2), paragraph "c," imposes a requirement on committee secretaries to send a copy of quarterly meeting minutes to the Department. The impact of this on individual members will be offset by the Department's providing business reply envelopes for this purpose. The additional cost for the business reply envelopes is approximately \$600 to \$1,000 and will be absorbed by the Department. Volunteers are also required to attend at least one training session annually. The Department currently provides, and will continue to provide, training for care review committee members, both on-site and through videotapes. The training is provided at no financial cost to volunteers.

It is the finding of the Department that Chapters 8 and 9, as proposed, do not create an economic impact substantially different from current practice. The current state budget (FY 1987) for the long-term care resident's advocate program is approximately \$55,000.

Rule 15.1(249D), elderly services program, provides an eligibility age of sixty (60) and older, which is consistent with the provisions of the Older Americans Act of 1965, as amended. Current rules provide an eligibility age of sixty-five (65) and older. The different ages create an administrative burden on area agencies and service providers. The implementation of rule 15.1(249D) relieves this burden, but no specific estimate of the economic impact of the rules is possible at this time.

Any interested person may make suggestions or comments on these proposed rules. Written comments should be received no later than 4:30 p.m., March 18, 1987. This written material should be directed to the Executive Director, Department of Elder Affairs, Jewett Building, 914 Grand Avenue, Suite 236, Des Moines, Iowa 50319.

Three public hearings will be held as follows:

2 p.m. - 4 p.m. Tuesday, March 17, 1987

Crawford County Senior Center
201 South Main
Denison, Iowa

9 a.m. - 12 noon Wednesday, March 18, 1987

Wallace State Office Building
East Ninth and Grand Avenue
Des Moines, Iowa

10 a.m. - 12 noon Thursday, March 19, 1987

Exercise Room Johnson County/Iowa City Senior Center
28 South Linn Street
Iowa City, Iowa

(Parking available for people 55 and older adjacent to the building. Additional parking in ramp at Linn and Burlington Streets.)

Each of these facilities is accessible to the disabled.

Persons who wish to make oral presentations at the public hearing should contact the Executive Director at least two days prior to the date of the public hearing.

These rules are intended to implement Iowa Code chapter 249D as established by 1986 Iowa Acts, chapter 1245, sections 1001 to 1026.

The following rules are proposed:

CHAPTER 1 INTRODUCTION

321—1.1(249D) Basis and purpose of the rules. The rules of the Iowa department of elder affairs, are based pursuant to the authority of Iowa Code chapter 249D. These rules prescribe requirements which agencies shall meet to receive grants under the Older Americans Act and other funds administered through the Iowa department of elder affairs.

321—1.2(249D) Applicability of other regulations and order of precedence.

1.2(1) Basis of the rules in order of precedence. These rules are based on the following federal and state regulations, listed in order of precedence, which will prevail in the event of conflicting or inconsistent requirements:

- a. Older Americans Act of 1965, as amended.
- b. Code of Federal Regulations, 5 CFR 900, subpart F, 7 CFR 250, 28 CFR 89, 45 CFR parts 74, 80, 81, 84, 90 and 1321.
- c. Administration on aging policy issuances and administration on aging program instructions.
- d. Iowa Code chapter 249D, department of elder affairs, and other Iowa Code chapters.
- e. Iowa Administrative Code, Elder Affairs, Department of [321].

ELDER AFFAIRS, DEPARTMENT OF [321] (cont'd)

f. Iowa aging directives signed by the executive director.

1.2(2) Applicability to various groups. The rules set forth herein apply to all grants awarded to any recipient through the department. Unless otherwise specified, the rules reflect legislative mandate, federal requirements, or commission policies and thus should be regarded as mandatory.

1.3 to 1.6 Reserved.

321—1.7(249D) Definitions. Unless otherwise prescribed by federal and state regulations, the terms used in these rules shall have the following meanings:

“Act” or “OAA” or “Federal Act” means the Older Americans Act of 1965, 42 U.S.C. subsection 3001 et seq., as amended to and including February 1, 1986.

“Administration on Aging” or “AoA” means the federal agency established to administer the provisions of the Act.

“Administrative action” (LTCRAP) means an action or decision made by an owner, employee, or agent of a long-term care facility, or by a governmental agency, which affects the service provided to residents of long-term care facilities.

“Advocacy” (RICEP) means an action which promotes the employment of eligible workers.

“Aggrieved party” means an individual or organization that alleges that their rights have been denied by the department, area agency on aging or area agency subcontractor action.

“Applicant” (RICEP) means an eligible person making a contact with the RICEP program to seek employment.

“Applicant recruitment” (RICEP) means contact by the older worker specialist with individuals, agencies, organizations or private businesses to provide information that will result in increased participation of eligible older individuals.

“Area agency on aging” or “AAA” or “area agency” means the grantee agency designated by the commission in a planning and service area to develop and administer the multiyear area plan for a comprehensive and coordinated system of services for elders and to carry out the duties specified in Iowa Code chapter 249D.

“Area agency on aging administration cost” means all direct and indirect costs incurred by the grantee in managing a grant, including all audit and policy board expenses incurred in the support of an area agency director.

“Assessment of job skills” (RICEP) means a process by which the older worker specialist develops a written history of the work experience and related qualities an individual possesses that would make the individual marketable as an employee.

“Authorized position” (SCSEP) means an enrollment opportunity during a program year allocated by the department.

“Catered meal” means a meal which is partially or wholly prepared, for a fee, by a provider with whom the area agency has a contract for the service.

“Certification form” (SCSEP) means an application for services.

“Commission” means the policy board of the department of elder affairs.

“Community focal point” means a place or mobile unit in a community or neighborhood designated by the area agency for the collocation and coordination of service delivery to elders.

“Community-based adult services” means a coordinated, multilevel social and health care delivery system which ensures the functionally dependent eligible elder the most appropriate level of care and supportive services in order to live as independently and in the least restrictive setting as possible.

“Complaint” (LTCRAP) means a report of an alleged violation of applicable requirements of Iowa Code chapter 135C, or rules adopted pursuant to said chapter.

“Comprehensive and coordinated system” means a system for providing all necessary supportive services, including nutrition services, in a manner designed to:

1. Facilitate accessibility to, and utilization of, all supportive services and nutrition services provided within the geographic area served by the system by any public or private agency or organization.

2. Develop and make the most efficient use of supportive services and nutrition services in meeting the needs of elders with a minimum of duplication.

“Congregate nutrition site” or “congregate meal site” or “meal site” or “site” means any location other than a primary place of residence where meals and other nutrition services are provided in a group setting in whole or in part, with AoA federal nutrition funds or contributions from an AoA nutrition program, or both.

“Continuum of care” means a full range of economic, physical, psychological, social and support programs and services necessary to maintain or restore elders to their optimal environment.

“Dietitian.” See licensed dietitian.

“Educational services” (RICEP) means adult education or training provided by community colleges and similar institutions.

“Elder” or “older individual” means an individual who is sixty (60) years of age or older.

“Eligible applicant” (EEP) means a college of law operating a law school clinical program which provides assurance to the department that the project will have at least one office located in Iowa and will provide legal services to elderly Iowa residents in compliance with 321—chapter 13.

“Eligible individual” (Title III and ES) means any person aged sixty (60) or older and the spouse of the person sixty or older regardless of the age of the spouse.

“Eligible individual” (SCSEP) means a person who is fifty-five (55) years of age or older who meets income guidelines published by the United States Department of Labor.

“Employment service” (RICEP) means activities in the client’s behalf that may be, but are not limited to, an assessment of job skills, referrals for training in job search techniques, referrals to educational institutions, referrals to job interviews, or supportive services that will enable the person to find employment.

“Enrollee” (SCSEP) means an eligible individual who receives services, and is paid wages for engaging in community service employment under a project.

“Equitable distribution” (SCSEP) means the ratio of the total authorized positions operated by the department

ELDER AFFAIRS, DEPARTMENT OF [321] (cont'd)

and national sponsors compared to the number of authorized positions established on the basis of the eligible population.

"Equivalent support" means in-kind contribution of services, goods, volunteer support, or other support reasonably determined by the department as equivalent to a dollar amount.

"Executive director" means the director of the Iowa department of elder affairs.

"Fiscal year" or "FY" means the state fiscal year, July 1 through June 30, numbered according to the year in which the fiscal year ends.

"Full-time employment" (RICEP) means paid employment for forty (40) hours per week or the number of hours customarily considered full-time for that occupation, but at a minimum, thirty (30) hours per week.

"Functionally impaired" or "disabled" or "handicapped" means any person who:

1. Has a physical or mental impairment that substantially limits one or more major life activities (e.g., caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working);

2. Has a record of such an impairment (has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities); or

3. Is regarded as having such an impairment.

"Grantee" means the legal entity to which a grant is awarded and which is accountable to the department for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. The term "grantee" does not include any secondary recipients such as subgrantees or contractors, who may receive funds from a grantee pursuant to a grant.

"Greatest economic need" means the need resulting from an annual income level at or below the poverty threshold established annually by the Bureau of the Census.

"Greatest social need" means the need caused by noneconomic factors which include physical and mental disabilities, language barriers, and cultural or social isolation including that caused by racial or ethnic status which restricts an individual's ability to perform normal daily tasks or which threatens the elder's capacity to live independently.

"Grievance" (LTCRAP) means a report of an administrative action alleged to affect residents in an adverse manner.

"Handicapped." See functionally impaired.

"Home delivered meals" means meals delivered to the home of eligible elders who are homebound by reason of illness, incapacitating disability or are otherwise isolated.

"Host agency" (SCSEP) means a public agency or private nonprofit organization, other than a political party, exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 as amended to January 1, 1986, which provides a worksite and supervision for an enrollee.

"Interdepartmental coordinating committee (IDCC) (JTPA) means the group consisting of representatives from the department of economic development, job service division of the department of employment

services, the department of education and the department of elder affairs who are appointed by each agency to assist with functions defined in the federal Act and these rules.

"Job contact" (RICEP) means a unit of service consisting of an application completed by a client and received by the older worker specialist.

"Job development" (RICEP) means contact by the older worker specialist with potential employers to encourage the employment of eligible individuals.

"Job placement" (RICEP) means employment obtained by an eligible participant as a result of RICEP assistance, which is documented in the program operator's files and may be defined further as permanent, temporary, part-time or full-time.

"Job referral" (RICEP) means a written notice presented to an eligible applicant by the older worker specialist to report for a prearranged interview for employment.

"Job search technique" or "job search assistance" (RICEP) means the methods used by the older worker specialists to find jobs for eligible participants.

"Job Training Partnership Act elder employment services" (JTPA) means services available to eligible individuals under the older individuals program of the JTPA.

"Joint annual plan" (JTPA) means an agreement to share information, conduct joint actions, and coordinate services.

"Joint annual report" (JTPA) means the document prepared by the interdepartmental coordination committee (IDCC) which describes job coordination activity and services provided to the elders of Iowa.

"Law school clinical program" (EEP) means an organized component of the curriculum of a college of law which provides students with work and educational experiences in the provision of legal services as defined in 321—chapter 13.

"Legal assistance" means legal advice and representation by an attorney, including, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney, and includes counseling or representation by a nonlawyer, where permitted by law, of elders with economic or social needs.

"Licensed dietitian" means an individual who maintains a license granted by the Iowa board of dietetic examiners.

"Local match." See match.

"Long-term care facility" means a long-term care unit of a hospital, a licensed hospice program, a foster group home, a group living arrangement, or a facility licensed under Iowa Code section 135C.1 whether the facility is public or private.

"Long-term care resident's advocate/ombudsman program" (LTCRAP) means the statewide long-term care ombudsman program operated by the department of elder affairs pursuant to the federal Act and Iowa Code chapter 249D.

"Low income" means any person or persons whose actual individual or family income is less than one hundred twenty-five percent (125%) of the poverty guidelines issued annually by the U.S. Office of Management and Budget.

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"Match" means the equivalent cash value of third party in-kind contributions and cash resources or both, representing that portion of the costs of a grant-supported project or program not borne by the department.

"Minority" means persons who identify themselves according to the racial or ethnic categories of Asian, Black, Hispanic, American Indian, Pacific Islander, or Alaskan native and includes persons who speak a language other than English as a first language.

"National sponsor" (SCSEP) means the American Association of Retired Persons, Green Thumb, Inc., the National Council of Senior Citizens or any other national organization which is allocated positions by the United States Department of Labor.

"Nonprofit contracts" means contracts between an area agency on aging and an entity designated as a nonprofit provider. See "public or private nonprofit service provider."

"Nutrition services" means meals, outreach, and nutrition education and other nutrition-related services.

"Older Americans Act" or "OAA," see Act.

"Older worker specialist" (RICEP) means a person employed by the RICEP operator whose responsibility it is to develop jobs, advocate for the employment of eligible individuals and provide employment services for eligible individuals.

"Participant support referral" (RICEP) means a notification to the eligible individual by the older worker specialist of supportive services that are available to an eligible participant from an organization other than the job service division of the department of employment services.

"Part-time employment" (RICEP) means employment in which an eligible worker is regularly scheduled to work less than thirty (30) hours per week.

"Permanent placement" (RICEP) means employment that exceeds ninety (90) calendar days per year whether the position is part-time or full-time.

"Physical examination" (SCSEP) means a medical examination performed by a physician or a medical professional under the supervision of a physician, to determine if the enrollee is capable of fulfilling the duties of a work assignment.

"Physical examination waiver" (SCSEP) means a signed statement by an enrollee or applicant which verifies that the enrollee or applicant was offered the opportunity to take a physical examination, but refused to take it.

"Planning and service area" or "PSA" means a geographic area of the state that is designated by the commission for purposes of planning, development, delivery and overall administration of services under a multiyear area plan.

"Poverty level" means a total family income or unrelated individual income of one hundred percent (100%) of the poverty guidelines issued by the U.S. Department of Labor and published annually in accordance with section 507(2) of the Older Americans Act.

"Program cost" means a cost incurred by the area agency on aging in managing and delivering services, including salary, fringe, travel, training, personnel costs, equipment, supplies, and nonpersonnel expenses of service delivery.

"Program income" or "project income" or "contributions" means gross income earned by a grant recipient from activities, part or all of which cost is paid by the grant or by funds used to match the grant.

"Program operator" (RICEP) means the agency designated by the department to operate the RICEP program for a designated demographic area.

"Project period" (EEP) means the period of time from July 1 through June 30 of the fiscal year in which appropriations are available.

"Provider" is an individual or organization providing an activity or service to elders either on a volunteer or contract basis.

"Public or private nonprofit service provider" means any government agency or private organization certified to be nonprofit by the U. S. Internal Revenue Service or an agency which was established pursuant to Iowa Code chapter 28E or chapter 473A, and is composed solely of public agencies or governmental units as defined in those chapters.

"Quarterly progress report" (SCSEP) means the report on enrollee activity and characteristics submitted to the Department of Labor from information gathered from the subprojects at the end of every three(3)-month period during the fiscal year

"Recipient" (EEP) means an eligible applicant who has received a grant award under the Iowa elderlaw education program.

"Region VII" means the states of Iowa, Kansas, Missouri and Nebraska.

"Resident" (LTCRAP) means any person residing in a long-term care facility and shall also include individuals seeking admission to a long-term care facility.

"Retired Iowan" (RICEP) means an unemployed or underemployed individual aged forty-five (45) or older who is a resident of Iowa.

"Rural area" means any geographic location not within an urban area.

"Satellite meal" means a meal which is partially or wholly prepared in an area agency on aging kitchen and transported to a congregate meal site to be served.

"Services" means the services described in the "Uniform Definitions of Services" issued by the department.

"State job training coordinating council" (SJTC) means the body, appointed by the governor, which provides direct oversight of the administration of the Job Training Partnership Act, and assists with coordination of employment programs for other eligible clients.

"Subproject sponsor" (SCSEP) means an organization which has entered into a subproject agreement or contract with a project sponsor.

"Subsidized employment" (RICEP) means employment in the senior community services employment program as an enrollee.

"Supportive services" (RICEP) means services that eligible workers may need to enable them to start work or to maintain themselves until they find employment. Support services may be provided by the area agency on aging or other agencies, and may include, but not be limited to, food stamps, funds for transportation, or equipment.

"Temporary placement" (RICEP) means employment that does not exceed ninety (90) days in one calendar year.

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"Temporary position" (SCSEP) means the authorized positions which exceed the number allocated by the Department of Labor.

"Termination" (SCSEP) means a separation from the program.

"Third party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without a charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

"Title III" means Title III of the federal Act for grants to state and community programs on aging.

"Title III-B" means Title III, part B, of the federal Act for supportive services.

"Title III-C" means Title III, part C, of the federal Act for nutrition services.

"Title III-C(1)" means Title III, part C subpart 1 of the federal Act for congregate nutrition services.

"Title III-C(2)" means Title III, part C subpart 2 of the federal Act for home-delivered nutrition services.

"Title V" means Title V of the federal Act for employment of low-income persons aged fifty-five (55) and older.

"Unit of general purpose local government" means a political subdivision of the state whose authority is general and not limited to only one function or combination of related functions.

"Unsubsidized employment" (RICEP) means employment of the eligible individual by any entity other than senior community service employment program as an enrollee.

"Unsubsidized employment" (SCSEP) means a position where wages, fringes and other expenses for a terminated enrollee are not paid with SCSEP funds.

"Urban area" means any geographic location within a standard metropolitan statistical area as defined by the U.S. Bureau of Census or within an incorporated place that has a population of two thousand five hundred (2,500) or more.

"Worksite" (SCSEP) means the actual location where enrollees perform their duties.

**CHAPTER 2
DEPARTMENT OF ELDER AFFAIRS
ESTABLISHED**

321—2.1(249D) Department established.

2.1(1) Designation. The Iowa department of elder affairs was created by Iowa Code chapter 249D.

2.1(2) Location. General correspondence, inquiries, requests for information or assistance, complaints, or petitions shall be addressed to: Executive Director, Iowa Department of Elder Affairs, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50319, (515) 281-5187.

2.1(3) Business hours. Business hours for the department are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays established by the state executive council.

321—2.2(249D) Executive director.

2.2(1) Appointment. The governor, subject to confirmation by the senate, shall appoint an executive director of the department of elder affairs who shall, subject to Iowa Code chapter 19A, employ and direct staff as necessary to carry out the powers and duties created by this chapter.

2.2(2) Term. The executive director shall serve at the pleasure of the governor. However, the executive director is subject to reconfirmation by the senate.

2.2(3) Salary. The governor shall set the salary for the executive director within the range set by the general assembly.

321—2.3(249D) Divisions of the department. The department's activities are performed by three (3) divisions directly responsible to the executive director:

2.3(1) Administrative, whose function is to control and account for all funds, provide technical assistance to funded agencies, manage purchasing activities, provide office management, complete all personnel transactions, manage central filing, and provide clerical support.

2.3(2) Planning, whose functions include interagency coordination of consumer advocacy and information assistance, provision of education and training services, development of legal assistance programs, policy advocacy and coordination, research and policy development (including development of the state plan on aging), program evaluation, resource development, information resource management, and administration of the long-term care resident's advocate program.

2.3(3) Operations, whose function it is to prepare and manage grants, administer programs, develop program initiatives, provide technical assistance, review and process multiyear area plans and funding applications, monitor, assess and evaluate the area agencies on aging for performance and develop and maintain relationships with programs providing service to elders.

321—2.4(249D) Staffing.

2.4(1) Employment under state merit system exceptions. The executive director shall comply with the provisions of the Iowa merit employment system, as applicable, in the employment of individuals. This is not to preclude the executive director from obtaining the specialized services of individuals or organizations on a contract basis. Subject to merit system requirements, preference shall be given to the employment of individuals aged sixty (60) or older.

2.4(2) Standards of conduct. Each employee of the department is personally responsible for maintaining a high standard of conduct, consistent with rules of the Iowa personnel department, chapter 18, Iowa Administrative Code, conduct of classified employees, and standards issued by the executive director.

2.4(3) Discrimination. The department shall extend equal opportunities to all employees and to applicants for employment who meet the qualifications established for a class or a position for which the application is made. Discrimination against any person in recruitment, examination, appointment, training, promotion, reten-

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tion, discipline, or any other aspect of personnel administration because of age, sex, race, national origin, or other nonmerit factors is prohibited.

2.4(4) Grievance procedure for perceived discrimination. Employees who have reason to believe they have been discriminated against under this rule shall file a grievance or complaint as provided within the department's standard procedures manual which shall be published and provided to all employees. Applicants for employment who are not chosen for a position shall be notified by letter that they were not chosen.

a. After receipt of the written notification, aggrieved applicants for employment may submit grievances in writing to the Iowa department of elder affairs for evaluation by the commission's affirmative action committee.

b. If the grievance is found to be warranted, the affirmative action committee shall submit its recommendations to the executive director of the department.

c. Applicants whose grievances are found to be unwarranted shall additionally be notified in writing that further appeal may be made either to the Iowa Personnel Department, Grimes State Office Building, Des Moines, Iowa 50319; Iowa State Civil Rights Commission, 211 East Maple Street, Des Moines, Iowa 50319; or the U.S. Equal Employment Opportunities Commission, Regional Office, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203-2292.

321—2.5(249D) Affirmative action plans. The commission shall annually review and approve an affirmative action plan for the department. The action plan shall comply with the requirements of section 900.607 of Title 5 of the Code of Federal Regulations (1981). The plan shall identify the number and types of staff assigned to carry out responsibilities and functions under the Act.

321—2.6(249D) Confidentiality and disclosure of department information.

2.6(1) Confidentiality. The department shall develop procedures to ensure that no personal information about, or obtained from an individual, is disclosed in a form identifiable with the individual. The individual or the individual's legal representative shall give informed consent to the release of any personal information by any agency or provider of service under programs of the department, unless required by court order, in compliance with 45 CFR 74.24 (1981).

2.6(2) Public accessibility to manuals, guidelines and records. Copies of all manuals, guidelines and standards referred to by these rules shall be maintained by the department. Subject to the confidentiality requirements of subrule 2.6(1) and with the exceptions provided by 5 USC subsection 552 (1979) and state law, all records maintained by the department shall be available for public inspection at the office location identified under subrule 2.1(2). The department may charge for the copying of documents.

321—2.7(249D) Department complaint procedure.

2.7(1) Aggrieved party identified. An aggrieved party is one of the following:

a. Any area agency whose area plan or plan amendment is disapproved by the commission;

b. Any area agency whose area agency designation is withdrawn pursuant to rule 4.14(249D);

c. Any applicant for designation as a planning and service area whose application is denied by the commission;

d. Any other agency, organization, or individual directly aggrieved by action of the department or commission when an evidentiary hearing is required by statute or by constitution.

2.7(2) Appeals to the department from the area agency on aging level.

a. Complaints and grievances at the area agency on aging level by participants, senior community service employment program applicants and enrollees, applicants to provide service, service providers, or subcontractors shall be heard first by the area agency on aging using the area agency complaint procedures.

b. Local complaint procedures shall be exhausted before contacting the department.

c. Senior community service employment program applicants and enrollees shall use the procedure set forth in subrule 10.3(2), paragraph "g."

2.7(3) Request for hearing.

a. An aggrieved party or a party appealing an area agency level decision has thirty (30) calendar days from receipt of written notice of action to request a hearing.

b. Within fifteen (15) calendar days of receipt of a request for a hearing, the department will transmit the request to the department of inspections and appeals pursuant to rule 481—4.2(10A), and will notify the aggrieved party of this transmittal. The department of inspections and appeals shall provide the hearing pursuant to 481—4.3(71GA, SF2175) to 4.6(71GA, SF2175).

2.7(4) Appeals.

a. Parties have thirty (30) calendar days from the mailing date of the decision by the department of inspections and appeals to appeal the decision to the commission. If no appeal is filed, the hearing decision becomes final thirty (30) days from the date of decision.

b. Appeals to the commission shall be filed with the executive director of the department of elder affairs at the location identified in subrule 2.1(2).

c. On appeal, the commission shall permit each party to file exceptions, present briefs and, with the consent of the commission, present oral arguments to the commission. The commission will establish a deadline for submission of the written exceptions, briefs, and requests for continuances and will notify the parties of the deadline.

d. The commission will base its decision on the evidence contained in the record made before the department of

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inspections and appeals and may permit the parties to submit new evidence at its discretion.

e. The commission will render a decision on the appeal within sixty (60) days of the date that the appeal was filed unless either party has requested and received a continuance. For purposes of this paragraph, the sixty (60) days shall exclude Saturdays, Sundays and holidays.

f. Request for continuance shall be made in writing and the reasons for the request shall be stated. The request shall be filed with the department at the address given in subrule 2.1(2).

g. The commission's decision on appeal is effective immediately unless otherwise specified in the decision.

2.7(5) Appeal by applicants denied designation as a planning and service area. Any applicant for designation as a planning and service area whose application is denied and who has been provided a hearing by the department of inspections and appeals and has received a written appeals decision by the commission may appeal the denial to the federal commissioner of the Administration on Aging in writing within thirty (30) calendar days of receipt of the commission's decision.

2.7(6) Judicial review. A party who seeks judicial review shall first exhaust all administrative remedies as follows:

a. A party shall appeal the decision of the hearing officer as provided in subrule 2.7(4) and receive a decision from the commission as provided in subrule 2.7(4), paragraph "e."

b. Petition for judicial review of the commission's decision shall be filed within thirty (30) calendar days after the decision is issued.

CHAPTER 3 COMMISSION ESTABLISHED

321—3.1(249D) Designation. The commission of elder affairs is established in accordance with Iowa Code sections 249D.11, 249D.12, and 249D.13.

321—3.2(249D) Conduct of meetings. Meetings shall be conducted according to Robert's Rules of Order as amended. The chairperson or a designee shall preside at each meeting.

3.2(1) Members of the public may be recognized at the discretion of the chairperson.

3.2(2) Quorum. A quorum shall consist of two-thirds (2/3) of the voting members of the commission.

3.2(3) Notice. Advance notice of time, date, place, and tentative agenda of each meeting of the commission shall be given at least ten (10) days before each meeting, except for an emergency meeting, in a manner reasonably calculated to apprise the public of that information, in compliance with Iowa Code section 21A.4. Reasonable notice shall include advising the news media which have filed a request for notice with the commission, sending notice to each area agency on aging, and posting the notice prominently at the office location identified under subrule 2.1(2).

3.2(4) Minutes. Minutes of each meeting shall be kept in compliance with Iowa Code sections 26.3 and 21.5(4). The minutes of each meeting shall be available for public inspection at the office location identified under subrule 2.1(2).

3.2(5) Emergency meetings. The chairperson may call an emergency meeting if for good cause ten (10) days' notice of an emergency meeting is impossible or impracticable. As much notice of an emergency meeting as is reasonably possible shall be given. Notice shall include notification of one or more news media which are generally apprised of commission meetings. The chairperson shall make all reasonable and practical efforts to contact all commissioners, the executive director, and other affected parties, informing them of the time, place, and purpose of the meeting. The nature of the good cause justifying the emergency meeting shall be stated in the minutes of the meeting.

3.2(6) Closed meetings. All meetings shall be open to the public unless an open meeting is properly closed pursuant to Iowa Code section 21.5.

3.3 Reserved.

321—3.4(249D) Commission duties and authority. The commission is the policymaking body of the sole state agency responsible for administration of the Older Americans Act of 1965, as amended. The commission shall, in addition to duties outlined in Iowa Code section 249D.14:

1. Serve in a judicial capacity relative to procedures developed by the department;

2. Annually review and approve an affirmative action plan for the commission; and

3. Require area agencies on aging to follow procedures established by the department.

CHAPTER 4 DEPARTMENT PLANNING RESPONSIBILITIES

321—4.1(249D) State plan on aging.

4.1(1) Authority for the state plan. The Iowa department of elder affairs is designated as the sole state unit on aging in Iowa for the development and implementation of a state plan on aging.

4.1(2) Duration and format of the state plan. The department shall develop a four (4)-year state plan in compliance with the Older Americans Act of 1965, as amended, and Iowa Code section 249D.31, in order to receive grants from its allotments under the Act. The state plan will be developed in accordance with the format, content, time limits, transmittal forms, and procedures specified by the federal Administration on Aging.

4.1(3) Content of the state plan. The state plan on aging shall be composed of five (5) sections:

a. Analysis of needs. This section shall contain an analysis of elders' need for supportive services, including

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legal assistance, nutrition services, and multipurpose senior centers, and an analysis of the extent to which existing public or private programs meet the need. The analysis shall be based on needs assessments conducted by area agencies on aging, the best available research and evaluation data, and a public hearing conducted by the department.

b. Resource allocation. This section shall contain an estimate of funding available to the department for implementation of the state plan, a statement of each policy which allocates these funds among titles or restricts their use for specific purposes, and an estimate of the funds available in each year of the plan for each authorized purpose. The section shall be based on the resource allocations of the area agencies on aging in previous fiscal periods, the analysis of needs for the state plan, and a public hearing conducted by the department.

c. Organizational policies. This section shall contain information specifying the planning and service areas of the state, the area agencies on aging designated to serve these areas, methods for efficient and effective administration of the state plan, methods for periodic evaluation of activities and projects carried out under the state plan, and other organizational policies, procedures, and methods as necessary. This section shall be based on the requirements of federal and state laws, regulations, or rules; the planning and service areas and area agencies on aging designated by the commission, and a public hearing conducted by the department.

d. Service delivery plan. This section shall contain goals and objectives for the delivery of services during the period of the plan, statements of the policies prohibiting direct service provision by the department and area agencies on aging except as permitted in rule 6.10 (249D), and other policies and standards for the delivery of services under state and area plans. The section shall be based on the provisions of state and federal laws, regulations, and rules and shall be updated based on the approved applications for award submitted by area agencies on aging.

e. Advocacy plan. This section shall contain goals and objectives to guide the advocacy efforts of the department with respect to state and federal laws, policies, and plans affecting elders. The section shall be based on the analysis of need for the state plan, the legislative proposals of the advocates representing elders, and a public hearing conducted by the department.

321—4.2(249D) Designation of planning and service areas.

4.2(1) Criteria for designation. The planning and service areas shall remain the same as those which existed on July 1, 1985. The commission shall alter existing planning and service area boundaries only after giving consideration to:

a. The distribution in the state of persons aged sixty (60) or older, including those with greatest social and economic need;

b. The views of public officials of affected units of general purpose local governments, the general public, known groups of elders, and others expressed orally or in writing at a public hearing;

c. The incidence of need for services provided under the Act and the resources available to meet these needs in the planning and service areas;

d. The boundaries of units of general purpose local government, regional planning areas, Indian reserva-

tions and settlements, existing economic development districts, and areas within the state established for planning and administering human services;

e. Whether there will be an increase or decrease in the total number of administrative units or dollars for service delivery statewide;

f. Recommendations from the department; and

g. Other relevant factors.

4.2(2) Procedure for designation of planning and service areas initiated by the commission.

a. Prior to submission of the multiyear state plan on aging, the commission shall notify the Administration on Aging of the intent either to maintain or to alter existing planning and service area boundaries.

b. The department shall notify the public officials of units of general purpose local governments, the general public, known groups of elders and area agencies on aging of the details of the commission intent to maintain or to alter existing planning and service area boundaries within thirty (30) days of the notification to the Administration on Aging.

(1) If the commission expresses intent to alter existing planning and service area boundaries, the notice of intent shall include details regarding the public hearing which shall be held within sixty (60) days after notification to the Administration on Aging. The purpose of the public hearing is to receive comments regarding the alteration of planning and service area boundaries.

(2) Ninety (90) days after the public hearing the commission shall issue a final decision regarding alteration of planning and service area boundaries based upon consideration of the criteria outlined in subrule 4.2(1) and analysis of the public hearing data.

(3) The commission decision regarding alteration of planning and service area boundaries shall include the effective date which shall be at least three hundred sixty-five (365) days after the commission's final decision.

(4) In calculating schedules for meeting the time frame specified, Saturdays, Sundays, and state holidays are excluded.

4.2(3) Procedure for designation of planning and service areas through the application process initiated by eligible organizations.

a. Application for designation. The department shall provide an opportunity to apply for designation as a planning and service area to any unit of general purpose local government, region recognized for areawide planning, metropolitan area, or a governing tribal organization(s) of an Indian reservation(s) or settlement(s).

(1) Within sixty (60) days after the department's notification of intent to alter existing planning and service area boundaries, eligible organizations interested in applying for designation as a planning and service area shall send a letter of intent and request an information packet and application form to the department office identified in subrule 2.1(2).

(2) Within fifteen (15) days of receipt of a letter of intent to apply for designation as a planning and service area from an eligible organization, the department shall furnish the requested application form and shall furnish area agency(ies) on aging in the potential remaining planning and service area(s) with form(s) to provide the required information regarding the potential planning and service area(s).

(3) The completed forms referred to in subrule 4.2(3), paragraph "a," subparagraph (2), shall be received at

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the department office within sixty (60) days after the department provided the forms.

(4) Upon receipt of a completed application for planning and service area designation, the department shall notify all the area agencies on aging.

b. Public hearing. Within sixty (60) days after receipt of an application for planning and service area designation, the department shall hold a public hearing which will be chaired by the executive director or the director's designee for the purpose of receiving the views of public officials of units of general purpose local governments and of the general public.

(1) The executive director shall select a reasonable place, date, and time for the public hearing and publish advance notices of the public hearing which shall contain specific information about participation in the hearing.

(2) The department shall send letters of notification of the hearing to public officials of units of general purpose local governments, known groups of elders and the area agency(ies) on aging in the affected planning and service area(s), the other area agencies on aging, and to the applicant. The notification shall include a comment form to provide an opportunity to indicate approval or disapproval and the reasons for approval or disapproval.

(3) The department shall receive written comments from any interested person prior to the public hearing.

(4) Presentations and testimony at the public hearing shall be time-limited and shall be prearranged with the department.

c. Application review and recommendation. Subsequent to the public hearing, the department shall review the application, the information forms, the written comments and salient comments made at the hearing, to prepare a written recommendation to the commission that is based on the criteria for designation of a planning and service area as outlined in subrules 4.2(1) and 4.2(4).

d. Commission action. The commission shall act on the application for designation as a planning and service area at the next commission meeting subsequent to receiving the department recommendation. If the commission decision is to alter planning and service area boundaries, the decision shall include the effective date which shall be at least three hundred sixty-five (365) days after the decision.

4.2(4) Criteria to be considered in the application and the information form:

a. Distribution of elders. Distribution in the state of persons aged sixty (60) and older, including those with the greatest economic need:

(1) Whether each of the proposed planning and service areas contains at least five percent (5%) of the state's elderly population;

(2) Whether each of the proposed planning and service areas contains five percent (5%) of the state's elderly population which is at or below the poverty level; and

(3) Whether each of the proposed planning and service areas has unique demographic characteristics pertaining to the elderly which set them apart from the existing planning and service area(s).

b. Incidence of need. The incidence of need for services provided under the Older Americans Act:

(1) The number of persons residing within each of the proposed planning and service areas who are currently served by Older Americans Act programs;

(2) The number of eligible persons within each of the proposed planning and service areas who are currently not utilizing proposed services offered under the Act;

(3) Whether each of the proposed planning and service areas has the financial resources available to provide matching funds for supportive services and nutrition services as specified in the Act; and

(4) Whether each of the proposed planning and service areas has service providers available to provide for supportive and nutrition services, as specified in the Act.

c. Boundaries. The boundaries of units of general purpose local governments, regional planning areas, Indian reservations or settlements, existing economic development districts, and areas within the state established for planning and administering human services including the areawide comprehensive planning and development districts or regions. The department may include all portions of an economic development district or Indian reservation or settlement(s) within a single planning and service area.

(1) Whether each of the proposed planning and service areas divides established boundaries of: units of general purpose local government; regional planning areas; Indian reservations or settlement(s); existing economic development districts; and areas within the state established for planning and administering human services.

(2) Whether each of the proposed planning and service areas has unique characteristics which set them apart geographically from the existing planning and service area.

4.2(5) Other relevant criteria:

a. Views of officials. Public officials from the unit(s) of general purpose local government within each of the proposed planning and service areas shall indicate their reason for approval or disapproval of each of the proposed planning and service areas. Written comments shall be solicited by the department.

b. Recommendation of the department. Whether the department recommends approval or disapproval of the designation of each of the proposed planning and service areas, and the reasons for approval or disapproval.

c. Other relevant factors:

(1) Whether the views of interested individuals, known groups of elders, organizations, and the general public indicate approval or disapproval of each of the proposed planning and service areas, and the reasons for approval or disapproval. Written comments will be solicited by the department.

(2) Whether there will be an increase or decrease in the total number of administrative units or dollars for service delivery statewide.

321—4.3(249D) Designation of area agencies on aging.

4.3(1) The commission shall designate thirteen (13) area agencies on aging, the same as those which existed on July 1, 1985.

4.3(2) The commission shall continue the designation until an area agency on aging designation is removed for cause as determined by the commission or until the agency voluntarily withdraws as an area agency on aging.

321—4.4(249D) Area agency designation.

4.4(1) Designation of area agency on aging. The commissioners shall designate an entity to be the area

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agency on aging to serve each planning and service area as defined in rule 4.2(249D).

4.4(2) Reasons for altering designation. The commissioners shall alter existing area agency on aging designations only for the following reasons:

a. Withdrawal by the state agency of an existing area agency on aging designation as outlined in rule 4.14(249D);

b. Voluntary withdrawal by an existing area agency of its area agency on aging designation; or

c. Any change in the designation of a planning and service area(s).

4.4(3) Commission considerations for area agency on aging designation. When designating an area agency on aging, the commissioners shall give consideration to the following:

a. The views of public officials of units of general purpose local governments in the planning and service area;

b. The findings of an on-site assessment conducted for the purpose of verifying the application information of the qualified applicants for designation as an area agency on aging;

c. Recommendation of the department; and

d. Other relevant factors.

321—4.5(249D) Types of agencies that may be an area agency.

4.5(1) General rule. An area agency on aging as designated in rule 4.4(249D) shall be one of the following types of agencies that has the authority and capacity to perform the functions of an area agency on aging.

a. An established office on aging which operates within the planning and service area designated by the commission;

b. Any office or agency of a unit of a political subdivision, which is designated for the purpose of serving as an area agency on aging by the chief elected official of the political subdivision;

c. Any office or agency designated by the appropriate chief elected officials or any combination of political subdivisions to act on behalf of the combination of political subdivisions; or

d. Any public or nonprofit private agency in a planning and service area which can engage in the planning and provision of a broad range of supportive services or nutrition services within the planning and service area, except any regional or local agency of the state.

4.5(2) Right of first refusal. When the commission designates a new area agency on aging, the commission shall give the right of first refusal to a political subdivision if:

a. Such unit can meet the requirements of subrule 4.5(1);

b. The boundaries of such unit and the boundaries of the area are reasonably contiguous; and

c. The political subdivision makes application as outlined in subrules 4.9(3) and 4.9(4).

321—4.6(249D) Single or multipurpose entity.

4.6(1) General rule. An area agency may be either:

a. An entity whose single purpose is to administer programs for older persons; or

b. A multipurpose entity with the authority and capacity to administer human services in the planning and service area.

(1) A multipurpose entity shall delegate all its authority and responsibility under the Act to a single organiza-

tional unit in the entity unless the entity receives a waiver of this requirement from the department under subrules 4.6(2) and 4.6(3).

(2) Applicants for area agency on aging designation shall submit a waiver request as part of the application.

(3) If a multipurpose entity has been designated as an area agency on aging for the designated planning and service area, the area agency on aging shall submit its waiver request as part of the multiyear area plan.

4.6(2) Waiver request. A waiver request asks waiver of the requirement to delegate all authority and responsibility under the Act to a single organizational unit. The request shall be submitted on a form supplied by the department, and shall:

a. Describe its methods for carrying out its functions and responsibility under the Act; and

b. Designate a component unit of the area agency on aging to plan and develop all policy on programs for older persons in the multiyear area plan; to administer the area plan; and to provide a visible focal point for advocacy, coordination, monitoring and evaluation of programs for elders in the planning and service area.

4.6(3) Approval. The commission may approve a request for waiver if it is determined that the area agency on aging can effectively carry out its function and responsibilities under the Act without being a single organizational unit.

4.6(4) Multipurpose agencies. If a multipurpose entity has been designated as the area agency on aging for the designated planning and service area, the governing body of that multipurpose entity shall be responsible to the department for the administration and operation of the aging programs under the multiplan area plan.

321—4.7(249D) Preference in area agency on aging designation.

4.7(1) Right of first refusal. When the commission designates a new area agency on aging, the commission shall give the right of first refusal to a unit of general purpose local government as stated in subrule 4.5(2).

a. If a unit of general purpose local government chooses to exercise the right of first refusal, it shall make application for designation as an area agency on aging as outlined in subrule 4.9(3) and 4.9(4).

b. If a unit of general purpose local government does not exercise the right of first refusal by making application, preference shall be given to an established office on aging which is defined as a legally incorporated entity with employed staff whose single purpose is to administer programs for elders.

4.7(2) Additional preferences. In designating an area agency on aging, if the type of agency listed in subrule 4.5(1), paragraph "a," is unavailable or unqualified, preference shall be given in the following order:

a. An agency whose single purpose is to administer programs for elders.

b. A multipurpose agency which delegates all authority and responsibility under the Act to a single organizational unit.

c. A multipurpose agency which meets the waiver requirement of subrule 4.6(2).

4.7(3) Determination of qualified applicants. The method for determining qualified applicants for area agency on aging designation and for giving preference, if there is more than one qualified applicant in any of the eligible applicant categories, is contained in rules 4.12(249D) and 4.13(249D).

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321—4.8(249D) Area agency on aging qualifications. In order to qualify for designation as an area agency, an entity shall be able to carry out the responsibilities outlined in chapters 6 and 7 of these rules.

321—4.9(249D) Application for designation. The department shall provide an opportunity to apply for designation as an area agency on aging to the types of entities that qualify by advertising the need as described in subrule 4.9(2) for an area agency on aging for a planning and service area.

4.9(1) Time frame. The department shall establish a time frame for requesting applications for area agency on aging designation and publish notice of the opportunity to apply for designation. In establishing the time frame, Saturdays, Sundays, and state holidays are excluded.

4.9(2) Letter of advertisement. The department shall send letters of advertisement to all county boards of supervisors, all mayors of incorporated cities, and to known groups of elders and service providers in the affected planning and service area.

4.9(3) Letter of intent. Eligible applicants as defined in subrule 4.5(1) interested in applying shall send a letter of intent and request an information packet and application form to the department office identified in subrule 2.1(2).

4.9(4) Completion of application. The completed application for designation as an area agency on aging shall be received at the department in accordance with the time frame indicated in the information packet.

4.9(5) Public hearing. The department shall hold a public hearing which shall be chaired by the executive director or the director's designee for the purpose of providing the opportunity for presentations by area agency on aging applicants and receiving the views of public officials of units of general purpose local governments and of the general public.

a. **Hearing date and location.** The department shall designate a place, date, and time for the public hearing and publish advance notices of the public hearing which shall contain specific information about participation in the hearing.

b. **Hearing notice.** The department shall send letters of notification to all county boards of supervisors, all mayors of incorporated cities, and to the applicant(s). Letters of notification shall be sent to known groups of elders and service providers in the affected planning and service area.

c. **Public comment.** The department shall receive written comments from any interested person prior to the public hearing. Presentations and testimony shall be time-limited and shall be prearranged with the department.

4.9(6) Determination of the most qualified applicant(s) to be considered for on-site assessment. Application review shall include the following:

a. Subsequent to the public hearing, the department shall review the application(s), the written comments received, and salient comments made at the hearing to determine qualified applicant(s) to be considered for on-site assessment.

b. **Criteria for designation of an area agency on aging** as defined in rules 4.9(249D), 4.12(249D), and 4.13(249D) shall be the basis for determination of the qualified applicant(s) to receive an on-site assessment.

321—4.10(249D) On-site assessment. The department shall conduct an on-site assessment of all the qualified applicants. The purpose of the on-site assessment is to verify the applicant information provided in the application.

4.10(1) Notification. The department shall notify all applicants of the qualified applicants for on-site assessment(s).

4.10(2) Visit. The department shall make arrangements for the on-site assessment visit(s) with the qualified applicant(s).

4.10(3) Tool. The department shall use a written assessment tool to conduct the on-site assessment.

4.10(4) Report. The department shall prepare a written report of the on-site assessment(s).

321—4.11(249D) Recommendation. The department shall prepare a written recommendation regarding designation of an area agency on aging for the commission.

4.11(1) The basis for the recommendation shall be the application review, the views of representatives of general purpose local governments and the general public, the on-site assessment, and other relevant factors.

4.11(2) Commission action. The commission shall act on the designation of an area agency on aging at the next commission meeting subsequent to receiving the executive director's recommendation.

321—4.12(249D) Application form criteria.

4.12(1) Criteria to be considered in the application form. Determination of qualified applicants shall be based on information provided in the application form which indicates agency stability, administrative ability and fiscal management, such as:

- a. Organizational structure;
- b. Program services; and
- c. Fiscal capabilities.

4.12(2) Other relevant factors covered in the application shall be as follows:

a. Applicant's proposed method for development of an area agency on aging advisory council whose members are representative of the planning and service area and population served and meet the requirements of subrule 6.5(1).

b. A multipurpose agency applicant's proposal for the delegation of all its authority and responsibility to a single organizational unit;

c. A multipurpose agency which does not propose delegating all its authority and responsibility to a single organizational unit but proposes a waiver request as described in subrule 4.6(2); and

d. Applicant's proposal for addressing factors specific to the planning and service area for which an area agency on aging is being designated.

321—4.13(249D) Methods for determining qualifications and preference.

4.13(1) Qualifications. The method for determining qualified applicants for area agency on aging designation as stated in subrule 4.5(1) is as follows:

a. All applications shall be reviewed to determine the qualifications of each applicant; and

b. All applicants shall be categorized according to types of agencies and their organizational structure as indicated in subrules 4.5(1) and 4.6(1) and preference categories indicated in rule 4.7(249D).

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4.13(2) First preference. The method for giving first preference as stated in subrule 4.7(1), paragraph "b," is as follows:

a. Determination shall be made if any qualified applicants are units of general purpose local government exercising right of first refusal.

b. If there is more than one qualified applicant in this category, the most qualified applicant will be determined by review, comparison, and analysis of how well each applicant met the standards set forth.

4.13(3) Second preference. The method for giving second preference as stated in subrule 4.7(1), paragraph "b," is as follows:

a. If there is no qualified applicant under subrule 4.13(2), determination shall be made if any of the qualified applicants is an established office on aging.

b. If there is more than one qualified applicant in this category, the most qualified applicant will be determined by review, comparison and analysis of how well each applicant met the standards set forth.

4.13(4) Third preference. The method for giving third preference as stated in subrule 4.7(2), paragraph "a," is as follows:

a. If there is no qualified applicant under subrule 4.13(3), determination shall be made if any of the qualified applicants is an agency whose single purpose is to administer programs for older persons.

b. If there is more than one qualified applicant in this category, the most qualified applicant will be determined by review, comparison and analysis of how well each applicant met the standards set forth.

4.13(5) Fourth preference. The method for giving fourth preference as stated in subrule 4.7(2), paragraph "b," is as follows:

a. If there is no qualified applicant under subrule 4.13(4), determination will be made if any of the qualified applicants is a multipurpose agency which proposes to delegate all authority and responsibility for the functions of an area agency on aging to a single organizational unit not of an excluded category as described in subrule 4.5(1), paragraph "d."

b. If there is more than one qualified applicant in this category, the most qualified applicant will be determined by review, comparison and analysis of how well each applicant has met the standards set forth.

4.13(6) Fifth preference. The method for giving fifth preference as stated in subrule 4.7(2), paragraph "c," is as follows:

a. If there are no qualified applicants under subrule 4.13(5), determination will be made if any of the qualified applicants is a multipurpose agency not of an excluded category as described in subrule 4.5(1), paragraph "d," which has submitted a request for waiver or delegation of authority.

b. If there is more than one qualified applicant in this category, the most qualified applicant will be determined by review, comparison and analysis of how each applicant has met the standards set forth.

321—4.14(249D) Withdrawal of area agency on aging designation. If an area agency on aging cannot fulfill the responsibilities outlined in 321—chapters 6 and 7, withdrawal of area agency on aging designation by the commission may result. The department shall follow procedures as outlined in rule 4.15(249D) for the following reasons:

4.14(1) The multiyear area plan is not approvable because:

- a. Instructions for preparation are not followed; or
- b. It is unrealistic in view of past performance;

4.14(2) The plan is poorly administered because of:

- a. Late contracting for services;
- b. Planned performance varies drastically from actual performance; or
- c. Financial instability;

4.14(3) Deficiency in implementation of programs. Contractual or direct services to the elderly commenced more than one month after the beginning of the fiscal year;

4.14(4) Reporting of fiscal or performance is consistently late, incomplete, or incorrect;

4.14(5) The area agency on aging has neglected to perform any of the responsibilities outlined in 321—chapters 6 and 7;

4.14(6) The area agency on aging has been unable to take remedial action or has not demonstrated significant progress toward compliance with any specific time frame established for remedial action; or

4.14(7) The area agency has substantially violated the grant terms and conditions, or the requirements and standards set forth in regulations.

321—4.15(249D) Procedures for withdrawal of area agency on aging designation.

4.15(1) Procedure. When there is reason to withdraw designation of an area agency on aging as outlined in rule 4.14(249D), the department shall:

a. Notify the area agency on aging in writing of the deficiency which is the reason for the withdrawal;

b. Provide technical assistance in determining the reasons for the deficiency;

c. Assist in developing a specific action plan for correcting the deficiency within a specific time frame;

d. Monitor the progress of the area agency on aging toward correcting the deficiency;

e. Report in writing to the area agency on aging the findings of the monitoring of progress toward correction of the deficiency; and

f. Determine appropriate action based on the progress toward correction of the deficiency, which may include:

(1) Probationary condition;

(2) Withdrawal of funds;

(3) Suspension; or

(4) Withdrawal of area agency on aging designation.

4.15(2) Notification to area agencies. The department will give written notification to the area agency on aging of:

a. The decision;

b. The remedial action required, if appropriate;

c. The time frame involved; and

d. The right to appeal as outlined in rule 2.7(249D).

321—4.16(249D) Department action subsequent to withdrawal of designation.

4.16(1) Notification and plan. When area agency on aging designation has been withdrawn, the department shall:

a. Notify the Administration on Aging in writing of the withdrawal of designation.

b. Implement a plan for continuity of services in the affected planning and service area.

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4.16(2) Continuity of services.

a. To ensure continuity of services in the planning and service area and, if necessary, for a period of up to one hundred eighty (180) days after withdrawal of designation, the department may:

(1) Perform the responsibilities of the area agency on aging; or

(2) Assign the responsibilities of the area agency on aging to another agency in the planning and service area.

b. Request in writing from the Administration on Aging, if necessary, an extension of up to one hundred eighty (180) days and demonstrate need for an extension to provide continuity of services in the affected planning and service area.

c. Designate a new area agency on aging in the planning and service area in accordance with rules 4.4(249D) and 4.5(249D).

4.17 to 4.19 Reserved.

321—4.20(249D) Multiyear area plan.

4.20(1) Each area agency on aging shall develop and administer a multiyear area plan.

4.20(2) Definition of a multiyear area plan. A multiyear area plan is a document submitted biennially with annual updates, by an area agency on aging to the department in order to receive subgrants from the department's grants.

4.20(3) Duration and format of the multiyear area plan.

a. Multiyear area plan. The multiyear area plan shall be for the two (2)-year period specified by the department.

b. Uniform area plan format. The area agency on aging shall submit a multiyear area plan or amendment to the department in accordance with the uniform area plan format and other instructions issued by the department. The format shall include:

(1) Assurance that the area agency on aging agrees to abide by the requirements of the Act and all other applicable rules and regulations;

(2) Projected budgets and objectives for each year of the two (2)-year period; and

(3) Other documents as specified by the department.

4.20(4) Comprehensive and coordinated delivery system. The multiyear area plan shall provide for the development of a comprehensive and coordinated service delivery system for all supportive and nutrition services needed by elders in the planning and service area to:

a. Facilitate access to and utilization of all existing services; and

b. Develop supportive and nutrition services effectively and efficiently to meet the needs of elders.

4.20(5) Content of the multiyear plan. A multiyear area plan shall provide for the comprehensive and coordinated service delivery system specified in the Act. The multiyear area plan shall contain the following information according to the uniform format and instructions provided by the department:

a. Objectives and budgets for a multiyear period.

b. Through a comprehensive and coordinated system, provide for supportive services, nutrition services, and where appropriate, for the establishment, maintenance, or construction of multipurpose senior centers, within the planning and service area covered by the plan including:

(1) Determining biennially the need for supportive services, nutrition services, and multipurpose senior centers in the area;

(2) Taking into consideration, among other things, the number of elders with low incomes residing in the area and the efforts of voluntary organizations in the community;

(3) Evaluating the effectiveness of the use of resources in meeting needs; and

(4) Entering into agreements with providers of supportive services, nutrition services, or multipurpose senior centers in the planning and service area, for the provision of services or centers to meet the need.

c. Assurances that an adequate proportion of the amount allotted for Title III-B to the planning and service area will be expended for the delivery of each of the priority services which are access, in-home and legal assistance services, as detailed in rule 6.12(249D).

d. Specify in detail the amount of funds expended in the categories of access, in-home and legal services for the fiscal year most recently concluded;

e. Provision for the establishment and maintenance of information and referral in sufficient numbers to ensure that elders within the planning and service area covered by the plan will have reasonably convenient access to services;

f. Assurances that preference will be given to providing services to elders with the greatest economic or social needs, with particular attention to low-income minority elders, and include proposed methods of carrying out the preference in the multiyear area plan; and

g. Assurance that the use of outreach efforts that will identify elders eligible for assistance with special emphasis on rural elders, and inform those elders of the availability of assistance.

h. Provision that the area agency on aging will:

(1) Conduct periodic evaluations of activities carried out under the multiyear plan;

(2) Furnish appropriate technical assistance to providers of supportive services, nutrition services, or multipurpose senior centers in the planning and service area covered by the multiyear area plan;

(3) Take into account, in connection with matters of general policy arising in the development and administration of the multiyear area plan, the views of recipients of services under the plan;

(4) Serve as the advocate and focal point for elders within the community by monitoring, evaluating and commenting on all policies, programs, hearings, levies, and community actions which will affect the elders;

(5) Where possible, enter into arrangements with organizations providing day care services for children so as to provide opportunities for elders to aid or assist on a voluntary basis in the delivery of such services to children;

(6) Develop and publish methods by which priority of services is determined, particularly with respect to the delivery of services;

(7) Establish effective and efficient procedures for coordination;

(8) Conduct efforts to facilitate the coordination of community-based, long-term care services to retain elders in their homes, thereby deferring unnecessary, costly institutionalization, and designed to emphasize the development of client-centered case management systems as a component of such services;

(9) Identify the public and private nonprofit entities involved in the prevention, identification, and treatment of the abuse, neglect, and exploitation of elders, and based on such identification, determine the extent to which the need for appropriate services is unmet; and

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(10) Facilitate the involvement of long-term care providers in the coordination of community-based long-term care services and work to ensure community awareness of an involvement in addressing the needs of residents of long-term care facilities.

321—4.21(249D) Requirements for processing area plans, plan amendments and revisions.

4.21(1) Public hearing(s). The area agency on aging shall hold at least one (1) public hearing on the multiyear area plan and include priority services and priority services requirements in subrule 6.12(1) of these rules as a distinct agenda item in the public hearing as required in subrule 6.12(2). The area agency shall hold a public hearing regarding all amendments specified in subrule 4.21(4).

a. The public hearing(s) shall be held prior to submission of the multiyear area plan or amendment at a time and barrier-free location which permits older persons, public officials, and other interested parties reasonable opportunity to participate.

b. Adequate notice shall be provided to older persons, public officials and other interested parties of the times, dates, and locations of the public hearing(s).

4.21(2) Review and comment by the advisory council and intergovernmental review. The area agency on aging shall submit the multiyear area plan and amendments for review and comment to the appropriate agency for intergovernmental review.

4.21(3) Submission. Area agencies shall submit the multiyear area plan and amendments to the commission for approval following procedures issued by the department.

4.21(4) Amendments and revisions to the area plan.

a. Amendments. The area plan shall amend the multiyear area plan and submit it to the commission for approval if:

(1) A new or amended state or federal statute or regulation requires a new provision, or conflicts with any existing plan provision.

(2) A United States supreme court decision changes the interpretation of a statute or regulation;

(3) Local law, organization, policy or agency operation changes and is no longer accurately reflected in the multiyear area plan;

(4) The department requires amendments; or

(5) The grantee proposes to change the designation of the single organizational unit or component unit.

b. Revision. The area agency may be required to revise the multiyear plan and submit it to the department for approval if:

(1) A department funding source to the area agency changes;

(2) A program requirement changes; or

(3) The area agency proposes to add or delete a service category.

4.21(5) Approval or disapproval of a multiyear area plan, plan amendments and revisions.

a. Approval or disapproval. The commission or department shall approve a multiyear area plan, a plan amendment or a revision which meets the established criteria for approval.

b. The multiyear area plans and plan amendments shall be approved by the commission after the plan or amendment has undergone intergovernmental review, public hearing(s), review by the area advisory council, approval by the grantee agency, assurance that there

are signed contracts for service, and after review of recommendations by the department.

4.21(6) Appeal. If any applicant wishes to appeal a denial of approval or conditions for approval on the multiyear area plan or plan amendments, that applicant shall be offered the opportunity for an appeal as provided in rule 2.7(249D).

321—4.22(249D) Area profile. Each area agency on aging shall submit to the department an area agency on aging profile in accordance with the time frame and procedures issued by the department that shall contain, but not be limited to:

1. Area agency on aging grantee articles of incorporation or other documents demonstrating organizational authority and bylaws of that organization.

2. Area agency on aging advisory council by-laws.

3. Grantee policy board and area agency on aging advisory council membership lists.

4. Area agency on aging affirmative action plan and methods of administration.

5. Description of the area agency on aging organizational structure.

6. Inventory of social and nutrition services funded by the area agency on aging structure.

7. Inventory of nutrition sites and senior centers.

8. Listing of the area agency's designated community focal points.

9. Area agency on aging policies and procedures; and

10. Other information, as required.

321—4.23(249D) Technical assistance by the department. As necessary, on-site technical assistance will be provided to area agencies on aging that have been unable to meet target dates.

4.23(1) Provided to any organization. Technical assistance will be provided to any agency, organization, association or individual representing the needs of the elders.

4.23(2) Provided to area agencies on aging. As necessary, on-site technical assistance will be provided to area agencies on aging in response to requests for assistance or to initiate training and technical assistance.

4.23(3) Technical assistance for remedial actions. Technical assistance for remedial action shall be provided to area agencies on aging with performance deficiencies as provided in rule 4.15(249D).

CHAPTER 5 DEPARTMENT FISCAL POLICY

321—5.1(249D) Grants to area agencies on aging.

5.1(1) General rule. The department makes annual allotments to each area agency on aging to support part of the costs of administration and services under the multiyear area plan.

5.1(2) Types of allotments. Each area agency on aging receives separate allotments for:

a. AoA supportive services;

b. AoA congregate nutrition services;

c. AoA home-delivered nutrition services;

d. AoA senior employment services;

e. Other federal and state allotments received by the department.

5.1(3) Limitation on use. Except as provided in rule 5.5(249D), the area agency on aging shall use each allotment for the purpose for which it was made.

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5.1(4) Time frame for use of funds. Area agency on aging allotments are budgeted in the multiyear area plan to be expended for the fiscal year July 1 to June 30 annually. In addition, budgets will include funds identified in rule 5.6(249D) in accordance with requirements identified in 321—chapter 5.

a. Funds displayed in the multiyear area plan budget summary shall be expended during the identified fiscal year with the exception that twenty-five percent (25%) of the total cash budget may be carried over for the use in the subsequent fiscal year until fiscal year 1989 and subsequent years when agencies having carryover funds exceeding twenty-five percent (25%) of the cash budget shall have a reduction in their AoA Title III fund advance equal to the excess carryover.

b. The total cash budget shall include AoA Title III funds, Title V employment funds, state funds, program income, local public funds and other cash.

c. AoA Title III carryover funds shall be included in the budget summary of the multiyear area plan.

d. Program income funds that are to be carried over from the prior fiscal year and program income forecast to be received for the fiscal year identified in the multiyear area plan shall be included in the budget summary of the multiyear area plan.

e. Title V funds shall not be carried over and shall not be included in the multiyear area plan forecast.

f. The forecast of program income for the year identified in the multiyear area plan must be at least eighty-five percent (85%) of the program income earned in the most recently completed fiscal year.

g. In the fiscal year 1989 and subsequent years, agencies having carryover funds exceeding twenty-five percent (25%) of the prior year cash budget shall have a reduction in their AoA Title III fund advance equal to the access carryover.

h. Area agencies on aging which exceed the twenty-five percent (25%) carryover limit for three (3) consecutive years will not receive the AoA Title III cash advance.

i. State funds may not be carried over unless specifically authorized by state law.

j. The amount of unearned funds (carryover) will be determined on the basis of the year-end final report for the budget year, which is due not later than forty-five (45) days after the end of the budget year.

5.1(5) Expenditures in rural areas. The department shall allot to rural areas at least one hundred five percent (105%) of the amounts these areas spent under Titles III and V of the Act during the fiscal year 1978.

321—5.2(249D) Intrastate funding formula.

5.2(1) Title III allotments to area agencies. From AoA Title III funds available to the department for allotment to area agencies on aging in each fiscal year for supportive and nutrition services, the department shall award funds to area agencies on aging subject to the provisions of this subrule based on the best available population data.

a. Each area agency on aging shall receive one-fourth of one percent of the Title III funds available for allotment, or twenty-four thousand dollars (\$24,000), whichever is greater, to be used for area agency on aging administration or for services.

b. Each area agency on aging shall receive three-hundredths of one percent of the Title III funds available or three thousand dollars (\$3,000), whichever is greater,

for each county in their planning and service area, to be used for area agency on aging administration or services.

c. Each area agency on aging shall receive a proportion of the Title III funds available for allotment remaining after the application of paragraphs "a" and "b" of this subrule equal to the proportion of the area agency on aging's weighted population to the weighted population of the state. The weighted population shall be the sum of the number of persons residing in the planning and service area of the state with the following characteristics multiplied by the following weights:

Factor	Weight
Persons aged sixty (60) and older	1
Minority persons aged sixty(60) and older	1
Persons aged sixty (60) and older living at or below the poverty level of income	2

d. If the sum of the amounts generated under paragraphs "a" and "b" of this subrule for all area agencies on aging equals or exceeds eight and one-half percent (8.5%) of the amount available to the department for allotment to area agencies on aging, the department shall reduce the amount allotted under this subrule to each area agency on aging under paragraph "a" by an amount sufficient to result in the sum for all area agencies on aging generated by paragraphs "a" and "b" being less than eight and one-half percent (8.5%).

5.2(2) The department shall calculate the allotments to area agencies based on the following schedule:

a. For FY 1988, one-third (1/3) of the funds available for allotment to area agencies on aging shall be calculated by the method specified in paragraphs "a," "b," and "c" of this subrule and two-thirds (2/3) will be distributed based on the proportion that each area agency on aging's allotment for FY 1987 bears to the total allotted to all area agencies on aging for FY 1987.

b. For FY 1989, two-thirds (2/3) of the funds available for allotment to area agencies on aging shall be calculated by the method specified in paragraphs "a," "b," and "c" of this subrule and one-third (1/3) shall be distributed based on the proportion that each area agency on aging's allotment for FY 1987 bears to the total allotted to all area agencies on aging for FY 1987.

5.2(3) The department shall use the best available population data to calculate allotments under this subrule. Population projections issued by the state demographer shall be used for each fiscal year beginning during a year for which such projections are available. These projections shall be used until data from the U.S. Bureau of the Census is available. These data shall be used to calculate area agency on aging allotments for the next fiscal year starting after the data is available.

321—5.3(249D) Long-term care ombudsman program. The department shall reserve at least one percent (1%) or thirty-five thousand dollars (\$35,000), whichever is greater, from the AoA supportive services allotment to administer the long-term care resident's advocate/ombudsman program as set forth in 321—chapter 8. The area agency on aging may use supportive service funds in support of the long-term care resident's advocate/ombudsman program for its specific planning and service area.

321—5.4(249D) Elderly services allocation. All state elderly services funds allocated to the department shall be allocated to area agencies on aging on the basis of

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persons sixty (60) and older in the planning and service area, minority persons sixty (60) and older in the planning and service area and double-weighted for persons sixty (60) and older living at or below the poverty level of income in the planning and service area.

321—5.5(249D) Transfer between supportive and nutrition service funds under the state plan.

5.5(1) Transfers up to thirty percent (30%). The department may, without the approval of the federal Administration on Aging, transfer from one federal Title III allotment specified in subrule 5.1(2) to another, thirty percent (30%) or less of the separate allotments for supportive services, congregate and home-delivered nutrition services.

5.5(2) An area agency on aging may apply to the department to transfer from one federal Title III allotment up to thirty percent (30%) of the area agency on aging's separate allotments for supportive services, congregate and home-delivered nutrition services. The area agency on aging shall:

a. Specify the percent and the amount which the area agency on aging proposes to transfer from one allotment to the other;

b. Specify the length of time for the proposed transfer; and

c. Justify the transfer based on the greater need proportionately, of the areas elders for the services, funded from each federal Title III allotment.

5.5(3) The department approves the area agency on aging's request by approving the multiyear area plan or plan amendment.

321—5.6(249D) Allowable use of federal and state funds for multiyear area plan administration.

5.6(1) Federal funds for administration. The area agency on aging may not use more than the amount received under rule 5.2(249D) and at least the amount of local match prescribed in rule 5.9(249D) for area agency on aging administration costs. The area agency on aging, acting as department employment subproject sponsors but not as host agencies, may use not more than four percent (4%) of the sum of the SCSEP funds allotted for program administration.

5.6(2) State funds for administration. Sums appropriated each state fiscal year for area agency on aging administration shall be distributed in equal amounts for each planning and service area as match for federal administrative funds distributed under subrule 5.2(1), paragraphs "a" and "b." These funds shall be used as match for federal funds used for area agency on aging administration.

5.6(3) Employment program awards. Adjustments in the amount of employment funds are subject to the availability and utilization of funds.

5.6(4) USDA allotments. Area agencies on aging will receive a portion of the USDA allotment to the state based on the proportion an area's eligible meals bears to the total of USDA eligible meals for all area agencies.

321—5.7(249D) Reallotment.

5.7(1) Funds for reallotment.

a. The amount of federal funds which are not expended or obligated for goods and service or both to be provided by the last day of the previous federal budget year (carryover) shall be available for reallotment.

b. If the department decides that an area agency on aging will have unused funds, the department may

reallot the unused funds to one or more other area agencies on aging according to their needs. The area agencies receiving these reallotted funds shall obligate them by the end of the fiscal year in which they are reallotted.

5.7(2) Federal and state financial participation.

a. State plan administration. The department shall use its federal allotment for state plan administration to pay not more than seventy-five percent (75%) of the costs of administering the state plans.

b. Area plan administration. An area agency may use its federal allotment to pay not more than seventy-five percent (75%) of the cost of administering area plans.

c. Supportive and nutrition services. An area agency may use its federal allotments for supportive and nutrition services and its state elderly services allotment to pay not more than eighty-five percent (85%) of the costs of these activities.

321—5.8(249D) AoA nonfederal share requirements. The nonfederal share may be either by allowable costs or the value of third-party in-kind contributions except as provided in rule 5.9(249D).

321—5.9(249D) Source of nonfederal share.

5.9(1) Cash and in-kind match. At least twenty-five percent (25%) of the minimum nonfederal share in each federal fiscal year shall be in the form of allowable costs of the state or local public agencies, or in the form of third-party in-kind contributions from local public agencies.

5.9(2) State match. One-third (1/3) of the nonfederal share required under subrule 5.6(2) shall be in the form of state-appropriated funds.

321—5.10(249D) Restriction on delegation of authority to other agencies. The department and area agencies on aging may not delegate to another agency the authority to award or administer funds under this part, except as provided in subrule 4.6(1), paragraph "b," subparagraph (1).

321—5.11(249D) State reviews and audits.

5.11(1) Audits. Grants from the department to area agency on aging grantees shall be audited by the state auditor or by a certified public accountant or certified public accounting firm approved by the department.

a. The audit costs are negotiated and paid for by the grantee from these grants.

b. The department shall provide the grantee with audit guidelines to be followed by the auditor.

c. Prior to being accepted by the department, audits conducted by approved certified public accountants or certified public accounting firms shall be evaluated and found to be acceptable by the state auditor.

5.11(2) Reports. Two (2) copies of the completed audit reports are to be sent to the executive director.

321—5.12(249D) Records and reports.

5.12(1) General rule. The department shall maintain uniform fiscal and performance records on all grants made to area agencies on aging. The department shall issue standardized forms for budget status reports, program reports, and requests for funds. The executive director shall closely monitor the program and budget status reports to ensure compliance with the rules and law.

5.12(2) Reporting requirements. The grantee is required to submit all fiscal and performance reports

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following procedures and requirements established by the department by the fifteenth of the month(s) following the end of the period being reported. Reports not received by the due date shall be considered delinquent.

5.12(3) Procedures for delinquent reports.

a. Notification of potential delinquency in submission of reports shall be provided to the department by area agencies on aging within three (3) working days prior to the due date.

b. Technical assistance will be offered to area agencies on aging by the department following receipt of the notice of potential delinquency in submission of reports.

c. Noncompliance with reporting requirements may jeopardize continued funding.

5.12(4) Record retention. Recipients of funds from the department shall retain fiscal and programmatic records for three (3) years after the filing of final expenditure reports.

321—5.13(249D) Procurement standards.

5.13(1) Authority. The department and the area agencies on aging may enter into contracts and arrangements for goods, equipment, and services with other agencies, public and private nonprofit organizations, and other entities as necessary to carry out their responsibilities under state laws and federal law (the Older Americans Act of 1965, as amended, and related Acts and regulations).

5.13(2) Standards. All contracting and similar arrangements for goods, equipment, and services shall be in compliance with the standards contained in federal regulations, 45 CFR part 74, Administration of Grants, unless a higher standard is elsewhere expressed by Iowa law. Where other factors are equal, preference will be given to Iowa contractors of goods and services over out-of-state contractors, in compliance with state law.

5.13(3) Utilization of small businesses and minority contractors. Positive efforts shall be made to utilize small business and minority-owned business sources of supplies and services.

a. Lists of minority contractors shall be obtained and kept on file. The lists shall be reviewed quarterly and updated as needed.

b. Minority contractors will be contacted individually concerning contracts for which they may be able to provide services.

c. Records will be maintained showing names and numbers of minority contractors contacted in regard to each contract.

d. This rule shall not be construed to require, however, that the award of contracts will favor small business or minority contractors when this would result in higher cost to the department or the area agency.

5.13(4) Free competition. All procurement transactions, whether negotiated or advertised, shall be conducted in a manner to provide maximum open and free competition. Special attention shall be given to eliminate organizational conflicts of interest or other noncompetitive practices which may restrict or eliminate competition.

5.13(5) Procurement description. Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured.

a. The description shall not, in competitive procurements, contain features which unduly restrict competition.

b. "Brand name or equal" descriptions may be used to define the performance or other salient requirements of a procurement. When so used, the specific features of the name brand which shall be met by the offerors should be clearly specified.

5.13(6) Appropriateness of procurement instruments — prohibited costing method. The type of procuring instrument used (i.e., fixed-price contract, cost reimbursement contract, purchase order, incentive contract, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

5.13(7) Bids. Except as provided in the following paragraphs, the department or area agency shall undertake formal solicitation for bids, with clear and accurate purchase description, sealed bids and public openings, for all procurement in excess of ten thousand dollars (\$10,000).

a. Exceptions. Procurements may be made through noncompetitive negotiation if it is impracticable and infeasible to use formal bid solicitation. Generally, procurements may be negotiated if:

(1) The item is available only from a single source;

(2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(3) The federal grantor agency authorizes noncompetitive negotiations; or

(4) After solicitation of a number of sources, competition is determined inadequate.

b. Selection of bidder. When solicited bids are obtained, the award shall be made to the bidder whose bid is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Any and all bids may be rejected and new bids requested if the bids received are judged not acceptable.

c. Methods of advertising. The invitations for bids shall be advertised by two (2) publications in a newspaper published in the county in which the work is to be done.

(1) The first publication shall not be less than fifteen (15) days prior to the date set for receiving bids.

(2) Additional methods of advertising may be used as deemed necessary, including the requirement for individually contacting minority contractors as specified in subrule 5.13(3), paragraph "b."

(3) The invitations for bids shall clearly set forth all requirements which the bidder shall fulfill in order for the bid to be evaluated.

5.13(8) Responsible bidders. Whether obtained through formal advertising or negotiation, contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

5.13(9) Restriction on procurement transactions for multipurpose agencies designated as area agencies on aging. When a multipurpose agency has been designated as the grantee for the area agency on aging, and it is the single organizational unit serving the designated planning and service area, no grant or contract shall be made between the area agency on aging office and some other division of the multipurpose agency without the express approval of the department.

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5.13(10) Records — contract administration. The department and area agencies on aging shall maintain records on all procurements.

a. Procurement records for purchases of more than ten thousand dollars (\$10,000) shall provide at least the following pertinent information: record of publication and other advertising including minority contractors contacted, justification for the use of negotiation in lieu of advertising, contractor selection and basis of selection, and the basis for the cost of the price negotiated.

b. All parties contracting with the department and area agencies on aging shall maintain records and make reports as required by the terms of the contract to provide for efficient monitoring and contract administration.

c. A system for contract administration shall be maintained by the department and area agencies on aging to ensure contractor compliance with terms, conditions and specifications of the contract or order, and to ensure adequate and timely follow-up of all purchases.

d. All records and reports shall be open to public inspection, with the exceptions permitted by state law.

5.13(11) Additional requirements under Title V. In the acquisition of property under Title V, senior employment, the area agency on aging shall ensure that:

a. All property bought with grant funds with a unit acquisition cost of five hundred dollars (\$500) or more shall be approved by the department prior to purchase;

b. Property bought with grant funds with a unit acquisition of one thousand dollars (\$1,000) or more will be returned to the Department of Labor upon request, when the grant terminates or if the property is no longer required for its intended purposes;

c. The area agency will pay twenty-five percent (25%) of the acquisition cost for excess property purchased with grant funds; and

d. Rules of the property handbook for employment and training administration project grantees, No. 303, shall be followed in the acquisition, accounting and disposition of property and shall be included as part of the grant provisions.

321—5.14 Recapture of funds for facilities.

5.14(1) Recapture from owner. The United States government is entitled to recapture a portion of federal funds and the department is entitled to recapture a part of state funds from the owner of a facility used for senior programs or services if within ten (10) years after acquisition or twenty (20) years after completion of construction:

a. The owner of the facility ceases to be a public or nonprofit agency; or

b. The facility is no longer used for senior activities.

5.14(2) Amount of recapture. The amount recovered under subrule 5.14(1) is that proportion of the current value of the facility equal to the proportion of federal or state funds contributed to the original cost. The current value of the facility is determined by an agreement between the owner of the facility and the federal government, or by an action in the federal district court in which the facility is located.

5.14(3) Recapture in leased facility. The department is entitled to recapture a portion of federal and state funds from the owner of a leased facility if the facility is no longer leased for senior activities within a period of time equal to one (1) year for every one thousand dollars (\$1,000) of nonremovable alterations or renovations.

5.14(4) Recapture share. The amount recovered under subrule 5.14(3) shall be the total federal or state funds contributed to the original cost or both, reduced by one thousand dollars (\$1,000) for each year the facility was used for senior programs or services.

321—5.15(249D) Property management.

5.15(1) Responsibilities of grantees and contractors. All grantees or contractors who use funds received from the department or area agency on aging to purchase property, to include real property or nonexpendable tangible personal property with a useful value of more than one (1) year and an acquisition cost of three hundred dollars (\$300) or more per unit, as within the provisions of the grant or contract, shall make and maintain appropriate records of all such property.

5.15(2) Transfer upon termination. Upon the termination of the grant or contract period, the grantee or contractor shall be required to transfer the property back to the department or area agency on aging.

5.15(3) Standards. The standards and guidelines utilized by the department to implement this rule shall be in compliance with current U. S. Department of Health and Human Services property management regulations, (Administration of Grants, 45 CFR 74) July 14, 1982, unless a higher standard is elsewhere expressed by these rules.

CHAPTER 6

AREA AGENCY ON

AGING PLANNING AND ADMINISTRATION

321—6.1(249D) Area agency administration.

6.1(1) Full-time director. The grantee shall employ a qualified full-time director, and may employ other staff as necessary to manage and monitor the multiyear area plan.

6.1(2) Area agency director responsibility. It is the responsibility of the area agency on aging director to ensure that all area agency on aging duties as outlined in rule 6.4(249D) are performed. Tasks, duties, responsibilities and concerns of the area agency on aging director include planning both for the area plan development and implementation and for organizational operations in general, budgeting for services and operations, implementation of services, monitoring and evaluation of services.

6.1(3) Preference. Subject to established area agency requirements, preference shall be given to employment of persons aged sixty (60) and over.

6.1(4) Standards of conduct. All area agency on aging employees are personally responsible for maintaining a high standard of honesty, integrity, impartiality, and conduct consistent with "standards of conduct for Title III grantees of the Older Americans Act."

6.1(5) Discrimination. The area agency on aging shall extend equal opportunities to all employees and to applicants for employment who meet the qualifications established for a class or a position for which the application is made. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of personnel administration because of sex, race, national origin, age, or other nonmerit factors is prohibited.

6.1(6) Affirmative action plans. Each area agency shall develop an affirmative action plan on employment which shall be submitted as part of the profile. All affirmative action plans shall comply with the require-

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ments of section 900.67 of Title 5 of the Code of Federal Regulations (1981).

6.1(7) Training and development requirements. Area agencies on aging shall have a plan and procedures that will support a broad program of staff development activities to ensure training of volunteers, paid personnel and providers of services to Iowa's elderly population.

321—6.2(249D) Confidentiality and disclosure of area agency information.

6.2(1) Confidentiality. Area agencies shall have procedures to ensure that no information about, or obtained from an individual, and in possession of an agency providing services to an individual under programs funded by the department, shall be disclosed in a form identifiable with the individual without the individual's informed consent.

6.2(2) Public accessibility to manuals, guidelines, and records. Copies of all manuals, guidelines, and standards referred to by these rules shall be maintained by the area agencies on aging and made available for public inspection.

321—6.3(249D) To contact area agencies on aging.

Information on how to contact the appropriate area agency on aging office may be obtained by contacting the department at the office location identified under subrule 2.1(2).

321—6.4(249D) Area agencies on aging duties. Each area agency on aging shall:

a. Develop and administer a multiyear area plan as outlined in rules 4.20(249D) and 4.21(249D);

b. Assess biennially the types and levels of services that are needed by elders in the planning and service area and the effectiveness of other public or private programs serving those needs;

c. Enter into subgrants or contracts to provide all services under the plan;

d. Provide technical assistance as needed, prepare written monitoring reports of subcontractor performance at least quarterly, and provide a written report of an annual on-site assessment of all service providers funded by the area agency on aging;

e. Coordinate the administration of its plan with federal programs and with other federal, state, and local resources in order to develop a comprehensive and coordinated service system;

f. Establish an area agency on aging advisory council;

g. Give preference in the delivery of services under the area plan to elders with the greatest economic or social need;

h. Ensure that elders in the planning and service area have reasonably convenient access to information and referral services;

i. Provide adequate and effective opportunities for elders to express their views to the area agency on aging policy development and program implementation under the area plan;

j. Designate community focal points if feasible;

k. Contract for outreach efforts, with special emphasis on rural elders, to identify elders with greatest economic or social needs and inform them of the availability of services under the multiyear area plan;

l. Develop and publish the methods that the agency uses to establish preferences and priorities for services;

m. Attempt to involve the area lawyers in legal assistance activities;

n. Submit all fiscal and performance reports in accordance with the policies of the department;

o. Monitor, evaluate, and comment on policies, programs, hearings, levies, and community actions which significantly affect the lives of elders;

p. Conduct public hearings on the needs of elders;

q. Represent the interests of elders to public officials, public and private agencies, and organizations;

r. Coordinate activities in support of the statewide long-term care resident's advocate/ombudsman program;

s. Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for elders;

t. Coordinate planning with other agencies for ensuring the safety of elders in a natural disaster or other safety-threatening situation.

321—6.5(249D) Area agency on aging advisory council.

6.5(1) Composition. The area agency on aging shall establish an area agency on aging advisory council composed of:

a. At least one-half of its members who are sixty (60) and over and includes:

(1) Persons with greatest economic and social needs;

(2) Participants of services under the Act; and

(3) Minority individuals.

b. Representatives of elders;

c. Local elected officials; and

d. The general public.

6.5(2) Duties. It shall be the specific responsibility of the advisory council to:

a. Advocate for elders in their planning and service area by keeping informed of all activities and proposals concerning the elders;

b. Review and make recommendations on the content, formulation, and administration of the multiyear area plan and participate in public hearings on the multiyear area plan;

c. Serve as an information link between the area agency on aging and providers of services to elders in the area;

d. Review and make recommendations on program priorities for the area;

e. Review and comment on community policies, programs and actions which affect elders;

f. Assist in generating local support for development of programs in the area; and

g. Make recommendations concerning the employment or discharge of the area agency on aging director and personnel policies.

6.5(3) Frequency of meetings. The area agency on aging advisory council shall meet at least quarterly.

6.5(4) Staff support. The area agency on aging shall provide staff and assistance to the area agency on aging advisory council.

6.5(5) Bylaws. The area agency on aging advisory council bylaws shall contain at least the basic bylaws articles: name, purpose, members, officers, meetings, committees, parliamentary authority and amendment of bylaws. The article on membership shall include but is not limited to number of members, selection process for members, and terms of membership.

321—6.6(249D) Preference in service delivery.

6.6(1) General rule. To ensure that preference is given to those elders with the greatest social and economic need, area agencies on aging are required to:

a. Give preference in the delivery of all services provided under the multiyear area plan to elders who

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are disabled, are minorities, have incomes at or below the poverty level, or are minorities with incomes at or below the poverty level.

b. Give preference in the delivery of service to persons aged seventy-five (75) and older residing in rural portions of the state.

6.6(2) Standard for preference. Area agencies on aging shall, in each service delivered under the multiyear area plan, serve elders with the following characteristics in a proportion equal to or greater than the proportion residing in the planning and service area who have the same characteristics:

- a. Are disabled or functionally impaired;
- b. Are minorities;
- c. Have incomes at or below the poverty level;
- d. Are minorities with incomes at or below the poverty level;
- e. Are aged seventy-five (75) and older residing in rural portions of the state.

6.6(3) Client estimates in area plans. Area agencies shall estimate the number of elders who are disabled, are minorities, have incomes at or below the poverty level, are minorities with incomes at or below the poverty level or are aged seventy-five (75) and older or aged seventy-five (75) and older residing in rural portions of the state who will be served by each program provided under the multiyear area plan. The department shall provide a mechanism, as part of the uniform multiyear area plan format, for the submission of these estimates and the methods that will be used to ensure that preference is given in accordance with this rule.

6.6(4) Reporting. Area agencies on aging shall report the estimated number of elders who are disabled, are minorities, have incomes at or below the poverty level, are minorities with incomes at or below the poverty level or are aged seventy-five (75) and older or aged seventy-five (75) and older residing in rural portions of the state who have been served under the multiyear area plan each quarter in accordance with rule 5.12(249D).

6.6(5) Compliance. When an area agency on aging's estimates pursuant to subrule 6.6(3) do not meet or exceed the standard in subrule 6.6(2), the department shall inform the area agency on aging of the deficiency and provide the area agency with an opportunity to revise the estimates prior to the department's submitting a recommendation to the commission regarding approval or disapproval of the multiyear area plan.

a. If the area agency on aging does not submit revised estimates that meet or exceed the standard in subrule 6.6(2), the department shall recommend that the commission place a probationary condition on approval of the multiyear area plan which requires the area agency on aging to achieve compliance or demonstrate significant progress toward compliance in the first six (6) months of the probationary period.

b. When an area agency on aging's performance pursuant to subrule 6.6(4) does not meet or exceed the standard in subrule 6.6(2) and no probationary condition has been placed on the multiyear area plan, the department shall follow procedures outlined in subrule 4.23(3) of these rules.

321—6.7(249D) Coordination with other programs.

6.7(1) General rule. Each area agency on aging shall coordinate the administration of its plan with the federal and state employment programs and with other federal, state and local resources in order to develop a compre-

hensive and coordinated service system. The area agency on aging shall establish effective and efficient procedures for coordination between the programs assisted under the Older Americans Act, and of the programs listed in OAA 203(b) including:

- a. The Job Training Partnership Act;
- b. Title II of the Domestic Volunteer Service Act of 1973;
- c. Titles XVI, XVIII, XIX, and XX of the Social Security Act;
- d. Sections 231 and 232 of the National Housing Act;
- e. The United States Housing Act of 1937;
- f. Section 202 of the Housing Act;
- g. Title I of the Housing and Community Development Act of 1974;
- h. Title I of the Higher Education Act of 1965, and the Adult Education Act;
- i. Sections 3, 9 and 16 of the Urban Mass Transportation Act of 1964;
- j. The Public Health Service Act;
- k. The Low-Income Home Energy Assistance Act of 1981;
- l. Part A of the Energy Conservation in Existing Buildings Act of 1976, relating to weatherization assistance for low-income persons;
- m. The Community Services Block Grant Act; and
- n. Demographic statistics and analysis programs conducted by the Bureau of Census under Title 13, United States Code.

6.7(2) Coordination for safety of elders. Each area agency on aging shall coordinate planning with other agencies for ensuring the safety of elders in a natural disaster or other safety-threatening situation. To further this purpose, each area agency on aging shall:

- a. Include in the procedures manual provided for in rule 6.8(249D) procedures to respond to emergency or disaster situations;
- b. Include in the staff development and training plan provided for in subrule 6.1(7) training for staff, contractors, and other interested parties in response to emergency or disaster situations; and
- c. Include in subgrants or contracts provisions for responding to emergency situations including, but not limited to, shifting funds from one activity to another or from one contractor to another.

321—6.8(249D) Area agency on aging procedures manual. A procedures manual for the area agency on aging shall be developed, followed, and kept updated by the area agency on aging. The area agency on aging procedures manual shall, at a minimum, contain the following:

- a. Procedures for the effective coordination of programs and activities related to the purpose of the Older Americans Act as provided in rule 6.4(249D);
- b. Procedures for coordination and outreach activities by service providers;
- c. Procedures for designating community focal points as provided in rule 6.4(249D);
- d. Procedures to provide technical assistance to service providers in subrule 6.4(1), paragraph "d";
- e. Procedures for awarding grants or contracts under the area plan as provided in rule 6.9(249D);
- f. Complaint procedures for resolving complaints by area agency employees, senior community service employment program applicants, and enrollees as outlined in subrule 10.3(2), paragraph "g," any partic-

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ipant in services under the multiyear area plan, applicants to provide services, service providers, subcontractors or any other agency, organization or individual directly aggrieved by action of the area agency. Area agency on aging appeal procedures shall be in compliance with relevant statutes, regulations, or rules and shall contain at least the following procedures and time frames for complaint review:

(1) Acknowledgment of the complaint;
 (2) Process for attempting to informally resolve the complaint;

(3) Sending a hearing notice;

(4) Holding a hearing;

(5) Notification of the outcome of the hearing;

(6) Appeal to the next higher authority;

g. Procedures to ensure that no information about, or obtained from, an elder is disclosed in a form that identifies the person without the person's informed consent as provided in subrule 6.2(1);

h. Methods for giving preference to those with greatest economic or social need in the provision of services under the plan as provided in rule 6.4(249D);

i. Procedures for the notification and conducting of at least one public hearing on the multiyear area plan as provided in subrule 4.21(1);

j. A memorandum of agreement between the area agency on aging and the local intergovernmental review which covers the means for coordinating their planning activities as provided in subrule 4.20(4);

k. Procedures for monitoring and assessing programs and subcontracts funded by the area agency on aging, including written monitoring reports at least quarterly and an on-site assessment report at least annually as provided in rule 6.4(249D);

l. Procedures to respond to emergency or disaster situations as provided in subrule 6.7(2);

m. Procedures for the collocation of services as provided in subrule 7.2(2);

n. Procedures to be followed by service providers to obtain the views of participants about services they provide as provided in subrule 6.13(3);

o. Procedures for the determination of the individual's eligibility for home-delivered nutrition services, established by the area agency on aging, or the provider with area agency on aging approval including specific criteria for:

(1) Initial and subsequent six (6)-month assessments of the individual's eligibility for home-delivered meals;

(2) Determination of the number of days per week the individual has a need for home-delivered meals; and

(3) Determination of the individual's need for other home-delivered nutrition services.

p. Procedures to ensure that any facility housing an Older Americans Act program or service will fully comply with federal, state, or local health, fire, safety, sanitation, accessibility and licensure requirements as provided in subrule 7.1(3).

321—6.9(249D) Area agency on aging subgrants or contracts.

6.9(1) General rule. Each area agency on aging shall enter into subgrants or contracts to provide all services.

6.9(2) Contract file. Area agencies on aging shall maintain a file of all current contracts with service-providing agencies or organizations for monitoring and assessment by the department.

6.9(3) Contracts with profit-making organizations. The area agency on aging shall submit to the department, for prior approval by the executive director, any proposed contracts with profit-making organizations for services under the multiyear area plan.

a. The department may approve the contracts only if the area agency on aging demonstrates that the profit-making organization can provide services that are consistent with the goals of the area agency on aging as stated in the multiyear area plan.

b. A separate approval request, using the request form provided by the department, shall be filed for each contract between the area agency on aging and a provider for a program or service that is proposed to be delivered by a profit-making organization.

(1) The request for approval shall be submitted to the department by the area agency on aging at least thirty (30) days prior to the signing of the contract by the area agency on aging and the service provider.

(2) All applicants to provide services for which the contract is proposed shall be listed on the request form completed by the area agency.

(3) The area agency on aging shall demonstrate that the profit-making organization can provide service consistent with the goals as stated in the multiyear area plan.

c. Services shall mean the services described in the "uniform definitions of services" issued by the department.

321—6.10(249D) Direct provision of service by area agencies on aging.

6.10(1) Area agencies prohibited from direct service. Area agencies are prohibited from providing direct services except as provided in this rule.

6.10(2) Waiver of direct service restriction. No direct service waiver shall be approved by the department unless the area agency requesting the waiver demonstrates to the satisfaction of the department that:

a. The direct provision of such services is necessary to ensure an adequate supply of such services; or

b. Such services are directly related to the area agency's administrative functions, these services being limited to those specified in subrule 6.10(4); or

c. Services of comparable quality can be provided more economically by the area agency.

6.10(3) Documentation. To provide documentation that the direct provision of the services for which a waiver is requested is necessary to ensure an adequate supply of such services or that services of comparable quality can be provided more economically by the area agency, the area agency shall:

a. Submit to the department, by August 1 of each year, a copy of an information packet which describes each service funded with Title III funds, or expected to be funded with Title III funds which the area agency intends to deliver directly. The information packet shall consistently supply the following information for each service:

(1) The geographic area to be served;

(2) The number of units of service to be delivered;

(3) The total amount of Title III funds and other resources used to provide the service, and the total cost per service;

(4) The number of persons aged sixty (60) and older to be served;

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(5) The established standards for quality service delivery;

(6) The identity of the current provider of the service; and

(7) A description of the service provided.

b. Submit to the department, by August 1 of each year, documentation that a notice was published in the two (2) newspapers having the largest exposure within the area, of which services the area agency intends to deliver directly and inviting potential providers of these services to contact the area agency for additional information. Exposure is determined by the newspaper's circulation multiplied by the number of days published weekly;

c. Retain and make available upon request all correspondence related to and all proposals received in response to the notice published in accordance with subrule 6.10(3);

d. Provide adequate documentation to the department, that the area agency offered to provide technical assistance, if requested, to any interested service provider to assist them in preparing a proposal to become the provider of the service for the next fiscal year; and

e. Submit to the department, by October 1 of each year, a report clearly setting forth the specific reason or reasons the area agency is unable to contract with another provider and requests a waiver of the prohibition in subrule 6.10(1) for the fiscal year starting on the next July 1.

6.10(4) The following services and activities are considered directly related to the administrative functions of the area agency: case management; information and referral; outreach; employment; ombudsman; planning, development, and coordination; advocacy representation; and area agency administration. A waiver is not required to provide these services directly.

6.10(5) Department decision. The department shall review the materials submitted by the area agency and shall grant or deny the waiver not later than December 1 following the request. If the department determines that the requirements in subrule 6.10(3) have been met and that the direct provision of services is necessary to ensure an adequate supply of the service or the service is directly related to the administrative functions of the area agency or that the area agency can provide comparable quality services more economically, the department shall grant the waiver. For purposes of this determination:

a. Adequate supply shall mean the number of units of service specified by the area agency in the information packet;

b. Comparable quality shall mean adherence to the quality standards specified by the area agency in the information packet; and

c. More economically shall mean the area agency's total cost per unit of service as specified in the information packet is lower than that proposed by any interested provider.

321—6.11(249D) Noncompliance status. When an area agency on aging's performance in any service does not meet the service standards set by the department, the department shall initiate the procedure identified in subrule 4.15(1).

321—6.12(249D) Priority service requirement.

6.12(1) General rule. An area agency on aging shall spend on priority services an adequate proportion of its

supportive services allotment as identified in rule 5.2(249D), excluding amounts used for administration under rule 5.6(249D). The proportion of supportive services is considered adequate when elders in the planning and service area have reasonably convenient access to each category of service. An adequate proportion of funds shall be spent in each of the following categories:

a. Services associated with access to other services. These services are transportation, outreach, and information and referral;

b. In-home services, which are homemaker and home health aide, visiting and telephone reassurance, chore maintenance, and supportive services for the families of victims of Alzheimer's disease and other neurological and organic brain disorders of the Alzheimer's type; and

c. Legal assistance.

6.12(2) Public hearing. An area agency on aging shall include the priority services and priority services requirement in subrule 6.12(1) as a distinct agenda item in the area agency public hearing required for the multiyear area plan.

a. Public hearing notices shall specify priority services as a special topic at the public hearing.

b. Public hearing discussion of priority services by the area agency shall include the level of priority services being provided by all other agencies.

c. The public hearing agenda shall give the public specific opportunity to comment during the priority services portion of the agenda.

d. The area agency on aging shall prepare a record of the public hearing. If a waiver is being requested, the area agency shall submit a copy of the public hearing record to the department with the multiyear area plan.

6.12(3) Waivers.

a. An area agency on aging shall request a waiver from the requirements of subrule 6.12(1) if the area agency on aging does not propose sufficient funding to allow elders to have reasonably convenient access to the service.

b. The commission, in approving the multiyear area plan or a plan amendment, shall, upon recommendation of the director, waive the requirement of subrule 6.12(1) for any category of service for which the area agency on aging demonstrates the following:

(1) That the services being furnished for the category meet the needs of elders in the planning and service area for that category of service; or

(2) The area agency on aging documents that it has made every reasonable effort to meet the need for a specific category of service.

321—6.13(249D) Requirements for service providers.

6.13(1) Contributions. As established by contract with the area agency on aging, each service provider shall:

a. Provide each elder with a free and voluntary opportunity to contribute to the cost of the service by prominently displaying or distributing a suggested contribution schedule which takes into consideration income ranges of eligible individuals in local communities;

b. Protect the privacy of each older person with respect to the person's contributions;

c. Utilize appropriate procedures to safeguard and account for all contributions, ensure against loss,

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mishandling or theft by bonding employees in accordance with guidelines set forth by the department; and

d. Use all contributions to expand the services of the provider under the area plan. Nutrition service providers shall use all contributions to increase the number of meals served.

6.13(2) Failure to contribute. A service provider that receives department funds may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

6.13(3) Obtain views of elders. Each service provider under the multiyear area plan shall utilize procedures for obtaining the views of participants about the services they receive. A report of procedures utilized and findings shall be made to the area agency on aging within six (6) months of the signing of the contract.

6.13(4) Compliance by service providers. The area agency on aging shall establish in its contract with each service provider an assurance that funds are used in compliance with federal guidelines.

CHAPTER 7**AREA AGENCY ON AGING SERVICE DELIVERY****321—7.1(249D) Delivery of service.**

7.1(1) Outreach for greatest need. Each area agency on aging shall conduct outreach efforts, with special emphasis on the rural low-income and minority elders to identify elders with greatest economic or social needs and inform them of the availability of services under the multiyear area plan.

7.1(2) Funds for facilities housing services to elders. The area agency may award funds received from the department to a public or private nonprofit agency for the following purposes:

a. Acquiring, altering, leasing or renovating a facility, including a mobile facility, to be used to provide services to elders;

b. The costs of professional and technical personnel required for the operation of facilities to be used to provide services to elders;

c. Constructing a facility, including a mobile facility to be used to provide services to elders, subject to the following provisions:

(1) The area agency shall obtain the approval of the commission before making an award for the construction of a facility.

(2) The commission may approve the construction of a facility after considering the views of the area agency if it is documented that there are no other suitable facilities available to be a focal point for service delivery.

(3) The area agency may make an award for purchasing or constructing a facility only if there are no suitable facilities for leasing.

7.1(3) Compliance with health, safety, and construction requirements. A recipient of any award from the department for a facility housing a program or service shall comply with all applicable state and local health, fire, safety, accessibility, building, zoning, and sanitation laws, ordinances or codes including:

a. Applicable building occupancy classification of the National Fire Protection Association "Life Safety Code" (NFPA No. 101, 1976 edition);

b. Regulations relating to minimum standards of construction, particularly with the requirements of the Architectural Barriers Act of 1973;

c. Technical adequacy of any proposed alteration or renovation that affects the loadbearing members of the

facility and is structurally sound. In absence of local and state codes, the recipient of funds shall ensure compliance with chapter 23 of the Uniform Building Code (1979), as published by the Internal Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90801;

d. Compliance with the requirements of the Davis-Bacon Act and other mandatory federal labor standards.

7.1(4) Length of use of an acquired or constructed facility.

a. Acquired facility. A recipient of an award of funds from the department for the acquisition of a facility housing a program or services for elders shall ensure that the facility will be used for that purpose for at least ten (10) years from the date of acquisition.

b. Constructed facility. A recipient of an award from the department for the construction of a facility housing a program or services for elders shall ensure the facility will be leased for that purpose for at least one (1) year for every one thousand dollars (\$1,000) of nonremovable improvements for a maximum lease period of ten (10) years.

7.1(5) Shared facilities. In a facility that is shared with other age groups, funds received from the department may support only:

a. That part of the facility used by older persons; or

b. A proportionate share of the costs based on the extent of the use of the facility by older persons.

7.1(6) Licensure and safety requirements.

a. All services provided with funds from the department shall meet any existing state and local licensure and safety requirements for the provision of those services.

b. Area agencies shall ensure that any facility housing a program or services will fully comply with federal, state or local health, fire, safety, sanitation, accessibility, and licensure requirements.

7.1(7) Membership fees.

a. Payment of a membership fee shall not be required of participants in senior center activities.

b. Each older person shall be provided with a free and voluntary opportunity to contribute to the cost of activities or services taking place in the facility.

7.1(8) Prohibition on sectarian use of a facility. A facility altered, acquired, renovated, or constructed using funds from the department shall not be used and shall not be intended to be used for sectarian instruction or as a place for religious worship.

321—7.2(249D) Focal points. The area agency on aging shall designate, where feasible, focal points for comprehensive service delivery in each community, giving special consideration to designating multipurpose senior centers as focal points.

7.2(1) Procedures for designating community focal points. The area agency on aging shall specify in the area profile the communities and facilities in which it proposes to designate and develop focal points and shall give special consideration to multipurpose senior centers and ensure that the facility currently or potentially can accommodate the collocation of services. In making the determination, the area agency on aging shall consider:

a. Communities with the greatest incidence of elders with the greatest economic or social need;

b. The delivery pattern of services funded under this part and funded from other sources;

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c. The location of multipurpose senior centers and congregated nutrition sites;

d. The geographic boundaries of communities and natural neighborhoods; and

e. The location of facilities suitable for designation.

7.2(2) Developing collocation of services. The area agency on aging shall:

a. Establish guidelines for operating schedules at the focal point which are convenient for elders in the community;

b. Ensure that information and referral and emergency service programs are provided at the community focal point;

c. Encourage service providers to collocate their services at the focal point; and

d. Encourage coordination among service providers.

321—7.3(249D) Nutrition services.

7.3(1) Purpose of making awards. The area agency on aging may award nutrition services funds to service providers to provide meals and other nutrition services, including outreach and nutrition education to older persons.

7.3(2) Assessment of need. The area agency on aging shall assess biannually the level of need for congregated and home-delivered meals within the planning and service area and must base the awards on that assessment.

7.3(3) Use of funds. The area agency on aging shall ensure that funds are used to:

a. Provide meals in a congregated nutrition site, and provide home-delivered meals based upon a determination of an individual's need.

b. Provide other nutrition services to ensure that the maximum number of eligible individuals, with emphasis on the frail, those with greatest social and economic need, and the isolated will have the opportunity to participate.

7.3(4) Eligibility for congregated nutrition services.

a. A person aged sixty (60) or older and the spouse of the person, regardless of age, are eligible participants of congregated nutrition services.

b. Noneligible individuals may eat at a congregated nutrition site if that meal does not deprive an eligible participant of a meal. Meals may be made available to handicapped or disabled individuals who have not attained sixty (60) years of age but who reside in housing facilities occupied primarily by the elderly at which congregated nutrition services are provided.

7.3(5) Eligibility for home-delivered meals. An elder who is homebound by reason of illness, incapacitating disability, or is otherwise isolated, is eligible to receive a home-delivered meal. The spouse of an elder, regardless of age or condition, may receive a home-delivered meal, if according to criteria determined by the area agency on aging, receipt of the meal is in the best interest of the homebound elder.

7.3(6) Licensed dietitian. Each area agency on aging must utilize the services of a licensed dietitian to provide technical assistance in nutrition program management.

7.3(7) Nutrition performance standards.

a. At least ninety-five percent (95%) of the total number of meals served by an area agency on aging during the fiscal year must be served to elders or their spouse.

b. Each meal served by the nutrition services provider must contain at least one third (1/3) of the nutrient levels as published in the most recent edition of the recommended daily dietary allowances as established by the

Food and Nutrition Board of the National Academy of Sciences — National Research Council.

c. Area agencies on aging shall ensure that the areawide percentage of residents with the greatest economic and social need is proportionately represented in the characteristics of individuals served in the nutrition program as outlined in the preference in service delivery, rule 6.6(249D).

7.3(8) Noncompliance. When a grantee's performance fails to meet the nutrition performance standards, the department shall follow procedures outlined in rule 4.15(249D).

7.3(9) Requirements for area agencies on aging related to nutrition services.

a. Contracts. The area agency on aging shall maintain a contract system according to procedures issued by the department to ensure that congregated and home-delivered nutrition services providers perform in accordance with terms, conditions, and specifications for funding. At a minimum, the procedures shall require that the contract include meal pattern, use of project income, length of contract, cost per unit, and performance requirements to ensure accountability and monitoring.

b. In making awards for congregated nutrition services, the area agency on aging shall:

(1) Select and designate as a congregated meal site any location where meals are served in a group setting with federal AoA nutrition funds or contributions from an AoA federal nutrition program, or both;

(2) Provide for hot or other appropriate meals at least once a day, five (5) or more days a week, including all federal and state holidays that occur on a regularly scheduled serving day in coordination with other community providers;

(3) Require hot or other appropriate meals to be provided in each congregated nutrition site at least once a day, three (3) or more days a week. In a county where there is a site providing meals five (5) or more days a week, other sites may be established which provide meals one (1) or more days a week. Efforts shall be made and documented to the department annually to increase the number of serving days to a minimum of three (3) days each week;

(4) Ensure that any facility housing an AoA program or service will fully comply with federal, state or local health, fire, sanitation, accessibility, and licensure requirements as outlined in subrule 7.1(3). All congregated nutrition sites must be inspected by the department of inspections and appeals and must have a current restaurant license posted in the congregated nutrition site;

(5) Develop procedures to assist other community disaster preparedness services to provide meals to the general public affected by weather-related and emergency situations;

(6) Provide information and referral services, health and human service counseling, recreation activities, and access to nutrition services to participants when such services are needed and not available;

(7) Where feasible and appropriate, make arrangements for the availability of food to elders in weather- and disaster- related emergencies;

(8) Provide activities of interest to elders on each day the congregated meal site is open including a monthly nutrition education program under the supervision of

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a licensed dietitian if the nutrition education provides medically oriented information;

(9) Forbid food service personnel, both paid and volunteer, to work in food service if infected with communicable disease;

(10) Ensure that food service personnel, both paid and volunteer, will practice hygienic food handling techniques;

(11) Ensure that food service personnel, both paid and volunteer, will be provided with job descriptions and standards of performance which will be evaluated annually; and

(12) Provide for ongoing training on safety, hygienic food handling and sanitation for both volunteer and paid food service personnel.

7.3(10) Meal provider assessment. In making awards for congregate nutrition services, the area agency on aging shall require the service providers to assess the individual need for home-delivered meals among participants.

7.3(11) Home-delivered meal requirements for area agencies. In making awards for home-delivered nutrition services, the area agency on aging shall:

a. Provide for home-delivered meals at least once a day, five (5) or more days a week.

b. Where feasible and appropriate, make arrangements for the availability of meals to elders in weather- and disaster- related emergencies.

7.3(12) Home-delivered meal provider requirements. In making awards for home-delivered meals, the area agency on aging shall require the service providers to:

a. Provide other nutrition and supportive services either directly or through referral to meet the need of the homebound elder;

b. Provide nutrition education for recipients that includes emphatic instruction in the storage and preparation of the home-delivered meal;

c. Assess, every six (6) months, the individual need for home-delivered meals among participants provided with home-delivered meals;

d. Provide for home-delivered meals to participants according to the frequency of need determined by procedures required in subrule 7.3(12), paragraph "f." Meals may be hot, cold, frozen, dried, canned or supplemental foods with a satisfactory storage life. The provider is not required to provide meals more than five (5) days per week, but is encouraged to do so.

e. With the consent of the elders or their representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the elders or the household in imminent danger. The area agency on aging should make provision for other agencies to provide services to the homebound elder to reduce isolation and dependency; and

f. The area agency on aging or the home-delivered meals provider, subject to area agency on aging approval, shall establish procedures for the determination of an elder's eligibility for home-delivered nutrition services, including specific criteria for:

(1) Initial and subsequent six (6)-month assessments of the elder's eligibility for home-delivered meals;

(2) Determination of the number of days per week the elder has a need for home-delivered meals;

(3) Determination of the elder's need for other home-delivered nutrition services.

7.3(13) Food-borne illness. The area agency on aging shall develop written procedures for handling suspected

cases of food-borne illnesses. The food service provider shall report the occurrence or suspected occurrence of a food-borne illness to the area agency on aging within twelve (12) hours. The area agency shall notify the department within twelve (12) hours.

7.3(14) Evaluation of providers. Conduct, record, and keep on file systematic on-site evaluations of nutrition service providers on a semiannual basis in order to document program compliance and analyze areas for ongoing monitoring.

7.3(15) Requirements for opening or closing congregate nutrition sites. The department must be notified in writing thirty (30) days before the area agency on aging may open, relocate, or terminate a nutrition site. The notification must include:

a. Reasons for the action;

b. Impact on eligible individuals;

c. Impact on nearby meal sites; and

d. Impact on provision of nutrition-related services.

7.3(16) Food standards. The area agency on aging shall require that the service provider, when purchasing food and preparing and delivering meals, comply with all state and local health laws and ordinances concerning preparation, handling and serving food.

a. Each service provider shall establish and implement procedures on handling foods prepared for a meal but not served. The procedures shall address which foods may be saved, which foods need to be destroyed, and instructions on cooling and storing foods for reuse.

b. All raw fruits and vegetables and other foods utilized shall be free from spoilage, filth or contamination and must be safe for human consumption.

c. Foods prepared, canned or preserved in the home shall not be used. The use of hermetically sealed, noncommercially prepared foods is prohibited because of the history of such food causing food-borne illness.

d. Standardized tested quantity recipes, adjusted to yield the number of servings needed, shall be used to achieve the consistent and desirable quality and quantity of meals.

e. Leftover foods shall not be given away or sold.

7.3(17) Menus.

a. All menus shall be planned for a minimum of four (4) weeks, certified in writing by the licensed dietitian whose services are utilized by the area agency on aging and submitted to the department for review at least two (2) weeks prior to the initial use of the menu. For purposes of audit, area agencies on aging shall keep copies of the certified menus on file for a period of one (1) year.

b. All certified menus shall be posted in a conspicuous location in each congregate meal site and regularly provided to home-delivered meal recipients. The certified menus may be modified occasionally if the provisions of subrule 7.3(16) are maintained and a licensed dietitian or nutrition director is consulted prior to the change.

7.3(18) Special diet menus. The area agency on aging shall ensure that the nutrition service provider provide special menus, where feasible and appropriate, to meet the particular dietary needs arising from the health requirements, religious requirements, or the ethnic backgrounds of eligible individuals.

a. The provider shall use the following criteria to determine feasibility and appropriateness:

(1) Sufficient numbers of elders exist who need the special menus to make the provision practical;

(2) Skills and food necessary to provide the special menus are available.

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b. Special diet menus must be planned under the supervision of a licensed dietitian in accordance with a current diet manual approved by the executive director and supplied to each area agency on aging by the department. Certified menus must be submitted to the department at least two (2) weeks prior to the initial use of the menus.

c. A written physician's order for each elder requesting a special diet shall be obtained prior to receipt of the meal, and kept on file where the meal is prepared and served. The order shall be interpreted by a licensed dietitian and the individual's physician.

d. The service provider shall have available for use, upon request, appropriate food containers and utensils for blind and handicapped participants.

7.3(19) USDA food assistance programs.

a. The area agency on aging shall have an agreement with the department to receive USDA commodities, cash, or a combination of commodities and cash.

b. The department shall allocate all food, cash, or the combination of food and cash received from USDA to area agencies on aging based on each area agency on aging's proportion of the total number of meals served to eligible recipients in the state.

c. The area agency on aging shall comply with the requirements of 7 CFR, Part 250, for participation in the USDA program.

d. The area agency on aging shall maintain perpetual inventories of all USDA foods at each site and storage area, and must submit a quarterly areawide inventory to the department within thirty (30) days after the reporting period.

e. Nutrition service providers shall accept and use appropriate USDA foods made available by the area agency on aging, and shall ensure appropriate and cost-effective arrangements for the transportation, storage, inventory, and use of the food.

f. USDA commodities shall be consumed as food only and shall not be sold, exchanged, traded, transferred, destroyed, or otherwise disposed of for any reason without prior approval from the department.

g. The area agency on aging shall report the loss, theft, damage, spoilage, or infestation of USDA commodities to the department within five (5) working days to initiate claim action.

h. An area agency on aging which receives cash in lieu of commodities shall spend all cash received from the USDA to purchase United States agricultural food items.

7.3(20) Food stamp program. The area agency on aging and nutrition service providers shall assist participants in taking advantage of benefits available to them under the food stamp program by providing current information to participants in both the congregate and home-delivered meals program. Activities shall be coordinated with agencies responsible for administering the food stamp program and by being certified to accept and accepting food stamps as contributions for meals.

7.3(21) Noncompliance. When a grantee's performance falls below these standards, the department shall follow the procedure identified in rule 4.15(249D).

321—7.4(249D) Information and referral services.

7.4(1) General rule. The multiyear area plan shall provide for information and referral services sufficient

to ensure that elders within the planning and service area have reasonably convenient access to the service.

7.4(2) English not principal language. In areas in which three percent (3%) of the elder population does not speak English as their principal language, the service provider must provide information and referral services in the language spoken by elders.

7.4(3) Provider requirements. A provider of information and referral services must:

a. Develop and maintain current information about services and opportunities available to elders;

b. Develop and maintain current lists of elders in need of services and opportunities and of services needed but not available;

c. Employ a trained staff to inform elders about those opportunities and services and assist elders to take advantage of them;

d. Make available at least four (4) hours of training annually for information and referral staff and volunteers; and

e. Obtain the informed written consent of the elders or an authorized representative before disclosing information about an elder.

321—7.5(249D) Legal assistance.

7.5(1) Provisions and restrictions. The provisions and restrictions in this subrule apply only to legal assistance providers and only when they are providing legal assistance under section 307(a)(15) of the Act as amended.

7.5(2) Provider requirements. The area agency on aging shall award funds to the legal assistance provider(s) that most fully meet the standards in this subrule. The legal assistance provider(s) shall:

a. Have staff with expertise in specific areas of law affecting elders in economic or social need, for example, public benefits, institutionalization, and alternatives to institutionalization;

b. Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting elders with economic or social need;

c. Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care resident's advocate/ombudsman program;

d. Demonstrate the capacity to deliver legal services to institutionalized, isolated, and homebound elders effectively;

e. Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language; and

f. Coordinate the provision of legal assistance with private bar attorneys and legal services corporation.

7.5(3) Client income disclosure. A legal assistance provider may not require an elder to disclose information about income or resources as a condition for providing legal assistance under this part.

7.5(4) Client information. A legal assistance provider may ask about the elder's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an elder may be eligible.

7.5(5) Assistance allowed. Nothing in this section is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

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7.5(6) Provider compliance with OAA regulations. The legal assistance provider and its attorney(s) and employee(s) shall comply with the following Code of Federal Regulation subparts as published April 1, 1985: 45 CFR Section 1321.73(f), pertaining to the outside practice of law; Section 1321.73(g), pertaining to political activities; Section 1321.73(h) pertaining to fee generating cases; Section 1321.73(i), pertaining to prohibited activities; Section 1321.73(j), pertaining to administrative and legislative activity; Section 1321.73(k), pertaining to documentation of administrative and legislative activities; Section 1321.73(1), pertaining to Older Americans Act fund use; Section 1321.73(m), pertaining to publicity or propaganda related to legislation; Section 1321.73(n), pertaining to article, newsletter, and other publication preparation; Section 1321.73(o), pertaining to attempts to influence federal, state, or local agency decision making; and Section 1321.73(p), pertaining to activities not prohibited.

**CHAPTER 8
LONG-TERM CARE
RESIDENT'S ADVOCATE/OMBUDSMAN**

321—8.1 (249D) Purpose.

8.1(1) General rule. The department shall operate a statewide long-term care resident's advocate/ombudsman program in cooperation with appropriate state and local agencies such as the office of the citizen's aide/ombudsman, the Iowa department of public health, the department of inspections and appeals, the Iowa department of human services and the area agencies on aging.

8.1(2) Care review committee program administration. The program shall include the administration of the care review committee program identified in Iowa Code section 249D.4.

321—8.2(249D) Long-term care resident's advocate/ombudsman duties.

8.2(1) Program administration. The department shall employ an individual (hereinafter called the resident's advocate/ombudsman) to administer the long-term care resident's advocate/ombudsman program in accordance with the requirements of the Act and Iowa Code chapter 249D.

8.2(2) Duties of the resident's advocate/ombudsman. The resident's advocate/ombudsman shall perform the following duties:

a. Investigate and resolve complaints and grievances that may adversely affect the health, safety, welfare or rights of residents;

b. Administer the care review committee system pursuant to these rules and assist the committees in the performance of their duties through training and technical assistance;

c. Monitor the development and implementation of federal, state and local laws, regulations and policies that relate to long-term care facilities;

d. Provide information and training to the public and to state and local agencies about problems of persons in long-term care facilities;

e. Train staff and volunteers upon request;

f. Assist in the development of organizations to participate in the long-term care resident's advocate/ombudsman program; and

g. Comment and make recommendations on administrative actions under consideration by an agency or authority which may affect residents in long-term care facilities.

321—8.3(249D) Access requirements. The resident's advocate/ombudsman shall have access to long-term care facilities, private access to residents, access to the personal and medical records of residents and access to other records maintained by the facilities or governmental agencies or agents thereof, pertaining to the complaint(s) being investigated.

8.3(1) Visits to facilities. The resident's advocate/ombudsman may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the resident's advocate/ombudsman's presence, the resident's advocate/ombudsman may communicate privately and without restriction with any resident who consents to the communication.

8.3(2) Visits to resident's living area. The resident's advocate/ombudsman shall not observe the private living area of any resident who objects to the observation.

8.3(3) Restrictions on visits. The facility staff member in charge may refuse or terminate a resident's advocate/ombudsman's visit with a resident only when written documentation is provided to the resident's advocate/ombudsman that the visit is a threat to the health and safety of the resident. The restriction shall be ordered by the resident's physician and the order shall be documented in the resident's medical record.

8.3(4) Request agency assistance. The resident's advocate/ombudsman may request cooperation, assistance and data that will enable the resident's advocate/ombudsman to execute any of the resident's advocate/ombudsman's duties and powers under the Older Americans Act from any governmental agency or agent thereof or area agency on aging.

8.3(5) Copies of medical and personal records. All medical and personal records maintained by a facility shall be confidential and shall not be available for copying by the resident's advocate/ombudsman except under the following circumstances:

a. The information is requested by the resident's advocate/ombudsman who provides the facility with a written waiver signed by the person about whom the information is sought, the person's guardian, conservator, legal representative or responsible party, as defined under rule 470—58.1(135C). Each signed consent shall designate specifically the person or agency to whom the information is to be provided, and the information shall be provided only to that person or agency; or

b. The information is sought by a court order.

8.3(6) Records needed to resolve complaints. Except as limited by subrule 8.3(5), the resident's advocate/ombudsman may review and copy any files or other records of a long-term care facility, or of any government agency pertaining to the care of residents that may be considered necessary to the resident's advocate/ombudsman for the resolution of a complaint.

321—8.4(249D) Authority and responsibilities of the department.

8.4(1) Confidentiality and disclosure. The complaint files maintained by the resident's advocate/ombudsman program shall be maintained as confidential information and may not be disclosed unless the resident's advocate/ombudsman authorizes disclosure.

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a. The resident's advocate/ombudsman shall not disclose the identity of any complainant or resident, or any identifying information obtained from a resident's personal or medical records unless the complainant or resident, or the legal representative of either, consents in writing to the disclosure and specifies to whom the information may be disclosed.

b. The resident's advocate/ombudsman may use materials in the files for the preparation and disclosure of statistical, case study and other pertinent reports provided that the means of discovering the identity of particular persons is not disclosed.

8.4(2) Referral of complaints or grievances.

a. When the resident's advocate/ombudsman encounters facts which may indicate the failure to comply with state or federal laws or regulations, the resident's advocate/ombudsman shall refer the case to the appropriate agency.

b. When the resident's advocate/ombudsman encounters facts that may warrant the institution of civil proceedings, the resident's advocate/ombudsman shall refer the case to the appropriate legal assistance.

c. When the resident's advocate/ombudsman encounters facts which may indicate the misconduct or breach of duty of any officer or employee of a long-term care facility or government agency, the resident's advocate/ombudsman shall refer the case to the appropriate authorities.

d. The resident's advocate/ombudsman program shall initiate follow-up activities on all referred complaints and grievances.

8.4(3) Reporting. The resident's advocate/ombudsman program shall maintain a statewide, uniform reporting system to collect and analyze information on complaints and grievances in long-term care facilities in accordance with requirements of the Act and Iowa Code section 249D.4.

a. Information provided by the department of inspections and appeals, individuals and agencies to whom cases were referred, and care review committees shall be used in the reporting system.

b. No information from this reporting system that threatens the confidentiality of residents or complainants shall be made public without the written permission of affected residents or complainants.

c. Any information from this reporting system which identifies a specific facility shall state that problems identified in that facility have been corrected, if such problems identified have been corrected to the satisfaction of the resident's advocate/ombudsman.

d. The complaint and grievance documentation and reporting system shall include, where available:

- (1) The source and date of the complaint or grievance;
- (2) Name, location, and type of facility;
- (3) Facility licensure and certification status;
- (4) Description of the problem;
- (5) Billing status of the resident;
- (6) Method by which the complaint was received; and
- (7) Description of follow-up activities and date of resolution.

e. The resident's advocate/ombudsman program shall prepare an annual report analyzing the complaint and statistics collected and provide this report, by January 15 of each year, to AoA, the office of the governor, the general assembly of Iowa, and the Iowa department of inspections and appeals, the Iowa department of human services, and area agencies on aging.

CHAPTER 9

CARE REVIEW COMMITTEES

321—9.1(249D) Care review committees established.

9.1(1) Committee for each licensed facility. A care review committee shall be established for each licensed health care facility as defined in Iowa Code section 135C.1 in accordance with Iowa Code section 135C.25 and chapter 249D and shall operate within the scope of these rules.

9.1(2) The committee shall consist of at least three (3) members or a number sufficient to maintain a ratio of one (1) member to fifteen (15) residents. The maximum number of members shall be established by the committee with the approval of the department.

9.1(3) Committee member residence. Members shall reside within the service area of the facility.

9.1(4) Appointment to more than one (1) facility. The committee, or individual members, may function for more than one (1) facility, subject to being appointed to each facility.

321—9.2(249D) Application for committee membership. Any individual may apply to the department for membership. Area agencies on aging and other organizations are encouraged to recommend names of potential volunteers for care review committee membership to the department.

9.2(1) Application forms. Application forms may be obtained from any area agency on aging or the department at the address identified in rule 2.1(249D).

9.2(2) Submission of forms. Each applicant shall complete and submit an application for membership to the department at the address identified in rule 2.1(249D).

9.2(3) Membership restriction. Applications for membership on care review committees will be accepted unless the applicant has an ownership interest in a facility; or is employed by the facility; or is related to an employee, board member, or licensee of the facility; or is a public employee involved with the sponsoring or placement of residents in the facility; or is an administrator of the long-term care facility; or is a professional consultant to the facility. Relatives shall be defined as any one of the following: father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepchild, stepsister, half-sister, half-brother, grandparent or grandchild.

9.2(4) Committee membership for facilities for mentally ill, mentally retarded, or developmentally disabled. Applications for care review committee membership for any facility caring primarily for persons who are mentally ill, mentally retarded, or developmentally disabled shall be accepted only after consultation with the director of the division of mental health, mental retardation and developmental disabilities of the Iowa department of human services. The applications shall be considered acceptable if the director of the division of mental health, mental retardation and developmental disabilities of the Iowa department of human services institutes no disqualifying action within ten (10) days of notification of the proposed appointments.

321—9.3(249D) Appointment to care review committees.

9.3(1) Notification. Members of the care review committee shall be appointed from individuals whose

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application for membership has been accepted according to this rule. Appointments shall be made by letter within forty-five (45) days of notification of a vacancy by the executive director or designee. Appropriate area agencies on aging and facilities shall be notified of the appointment.

9.3(2) Traits or skills. Appointment of care review committee members may be made from accepted applicants who may, but are not required to, possess a combination of the following traits or skills: knowledge of the long-term care system; understanding of the aging process; training in the human services field; experience in complaint identification, processing, and documentation; a commitment to the welfare and rights of residents; and understanding of the types and needs of clients served by the facility.

9.3(3) Preference. Preference for membership on care review committees may be given to applicants with backgrounds and expertise that differ from existing members of the same committee.

321—9.4(249D) Cancellation of appointments to care review committees.

9.4(1) Reasons for cancellation. A care review committee member's appointment may be canceled by the executive director for any of the following reasons: falsification of information on the application for membership form, acting as a member without appointment, attending less than one-half (½) of the meetings convened each year by the care review committee chairperson, voluntary resignation, and actions which are found by the executive director to violate these rules or the intent of the resident's advocate/ombudsman program.

9.4(2) Filing an objection. A facility administrator who objects to the membership of the care review committee for that facility may file an objection with the executive director. The objection shall be considered a confidential complaint and shall be investigated as such.

9.4(3) Notification of cancellation. The executive director shall notify, in writing, the remaining committee members, the appropriate area agency on aging, and the facility of the cancellation of care review committee members' appointments.

321—9.5(249D) Request for reconsideration of appointment or cancellation of appointment.

9.5(1) Timeline of request. A request for reconsideration of the decision of the executive director concerning the appointment or cancellation of a care review committee member may be made in writing to the department within thirty (30) days of the written notice of the executive director's decision.

9.5(2) Timeline for response. The executive director shall consider the request and notify the requesting party of the director's decision regarding the request within thirty (30) days of receiving written notice of the request.

321—9.6(249D) Care review committee structure and meetings.

9.6(1) Structure. Every committee shall have a chairperson and secretary selected by the membership. The chairperson shall coordinate the activities of the committee. The secretary shall record minutes of each meeting on forms provided by the department and distributed by area agencies on aging, submit and prepare reports as necessary.

9.6(2) Meetings. The committee shall meet at least quarterly and on other occasions as required to

accomplish its responsibilities. The chairperson shall notify all members of the time and place of each meeting.

a. The administrator or staff of the facility shall not attend committee meetings except upon request of the committee.

b. Confidential information shall not be discussed during meetings when members of the general public are present.

c. The secretary shall submit written minutes to the administrator and to the department at the conclusion of each meeting.

d. Committee minutes shall be retained by the facility for a period of at least two (2) years and shall be available to the department of inspections and appeals and the department of elder affairs upon request.

321—9.7(249D) Responsibilities of the committee.

9.7(1) Duties. The committee shall represent and advocate for the rights of residents of the facility.

9.7(2) The committee or individual members shall:

a. Conduct a review of each resident annually according to the procedures identified in rule 9.10(249D);

b. Investigate complaints and grievances according to the procedures established in rule 9.11(249D); and

c. Attend a training session approved by the department at least once per year.

321—9.8(249D) Committee access and assistance.

9.8(1) Access. The committee shall have access to the facility and private access to the residents.

9.8(2) Assistance to the committee. The committee may request information, advice and counsel from the facility administrator, medical or health professionals or specialists, area agencies on aging, the department or from other state and local agencies.

a. The physician's certification of care shall be made available to the committee by the administrator of the facility.

b. Physicians who have patients residing in the facility shall have the responsibility of assisting the committee upon request.

c. Upon contacting anyone on behalf of residents in the performance of duties, the care review committee member shall clearly identify oneself as a care review committee member who is a volunteer advocate and shall clearly state the purpose and justification for this contact.

321—9.9(249D) Confidentiality.

9.9(1) Restriction on access. Care review committee members shall not have access to the following:

a. Medical, financial or personal records of the residents; or

b. Records of the social services department of the facility.

9.9(2) Nondisclosure of information. The committee shall not disclose information concerning the residents or the operation of the facility in a manner that will identify individuals or the facility, except to the resident's advocate/ombudsman program or as requested in proceedings involving the investigation of a facility by the department of inspections and appeals.

321—9.10(249D) Committee procedures.

9.10(1) Resident reviews. To evaluate the degree of satisfaction that residents have with the quality of life experienced in the facility in which they reside, the following procedures shall be used:

a. Resident reviews shall be recorded on a form supplied by the department and distributed by area agencies on aging;

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b. The committee shall establish a schedule for at least one (1) private interview annually with each resident in the facility;

c. Responses to questions asked of residents or their representatives will be reported on the interview section of the form, except as provided in subrule 9.10(4).

9.10(2) Review visits. Committee members shall make visits without prior notice to the facility to observe residents at different times of the day. Committee members shall notify the staff person in charge of the facility that the member(s) is in the facility. Comments made after observing residents will be entered on the comments section of the form except as provided in subrule 9.10(4).

9.10(3) Review reports. The report of each resident review shall be discussed and provided to the administrator of the facility following the private interview of the resident. Reports shall be retained by the facility for a period of at least two (2) years. The report shall be available to the department of inspections and appeals and department of elder affairs, upon request.

9.10(4) Complaints and grievances during reviews. Complaints and grievances identified by the resident during resident reviews shall be handled according to procedures identified in subrule 9.11(2) and shall not be recorded on resident review forms.

321—9.11(249D) Committee response to complaints and grievances.

9.11(1) General rule. Throughout the investigation of all complaints and grievances, the committee shall maintain objectivity and act as advocates for residents without being adversaries of the facility.

a. The dignity and privacy of residents will be maintained by all persons involved in a complaint or grievance investigation.

b. The committee may receive and investigate complaints or grievances regarding the rights and welfare of residents of a facility using the procedures appropriate to the source of the complaint, either from an individual or department of inspections and appeals.

c. The committee shall solicit the input of the complainant or resident regarding the complainant's or resident's wishes on action to be pursued by the committee.

d. The purpose of the committee response to complaints or grievances is to seek the mutually satisfactory resolution of problems and prevent unnecessary recourse to regulatory action against a facility. This purpose shall not, however, prevent such regulatory action when necessary to protect or achieve the rights of residents.

9.11(2) Action upon receipt of a complaint or grievance. Upon receipt of a complaint or grievance, the committee will contact the facility administrator to discuss the allegations, only if such contact does not violate confidentiality, and shall forward a copy of the complaint or grievance to the resident's advocate/ombudsman.

a. Information which may identify the complainant or resident shall be confidential unless the complainant or resident has given written permission to the care review committee for the disclosure of such identity.

b. A committee member will investigate the complaint or grievance within fourteen (14) calendar days of receipt.

c. The investigating care review committee member shall make an unannounced visit to the facility, and upon

arrival at the facility, notify the staff person in charge of the facility that the member is in the facility.

d. The committee member investigating the complaint or grievance will, to the extent possible, ascertain the facts of the situation by talking with residents, staff and others who might have information regarding the matter under investigation and through personal observations of conditions and activities in the facility.

e. The committee shall attempt to resolve the situation to the mutual satisfaction of the facility administrator and the complainant.

f. If, after fourteen (14) days, a resolution has not been reached, the committee shall file a written report with the resident's advocate/ombudsman program. The report shall document all attempts of resolution pursued by the committee. The resident's advocate/ombudsman program shall forward a copy of the report to the department of inspections and appeals.

g. The committee will inform the complainant of any action taken in response to the complaint or grievance within twenty (20) days of receipt.

321—9.12(249D) Complaints referred from the department of inspections and appeals. The following procedures shall apply to complaints referred by the department of inspections and appeals to the department of elder affairs:

9.12(1) Referral process. Complaints or grievances received or initiated by the department of inspections and appeals shall be referred for investigation by the care review committee by transmittal to the resident's advocate/ombudsman program at the department at the location identified in subrule 2.1(2).

9.12(2) Confidentiality. Information that may identify the complainant or resident shall be confidential.

9.12(3) Notification. The resident's advocate/ombudsman program will provide adequate information within three (3) days to a member of the appropriate care review committee to investigate the allegations. Written notification will be provided within seven (7) days.

9.12(4) Investigation. A committee member will investigate the complaint or grievance in accordance with rule 9.11(249D).

321—9.13(249D) Role of the area agencies on aging. Area agencies on aging shall carry out the following activities in support of the resident's advocate/ombudsman program:

1. Advise the resident's advocate/ombudsman program on the training needs of care review committees in the planning and service area of the area agency;

2. Assist the resident's advocate/ombudsman program in training and coordinating the training of care review committee members;

3. Distribute department-provided forms needed by care review committees;

4. Assist care review committees to obtain legal and other technical assistance;

5. Recruit applicants for membership on care review committees; and

6. Assist in the resolution of complaints or grievances being investigated by care review committees or the resident's advocate/ombudsman program.

321—9.14(249D) Approval of training.

9.14(1) Potential provider requirements. The provider of proposed training for care review committee members shall submit the training agenda, facility, and objectives

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to the resident's advocate/ombudsman program for approval thirty (30) days prior to the date of the proposed training.

9.14(2) Timeline for approval or disapproval. The resident's advocate/ombudsman program shall approve or disapprove the proposal and notify the provider of the proposed training within ten (10) working days of receipt of the proposal.

9.14(3) Provider reports. Upon completion of the care review committee training, the provider of the training shall submit a list of the name and address of each care review member trained and the name and address of the long-term care facility at which each trained care review committee member serves, to the resident's advocate/ombudsman program within ten (10) days following completion of the training course.

**CHAPTER 10
SENIOR COMMUNITY SERVICE
EMPLOYMENT PROGRAM (SCSEP)**

321—10.1(249D) Scope and purpose.

10.1(1) Scope. All procedures and rules used to operate this program shall be in accordance with Title V of the Older Americans Act as amended in 1984, and 20 CFR 674, and these rules.

10.1(2) Purpose.

a. The SCSEP is designed to provide, foster and promote useful, part-time community service employment for persons with low incomes who are fifty-five (55) and older.

b. Services provided under this program shall contribute to the general welfare of the community.

c. Employment in the program shall result in an increase in employment opportunities which would not otherwise be available.

321—10.2(249D) Eligibility for service.

10.2(1) Individual's eligibility. To be eligible for participation in the SCSEP, an applicant shall:

a. Be aged fifty-five (55) or older; -

b. Be a current resident of the state of Iowa; and

c. Meet income guidelines established annually by the U.S. Department of Labor.

10.2(2) Priority eligibility. A person who is eligible and who has priority status as defined in subrule 10.3(1), paragraph "a," will be given first consideration for an SCSEP position.

321—10.3(249D) Program requirements.

10.3(1) Subproject sponsor responsibilities. Each SCSEP subproject sponsor shall:

a. Ensure that priority in providing employment positions shall be given to eligible individuals who are aged sixty (60) or over, are applying for reenrollment, are below the poverty level, or who have temporary positions;

b. Meet performance goals based on Department of Labor guidelines and additional goals established in the multiyear area plan;

c. Coordinate the SCSEP with the retired Iowans community employment program and the Job Training Partnership Act, older individuals program, to ensure opportunities for unsubsidized employment;

d. Designate a member of its staff as an SCSEP coordinator to ensure timely reporting and performance of required functions;

e. Provide evidence that enrollees reside in the community near where they are employed;

f. Provide evidence that enrollees are not performing work which is the same or essentially the same as that performed by any other person who is displaced;

g. Assist enrollees in attending approved training sessions sponsored by the department or other agencies or organizations;

h. Provide expense reimbursement and regular compensation for enrollees attending required training;

i. Ensure that training of enrollees does not exceed two hundred sixty (260) hours during a fiscal year;

j. Provide safe and healthful conditions for enrollees at worksites;

k. Provide enrollees with reimbursement for expenses such as transportation which is required in the direct performance of the job;

l. Ensure that enrollees are covered by the state unemployment insurance plan;

m. Ensure that opportunities for physical examinations are provided to enrollees annually but not more than fifteen (15) months from the previous physical, or that a signed physical examination waiver is obtained;

n. Ensure that no enrollee works more than thirteen hundred (1300) hours during each fiscal year;

o. Provide enrollees and host agencies with orientation to program purposes, goals and requirements;

p. Provide supportive services where needed by an enrollee for participation in the program;

q. Provide written job descriptions to enrollees immediately after entry into the program;

r. Complete enrollment or reenrollment forms for each individual in the program. Recertification forms are completed within twelve (12) months of enrollment or reenrollment and at least once during each program year;

s. Provide each enrollee with a copy of the host agency grievance procedures, and the subproject sponsor's grievance procedures;

t. Provide each enrollee with information about prohibited political activity;

u. Ensure that nepotism is not practiced in the hiring of enrollees;

v. Ensure that minorities and limited-English-speaking individuals are enrolled in the program at least in proportion to their number in the eligible population in the planning and service area;

w. Maintain the authorized enrollment level and provide for temporary positions with approval of the department when underspending occurs;

x. Perform evaluations of each host agency at least annually;

y. Coordinate and cooperate with national sponsors in the establishment of authorized positions in each county in accordance with equitable distribution requirements; and

z. Maintain records as required in these rules.

10.3(2) Department responsibilities. The department shall:

a. Issue instructions for application for SCSEP funds in the multiyear area plan;

b. Monitor subproject sponsors at least annually;

c. Provide technical assistance to subproject sponsors upon request or when monitoring indicates compliance violations or failure to meet performance goals;

d. Provide training workshops for enrollees, SCSEP coordinators and other subproject sponsor employment staff;

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e. Coordinate the allocation of authorized positions with national sponsors according to equitable distribution requirements;

f. Report to the Department of Labor annually on the status of equitable distribution efforts;

g. Resolve complaints of applicants, enrollees, subproject sponsors and host agencies following these procedures:

(1) An applicant or enrollee shall report in writing to the subproject sponsor an alleged violation of law or perceived unfair treatment within fifteen (15) days of its occurrence.

(2) The subproject sponsor and the host agency shall develop complaint procedures which provide for resolution within fifteen (15) days of the official filing.

(3) Applicants or enrollees may file an appeal with the department within fifteen (15) days of a negative determination or a failure to act by a host agency or the subproject sponsor.

(4) The department shall immediately refer the complaint to the department of inspections and appeals for its consideration. The department of inspections and appeals shall render a decision within fifteen (15) days after receipt of the complaint from the department.

(5) Complaints alleging violation of law may be appealed to the Department of Labor if not resolved by the host agency, subproject sponsor or the department within sixty (60) days of the original filing.

(6) Complaints alleging discrimination on the basis of race, color, sex, national origin, handicap or age, which are not resolved by the host agency, subproject sponsor or the department within sixty (60) days, may be filed with the Director, Office of Civil Rights, U.S. Department of Labor, Washington, D.C. 20210. These complaints will be handled in accordance with the procedures in 29 CFR parts 31 and 32.

(7) Complaints not alleging discrimination or violation of statute may be appealed to the department, but are not subject to appeal to the Department of Labor.

h. Report to the Department of Labor each quarter or as required on SCSEP activity and enrollee characteristics;

i. Coordinate the SCSEP with the job service division of the department of employment services, the department of education, the department of economic development and other agencies which provide employment services to elder Iowans; and

j. Maintain records as required by subrule 5.12(1) of these rules.

321—10.4(249D)Funding criteria.

10.4(1) Application.Application for SCSEP funds shall be made annually by area agencies on aging as part of the multiyear area plan submitted to the department for approval and shall conform to the procedures and requirements established in the multiyear area plan outlined in rules 4.20(249D) and 4.21(249D).

10.4(2) Award.Upon approval by the department, an award of funds shall be made to subproject sponsors each fiscal year subject to funding by the U. S. Department of Labor, and the requirements for equitable distribution.

10.4(3) Denial of award.An application for SCSEP funding by a subproject sponsor may be denied if the subproject sponsor does not perform according to the

guidelines of these rules or fails to meet the goals of their multiyear area plan approved by the department.

10.4(4) Appeal.An appeal to a decision made pursuant to these rules may be made according to the procedures outlined in subrule 10.3(2), paragraph "g," of these rules.

10.4(5) Reallocation. Reallocation of SCSEP funds may be made by the executive director according to the criteria defined in subrule 5.7(1).

321—10.5(249D) Monitoring and recordkeeping.

10.5(1) Subproject sponsor duties. The subproject sponsor shall:

a. Submit performance, fiscal and program reports to the department according to instructions provided each year in the reporting manual;

b. Maintain files on each SCSEP enrollee containing the following: application, enrollment form, recertifications (if applicable), skills assessments, training record, terms of employment agreement, physical examination report (or properly executed waiver), job description, performance evaluations, disciplinary actions, payroll records, and termination forms (if applicable); and

c. Maintain files for each host agency or worksite, and each file shall include:

(1) The host agency or worksite agreement containing relevant program requirements;

(2) Evidence that the host agency or worksite enrollee supervisor has received orientation; and

(3) Host agency or worksite evaluation reports.

10.5(2) Department duties. The department shall:

a. Conduct desk monitoring of the SCSEP and may do on-site monitoring if circumstances require an inspection of subproject sponsor records;

b. Conduct an on-site assessment of each SCSEP subproject at least annually. The subproject sponsor shall be informed in writing of findings and recommended corrective actions. Assessment reports and responses shall be kept on file at the department, and shall be open to inspection by authorized state and federal officials;

c. Maintain files on SCSEP enrollees that include applications, recertifications, physical examination records, physical exam waivers, and termination forms (if applicable);and

d. Maintain financial records as required by statute, regulation, administrative rule, or technical bulletin.

CHAPTER 11**RETIRED IOWANS COMMUNITY EMPLOYMENT PROGRAM (RICEP)****321—11.1(249D) Retired Iowans community employment program.**

11.1(1) Scope and purpose. These rules are intended to implement 1986 Iowa Acts, chapter 1245, section 1020. The purpose of the retired Iowans community employment program (RICEP) is to assist eligible Iowans in preparing for and finding suitable employment.

11.1(2) Description. The department shall allot RICEP funds annually, to the extent that funds are available, according to established procedures, to area agencies on aging or other program operators throughout the state to employ older worker specialists. The older worker specialist shall provide individualized job search assistance, conduct job development and perform advocacy functions for Iowa's eligible individuals.

11.1(3) Program requirements. Each retired Iowans community employment program operator shall adhere to the following criteria:

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a. Of the total number of individuals served by the program:

(1) A minimum of ninety-five percent (95%) shall be fifty-five (55) years of age or older;

(2) Five percent (5%) may be between forty-five (45) and fifty-five (55) years of age; and

(3) A minimum of eighty-five percent (85%) shall be unemployed at the time of the application.

b. Program operators shall:

(1) Consider participants of subsidized employment programs as unemployed workers;

(2) Accept eligibility information provided by participants; and

(3) Meet performance standards based on a formula established annually by the department which considers the number of persons aged fifty-five (55) and older in the area served by the program operators and the unemployment rate of individuals aged fifty-five (55) and over in the area.

c. The older worker specialist shall work one-half (½) of the older worker specialist's working time in an office of the job service division of the department of employment services within each planning and service area unless it can be demonstrated that an alternative arrangement will provide more effective service. A schedule of the older worker specialist's normal office hours shall be established and posted in an office of the job service division of the department of employment services.

d. Written agreements shall be established between the program operator and the job service division of the department of employment services defining coordination, office arrangements and accessibility to older worker applications and job orders.

11.1(4) Eligibility for service. To be eligible for participation in the RICEP program, a person shall be:

a. Aged forty-five (45) or older;

b. A current resident of the state of Iowa; and

c. Unemployed or underemployed at the time of application.

11.1(5) Program operator requirements.

a. Application for RICEP funds shall be made annually by the area agencies on aging as part of the multiyear area plan submitted to the department for approval and shall conform to the same time requirements, or by other entities according to procedures established by the department.

b. Upon approval by the Iowa department of elder affairs, an award of funds will be made to program operators in the state each fiscal year subject to funding by the general assembly of Iowa.

c. An application for RICEP funding by a program operator may be denied if the operator does not perform according to guidelines of these rules or fails to meet the goals of the multiyear area plan approved by the department.

d. An appeal to a decision made pursuant to these rules may be made according to the procedures in rule 2.7(249D).

11.1(6) Monitoring and recordkeeping.

a. Performance, program and fiscal reports shall be submitted to the department according to instructions provided each fiscal year in the fiscal and performance reporting manual.

b. The program operator shall also maintain program, performance and fiscal records as required in OMB

circular A-110, July 20, 1976, or applicable state accounting procedures.

c. All records are subject to inspection by the department or an officially designated representative, and other federal or state officials as necessary.

d. Each RICEP worker shall be evaluated at least annually by the RICEP operator to ensure that the goals of the program are being met.

e. The program operator shall provide a quarterly report to the department on the progress toward the operator's stated goals.

f. RICEP programs shall be assessed on-site at least annually by the department. The annual assessment reports, and the required corrective actions to be taken by the program operator will be provided to the RICEP program operators and kept on file at the department for a period of at least three (3) years.

CHAPTER 12

COORDINATION WITH THE JOB TRAINING PARTNERSHIP ACT (JTPA)

321—12.1(249D) Scope and purpose. Coordination shall be maintained between the senior employment programs operated by the department of elder affairs and the Job Training Partnership Act in order to improve employment services for elders.

321—12.2(249D) JTPA annual plan.

12.2(1) The department shall convene a meeting of the interdepartmental coordination committee (IDCC) to develop a listing of all employment services provided to elders by each department and to discuss coordination mechanisms.

12.2(2) The interdepartmental coordination committee shall prepare a coordination plan for submission to the state job training coordinating council by September 30 of each year.

12.2(3) Each department participating as members of the interdepartmental coordination committee shall maintain records, compile data and share information in accordance with the coordination agreement.

321—12.3(249D) Interdepartmental coordination committee annual report. By July 31 of each year, the interdepartmental coordination committee will prepare a joint report describing the services provided to elder Iowans, assessing the extent to which coordination was achieved, and making recommendations for improving coordination. The department of elder affairs will coordinate the preparation of the report.

CHAPTER 13

IOWA ELDERLAW EDUCATION PROGRAM

321—13.1(249D) Purpose. The purpose of the Iowa elderlaw education program is to deliver legal services to elder Iowans while increasing the number of law school students with specific, practical work experience in the provision of legal services to elders.

321—13.2(249D) Description. Law school clinical programs with the potential to operate in Iowa and provide legal services to elders are eligible to apply for a grant from the department. Grants will be awarded on a competitive basis. Application forms and instructions shall be issued by the department. Eligible programs may make application to the department which will award grants based on criteria described in

ELDER AFFAIRS, DEPARTMENT OF[321] (*cont'd*)

these rules and on the information provided by the applicants. Contractual agreements specifying the terms of the grant award shall then be executed between the department and successful applicants.

321—13.3(249D) Application for grants.

13.3(1) Application submission. Applicants shall submit applications to the department at the address identified in subrule 2.1(2).

a. Applications shall be in the form prescribed by the department and shall contain the information identified in subrule 13.3(2).

b. The applications shall be submitted according to the timeline identified in rule 13.6(249D).

13.3(2) Application contents. Each application shall contain the following information:

a. A description of the applicant organization including proposed office locations and geographic areas in Iowa proposed to be served by the applicant;

b. An analysis of the need for legal services in the geographic areas of the state to be served by the applicant;

c. A description of the activities proposed to be undertaken and the services to be provided by the applicant and supported by the Iowa elderlaw education program;

d. The amount of grant funds requested;

e. A comprehensive budget for the law school clinical program detailing all expected amounts and sources of funding and the planned amounts and types of expenditures for the project period;

f. A description of how the proposed activities will accomplish the purposes of the Iowa elderlaw education program including the amount and types of legal services that will be provided and the number of law students receiving work and education services;

g. A description of the capacity of the applicant to perform the proposed activities including the past performance of the applicant in similar programs, the demonstrated ability of the applicant to work cooperatively with other organizations providing legal or other services to elders, and such other information as may be specified by the department; and

h. Assurances that the applicant will establish at least one (1) office in Iowa, will provide legal services to the elder residents of the state, and will meet the requirements of legal services providers contained in rule 7.5(249D).

13.3(3) Review and rating of applications.

a. The department shall conduct a preliminary review of each application to determine if it is submitted by an eligible applicant and that the application is complete. Applications which do not meet these criteria will not be considered for funding.

b. Completed applications submitted by eligible applicants will be rated by the department based on the following factors to determine the priority of applications for funding:

FACTOR 1. The need for, amount and type of legal service to be provided during the project period as a direct result of activities proposed by the applicant (maximum points, 400).

FACTOR 2. The number of law students expected to receive work and educational experience during the project period as a result of the activities proposed by the applicant (maximum points, 400).

FACTOR 3. The extent to which other sources of funds are pooled to support the activities proposed by the applicant for the project period (maximum points, 100).

FACTOR 4. The capacity of the applicant to carry out the proposed activities during the project period (maximum points, 100).

321—13.4(249D) Contractual agreement. Upon approval of each grant award the department shall prepare a contractual agreement specifying the terms and conditions of the grant, reporting requirements, and the timeline for requisition of reimbursable expenditures. The contractual agreement shall be executed between the department and the recipient.

321—13.5(249D) Reporting requirements. Recipients are required to submit progress reports on the status of the activities proposed for the project period as specified in the contractual agreement and in accordance with forms and instructions issued by the department. The department may require a financial audit of the grantee by an independent, qualified auditor at the expense of the grantee.

321—13.6(249D) Timing of grants.

13.6(1) To promote sound administration and to implement the intent of the program, the department may set one (1) or more deadlines for grant applications and may make awards of some or all of the funds appropriated for the Iowa elderlaw education program.

13.6(2) The department will make application forms and instructions available by July 30 of the year in which appropriations are available at the location identified in subrule 2.1(2) and will accept applications for funds until August 31.

13.6(3) Awards will be made by the department before September 30 of the year in which appropriations are available.

13.6(4) All grant moneys shall be spent in accordance with contractual agreement. Grant moneys unspent as of June 30 shall be returned to the department by the recipient within forty-five (45) days of the end of the project period.

**CHAPTER 14
RETIRED SENIOR
VOLUNTEER PROGRAM (RSVP)**

321—14.1(249D) Purpose and program description. The purpose of the Retired Senior Volunteer Program (RSVP) is to provide basic support grants to each RSVP program providing services in Iowa and to provide discretionary grants to RSVP programs on a competitive basis for program expansion. The RSVP grant program provides two (2) types of grants:

14.1(1) Formula grant. Each RSVP program, which has a current memorandum of agreement to operate an RSVP program from the federal Action Office, is to be allocated an equal share of state funds appropriated for formula distribution.

14.1(2) Discretionary grant. Grants will be awarded on a competitive basis by the department to local RSVP programs for projects to expand either the geographic area served by the local RSVP program or their program emphasis, such as supplementing the continuum of care for elder Iowans, substance abuse program for elders, or other programs consistent with the goals of the RSVP

ELDER AFFAIRS, DEPARTMENT OF [321] (cont'd)

program and the department, from state funds appropriated for program expansion.

321—14.2(249D) Application procedures. Two different procedures will be followed for the formula and discretionary grants. Appropriate forms and applications for both are available from the Iowa department of elder affairs, at the location identified in subrule 2.1(2). Forms and applications will be mailed by the department to eligible applicants as soon as feasible after July 1.

14.2(1) Formula grants. Each RSVP program shall submit to the department a budget outlining how the RSVP program will expend the formula grant allotted to their program.

14.2(2) Discretionary grants. Grant applications and requirements will be provided to each RSVP program by the department.

321—14.3(249D) Administration of grants. The department shall prepare contractual agreements for both the formula and discretionary grants. This agreement must be executed by the director or designee of the department and the duly authorized official of the local RSVP program. The contract will include dates for requisition of reimbursable expenses, procedures for the submission of progress reports and financial reports.

CHAPTER 15 ELDERLY SERVICES PROGRAM

321—15.1(249D) Elderly services program.

15.1(1) Purpose. The department shall establish an elderly services program to reduce institutionalization and encourage community involvement to help elders remain in their own homes.

15.1(2) Funds appropriated for this purpose shall be instituted based on administrative rules adopted by the commission. The department shall require such records as needed to implement this section.

321—15.2(249D) Allocation formula. All funds appropriated to the department for elderly services shall be allocated to area agencies on aging in accordance with the formula outlined in rule 5.4(249D).

321—15.3(249D) Eligibility criteria for services. Only those eligible individuals as defined in subrule 1.7(1) may receive services under the elderly services program.

321—15.4(249D) Allowable program costs. Elderly services funds shall be awarded to area agencies on aging which include cash match at the rate specified in subrule 5.7(2), paragraph "c."

321—15.5(249D) Funding process.

15.5(1) Application. The executive director shall provide the area agencies on aging with an application packet and instructions as part of the multiyear area plan and process issued by the department.

15.5(2) Advertising. Area agencies on aging shall follow the procedure for advertising for funding requests in Title 45 of the Code of Federal Regulations, part 74, Administration of Grants, subpart P, Procurement Standards, June 9, 1981.

15.5(3) Application requirements. The application of the area agency on aging shall include, but not be limited to:

- a. The projected use of elderly service funds to respond to the area agency on aging needs assessment;
- b. Evidence of review by the area advisory council;

- c. A description of the services to be provided;
- d. The source and amount of the required match;
- e. The projected number of elders to be served; and
- f. The targeting method to be used to comply with the requirements outlined in rule 6.6(249D).

321—15.6(249D) Records and reports. Requirements for elderly services records and reports are outlined in subrules 5.12(1) and 5.12(2).

321—15.7(249D) Amendments and revisions to the elderly services portion of the area plan. The elderly services portion of the multiyear area plan shall be amended and revised in accordance with procedures outlined in subrule 4.21(4).

321—15.8(249D) Report to the general assembly. The department shall submit an annual report and recommendations to the general assembly regarding the elderly services program.

CHAPTER 16 LONG-TERM CARE COORDINATING UNIT

321—16.1(249D) Purpose. The long-term care coordinating unit shall develop mechanisms and procedures to improve long-term care in Iowa. In furthering this purpose the long-term care coordinating unit shall develop procedures, plans, rules and reports as identified in Iowa Code section 249D.58.

321—16.2(249D) Organization. The long-term care coordinating unit is created within the department of elder affairs.

16.2(1) Membership. The membership of the coordinating unit consists of:

- a. The commissioner of human services;
- b. The executive director of the department of elder affairs;
- c. The director of public health;
- d. Two (2) nonvoting members appointed by the governor.

16.2(2) Chairperson and vice-chairperson duties. The chairperson of the unit is chosen from among the voting members on an annual, rotating basis.

- a. Rotation is alphabetical by department name.
- b. The chairperson's duties include:

- (1) Convening unit meetings and chairing such meetings;
- (2) Ensuring that unit proceedings are recorded;
- (3) Ensuring that minutes of such meetings are prepared and distributed;
- (4) Ensuring that tentative meeting agendas are prepared and distributed; and
- (5) Ensuring that all notices required by Iowa Code section 28A.4 are given.

c. The vice-chairperson of the unit is chosen from the voting members on an annual basis. The vice-chairperson shall assume the chairperson's duties in the chairperson's absence.

16.2(3) Quorum and action.

a. A majority of the voting members of the unit constitutes a quorum.

b. Action of the unit is not taken except upon the affirmative vote of a majority of the members of the unit. Other materials considered are made a part of the unit's minutes by reference.

c. In cases not covered by these rules, Robert's Rules of Order, as amended, shall govern.

ELDER AFFAIRS, DEPARTMENT OF[321] (cont'd)

321—16.3(249D) Meetings. The unit shall meet at least once during each calendar quarter. Meeting dates shall be set by members of the unit at the end of each meeting or by call of the chairperson upon five (5) days' notice.

321—16.4(249D) Operation. The technical and administrative functions of the unit shall be apportioned among the departments of elder affairs, human services, and public health and other entities included by memorandum of agreement.

321—16.5(249D) Communications. Communications to the unit shall be addressed to the department of elder affairs at the address identified in subrule 2.1(2) of these rules unless otherwise specified.

CHAPTER 17 PETITION FOR RULE MAKING

Insert the petition for rule-making segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code with the following amendments:

321—17.1(17A) Petition for rule making. In lieu of the words "the agency at (designate office)" insert "the Executive Director, Department of Elder Affairs, 914 Grand Avenue, Suite #236, Des Moines, Iowa 50319".

In lieu of the words "AGENCY NAME", the heading on the petition should read:

BEFORE THE DEPARTMENT OF ELDER AFFAIRS

321—17.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Executive Director, Iowa Department of Elder Affairs, 914 Grand Avenue, Des Moines, Iowa 50319.

CHAPTER 18 DECLARATORY RULINGS

Insert the petition for declaratory rulings segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code with the following amendments:

321—18.1(17A) Petition for declaratory ruling. In lieu of the words "designate office" insert "the Executive Director, Iowa Department of Elder Affairs, 914 Grand Avenue, Suite #236, Des Moines, Iowa 50319".

In lieu of the words "AGENCY NAME", the heading on the petition should read:

BEFORE THE DEPARTMENT OF ELDER AFFAIRS

Further amend 321—18.1(17A) by adding the following information required to be in the petition:

9. The petitioner's state identification number, if applicable.

Further amend 321—18.1(17A) by substituting the following paragraph for the parenthetical sentence at the end:

For requests for an application of agency policy to specific facts, the request may be submitted in letter format. The letter should recite all pertinent facts.

321—18.3(17A) Inquiries. Inquiries concerning the status of a petition for a declaratory ruling may be made to the Executive Director, Iowa Department of Elder Affairs, 914 Grand Avenue, Suite #236, Des Moines, Iowa 50319.

INSURANCE DIVISION

NOTICE OF PROPOSED WORKERS' COMPENSATION RATE FILING

Pursuant to Iowa Code section 515A.6(7), notice is hereby given that the National Council on Compensation Insurance has made a rate filing which affects premium rates for workers' compensation insurance.

The filing proposes an overall 9.4% increase in premium level. Details of the filing may be obtained from the Division of Insurance of the State of Iowa.

In addition, the National Council on Compensation Insurance has filed employers' liability rates, in accordance with Iowa Code section 517.6 (1985). The proposed rates for employers' liability are identical to the proposed rates for workers' compensation.

These rate filings have a proposed effective date of April 1, 1987. An affected workers' compensation policyholder or established organization with one or more workers' compensation policyholders among its members may request a hearing on this filing before the Commissioner. Such request must be filed within fifteen days of the date of this publication and shall be made to the Commissioner of Insurance at the Division of Insurance of the State of Iowa, Lucas State Office Building, Sixth Floor, Des Moines, Iowa 50319.

INSURANCE DIVISION

NOTICE OF PROPOSED WORKERS' COMPENSATION RATE FILING

Pursuant to Iowa Code section 515A.6(7), notice is hereby given that the National Council on Compensation Insurance has made a rate filing which affects premium rates for workers' compensation insurance.

This filing proposes the elimination of premium discounts for assigned risks. The proposed change is designed to more equitably distribute costs of writing individual insureds in the assigned risk plan. Expense provisions for the large risks will be made more adequate while premiums of risks whose standard premium is under \$5,000 will be unaffected.

This filing has a proposed effective date of April, 1987. An affected workers' compensation policyholder or established organization with one or more workers' compensation policyholders among its members may request a hearing on this filing before the Commissioner. Such request must be filed within fifteen days of the date of this publication and shall be made to the Commissioner of Insurance at the Division of Insurance of the State of Iowa, Lucas State Office Building, Sixth Floor, Des Moines, Iowa 50319.

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NURSING, BOARD OF [590]

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 17A.3, the Iowa Board of Nursing hereby gives Notice of Intended Action to adopt amendments to Chapter 1, "Administrative and Regulatory Authority," appearing in the Iowa Administrative Code.

These amendments make minor changes in the description of the Board and the meeting schedule of the Board. Procedures for allowing public comment at the Board meetings are included. The uniform rules regarding petitions for rule making and declaratory rulings are also incorporated.

Any interested person may make written suggestions or comments prior to March 17, 1987. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 East Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director at (515) 281-3256 or in the office at 223 East Court Avenue by appointment.

These amendments are intended to implement Iowa Code section 17A.3.

The following amendments are proposed:

ITEM 1. Amend rule 590—1.1(17A,147,152) by deleting the subrule numbers and adding the following new definition in alphabetical order:

"Department" means the department of public health.

ITEM 2. Amend the catchwords to rule 590—1.3(17A,147,152) to read as follows:

590—1.3(17A,147,152) Description and organization of the Iowa Board of Nursing.

ITEM 3. Amend subrule 1.3(1) to read as follows:

1.3(1) Description of the board. The board derives its legal authority for *regulating and enforcing regulations* for nursing education, nursing practice, and continuing education for nurses and ~~the regulation and enforcement of nursing practice~~ under the provisions of Iowa Code chapters 147, 147A, 152, and 258A.

ITEM 4. Strike all of subrule 1.3(2) and insert in lieu thereof the following:

1.3(2) Organization of the board and meetings. The composition of the board is defined in Iowa Code sections 147.14 and 147.19. The board shall:

a. At the last regularly scheduled meeting prior to May 1:

(1) Elect a chairperson and secretary from its membership to begin serving as officers on May 1.

(2) Establish standing committees and elect a chairperson for each committee.

(3) Schedule regular meeting dates through the summer of the following year.

(4) Hold regularly scheduled meetings in Des Moines, Iowa.

b. Hold special meetings called by the chairperson or upon request of four (4) members of the board to the chairperson or executive director. Special meetings may be held by electronic means in accordance with Iowa Code section 21.8.

c. Make available to the public, the date, time, and location of board meetings.

d. Make available to the public, the date on which board materials are due in the board office for the agenda of regularly scheduled meetings. Materials received three (3) weeks prior to a scheduled board meeting shall be placed on the agenda. Materials from emergency or unusual circumstances may be added to the agenda with the chairperson's approval.

e. Allow members of the public to be present during board meetings unless the board votes to hold a closed session.

(1) Anyone who has submitted materials for the agenda or whose presence has been requested by the board will be given the opportunity to address the board.

(2) At every regularly scheduled board meeting, time will be designated for "Public Comment." During the time on the agenda labeled "Public Comment," anyone may speak for up to two (2) minutes per person. Requests to speak at a later time for two (2) minutes per person when a particular topic comes before the board should be made at the time of "Public Comment" and will be granted at the discretion of the chairperson. No more than ten (10) minutes will be allotted to public comment at any one time unless the chairperson indicates otherwise.

(3) One who has not asked to address the board during "Public Comment" may be recognized by the chairperson if one raises a hand. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

f. Hold a closed session of the board voted to do so in a public vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if less are present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. Minutes of all discussion, persons present, and action occurring at a closed session will be recorded along with a tape recording of the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

g. Govern its meetings in accordance with Iowa Code chapter 21 and its proceedings by "Robert's Rules of Order, Revised."

h. Appoint a full-time executive director who, under the direction of the board, is responsible for the administration of policies and programs of the board and for the operation of the board office. Appointment or termination of appointment of the executive director shall require a majority vote of the entire board.

ITEM 5. Amend subrule 1.3(3) to read as follows:

1.3(3) Information. Members of the public may obtain information or submit requests to the board office that relate to *regulating and enforcing regulations on nursing education, nursing practice, and continuing education for nurses*; and ~~the regulation and enforcement of nursing practice~~ *Requests for information resulting in legally binding answers require a petition for rule making or a petition for declaratory ruling.*

ITEM 6. Rescind subrule 1.3(4).

ITEM 7. Renumber subrules 1.3(5) and 1.3(6) accordingly.

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

ITEM 8. Add the following new rules to read as follows:

590—1.4(17A) Petition for rule making.

1.4(1) Filing a petition. Any person or agency may file a petition for rule making with the board at the board office. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose.

a. The petition must be legible and provide the following information:

(1) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

(2) A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

(4) A brief summary of any data supporting the action urged in the petition.

(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

(6) Any request by petitioner for a meeting provided for by subrule 1.4(4), paragraph "a."

b. The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

c. The executive director shall acknowledge receipt of a petition or return a petition not in substantial conformity with this subrule with an explanation of why it does not conform.

1.4(2) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

1.4(3) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the executive director at the board office.

1.4(4) Board consideration. The board must act as follows:

a. Within fourteen (14) days after the filing of a petition, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee.

b. Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition.

c. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

d. Within sixty (60) days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to the petitioner.

e. The board may deny the petition to initiate rule making for any of the following reasons:

Lack of jurisdiction.

Lack of clarity of the issue presented.

Lack of merit.

f. Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

590—1.5(17A) Petition for declaratory ruling.

1.5(1) Filing a petition. Any person or agency may file a petition with the board for a declaratory ruling concerning the applicability of any statute, rule, policy, decision, or order, administered by the agency at the board office. A petition is deemed filed when it is received by the board office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose.

a. The petition must be legible and provide the following information:

(1) A clear and concise statement of all relevant facts on which the ruling is requested.

(2) A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.

(3) The questions petitioner wants answered, stated clearly and concisely.

(4) The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

(5) The reasons for requesting the declaratory ruling and disclosure of the petitioner's interest in the outcome.

(6) A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any government entity.

(7) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

(8) Any request by petitioner for a meeting provided for by subrule 1.5(4), paragraph "a."

b. The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

c. The executive director shall acknowledge receipt of a petition or return a petition not in substantial conformity with this subrule with an explanation of why it does not conform.

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

1.5(2) Briefs. The petitioner may attach a brief to the petition in support of the position urged in the petition. The board may request a brief from the petitioner or from any other person concerning the questions raised in the petition.

1.5(3) Inquiries. Inquiries concerning the status of a petition for a declaratory ruling may be made to the executive director at the board office.

1.5(4) Board consideration. The board must act as follows:

a. Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition.

b. The board may request the petitioner to submit additional information or argument concerning the petition. The board may solicit comments from any person on the questions presented in the petition. Also, comments on those questions may be submitted to the board by any person.

c. Within thirty (30) days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, issue a ruling on the petition or refuse to do so. The board is deemed to have issued a ruling or to have refused to do so on the date the ruling or refusal is mailed or delivered to petitioner.

d. The agency may refuse to issue a declaratory ruling for good cause. Good cause includes, but is not limited to, the following reasons:

(1) The petition does not substantially comply with the required form.

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

(3) The agency does not have jurisdiction over the questions presented in the petition.

(4) The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding, that may definitively resolve them.

(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

(6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a ruling.

(7) There is no need to issue a ruling because the questions raised in the petition have been settled due to a change in circumstances.

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

(9) The petition requests a declaratory ruling that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

(10) The petitioner requests the board to determine whether a statute is unconstitutional on its face.

e. A refusal to issue a declaratory ruling must indicate the specific grounds for the refusal and constitutes final board action on the petition.

f. Refusal to issue a declaratory ruling pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the board's refusal to issue a ruling.

1.5(5) Contents of declaratory ruling—effective date. In addition to the ruling itself, a declaratory ruling must contain the date of its issuance, the name of petitioner, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory ruling is effective on the date of issuance.

1.5(6) Effect of a declaratory ruling. A declaratory ruling is binding on the board and the petitioner and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those contained in the petition. As to all other persons, a declaratory ruling serves only as precedent and is not binding on the board. The issuance of a declaratory ruling constitutes final board action on the petition.

1.5(7) Availability of declaratory rulings. Declaratory rulings issued by the board shall be indexed and available for public inspection.

ARC 7387

**NURSING, BOARD OF[590]
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 and 147.76, the Iowa Board of Nursing hereby gives Notice of Intended Action to adopt an amendment to Chapter 3, "License to Practice—Registered Nurse/Licensed Practical Nurse," appearing in the Iowa Administrative Code.

This amendment increases the length of the temporary license for applicants who have taken the examination in another state and have produced evidence of successful completion of the examination.

Any interested person may make written suggestions or comments prior to March 17, 1987. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 East Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director at (515) 281-3256 or in the office at 1223 East Court Avenue.

This amendment is intended to implement Iowa Code sections 147.2 and 152.9.

The following amendment is proposed:

Amend subrule 3.5(3), paragraph "b," subparagraph (4), to read as follows:

(4) A temporary license shall be issued for a period not to exceed ~~thirty~~ *ninety (90)* days or at the discretion of the executive director.

ARC 7392**PUBLIC HEALTH
DEPARTMENT[470]****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 135.11(15) as amended by 1986 Iowa Acts, chapter 1245, section 1104, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend 470—Chapter 6, "Venereal Disease Prophylactics," Iowa Administrative Code.

The proposed rule change adds definitions and a rule explaining the distribution of prophylactics by the Department to coalitions and sexually transmitted disease clinics at no cost.

Any interested person may attend a public hearing to be conducted March 17, 1987, 10 a.m. in the Lucas State Office Building, 3rd Floor Conference Room 2, Des Moines, Iowa, or make written comments concerning the proposed rule not later than March 17, 1987. Comments should be addressed to David J. Fries, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 135.11.

ITEM 1. Add the following definitions to rule 6.1(135):

"AIDS" means acquired immune deficiency syndrome.

"Community AIDS coalition" means a group of volunteers recognized by the department to impart educational messages to the public concerning AIDS.

"High risk populations" means homosexuals, bisexuals, and intravenous drug abusers.

"Sexually transmitted disease (STD) clinics" means clinics recognized by the department to treat sexually transmitted diseases.

ITEM 2. Add a new rule 6.6(135) as follows:

470—6.6(135) Distribution by the department.

6.6(1) The department will purchase venereal disease prophylactics, and upon written request provide the prophylactics at no cost to community AIDS coalitions and sexually transmitted disease clinics.

6.6(2) The coalitions and STD clinics must submit, in writing, to the department their intent to provide the prophylactics to members of the high risk population.

6.6(3) The department will review the requests and approve or disapprove distribution by coalitions and STD clinics.

6.6(4) The coalitions and STD clinics will distribute, at no cost, the venereal disease prophylactics and an educational pamphlet to members of the high risk population in an attempt to eliminate the spread of acquired immune deficiency syndrome (AIDS).

ARC 7393**PUBLIC HEALTH
DEPARTMENT[470]****BOARD OF CHIROPRACTIC EXAMINERS****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code chapter 17A, Iowa Code section 147.76, and 1986 Iowa Acts, chapter 1180, section 10, the Board of Chiropractic Examiners gives Notice of Intended Action to amend 470—Chapter 141, "Chiropractic Examiners," Iowa Administrative Code.

Item 1 relates to the issuance of a temporary certificate for chiropractors. Subrules establish the application procedures and requirements for the certificate.

Item 2 relates to the establishment of utilization and cost control review committee(s), qualifications for committee members, procedures for utilization and cost control review, types of cases to be reviewed and criteria for review.

Any interested person may make written comments on the proposed rules prior to March 17, 1987. Such comments shall be directed to Harriett L. Miller, Board Administrator, Iowa Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319-0075. Also, there will be a hearing on March 17, 1987, at 1:30 p.m. in the fourth floor west conference room of the Lucas State Office Building, at which time persons may present their views either orally or in writing.

Persons who wish to make oral presentations at the public hearing should contact the Board Administrator at least one day prior to the date of the hearing. At the hearing, persons will be asked to give their names and addresses for the record and to confine remarks to the subject of the rule.

These rules are intended to implement 1986 Iowa Acts, chapter 1127 and chapter 1180, section 10.

ITEM 1. Add a new rule 141.18(71GA,ch 1127) as follows:

470—141.18(71GA,ch 1127) Temporary certificate.

141.18(1) The board, may, in its discretion, issue a temporary certificate authorizing the applicant to practice chiropractic whenever, in the opinion of the board, a need exists and the applicant possesses the qualifications prescribed by the board for the certificate, which shall be substantially the same as those required under Iowa Code chapter 151. A temporary certificate shall be issued for one (1) year and, at the discretion of the board may be annually renewed, not to exceed two (2) additional years, at a fee of one hundred dollars (\$100) per year.

141.18(2) Each applicant shall:

a. Submit a completed application form accompanied by a fee of one hundred dollars (\$100). This fee shall not apply toward license application.

b. Present a photostatic copy of a diploma (no larger than 8½ by 11 inches) issued by a chiropractic college approved by the board.

PUBLIC HEALTH DEPARTMENT[470] (cont'd)

c. Present an official transcript of grades of the National Board or basic science certificate issued prior to July 1, 1973. The board may accept, in lieu of a transcript of grades, proof of licensure in another state.

141.18(3) Applicants may be required to satisfactorily complete a written, oral, or practical examination. In any case, the board shall require the applicant to appear for a personal interview before the board or a member of the board.

141.18(4) The temporary certificate may be canceled at any time without a hearing for reasons deemed sufficient to the board. The certificate may be canceled:

a. For any of the grounds for which licensee discipline may be imposed.

b. If the temporary certificate holder applies for a permanent license, is examined, and fails the examination.

Cancellation will be effective three (3) days after mailing the notice of cancellation by registered mail.

This rule is intended to implement Iowa Code section 151.12 as established by 1986 Iowa Acts, chapter 1127.

ITEM 2. Add a new rule 141.19(71GA, ch 1180) as follows:

470—141.19(71GA, ch 1180) Utilization and cost control review.

141.19(1) The board shall establish U.C.C.R. (Utilization and Cost Control Review) committee(s). The name(s) of the committee(s) shall be on file with the board and available to the public. The designation of the committee(s) shall be reviewed annually.

141.19(2) Members of the U.C.C.R. committee shall:

a. Hold a current license.

b. Practice chiropractic in the state of Iowa for a minimum of five (5) years.

c. Be actively involved in a chiropractic practice during the term of appointment as a U.C.C.R. committee member.

d. Not assist in the review or adjudication of claims in which the committee member may reasonably be presumed to have a conflict of interest.

141.19(3) Procedures for utilization and cost control review. A request for review may be made to the board by any person governed by the various chapters of Title XX of the Code, self-insurers for health care benefits to employees, other third party payors, chiropractic patients, or licensees.

a. The fee for service shall be one hundred dollars (\$100), which will be made payable directly to the U.C.C.R. committee. The committee shall make a yearly accounting to the board.

b. A request for service shall be submitted to the executive director of the U.C.C.R. committee on an approved submission form and shall be accompanied by four (4) copies of all information. All references to identification and location of patient and doctor shall be deleted and prepared for blind review by the executive director of the U.C.C.R. committee. The information shall be forwarded to the U.C.C.R. committee.

c. The U.C.C.R. committee shall respond in writing to the parties involved with its findings and recommendations within ninety (90) days. The committee shall review the appropriateness of levels of treatment and give an opinion as to the reasonableness of charges for diagnostic or treatment services rendered as requested. The U.C.C.R. committee shall submit a quarterly report of their activities to the board.

141.19(4) Types of cases reviewed shall include:

a. Utilization

(1) Frequency of treatment

(2) Amount of treatment

(3) Necessity of service

(4) Appropriateness of treatment

b. Usual and customary service

141.19(5) Criteria for review may include but are not limited to:

a. Was diagnosis compatible and consistent with information?

b. Were X-ray and other examination procedures adequate, or were they insufficient or nonrelated to history or diagnosis?

c. Were clinic records adequate, complete, and of sufficient frequency?

d. Was treatment consistent with diagnosis?

e. Was treatment program consistent with scientific knowledge and academic and clinical training in accredited chiropractic colleges?

f. Were charges reasonable and customary for the service?

141.19(6) Members of the U.C.C.R. committee shall observe the requirements of confidentiality imposed by Iowa Code chapter 258A.

141.19(7) Action of the U.C.C.R. committee does not constitute an action of the board.

This rule is intended to implement 1986 Iowa Acts, chapter 1180, section 10.

ARC 7394

REVENUE AND FINANCE, DEPARTMENT OF[701] 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.22 and 421.14, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 7, "Practice and Procedure Before the Iowa Department of Revenue and Finance," Iowa Administrative Code.

The amendments to Chapter 7 are proposed in order to implement Iowa Code chapters 17A and 421 as amended by 1986 Iowa Acts, chapters 1245 and 1007.

The Notice of Intended Action is also given of the Department's intention to implement 1986 Iowa Acts, chapter 1007 by creating rules to require the payment of the tax, penalty, interest or fees, or posting a bond in lieu of payment, before a taxpayer can proceed to contested case proceedings when protesting a Department assessment for tax, penalty, interest and fees made on or after January 1, 1987.

The Department has determined that these proposed rules may have an impact on small business. The Department has considered the factors listed in Iowa

REVENUE AND FINANCE, DEPARTMENT OF [701] (cont'd)

Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than March 17, 1987, to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, Post Office Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any interested person may make written suggestions or comments on these proposed amendments on or before March 27, 1987. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, Post Office Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact Clair R. Cramer, Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, at 515/281-4250 or at Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by March 20, 1987.

These rules and amendments to rules are intended to implement Iowa Code chapters 17A and 421 as amended by 1986 Iowa Acts, chapters 1245 and 1007.

The following amendments to Chapter 7 are proposed.

ITEM 1. Amend rule 701—7.1(17A) by deleting numbers and arranging the definitions alphabetically.

Further amend 7.1(17A) by adding a new definition and amending the definition of "pleadings" to read as follows:

"Motion" has the same meaning as the term is defined in rule 109 of the Rules of Civil Procedure.

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

ITEM 2. Amend rule 7.2(17A), numbered paragraphs "12," "13," and "14" to read as follows:

12. Games of skill, chance and raffles—chapter 99B
Local option taxes—chapter 422B.

13. Possession of gambling devices—license revoked—chapter 99B.

14. Hotel and motel tax—chapter 422A.

ITEM 3. Rule 7.6(17A), numbered paragraph "4," is rescinded and the following inserted in lieu thereof:

4. Accountants who are authorized, permitted, or licensed under chapter 116.

ITEM 4. Amend rule 7.8(17A) by rescinding the first unnumbered paragraph given below.

Any person who is not contesting any department action and who feels entitled to declaratory relief in which an evidentiary proceeding (contested case) would be required can file a protest under this rule.

ITEM 5. Amend rule 7.8(17A) by renumbering "1." as subrule 7.8(1) and "2." as 7.8(2).

ITEM 6. Amend renumbered subrule 7.8(2) by relettering paragraphs "f" as "i" and "g" as "j" and amend paragraph "j" to read as follows:

g. The signature of the protester or that of his or her the protester's representative;

ITEM 7. Further amend renumbered subrule 7.8(2), paragraphs "h" as "f," "i" as "g," and "j" as "h" and amend relettered "h" to read as follows:

h. The desire of protester to waive informal or contested case proceedings if he or she so it is desired; unless the protester so indicates a waiver, informal procedures will be initiated.

ITEM 8. Amend rule 7.8(17A), the last unlettered paragraph, to read as follows:

The protester may amend his or her the protest and the department may amend its answer at any time prior to the commencement of the evidentiary hearing.

ITEM 9. Amend rule 7.14(17A) by renumbering it as subrule 7.14(2) and by adding the following new subrule to be designated subrule 7.14(1).

7.14(1) Payment of tax or bond required prior to contested case proceedings.

a. Effective date — payment or bond required. Effective for contested case proceedings for unpaid tax, penalty, interest, or fees commenced in response to assessments made on or after January 1, 1987, the taxpayer must pay prior to the commencement of contested case proceedings, all of the assessed tax, penalty, interest, or fees or, upon a showing of good cause, a bond may be posted in lieu of payment of the amount of the assessment that is in dispute.

b. Cases applicable. The provisions of this subrule only apply to those contested case proceedings where a tax, penalty, interest, or fees, or any combination of them, which has not been previously paid prior to the commencement of contested case proceedings, is at issue.

c. Cases not applicable. This subrule does not apply to protest proceedings involving only the denial of refund claims. Nor does this subrule apply to a taxpayer's appeal or protest pending in informal procedures involving an unpaid tax, penalty, interest, or fees.

d. Time disputed tax, penalty, interest, or fees must be paid. Unless a bond has been posted as provided in subrule 7.14(1), paragraph "f," all of the disputed tax, penalty, interest, or fees assessed computed to the date of payment must be paid in full, within thirty (30) days after the date the answer is filed by the department. Undisputed amounts are not eligible for a bond and must be paid with the payment of the disputed amount, or with the posting of the bond.

e. Payment deemed made under protest. Unless the taxpayer declares otherwise in writing, the payment of that portion of the assessed tax, penalty, interest, or fees in dispute after the filing of the department's answer, shall be deemed to have been paid under protest and, if upon resolution of the protest, the amount paid is in excess of the correct tax, penalty, interest, or fees due, the excess shall be refunded to the taxpayer or other persons entitled with interest as provided by law, subject to any right of offset.

f. Bond in lieu of payment. Within thirty (30) days after the date the answer is filed by the department,

REVENUE AND FINANCE, DEPARTMENT OF[701] (cont'd)

and upon filing an application showing good cause, the taxpayer may, in lieu of payment, post a bond securing the payment of that portion of the assessed tax, penalty, interest, or fees which is in dispute accrued to the date the bond is posted. A taxpayer is not permitted to refuse to pay the portion of the assessed amount not in dispute until all disputed issues have been resolved. The uncontested portion of the assessment must be paid and a bond is only permitted to be posted in lieu of payment of the amount in dispute. The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings. The bond shall be for the full amount of the assessed tax, penalty, interest, or fees that is in dispute, computed to the day the bond is posted. Provided upon application of the taxpayer or the department, the department's hearing officer may, upon hearing, fix a greater or lesser amount to reflect changed circumstances, but only after ten (10) days' prior notice is given to the department or the taxpayer as the case may be.

g. Type of bond. A personal bond, without a surety, is only permitted if the taxpayer posts with the department's hearing officer, cash, a cashier's check, a certificate of deposit, or other marketable securities with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of Iowa Code chapter 682 relating to personal and corporate sureties shall govern to the extent not inconsistent with the provisions of 1986 Iowa Acts, chapter 1007, section 18 and this subrule.

h. Procedure for posting bond. In the event the taxpayer desires to post bond in lieu of payment of the amount of the tax, penalty, interest, or fees claimed to be due which is in dispute, an application in writing, together with the bond must be filed with the hearing officer within thirty (30) days after the department's answer is filed. The application must state the reasons why good cause exists for posting a bond in lieu of payment. A copy of the application with a copy of the bond attached must be given the department's representative by ordinary mail and thereafter if the taxpayer and the department agree on the bond, it shall be approved by the hearing officer. If an agreement on the bond is not reached and the department has not filed with the hearing officer written objections to granting the bond within ten (10) days after the postmark date of the notice of application, the hearing officer shall approve the bond, if the bond is otherwise in proper form and in compliance with the law. In the event objections are filed by the department, the hearing officer shall set the objections down for hearing with written notice to be given the taxpayer and the department at least ten (10) days prior to the hearing. If upon hearing the department's objections are overruled, the bond shall be approved. If the objections are sustained, and the taxpayer fails to pay the amount of the tax, penalty, interest, or fees claimed to be due or cure the bond defects, if permitted by the hearing officer's order, within thirty (30) days after the hearing officer's decision, the protest shall be dismissed and the dismissal shall be with prejudice, if the time for protesting the department action has elapsed.

i. Reasons constituting good cause. The financial hardship of the taxpayer as evidenced by the books and

records of the taxpayer is an example of a good cause for posting a bond in lieu of paying the tax, penalty, interest, or fees in dispute. In addition, posting of a bond will be allowed upon agreement of the protester and the department.

j. Form of surety bond. The surety bond posted shall be in substantially the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE AND FINANCE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

<u>IN THE MATTER OF</u>	•	
(Taxpayer's Name,	•	<u>SURETY BOND</u>
Address and designate	•	
proceeding e.g. income,	•	
sales, etc.)	•	DOCKET NO.

KNOW ALL PERSONS BY THESE PRESENTS:

That we (taxpayer) as principal, and (surety), as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue and Finance for the use of the State of Iowa, in the sum of \$ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue and Finance, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest, or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated the ____ day of _____, 19__.

Principal

Surety

Surety

(corporate acknowledgement if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA)
) ss.
COUNTY OF)

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts", and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my

REVENUE AND FINANCE, DEPARTMENT OF[701] (cont'd)

signature in the column entitled "Property in Iowa Liable to Execution".

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
Surety (type name)	\$ _____	\$ _____
Surety (type name)	\$ _____	\$ _____

Subscribed and sworn to before me the undersigned
Notary Public this ____ day of _____, 19__.

(Seal) _____
Notary Public in and
for the State of Iowa

k. Duration of bond. The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated by the hearing officer.

l. Exoneration of the bond. Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the hearing officer when any of the following events occur: upon full payment of the tax, penalty, interest, or fees found to be due; upon filing a bond for the purposes of judicial review; or if no additional tax, penalty, interest, or fees are found to be due that have not been previously paid, upon entry of the order resolving the contested case proceedings.

m. Failure to pay amount found to be due. If upon resolution of the contested case proceedings, the taxpayer fails to pay the tax, penalty, interest, or fees assessed or found to be due, the bond shall be forfeited by the hearing officer and the department may sell or liquidate any property posted by the taxpayer, or bring suit against the surety on the bond and apply the amount recovered to the tax, penalty, interest, or fees due. Any excess over the amount due shall be refunded to the taxpayer or other persons entitled as provided by law, subject to any right of offset.

n. Dismissal of protest — failure to pay or post bond. The hearing officer must dismiss the protest in the following circumstances:

(1) If the taxpayer fails to pay the amount of the assessed tax, penalty, interest, or fees or fails to post a bond with the hearing officer for the amount of the assessment in dispute within thirty (30) days after the filing of the department's answer;

(2) The taxpayer fails to pay the disputed tax, penalty, interest, or fees or fails to file an acceptable bond, if permitted by order of the hearing officer, within thirty (30) days after the order sustaining the department's objection to the bond. The dismissal shall be with prejudice if the time for protesting the department's action has elapsed at the time of dismissal. The dismissal of the protest cannot be avoided or circumvented when payment has not been made or a bond posted by a withdrawal of or amendment to the protest after the answer has been filed.

This subrule is intended to implement 1986 Iowa Acts, chapter 1007, section 18.

ITEM 10. Subrule 7.23(2) is amended to read as follows:

7.23(2) Parties or their representatives. Iowa Code section 17A.17 provides further that parties or their representatives in a contested case shall not communicate, directly or indirectly, in connection with any issue

of fact or law in that contested case, with individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in that contested case, except upon notice and opportunity for all parties to participate. Therefore, if any party or their representative desires to discuss certain matters with the hearing officer the party should notify the hearing officer and the opposing party of the desire to meet with the hearing officer and the hearing officer upon notification of the desire shall advise the parties or their representatives in writing of the time and place at which the affected persons or parties may meet to discuss any matters.

ITEM 11. Amend rule 7.25(17A), unnumbered paragraphs following paragraph "g" to read as follows:

Upon filing, the petition for declaratory ruling shall be given a docket number and the petition and any attachments thereto shall become a matter of public record. Briefs and exhibits which the petitioner desires the Tax Review Committee department to consider shall be attached to and filed with the petition.

Although no hearing will be granted to the petitioner or to any interested person in the usual course of disposition of a petition for a declaratory ruling, the Tax Review Committee department may, in its discretion, request an oral conference on the disposition of the petition. Since petitions for declaratory rulings will be disposed of on the basis of written information at the conclusion of the oral conference, the petitioner may be requested to resubmit its petition or be requested to submit a brief, exhibits or other written information as the committee department may deem necessary. Failure to submit such requested information can form a basis for declining to issue the requested declaratory ruling.

All declaratory rulings shall be signed by the director and issued within ~~sixty (60)~~ ^{thirty (30)} days of filing unless good cause exists for a further period of time not to exceed a reasonable period. A declaratory ruling which is issued shall have the same status as an order rendered in a contested case and shall be final for purposes of appeal or judicial review.

These rules are intended to implement Iowa Code sections 17A.1(2) and 17A.2(2) and 1986 Iowa Acts, chapter 1245.

ARC 7404

UTILITIES DIVISION[199]

AMENDED NOTICE

Pursuant to Iowa Code sections 476.2, 476.6(11), and 476.6(15), the Iowa State Utilities Board gives Notice that on February 9, 1987, the Board issued an order, "Order Renoticing Rules" in Docket No. RMU-86-13, In Re: Purchased Gas Adjustments and Annual Review of Gas Procurement Practices after receiving comment on the rules [19.10 and 19.11, and subrule 19.2(4)"b"] published in the Iowa Administrative Bulletin on November 5, 1986, as ARC 7115. The Board has made a number of changes and will renotice the rules for additional comments.

In the PGA portion of the rules the weather normalization formula was removed and replaced by a five-year average of actual sales. Monthly PGA paperwork is reduced. The interest on over-collection factors has been stricken.

UTILITIES DIVISION[199] (cont'd)

The purpose of the purchase gas adjustment is to automatically flow-through the cost of gas. PGAs will be filed but not approved. There will continue to be a PGA roll-in, because it is required by law, but the roll-in will not affect rates. The base rates and PGA adjustment will be modified at the conclusion of the ARGs with prospective effect only.

The filing requirements for the procurement plan and the forecast have been simplified. Both the plan and the forecast require one-, five- and ten-year projections. The Board believes prudent planning and reliability of service require a mix of contract terms. The varying periods will assist the utilities, as well as the Board, in evaluating their mix between long-term gas and spot gas. The one-year plan should be quite detailed and the five- and ten-year plans should be specific where commitments have been made.

The amended rules also include a new section on factors used in evaluating the procurement plan and a section describing where adjustments will be made.

The rules require that gas costs be separated from nongas costs for accounting purposes. The rules specifically require this breakdown and also permit the Board to audit the accounts upon request.

Any interested person may file a written statement of position pertaining to these proposed amendments. The statement must be filed on or before March 17, 1987, by filing an original and ten copies in a form substantially complying with Iowa Administrative Code 199—subrule 2.2(2). All communications shall be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 1. Rescind rule 199—19.10(476) and insert in lieu thereof the following:

199—19.10(476) Purchased gas adjustments (PGA) [476.6(11)].

19.10(1) A rate-regulated utility's automatic adjustments for the cost of purchased gas shall be based on the purchased gas adjustment clauses on file with the board.

The utility shall implement all purchased gas adjustment changes immediately with concurrent board notification with adequate information to calculate and support the change.

19.10(2) Applicability. Unless otherwise ordered by the board, a rate-regulated utility's purchased gas adjustment rate factors shall be adjusted as purchased gas costs change and shall recover from the customers only the actual costs of purchased gas and other currently incurred charges associated with the delivery of natural gas.

19.10(3) Purchased gas adjustment clause for rate-regulated utilities.

Purchased gas adjustments shall be computed separately for groupings determined appropriate by the board based upon the data filed on or before August 1. The calculation of the purchased gas adjustment (on the same per unit basis as the utility's tariffed rates) shall be according to the following formula:

$$PGA = \frac{(C \times Rc) + (D \times Rd) + (Z \times Rz) + E - K}{S}$$

PGA is the purchased gas adjustment per unit.

S is the average of actual sales volume for the prior five years ended June 30 for each grouping reflecting any adjustments approved by the board.

C is the quantity of applicable commodity purchased for each grouping required to meet sales, S, plus the expected lost and unaccounted for volumes. The lost and unaccounted for volumes is the average difference between actual sales and purchases for the prior five years ended June 30.

Rc is the weighted average of applicable commodity rates to be in effect September 1 corresponding to purchases C.

D is the total quantity of applicable demand purchases required to meet sales, S, for each grouping.

Rd is the weighted average of applicable demand rates to be in effect September 1 corresponding to purchases D.

Z is the total quantity of applicable storage service purchases required to meet sales, S, for each grouping.

Rz is the weighted average of applicable storage service rates to be in effect September 1 corresponding to purchased Z.

E is the per unit over- or under-collection adjustment as calculated under subrule 19.10(4).

K is the base cost of gas as set forth in the utility's tariff.

All worksheets and detailed supporting data used to determine the purchased gas adjustment volumes and factors including sales and purchase data from bills, invoices, internal reports and contracts shall be filed as a part of the August 1 filing.

The purchased gas adjustment shall be adjusted to reflect the final decision issued by the board in the annual review proceeding.

19.10(4) Roll-in of purchased gas costs to base rates. The purchased gas adjustments must be reduced to zero with the August 1 filing to become effective September 1. The purchased gas adjustment as determined in subrule 19.10(3) shall be incorporated in the utility's gas portion of the base tariff rates and the total shall become the "K" factor for the prospective twelve (12)-month period.

19.10(5) Reconciliation of under- and over-billings. The utility shall file with the board on or before October 1 of each year a purchased gas adjustment reconciliation for the twelve(12)-month period which began on September 1 of the previous year. This reconciliation shall be the actual net invoiced costs of purchased gas less the actual revenue billed through its purchased gas adjustment clause net of the prior year's reconciliation dollars for each customer classification. Actual net costs for purchased gas shall be the applicable invoice costs from all appropriate sources associated with the time period of usage.

Negative differences in the reconciliation shall be considered overbilling by the utility and positive differences shall be considered underbilling. This reconciliation shall be filed with all worksheets and detailed supporting data for each particular purchased gas adjustment clause. Penalty purchases shall only be includable where the utility clearly demonstrates a net cost savings.

a. Any underbilling determined from the reconciliation shall be collected through ten (10)-month adjustments to the appropriate purchased gas adjustment. The underbilling generated from each purchased gas adjustment clause shall be divided by the anticipated sales volumes for the prospective ten (10)-month period beginning November 1 (based upon the sales determination in subrule 19.10(3)).

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The quotient, determined on the same basis as the utility's tariff rates, shall be added to the purchased gas adjustment clause for the prospective ten (10)-month period beginning November 1.

b. Any overbilling determined from the reconciliation shall be refunded to the customer classification and PGA grouping from which it was generated. The overbilling shall be divided by the annual cost of purchased gas subject to recovery for the twelve (12)-month period which began the prior September 1 for each purchased gas adjustment clause and applied as follows:

(1) If the net overbilling from the purchased gas adjustment reconciliation exceeds five percent (5%) of the annual cost of purchased gas subject to recovery, the utility shall refund the overbilling by bill credit or check with interest for the time period beginning November 1 of the current year to the date of refunding.

(2) If the net overbilling from the purchased gas adjustment reconciliation does not exceed five percent (5%) of the annual cost of purchased gas subject to recovery, the utility may refund the overbilling by bill credit or check with interest for the time period beginning November 1 of the current year to the date of refunding, or the utility may refund the overbilling through ten (10)-month adjustments to the particular purchased gas adjustment clause from which they were generated. This adjustment shall be determined by dividing the overcollection by the anticipated sales volume for the prospective ten (10)-month period beginning November 1 as determined in subrule 19.10(3) for the applicable purchased gas adjustment clause.

The quotient, determined on the same basis as the utility's tariff rates, shall be a reduction to that particular purchased gas adjustment clause for the prospective ten (10)-month period beginning November 1.

c. When a customer has reduced or terminated system supply service, any liability for over and under collections shall be determined in accordance with the utility's gas transportation tariff.

19.10(6) Refunds from gas suppliers.

a. The utility shall refund to customers by bill credit or check an amount equal to any refund received from a supplier, plus accrued interest, if the refund exceeds five dollars (\$5) per average residential customer under the applicable PGA clause. The utility may retain for up to twelve (12) months undistributed refund amounts in special refund retention accounts for each customer classification under the applicable PGA clause until such time as additional refund obligations or interest cause the average residential customer refund to exceed five dollars (\$5). Any obligations remaining in the retention accounts on September 1 shall become a part of the annual PGA reconciliation.

Within ten (10) days of receipt of a refund from a supplier, the utility shall file with the board the following information:

- (1) A statement of reason for the refund.
- (2) The amount of the refund with support for the amount.
- (3) The balance of the appropriate refund retention accounts.
- (4) The amount due under each purchased gas adjustment clause.

b. If the supplier refund will result in a refund distribution, the utility shall also file within ten (10) days:

(1) The intended period of the refund distribution (not to be more than 30 days from the date of filing).

(2) The estimated interest accrued for each supplier refund through the proposed refund period, with complete interest calculations and supporting data as determined in 19.10(6)"e."

(3) The total amount to be refunded, the amount to be refunded per customer classification and PGA grouping, and the refund per ccf or therm.

c. Within ten (10) days of receipt of a refund from a supplier which will result in a refund retention, the utility shall also file with the board for its approval a refund retention report which shall include the following information:

(1) The estimated interest accrued for each refund received and for each amount in the refund retention accounts through the date of the filing with complete interest calculation and support as determined in 19.10(6)"e."

(2) The total amount to be retained, the amount to be retained per customer class and PGA grouping, and the level per ccf or therm.

(3) The calculations demonstrating the retained balance is less than five dollars (\$5) per average residential customer with supporting schedules for all factors used.

d. The refund to each customer shall be determined by dividing the amount in the appropriate refund retention account, including interest, by the total ccf or therm of gas consumed by affected customers during the period for which the refundable amounts are applicable and multiplying the quotient by the ccf or therms of gas actually consumed by the customer during the appropriate period. The utility may use the last available twelve (12)-month period if the use of the actual period generating the refund is impractical. The utility shall file complete support documentation for all figures used.

e. The interest rate on refunds distributed under this subrule, compounded annually, shall be the commercial paper rate (90-day, high-grade unsecured notes) quoted in the "Money Rates" section of the Wall Street Journal on the day the refund obligation vests. Interest shall accrue from the date the rate-regulated utility receives the refund or billing from the supplier to the date the refund is distributed to customers.

This rule is intended to implement Iowa Code section 476.6(4).

ITEM 2. Rescind rule 199—19.11(476) and insert in lieu thereof the following:

199—19.11(476) Annual review of gas procurement practices [476.6(15)].

19.11(1) Procurement plan. A rate-regulated utility shall file by August 1 of each year a complete twelve (12)-month, five (5)-year, and ten (10)-year natural gas procurement plan for the period commencing September 1. A utility's procurement plan shall be organized as follows and shall include:

a. An index of all documents and information filed in the plan and identification of the board files in which documents incorporated by reference are located.

b. All contracts and gas supply arrangements executed or in effect for obtaining gas and all supply arrangements planned for the future twelve (12)-month, five (5)-year, and ten (10)-year periods.

UTILITIES DIVISION[199] (cont'd)

c. A list and description of all other contracts or arrangements for obtaining gas reasonably available to the utility for the future plan periods which the utility did not execute.

d. An organizational description of the officer or division responsible for gas procurement and a summary of operating procedures and policies for procuring and evaluating gas contracts.

e. A summary of the legal and regulatory actions taken to minimize purchased gas costs.

f. All studies or investigation reports considered in gas purchase contract or arrangement decisions during the plan periods.

g. A complete list of all contracts executed during the previous twelve months.

h. A list of other unbundled services available (for example, storage services if offered).

i. A description of the supply options selected and an evaluation of the reasonableness and prudence of its decisions. This evaluation should show the relationship between forecast and procurement.

19.11(2) Gas requirement forecast. A rate-regulated utility shall file by August 1 of each year a complete twelve (12)-month, five (5)-year, and ten (10)-year gas requirement forecast for the period commencing September 1. A utility's gas requirement forecast report shall be organized as follows and shall include:

a. An index of all documents and information in the forecast and identification of the board files in which all documents incorporated by reference are located.

b. The existing system contract deliverability for each plan year, as follows:

(1) System contract deliverability in volume, by supplier.

(2) Certified storage capacities and deliverability in volume for underground storage and storage in liquified form.

c. The demand forecast for each PGA grouping according to the provisions of subrule 19.10(1). All forecasts shall include the gas requirements of the utility by service district or territory and by customer classes for residential, commercial, and industrial, and subclasses of interruptible, off-peak, and firm:

(1) The forecast of total demand, peak demand, and weather-normalized demand for each of the five (5) years.

(2) A statement of the utility's actual total, peak, and weather-adjusted demand, and a statement of the utility's forecast preceding each peak by one (1) year.

(3) An explanation of any significant differences between the utility's current forecast and the forecast made in the preceding year. A table of previous and present year-by-year forecasts should be provided for comparison.

d. The following supply forecast information:

(1) A list of all alternative suppliers expected to be available.

(2) A list of supplier-mix options (combinations of one or more sources of supply) available with supply forecast and projections of purchase costs for each mix.

(3) A list of supply contracts and arrangements contemplated.

e. The forecast of the transportation volume for each of the plan years.

f. The following sensitivity analysis information:

(1) A list of all assumptions or forecasts which could significantly alter either the demand for gas, the estimate supply of gas, or projections of purchase costs.

(2) A statement of the reasonable margins of error for each assumption or forecast listed above.

(3) A statement in quantified terms of the effect of potential errors and assumptions in forecasts exceeding the reasonable margin levels listed above.

(4) A description of any contingency plans for addressing possible changes identified above.

19.11(3) Annual review proceeding. The board will conduct a proceeding to evaluate the reasonableness and prudence of a rate-regulated utility's annual natural gas procurement plan.

a. On or before August 1 of each year, each utility shall file prepared and direct testimony and exhibits in support of its gas procurement decisions and its gas requirement forecast. This filing shall be in conjunction with the filing of the plans.

b. The board will docket the matter as a contested case on or before September 1 of each year.

c. On or before October 15 each year, the Consumer Advocate Division, Department of Justice, and any intervenors shall file prepared direct testimony and exhibits.

d. On or before November 15 of each year the rate-regulated utility shall file prepared rebuttal testimony and exhibits.

e. The board will schedule a public hearing within five (5) months after the initial filing for the purpose of cross-examining all filed testimony. The hearing shall be conducted in accordance with the provisions of rule 7.7(476).

f. The board will establish briefing schedules with final briefs due no later than March 1.

19.11(4) Evaluation of the plan. The burden shall be on the utility to prove it is taking all reasonable actions to minimize its purchased gas costs. The board will evaluate the procurement plan considering:

a. Volume, cost, and reliability of the major gas suppliers available to the utility.

b. The cost of alternative fuels available to the utility customers.

c. The availability of gas in storage.

d. The extent to which mix in contract terms assures reliability.

e. The legal and regulatory actions taken by the utility to minimize the cost.

f. The gas procurement policies and practices.

g. The price paid by other utilities for comparable contracts.

h. The spot market for gas.

i. The futures market for gas.

19.11(5) Disallowance of costs. The board shall disallow any purchased gas costs in excess of costs incurred under responsible and prudent policies and practices. The gas portion of the base rates and the PGA factor shall be adjusted prospectively to reflect the disallowance.

This rule is intended to implement Iowa Code section 476.6(15).

ITEM 3. Amend subrule 19.2(4), paragraph "b," to read as follows:

b. All rates of utilities subject to rate regulation for service with indication of ~~for~~ each rate ~~of~~ for the type of gas and the class of customers to which each rate applies. There shall also be shown the prices per unit of service, ~~and~~ the number of units per billing period to which the prices apply, the period of billing, the

UTILITIES DIVISION[199] (cont'd)

minimum bill, the method of measuring demands and consumptions, including the method of calculating or estimating loads or minimums, delivery pressure, and any special terms or conditions applicable. *All rates should be separated into "gas" and "non-gas" components and books and records shall be maintained on this basis. Books and records shall be available to the board for audits upon request. The gas components will be the result of the utility's ARG (rule 19.11(476)) and PGA (rule 19.10(476)) proceeding. The non-gas components will be established through rate case proceedings under Iowa Code section 476.6 or 476.3.* The period during which the net amount may be paid before the account becomes delinquent shall be specified. In any case where net and gross amounts are billed, the difference between net and gross is a late payment charge and shall be so specified.

Customer charges for all special services relating to providing the basic utility service including, but not limited to, reconnect charge and different categories of service calls shall be specified.

Docket No. INU-86-8, In re: Effects of Federal Tax Reform. In that proceeding, utilities were required to provide specified data to the Board regarding the effect of tax reform on the particular utility. The data filed indicates there is the potential for significant revenue changes from tax reform. On its own motion, the Utilities Board will take official notice of the record in Docket No. INU-86-8, In re: Effects of Federal Tax Reform. The record will become a part of these rule-making proceedings.

Any person interested in this matter may file a written statement of position on the proposed rules no later than March 17, 1987, by filing an original and ten copies of such comments substantially complying with the form prescribed in Iowa Administrative Code 199—subrule 2.2(2). All communications shall be addressed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

The Utilities Board is also scheduling an oral presentation in this matter. It will commence at 10 a.m., March 26, 1987, in the Utilities Division's First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa.

ARC 7406

UTILITIES DIVISION[199]
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 Iowa Code section 476.2, the Utilities Board hereby gives Notice of Intended Action to adopt rules [Chapter 30, "Tax Reform Revenue Adjustment"] to comply with the provisions of Iowa Code section 476.8. On February 6, 1987, the Utilities Board adopted rules under Iowa Administrative Code 199—Chapter 30 on an emergency basis, effective April 1, 1987, pursuant to Iowa Code section 17A.4(2). These rules are being published as ARC 7405 herein and are incorporated by reference as the proposed rules for a continuing rule-making proceeding docketed as RMU-87-4.

These rules are designed to recognize the impact of the Tax Reform Act of 1986 on utilities. The Board investigated the anticipated effect of federal tax reform in

NOTICE - USURY

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

August 1, 1985 - August 31, 1985	12.25%
September 1, 1985 - September 30, 1985	12.25%
October 1, 1985 - October 31, 1985	12.25%
November 1, 1985 - November 30, 1985	12.25%
December 1, 1985 - December 31, 1985	12.25%
January 1, 1986 - January 31, 1986	11.75%
February 1, 1986 - February 28, 1986	11.25%
March 1, 1986 - March 31, 1986	11.25%
April 1, 1986 - April 30, 1986	10.75%
May 1, 1986 - May 31, 1986	9.75%
June 1, 1986 - June 30, 1986	9.25%
July 1, 1986 - July 31, 1986	9.75%
August 1, 1986 - August 31, 1986	9.75%
September 1, 1986 - September 30, 1986	9.25%
October 1, 1986 - October 31, 1986	9.25%
November 1, 1986 - November 30, 1986	9.50%
December 1, 1986 - December 31, 1986	9.50%
January 1, 1987 - January 31, 1987	9.25%
February 1, 1987 - February 28, 1987	9.00%
March 1, 1987 - March 31, 1987	9.00%

ARC 7398

AGRICULTURE AND
LAND STEWARDSHIP,
DEPARTMENT OF[21]

Pursuant to the authority of Iowa Code sections 17A.3 and 159.5, the Department of Agriculture and Land Stewardship (the Department) hereby adopts a new Chapter 62 entitled "Participation in Grain Indemnity Fund," Iowa Administrative Code, to implement 1986 Iowa Acts, chapter 1152, sections 31 et seq.

Chapter 62 provides definitions, criteria, and procedures for participation by state licensed grain dealers and state licensed warehouse operators in the Grain Depositors and Sellers Indemnity Fund (the Indemnity Fund).

Notice of Intended Action was published in the Iowa Administrative Bulletin, December 31, 1986, as ARC 7242.

These rules are identical to those published in the Iowa Administrative Bulletin, December 31, 1986, as ARC 7241 with the exception that in subrule 62.3(2) the words "as evidenced by warehouse receipts issued by the warehouse operator" and "negotiable" have been stricken. In addition, the words "issues a warehouse receipt on the grain" have been stricken and replaced with "received the grain for storage." In subrule 62.3(3), the words "as evidenced by warehouse receipts issued by the federal licensee" have been stricken. These changes are being made so that, pursuant to public comment, the requirements of 62.3(2) and 62.3(3) will conform more closely to existing practices used in the grain industry.

These rules were adopted by the Department on February 6, 1987, and will become effective on April 1, 1987. Emergency filed rules (ARC 7241) will be rescinded effective April 1, 1987.

Rescind 21—Chapter 62 and insert in lieu thereof the following:

CHAPTER 62

PARTICIPATION IN GRAIN INDEMNITY FUND

21—62.1(71GA, ch 1152) Mandatory participation in fund. All grain dealer licensees, state warehouse licensees, and participating federal warehouse licensees shall participate in the grain depositors and sellers indemnity fund (the fund) through the remission of the fees required in rule 62.3(71GA, ch 1152). Failure to participate shall result in license suspension, revocation, cancellation, or nonrenewal.

21—62.2(71GA, ch 1152) Required fees. Until the amounts are amended or waived by the grain indemnity fund board pursuant to 1986 Iowa Acts, chapter 1152, section 35, in accordance with Iowa Code chapter 17A, fees shall be assessed as follows:

62.2(1) A per-bushel fee on all grain sold, in an amount of one-quarter cent per bushel, remitted by the licensee.

62.2(2) An annual grain dealer/warehouse fee, remitted by the licensee, as follows:

a. For Class 1 grain dealers, five hundred dollars (\$500).

b. For Class 2 grain dealers, two hundred fifty dollars (\$250).

c. For warehouse operators or participating federally licensed grain warehouses:

(1) For intended storage of bulk grain in any quantity less than twenty thousand (20,000) bushels, forty-two dollars (\$42) plus seven dollars (\$7) for each two thousand (2,000) bushels or fraction thereof in excess of twenty thousand (20,000) bushels.

(2) For intended storage of bulk grain in any quantity not less than twenty thousand (20,000) bushels and not more than fifty thousand (50,000) bushels, seventy dollars (\$70) plus four and a half dollars (\$4.50) for each three thousand (3,000) bushels or fraction thereof in excess of twenty thousand (20,000) bushels.

(3) For intended storage of bulk grain in any quantity not less than fifty thousand (50,000) bushels and not more than seventy thousand (70,000) bushels, one hundred fifteen dollars (\$115) plus four and a half dollars (\$4.50) for each four thousand (4,000) bushels or fraction thereof in excess of fifty thousand (50,000) bushels.

(4) For intended storage of bulk grain in any quantity not less than seventy thousand (70,000) bushels, one hundred thirty-seven dollars (\$137) plus two and three-quarters dollars (\$2.75) for each five thousand (5,000) bushels or fraction thereof in excess of seventy thousand (70,000) bushels.

This rule is intended to implement 1986 Iowa Acts, chapter 1152, section 35.

21—62.3(71GA, ch 1152) "Grain sold"—grain on which a fee is required to be remitted.

62.3(1) With respect to licensees who hold only a state grain dealer license and do not hold either a state warehouse license or a federal warehouse license, "grain sold" as defined in 1986 Iowa Acts, chapter 1152, section 31, includes all grain to which the grain dealer obtains title, including credit sale contract transactions. The above described grain shall be subject to the per-bushel fee established in 1986 Iowa Acts, chapter 1152, section 33, as adjusted by rule 62.2(71GA, ch 1152). The per-bushel fee accrues as of the date title to the grain is transferred to the licensee.

62.3(2) With respect to licensees who concurrently hold a state grain dealer license and a state warehouse operators license, "grain sold" as defined in 1986 Iowa Acts, chapter 1152, section 31, includes all grain to which the grain dealer obtains title, including credit sale contract transactions, and includes all grain received for storage by the warehouse operator. The above-described grain shall be subject to the per-bushel fee established in 1986 Iowa Acts, chapter 1152, section 33, as adjusted by rule 62.2(71GA, ch 1152). In the case of grain received for purchase by the grain dealer, the per-bushel fee accrues as of the date title to the grain is transferred to the licensee. In the case of grain received for storage by the warehouse operator, the per-bushel fee accrues as of the date the warehouse operator receives the grain for storage. The per-bushel fee shall be assessed as described above, unless the licensee can provide documentation, acceptable to the grain warehouse division, that some or all of the grain for which the licensee has issued warehouse receipts would be used for grain bank storage.

62.3(3) With respect to licensees who concurrently hold a state grain dealer license and federal warehouse license, "grain sold" as defined in 1986 Iowa Acts, chapter 1152, section 31, includes all grain to which the grain dealer obtains title, including credit sale contract

AGRICULTURE AND LAND STEWARDSHIP, DEPARTMENT OF[21] (cont'd)

transactions, and does not include grain received for storage by the federal licensee. The above-described grain shall be subject to the per-bushel fee established in 1986 Iowa Acts, chapter 1152, section 33, as adjusted by rule 62.2(71GA, ch1152); as of the date title to the grain is transferred to the licensee.

This rule is intended to implement 1986 Iowa Acts, chapter 1152, sections 31 and 33.

21—62.4(71GA, ch 1152) Payment of the per-bushel fee:

62.4(1) The per-bushel fee established in 1986 Iowa Acts, chapter 1152, section 33, as adjusted by rule 62.2(71GA, ch1152), is due on the fifteenth (15th) day of the calendar month succeeding the calendar quarter in which the fee accrued. The calendar quarters are as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

62.4(2) If the per-bushel fee is not addressed to the grain warehouse division and postmarked on or before the fifteenth (15th) day of the month succeeding the calendar quarter in which the fee accrued, the grain warehouse division shall begin to assess the penalty established in 1986 Iowa Acts, chapter 1152, section 33. However, the grain warehouse division will not collect the above-mentioned penalty until the penalty amount is greater than or equal to five dollars (\$5).

62.4(3) If the per-bushel fee is not addressed to the grain warehouse division and postmarked on or before the forty-fifth (45th) day of the succeeding calendar quarter, the grain dealer's or warehouse operator's license shall be suspended.

This rule is intended to implement 1986 Iowa Acts, chapter 1152, section 33.

[Filed 2/6/87, effective 4/1/87]

[Published 2/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 2/25/87.

ARC 7395

**CORRECTIONS,
DEPARTMENT OF[291]**

Pursuant to the authority of 1986 Iowa Acts, chapter 1178, the Iowa Department of Corrections by approval of the Corrections Board at its regular meeting on January 29, 1987, adopts amendments to Chapter 20, "Institutions Administration," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin December 31, 1987, as **ARC 7268**.

Changes from the Notice are as follows:

Subrule 20.15(2), first line,

Subrule 20.15(2), paragraphs "a" and "b,"

Subrule 20.15(3), entire paragraph,

Subrule 20.15(4), first line,

Subrule 20.15(7), first line.

This rule will become effective April 1, 1987.

Amend 291—Chapter 20 by adding the following new rule:

291—20.15(71GA, ch1178) Victim notification.

20.15(1) Definitions.

"Notification" means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit an agency from also providing appropriate information to a registered victim by telephone.

"Registered" means having provided the appropriate office, agency, or department with the victim's written request for notification and current mailing address and telephone number.

"Victim" means a person who has suffered physical, emotional, or financial harm as the result of a public offense, other than a simple misdemeanor, committed in this state. The term also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen (18) years of age at the time of the offense.

"Violent crime" means a forcible felony, as defined in Iowa Code section 702.11, and includes any other felony or aggravated misdemeanor which involved the actual or threatened infliction of physical or emotional injury on one or more persons.

20.15(2) A victim of a violent crime may become registered with the department of corrections which entitles the victim to be notified when the offender is to be released in any of the following situations:

a. Work release. Approximate date of release and whether the inmate is expected to return to the community where the victim resides will be provided.

b. Furlough. Date of leave, date of return and whether the inmate is expected to return to the community where the victim resides will be provided.

c. Escape. Date of escape will be provided.

d. Expiration of sentence. Date of discharge from an institution will be provided.

20.15(3) The victim shall also be notified when an institution initiates a recommendation for parole.

20.15(4) A victim will become registered by written request to the Director, Iowa Department of Corrections, Jewett Building, 10th and Grand, Des Moines, Iowa 50309.

20.15(5) Assistance for registering may be obtained through the county attorney or contacting the director of corrections at (515) 281-4811.

20.15(6) All information with regard to a registered victim will be kept confidential.

20.15(7) A registered victim is responsible for notifying the department of corrections of address or phone changes.

[Filed 2/6/87, effective 4/1/87]

[Published 2/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 2/25/87.

ARC 7401

INSPECTIONS AND APPEALS, DEPARTMENT OF [481]

Pursuant to the authority of the 1986 Iowa Acts, Chapter 1245, section 504, the Iowa Department of Inspections and Appeals hereby adopts amendments to Chapter 1, "Administration"; Chapter 2, "Petitions for Rule Making"; Chapter 3, "Declaratory Rulings"; Chapter 4, "Contested Case Hearings"; Chapter 5, "Investigations and Hearings Relating to Professional Licensure Within the Department of Public Health"; Chapter 6, "Medicaid Provider Audits"; and Chapter 7, "Investigations," Iowa Administrative Code. These rules and amendments were adopted February 1, 1987, by the Iowa Department of Inspections and Appeals.

Notice of Intended Action was published in the Iowa Administrative Bulletin October 8, 1986, as **ARC 7024**.

These rules establish minimum procedural requirements for conducting Department business. They are identical in content to those published in the Iowa Administrative Bulletin on October 8, 1986, as **ARC 7024**.

These rules become effective April 1, 1987, and Emergency rules adopted July 16, 1986, will be rescinded effective April 1, 1987.

The following rules are adopted:

ITEM 1. Adopt 481—Chapter 1, "Administration"; Chapter 2, "Petitions for Rule Making"; Chapter 3, "Declaratory Rulings"; Chapter 4, "Contested Case Hearings"; Chapter 5, "Investigations and Hearings Relating to Professional Licensure Within the Department of Public Health"; Chapter 6, "Medicaid Provider Audits"; and Chapter 7, "Investigations" as filed emergency, effective July 1, 1986, and published in the Iowa Administrative Bulletin on July 16, 1986, as **ARC 6749, in their entirety subject to the following amendments:**

ITEM 2. Amend subrule 1.1(5) as follows:

1.1(5) The deputy director serves as the principal deputy to the director to assist in the development, implementation, or revision of the policies affecting overall operations and relationships in the agency; confers with staff department heads regarding the progress and problems of specific programs and operations for which they are responsible; reviews activities, reports and records, and determines conformity with policies and procedures and the need for improvements or revisions; determines and ensures that policy required by changes in the law or director action; are executed, reports findings and submits recommendations to the director for approval or subsequent actions; supervises divisions requiring administrative coordination, and supervises general administrative matters. *The deputy director* represents the director in various capacities as directed.

ITEM 3. Amend the introductory paragraph to rule 4.6(71GA, ch1245) as follows:

481—4.6(71GA, ch1245) Procedures. The following procedures will be followed, subject to the transmitting agency's rules, contracts or agreements:

ITEM 4. Amend subrule 5.7(2) as follows:

5.7(2) If a contested case is heard by a hearing officer alone, the hearing officer shall prepare a proposed decision in such a form that it may be adopted as the decision in the case. The board itself may adopt the

proposed decision in its entirety, or may increase or reduce the proposed penalty, or make other changes and adopt the balance of the proposed decision.

ITEM 5. Amend the introductory paragraph to rule 7.4(71GA, ch1245) as follows:

481—7.4(71GA, ch1245) Food establishments, food and vending machines and hotel-licensing process. The department will receive requests for licensure of food establishments, food and beverage vending machines and hotels, and ~~will~~ *shall* issue or withhold licenses based on standards in agriculture rules 30 — chapters 36, 37, 38, 39, and 46.

These rules are intended to implement 1986 Iowa Acts, Chapter 1245, section 504.

[Filed 2/6/87, effective 4/1/87]

[Published 2/25/87]

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ARC 7402

NATURAL RESOURCE COMMISSION [571]

Pursuant to the authority of Iowa Code section 107.24 and 1986 Iowa Acts, chapter 1245, section 1805, the Natural Resource Commission hereby amends Chapter 24, "Recreation/ Tourism Grants to County Conservation Boards," Iowa Administrative Code.

These amendments provide for the use of cost analyses in addition to appraisals for land acquisitions, restrict the use of recreation/tourism grants for facilities that have already been developed for public use, allow a board member or employee from a county with a project under consideration to remain on the review and selection committee, allow for waivers of retroactivity to be granted for both acquisition and development projects, change project application dates, more clearly identify necessary steps for an agency to request obligation of funds, establish a more efficient method for allocating funds for projects that are prepared for activation, and establish a limit based on the percentage of the project cost allowed for advance payments.

Notice of Intended Action was published in the December 17, 1986, Iowa Administrative Bulletin as **ARC 7240**. Oral and written comments were received. Changes from the Notice of Intended Action include:

1. After the Notice, the Commission transferred the former Conservation Commission rules to part 571 of the Iowa Administrative Code. Thus, Item 1 of the Notice which proposed to transfer 290—ch 71 to 571—ch 71 was deleted because it was no longer necessary. In addition, there was substantial renumbering of the rules, with former Chapter 71 becoming new Chapter 24. Thus, this adoption of amendments reflects the new numbering.

2. Language was added to 24.4(3) (Item 3) to restrict the purchase of private areas and facilities which are open to the public, but not eliminate such purchase altogether as proposed in the Notice.

NATURAL RESOURCE COMMISSION[571] (cont'd)

3. Applications are required to be received by August 15 rather than October 15, again in response to comments. This will allow applications to be approved in time to allow counties to negotiate land acquisition so as to occur in two calendar years, to the tax advantage of sellers and thus potential lower cost to the county (Item 6).

4. New subrules 24.6(5) and 24.6(6) were added (Items 7 and 8) in response to comments. These subrules allow "waiver of retroactivity" in certain circumstances.

5. The date for obligating money to lower ranked projects was changed from October 15 to May 31 (Item 4). These rules will become effective April 1, 1987.

These amendments are intended to implement 1985 Iowa Acts, chapter 33, section 301.3"a" as amended by 1986 Iowa Acts, chapter 1207, section 3.

ITEM 1. Rule 24.1(71GA,ch33) is amended to read as follows:

571—24.1(71GA, ch33) Purpose. The purpose of this rule is to promulgate procedures for the distribution of those funds from the "jobs now account" authorized by the Iowa lottery Act and designated for use in providing grants-in-aid to county conservation boards, hereinafter referred to as boards, for carrying out acquisition and development projects as provided in Iowa Code chapter 111A, with the intent of providing economic development initiatives. The department of natural resources, hereinafter referred to as the *agency department*, acting through its director, will administer the distribution of funds.

ITEM 2. Subrule 24.4(1) is amended to read as follows:

24.4(1) Acquisition projects. Assistance will be provided for the cost of real property not to exceed the appraised valuation based on an appraisal report prepared by a competent appraiser and approved by the *agency, department, or other property value analyses method approved by the director*. Assistance will also be provided for incidental expenses including the cost of the appraisal, abstracting, deed tax stamps, recording fees, and any necessary surveys.

ITEM 3. Add a new subrule 24.4(3) as follows:

24.4(3) Existing facilities. *The primary purpose of this program is to acquire and develop additional new public recreational areas and facilities. The purchase of existing areas and facilities from the private sector when those areas and facilities are already available and will continue to be available for public recreational use will not be eligible for funding. New public facilities, existing private facilities previously not available to the general public, or the significant expansion or enhancement of existing publicly owned facilities may be funded under this program.*

ITEM 4. Subrule 24.5(4) is amended to read as follows:

24.5(4) Grant match. A board may request a grant from this program to match its own funds, donations, private foundation grants, any federal or state grant not administered by the *agency department* or any combination thereof.

ITEM 5. Subrule 24.6(1) is amended to read as follows:

24.6(1) Form of application. Grant applications shall be on forms provided by the *agency department*, and the content of which shall, at a minimum, address the following items:

- a. Economic impact.
- b. Project scope.

- c. Project justification.
- d. Planning relationships.
- e. Project access.
- f. Handicapped provisions.
- g. Project schedule and related funding.

ITEM 6. Subrule 24.6(2) is amended to read as follows:

24.6(2) Application timing. Applications for grants will be reviewed and selected for funding on an annual basis in ~~November~~ *September* during the life of the program ~~except that in 1985, the review and selection process will be held in December.~~ Applications must be received in acceptable form by the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319, by the close of business on the fifteenth day of ~~October~~ *August* or the closest work day thereto ~~except that in 1985, applications must be received by November 29.~~

ITEM 7. Add a new subrule 24.6(5) as follows:

24.6(5) Waiver of retroactivity, land acquisition. In case of extreme urgency involving land acquisition, a potential grant applicant may formally request a written "waiver of retroactivity" which, if granted by the director, will permit the applicant to acquire the real property immediately without jeopardizing its chances of receiving a grant. However, the granting of the waiver in no way implies or guarantees that any subsequent grant application covering the acquisition will be recommended for funding by the committee. The request for the waiver must include justification regarding the urgency of the acquisition, a description of the land to be acquired, and a county map on which the land to be acquired is located. Acceptable justification would include situations in which land is to be sold at auction or by sealed bids or when the landowner requires immediate purchase.

ITEM 8. Add a new subrule 24.6(6) as follows:

24.6(6) Waiver of retroactivity, development. When a project has received approval by the commission under 24.8(71GA,ch33), a waiver of retroactivity for development activities and associated costs that are clearly within the scope of the project as approved may be assumed to exist. As with waivers for acquisition, no guarantee of grant assistance is provided under this subrule and funds will be directed toward approved projects in accord with their priority rankings. Exceptions are (a) when sufficient funds are available to cost-share all approved projects, and (b) after May 31 each year, if lower ranking approved projects are ready for funding and higher ranking approved projects are not, funds may be diverted to those lower ranking projects.

ITEM 9. Subrule 24.7(1) is amended to read as follows:

24.7(1) Review and selection committee. The role of the review and selection committee, hereinafter referred to as the committee, will be to rank in priority order the grant applications that are submitted based on the information provided and make recommendations to the *agency director*. The committee will be composed of three *agency department* staff persons appointed by the director, one board member appointed by the chairperson of the Iowa Association of County Conservation Boards, and one board employee appointed by the chairperson of the Iowa Association of County Conservation Board Employees. Board personnel will serve *staggered* two-year terms on a state fiscal year basis, ~~except that the first appointed board member will serve a one-year term~~

NATURAL RESOURCE COMMISSION[571] (cont'd)

expiring on June 30, 1986. A board member or board employee may serve on the committee only if their board has not submitted a project for review. If a conflict arises, the board member or board employee shall resign and the appropriate chairperson shall appoint another person to complete the term. If a project is submitted for review by the review and selection committee by a county conservation board, one of whose members or employees is on the review and selection committee, that individual shall not participate in discussion on and shall not vote on that particular project.

ITEM 10. Subrule 24.7(3), paragraph "f," is amended to read as follows:

f. Relationship to recreation/tourism/leisure plan, statewide comprehensive outdoor recreation plan and agency department plan (2).

ITEM 11. Rule 24.8(71GA,ch33) is amended to read as follows:

571—24.8(71GA,ch33) Agency Department review. Grant applications as prioritized by the committee and recommended to the director will be presented to the department of natural resources commission, hereinafter referred to as the commission, at the December meeting for final approval. Approval by the department of natural resources commission will establish the budget for each approved project for each fiscal year. Funds will be available to the anticipated budget level of \$750,000 each year contingent upon transfer of sufficient lottery revenues to the jobs now account. The commission may alter the rankings recommended by the committee. Approval at this point will not constitute approval of the obligation of funds for a project.

ITEM 12. Rule 24.9(71GA,ch33) is amended to read as follows:

571—24.9(71GA,ch33) Notification of grant application rankings. Immediately following approval of grant application rankings by the department of natural resources commission, all applicants will be notified of their ranking. The highest ranked applicants, up to the anticipated budget level of \$750,000 amount for county conservation board projects transferred to the jobs now account for that year, will be advised to notify the agency department as soon as they are ready to commence work on their projects.

ITEM 13. Rule 24.10(71GA,ch33) is amended to read as follows:

571—24.10(71GA,ch33) Obligation of funds. When a board is prepared to enter into a contract for land acquisition or development, it shall submit a request to the agency department for the obligation of funds. The following requirements must be met prior to a request for obligation of funds:

1. Approval by the commission as required under Iowa Code chapter 111A.
2. Approval of plans and specifications by the department.
3. Signed option to acquire at or below appraised price or value established by approved property value analysis, conditioned upon receipt of a recreation/tourism grant.
4. Statement of availability and commitment of local funds.
5. Appraisals or cost analyses approved by the department.

Funds will be obligated immediately or as soon as available in the jobs now account. However, no funds will be obligated until the agency department is satisfied that the board is prepared to approve a contract within forty-five (45) days.

ITEM 14. Rule 24.11(71GA,ch33) is amended to read as follows:

571—24.11(71GA,ch33) Order of funding. Approved projects which are ranked within the anticipated budget level of \$750,000 will be funded in the order in which requests for obligation of funds are submitted to the agency of their ranking. However, when it becomes necessary to delay obligation of funds due to a shortage in the jobs now account and, as a result, a backlog of requests occurs, projects will be funded in accordance with their numerical rankings. Funds will be allocated to projects in accord with their ranking until May 31 of the year following. Any funds not obligated by May 31 will be made available to approved projects with a lower rank that are ready for obligation.

ITEM 15. Subrule 24.12(1) is amended to read as follows:

24.12(1) Commencement deadline. Boards which are notified that their projects are ranked within the anticipated budget level of \$750,000 scheduled for funding shall be prepared to commence their projects within nine (9) months following notification.

ITEM 16. Subrule 24.12(3) is amended to read as follows:

24.12(3) Replacement. If funds are available, grant applicants previously ranked outside of the anticipated budget level will but not approved by the commission may be given the grant opportunity to receive a grant in the order in which their grant applications were ranked. Projects must be in a position to request the obligation of funds prior to the end of the fiscal year.

ITEM 17. Subrule 24.15(1) is amended to read as follows:

24.15(1) Project billings. Grant recipients shall submit billings for reimbursement on billing forms provided by the agency department.

ITEM 18. Subrule 24.15(4) is amended to read as follows:

24.15(4) Documentation. Grant recipients shall provide maintain documentation as required by the agency department to substantiate all costs incurred on a project.

ITEM 19. Subrule 24.15(5) is amended to read as follows:

24.15(5) Advance payments. Upon proper evidence of need, advance payments may be made to grant recipients for land acquisition payments and for payments to contractors on development work. Advance payments will be in amounts not less than \$5,000 and will not be paid out until such time as actually needed by the recipient. For land acquisition projects, advance payments may be one hundred percent (100%) of the state's share of the project for documented expenses and for development work, advance payments shall be ninety percent (90%) of the state's share of the project cost.

ITEM 20. Subrule 24.15(6) is amended to read as follows:

24.15(6) Direct payments to landowners. If good cause can be shown by the grant recipient, the agency depart-

NATURAL RESOURCE COMMISSION[571] (cont'd)

ment may approve direct payment to the seller of the grant portion of the purchase price on land acquisition projects. Direct payments may also be approved to any third party which may have paid the purchase price and taken title to the land in the name of the grant recipient.

ITEM 21. Rule 24.16(71GA,ch33) is amended to read as follows:

571—24.16(71GA,ch33) Recordkeeping and retention. A grant recipient shall keep adequate records relating to its administration of a grant assisted project, particularly relating to all incurred costs. These records shall be available for audit by appropriate personnel of the agency representatives of the department and the state auditor's office.

ITEM 22. Subrule 24.17(1) is amended to read as follows:

24.17(1) Previously approved projects. Each board with an active project for which a grant was approved in a previous fiscal year shall submit a project status report including any revisions in economic impact estimates and cost estimates. Such ~~This~~ report shall be submitted by the close of business ~~on by the fifteenth day of October or the closest work day thereto May 31 of each year.~~ At subsequent reviews, the department of natural resources will approve budgets for new projects only after ensuring that adequate funds are budgeted for projects approved at previous project reviews, to the extent of available funding. However, expansion of the scope of a previously approved project will be treated as a new project.

ITEM 23. Rule 24.18(71GA,ch33) is amended to read as follows:

571—24.18(71GA,ch33) Interim reviews. The agency director may order an interim review process upon sixty (60)-day notice to all boards. Interim review may be ordered to compensate for major increases or decreases in costs or estimates relating to approved projects, significant changes in lottery funding availability, or unique project opportunities that could not be reasonably foreseen at the time of the preceding annual review and where time is of the essence.

ITEM 24. Subrule 24.20(1) is amended to read as follows:

24.20(1) Buildings and other structures. Income from the sale of any buildings or other structures acquired with a grant from this program shall be credited to the project by which acquired. If the project is already closed out, payment shall be made to the agency department in the same ratio of the original grant to the total project cost.

ITEM 25. Subrule 24.20(2) is amended to read as follows:

24.20(2) Land acquired with grant assistance. Whenever it has been determined and agreed upon by the grant recipient and the agency department that land acquired with assistance from this program is no longer of value for the intended purpose, or the recipient has other good cause, the land, with the approval of the agency department, may be disposed of and the proceeds used to acquire an area of equal value or refund shall be made to the agency department of the proceeds in the same ratio as the ratio of the original grant to the total project cost.

ITEM 26. Subrule 24.20(3) is amended to read as follows:

24.20(3) Land developed with grant assistance. Whenever it has been determined and agreed upon by the grant recipient and the agency department that land developed with assistance from this program is no longer of value for the intended purpose, or the recipient has other good cause, the land, with the approval of the agency department, may be disposed of and the proceeds used to acquire and develop an area of equal value or the development grant shall be refunded to the agency department less depreciation based on an amortization period of twenty-five (25) years.

These rules are intended to implement 1985 Iowa Acts, chapter 33, section 301.3"a" as amended by 1986 Iowa Acts, chapter 1207, section 3.

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ARC 7386

NURSING, BOARD OF[590]

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Iowa Board of Nursing adopts amendments to Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses," appearing in the Iowa Administrative Code.

These amendments require the circulating registered nurse to be present in the operating room with the staff being supervised.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 3, 1986, as ARC 7172. The only change from Notice is in subrule 6.3(3), paragraph "d," which was made in an attempt to more clearly define the supervisory relationship between the registered nurse and the licensed practical nurse working in the operating room.

These amendments are intended to implement Iowa Code section 152.1.

These amendments will become effective on April 1, 1987.

ITEM 1. Amend subrule 6.3(3), paragraph "d," to read as follows:

d. Operating room. (A licensed practical nurse may assist with circulating duties when supervised by a registered nurse circulating in the same room.)

ITEM 2. Amend chapter 6 by adding the following new rule:

590—6.7(152) Specific nursing practice for registered nurses. A registered nurse, while circulating in the operating room, shall provide supervision only to persons in the same operating room.

This rule is intended to implement Iowa Code section 152.1.

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ARC 7378
PHARMACY EXAMINERS,
BOARD OF[620]

Pursuant to the authority of Iowa Code section 155.19, the Iowa Board of Pharmacy Examiners adopts an amendment to Chapter 1, "Licensure," Iowa Administrative Code.

The adopted rule is identical to that published as Notice of Intended Action in the November 19, 1986, Iowa Administrative Bulletin as ARC 7127. The amendment was adopted during a regular meeting of the Iowa Board of Pharmacy Examiners on January 20, 1987.

The amendment clarifies the procedures to be followed when a candidate for licensure transfers NABPLEX scores from another state. Those procedures require that the candidate meet the requirements for licensure as listed in rule 1.13(155) within twelve months of the date of the transfer of scores.

This rule is intended to implement Iowa Code section 155.5 and will become effective on April 1, 1987.

Subrule 1.14(1) is amended to read as follows:

1.14(1) The board of pharmacy examiners will accept NABPLEX scores transferred from another state board of pharmacy through NABP in lieu of the applicant taking NABPLEX in Iowa. ~~if the applicant is not licensed as a pharmacist in another state and the grades are transferred within one year of the applicant's taking NABPLEX. Score transfer candidates shall be required to meet the standards established in rule 1.13(155) within twelve (12) months of the date of transfer.~~

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ARC 7379
PHARMACY EXAMINERS,
BOARD OF[620]

Pursuant to the authority of Iowa Code section 203A.15, the Iowa Board of Pharmacy Examiners adopts an amendment to Chapter 2, "Pharmacy Business Licenses," Iowa Administrative Code.

The adopted rule is identical to that published as Notice of Intended Action in the November 19, 1986, Iowa Administrative Bulletin as ARC 7128. The amendment was adopted during a regular meeting of the Iowa Board of Pharmacy Examiners on January 20, 1987.

The amendment clarifies the provisions for the return, exchange, and reselling of drugs and devices which have been dispensed on a prescription.

This rule is intended to implement Iowa Code section 203A.10 and will become effective on April 1, 1987.

Rule 620—2.6(155) is amended to read as follows:

620—2.6(155) 203A) Return of drugs and appliances. For the protection of the public health and safety, no prescription drugs of any description or items of personal

contact nature which have been removed from the original package or container after sale, shall be accepted for return, exchanged, or resold by any pharmacist: *except as authorized in subrule 6.11(6).*

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ARC 7380
PHARMACY EXAMINERS,
BOARD OF[620]

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Pharmacy Examiners adopts an amendment to Chapter 4, "License Fees, Renewal Dates, Fees for Duplicate Licenses and Certification of Grades," Iowa Administrative Code.

The adopted rule is identical to that published as Notice of Intended Action in the November 19, 1986, Iowa Administrative Bulletin as ARC 7129. The amendment was adopted during a regular meeting of the Iowa Board of Pharmacy Examiners on January 20, 1987.

The amendment provides that only original or duplicate licensed pharmacist certificates are valid for display.

This rule is intended to implement Iowa Code section 155.7 and will become effective on April 1, 1987.

Rule 620—4.2(147) is amended to read as follows:

620—4.2(147) 155) Fees. *Only original or duplicate certificates for licensed pharmacists issued by the board of pharmacy examiners are valid.* Duplicate certificates for registered licensed pharmacists may be issued for a fee of five dollars (\$5) each.

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ARC 7381
PHARMACY EXAMINERS,
BOARD OF[620]

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Pharmacy Examiners adopts an amendment to Chapter 5, "Reciprocal Registration," Iowa Administrative Code.

The adopted rule is identical to that published as Notice of Intended Action in the November 19, 1986, Iowa Administrative Bulletin as ARC 7130. The amendment was adopted during a regular meeting of the Iowa Board of Pharmacy Examiners on January 20, 1987.

The amendment removes certain requirements which are no longer germane to current candidates for reciprocity, and establishes the fees and procedures to be followed in order to obtain a license by reciprocity.

These rules are intended to implement Iowa Code section 147.94 and will become effective on April 1, 1987.

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

620—Chapter 5 is rescinded in its entirety and the following is inserted in lieu thereof:

CHAPTER 5
LICENSURE BY RECIPROCITY

620—5.1(147) **Reciprocity fee.** The fee for reciprocal licensure is one hundred fifty dollars (\$150), which must accompany the application. The fee is returned if the application is denied.

620—5.2(147) **Necessary credentials.** The application, together with other necessary credentials, must be filed with the secretary of the Iowa Board of Pharmacy Examiners, Statehouse, Des Moines, Iowa.

620—5.3(147) **Fiscal licensure.** No additional collection of licensure fees shall be made for the balance of the biennial renewal period in which the applicant has been declared fully licensed by reciprocity by the board.

620—5.4(147) **Eligibility for reciprocity.** The applicant must be a licensed pharmacist by examination in some state of the United States with which Iowa has a reciprocal agreement and must be in good standing at the time of the application. Further, all applicants for reciprocity to this state who obtain their original licensure after January 1, 1980, must have passed the National Association of Boards of Pharmacy (NABP) Licensure Examination (NABPLEX) or its equivalent as determined by NABP. Reciprocal licensure will not be granted until after the application is approved by the secretary of the board and after the applicant has made a personal appearance before at least one (1) member of the board, showing proof of qualifications, and has passed an examination on the Iowa drug laws.

These rules are intended to implement Iowa Code section 147.94.

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ARC 7382

**PHARMACY EXAMINERS,
BOARD OF[620]**

Pursuant to the authority of Iowa Code section 155.19, the Iowa Board of Pharmacy Examiners has adopted amendments to Chapter 6, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The adopted rules are identical to those published as Notice of Intended Action in the November 19, 1986, Iowa Administrative Bulletin as **ARC 7131**. The amendments were adopted during a regular meeting of the Iowa Board of Pharmacy Examiners on January 20, 1987.

The amendments to rule 6.1(155) clarify the meaning of the phrase "fill the prescriptions" in Iowa Code section 155.6 so that it incorporates the intent and meaning of Iowa Code section 147.107. The amendment to subrule 6.5(7) clarifies that subrule by prohibiting the leasing of drug distribution equipment.

These rules implement Iowa Code sections 147.55, 147.107, and 155.6.

These rules will become effective on April 1, 1987.

ITEM 1. Amend rule 620—6.1(155) to read as follows:

620—6.1(155) Authorized person. For the purpose of Iowa Code sections 155.6 and 147.107 of the Code, the phrase "fill the prescriptions" shall be deemed to include, but not necessarily be limited to, the following *judgmental functions*:

6.1(1) Read and interpret the prescription of a duly licensed medical practitioner, whether transmitted to the pharmacist by writing or orally.

6.1(2) Accurately measure, or compound, ingredients Ensure the accuracy of the ingredients when measured or compounded as specified by the medical practitioner.

6.1(3) Read and interpret, and write, adequate label directions Ensure adequate label directions as are necessary to assure the patient's understanding of the prescriber's intentions.

6.1(4) Affix label in, or to the container containing the medication, prescribed for the patient.

ITEM 2. Amend subrule 6.5(7) to read as follows:

6.5(7) It is unethical for a pharmacist to enter into any agreement with long-term care or acute care facilities which agreement calls for the pharmacist to purchase or lease drug distribution equipment, or any other equipment, for the exclusive use of the facility. It shall also be unethical for a pharmacy to enter into agreements with long-term care facilities which negate a patient's freedom of choice of pharmacy services.

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ARC 7383

**PHARMACY EXAMINERS,
BOARD OF[620]**

Pursuant to the authority of Iowa Code section 204.301, the Iowa Board of Pharmacy Examiners adopts amendments to Chapter 8, "Controlled Substances," and rescinds Chapter 12, "Medicinal Uses of Marijuana," Iowa Administrative Code.

The adopted rules are identical to those published as Notice of Intended Action in the November 19, 1986, Iowa Administrative Bulletin as **ARC 7132** except for editorial changes. The amendments were adopted during a regular meeting of the Iowa Board of Pharmacy Examiners on January 20, 1987.

The amendment to subrule 8.13(9) identifies that prescriptions for schedule V controlled substances are limited to five refills or six months, whichever comes first.

The amendment to rule 8.15(204) adds a requirement for a delivery date on the record form of complimentary packages left with a registrant.

The amendment to rule 8.19(204) adds the product Vicks Inhaler to the list of excluded substances.

The amendment rescinding Chapter 12 is necessary because of changes in Iowa Code chapter 204 as amended by 1986 Iowa Acts, chapter 1037. This change eliminates the need for investigational programs on the medical use of marijuana.

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

These rules are intended to implement Iowa Code section 204.308 and will become effective on April 1, 1987.

ITEM 1. Amend subrule 8.13(9) to read as follows:

8.13(9) Refilling of prescriptions. No prescription for a controlled substance listed in schedule III, or IV or V shall be filled or refilled more than six (6) months after the date on which such prescription was issued and no such prescription authorized to be refilled may nor be refilled more than five (5) times. Each refilling of a prescription shall be entered on the back of the prescription or on another appropriate uniformly maintained readily retrievable record, such as medication records, which indicate the date, quantity, and name of dispensing pharmacist for each prescription initialed, and dated by the pharmacist as of the date of dispensing, and shall state the amount dispensed. If the pharmacist merely initials and dates the back of the prescription, the pharmacist he shall be deemed to have dispensed a refill for the full face amount of the prescription. Additional quantities of controlled substances listed in schedule III, or IV or V may only be authorized by a prescribing practitioner through issuance of a new and separate prescription. as provided herein which shall be a new and separate prescription.

ITEM 2. Amend rule 620—8.15(204) to read as follows:

620—8.15(204) Records form—complimentary packages. The records form for the distribution of complimentary packages of controlled substances shall contain the name, address, registration number of the supplier and practitioner; the name and quantity of the specific controlled substances delivered; and the date of that delivery.

ITEM 3. Amend rule 620—8.19(204) by adding the following substance in alphabetical sequence:

Trade name: Vicks Inhaler
 Dosage form: Inhaler
 Composition: 1-desoxyephedrine
 Potency: 113.00 mg.
 Manufacturer or distributor: Vick Chemical Co.

ITEM 4. Rescind 620—Chapter 12 in its entirety.

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requested. It also establishes that a voluntary surrender of a license to practice pharmacy will be considered a revocation with respect to a request for reinstatement.

These rules are intended to implement Iowa Code section 155.13 and will become effective on April 1, 1987.

Amend 620—Chapter 9 by adding the following new rules:

620—9.3(155) License reinstatement. Any person whose license to practice pharmacy has been revoked must meet the following eligibility requirements:

1. Must have satisfied all the terms of the order of revocation or court proceedings as they apply to that revocation.

2. Must successfully pass NABPLEX or an equivalent examination as determined by NABP, the Federal Drug Law Examination (FDLE), and the Iowa Drug Law Examination.

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

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

5. An order for reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law, and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in subrule 9.1(9).

620—9.4(155) Voluntary surrender of a license. A license to practice pharmacy which has been voluntarily surrendered shall be considered a revocation of license with respect to a request for reinstatement which will be handled under the terms established by rule 9.3(155).

[Filed 1/28/87, effective 4/1/87]
 [Published 2/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 2/25/87.

ARC 7384

PHARMACY EXAMINERS,
BOARD OF[620]

Pursuant to the authority of Iowa Code section 155.19, the Iowa Board of Pharmacy Examiners adopts an amendment to Chapter 9, "Purpose and Organization," Iowa Administrative Code.

The adopted rule is identical to that published as Notice of Intended Action in the November 19, 1986, Iowa Administrative Bulletin as ARC 7133 except for editorial changes. The amendment was adopted during a regular meeting of the Iowa Board of Pharmacy Examiners on January 20, 1987.

The amendment establishes the procedures to be followed when reinstatement of a revoked license is

ARC 7396

PUBLIC HEALTH
DEPARTMENT[470]

Pursuant to the authority of Iowa Code sections 135.11(15) as amended by 1986 Iowa Acts, chapter 1245, section 1104, and 135C.14, the Iowa Department of Public Health hereby amends Chapter 58, "Intermediate Care Facilities," Chapter 59, "Skilled Nursing Facilities," and Chapter 64, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

The rules were published as a Notice of Intended Action, ARC 7055, on October 22, 1986. The rules were adopted by the Board of Health on January 14, 1987.

PUBLIC HEALTH DEPARTMENT[470] (cont'd)

The following items amend three subrules in health facility licensure rules dealing with dietitians. The existing rules require that certain dietitians be registered or eligible for registration/membership in the American Dietetic Association. Because Iowa has recently established licensure for dietitians, three subrules were amended to require that dietitians be licensed and to delete the reference to membership in the American Dietetic Association.

These rules are identical to those published under Notice. The rules will become effective on April 1, 1987.

These rules are intended to implement Iowa Code section 135C.14.

ITEM 1. Amend subrule 58.24(2), paragraph "d," by striking in its entirety and inserting in lieu thereof the following:

d. If a dietetic service supervisor is not a licensed dietitian, a consultant dietitian is required. The consultant dietitian shall be licensed by the state of Iowa, pursuant to Iowa Code chapter 152A.

ITEM 2. Amend subrule 59.29(2), paragraph "d," by striking in its entirety and inserting in lieu thereof the following:

d. If the dietetic service supervisor is not a licensed dietitian, a consultant dietitian is required. The consultant dietitian shall be licensed by the state of Iowa, pursuant to Iowa Code chapter 152A.

ITEM 3. Amend subrule 64.32(2), paragraph "d," by striking in its entirety and inserting in lieu thereof the following:

d. If the dietetic service supervisor is not a licensed dietitian, a consultant dietitian is required. The consultant dietitian shall be licensed by the state of Iowa, pursuant to Iowa Code chapter 152A.

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ARC 7397**PUBLIC HEALTH
DEPARTMENT[470]**

Pursuant to the authority of Iowa Code sections 135.11(15), as amended by 1986 Iowa Acts, Chapter 1245, section 1104, and 135C.14, the Iowa Department of Public Health hereby amends Chapter 58, "Intermediate Care Facilities," and Chapter 59, "Skilled Nursing Facilities," Iowa Administrative Code.

These rules were published as a Notice of Intended Action, **ARC 7082**, on November 5, 1986. The rules were adopted by the Board of Health on January 14, 1987.

The rules require all intermediate care facilities and all skilled nursing facilities to enact policies regarding the admission and retention of persons with histories of dangerous or disturbing behavior.

The rules are identical to those published under Notice. The rules will become effective on April 1, 1987.

These rules are intended to implement Iowa Code section 135C.23(2).

Rules 58.39(135C) and 59.44(135C) are amended by inserting the following as **58.39(2)** and **59.44(2)** and renumbering the existing subrules accordingly:

Policies and procedures shall address the admission and retention of persons with histories of dangerous or disturbing behavior. For the purposes of the subrule, persons with histories of dangerous or disturbing behavior are those persons who have been found to be seriously mentally impaired pursuant to Iowa Code section 229.13 or 812.1 within six (6) months of the request for admission to the facility. In addition to establishing the criteria for admission and retention of persons so defined, the policies and procedures shall provide for:

a. Reasonable precautions to prevent the resident from harming self, other residents, or employees of the facility.

b. Treatment of persons with mental illness as defined in Iowa Code section 229.1(1) and which is provided in accordance with the individualized health care plan.

c. Ongoing and documented staff training on individualized health care planning for persons with mental illness.

[Filed 2/6/87, effective 4/1/87]
[Published 2/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 2/25/87.

ARC 7389**TRANSPORTATION,
DEPARTMENT OF[820]****01 DEPARTMENT GENERAL**

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2 as amended by 1986 Iowa Acts, chapter 1245, sections 1909 and 1926, the Department of Transportation on February 3, 1987, adopted amendments to 820—[01,B] Chapter 2, "Procurement of Equipment, Materials, Supplies and Services," Iowa Administrative Code.

A Notice of Intended Action for these amendments was published in the December 17, 1986, Iowa Administrative Bulletin as **ARC 7221**.

The procurement rules are being amended to comply with two Acts of the Seventy-first General Assembly.

One subrule amends the procurement policy to set aside up to ten percent of procurement awards for targeted small businesses.

The paragraph concerning the list of prospective bidders is being expanded to include targeted small businesses that have been certified by the Department of Economic Development.

An additional paragraph specifies the required method of determining life cycle costs for motor vehicle procurement.

These amendments are identical to the ones published under Notice except for a correction to the implementation clause.

These amendments are intended to implement Iowa Code chapter 307.

TRANSPORTATION, DEPARTMENT OF[820] (*cont'd*)

These amendments are to be published as adopted in the February 25, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective April 1, 1987.

Rule-making actions:

ITEM 1. Amend rule 820—[01,B]2.3(307) by adding subrule 2.3(4) as follows:

2.3(4) Targeted small business procurement. Each fiscal year the department shall set aside between two percent (2%) and ten percent (10%) of the value of anticipated total purchases of goods and services, excluding utilities, for award to certified targeted small businesses.

ITEM 2. Amend subrule 2.4(1), paragraph "a," as follows:

a. These lists are developed using available sources such as technical publications, telephone books, trade journals, commercial vendor registers, and advertising literature, and targeted small businesses certified by the department of economic development.

ITEM 3. Amend subrule 2.4(8) by adding paragraph "c" as follows:

c. Procurement of motor vehicles shall include the calculation and reduction of life cycle costs as specified in 1986 Iowa Acts, chapter 1132, section 1.

ITEM 4. Add an implementation clause at the end of the chapter as shown:

These rules are intended to implement Iowa Code sections 307.10 and 307.21, and 1986 Iowa Acts, chapter 1132, section 1, and chapter 1245, sections 831 to 837.

[Filed 2/6/87, effective 4/1/87]

[Published 2/25/87]

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application of regulatory, warning, and guide signs; one change in the use of markings; three changes in the use of traffic signals; six changes in specifications for construction-maintenance work zone devices; and one miscellaneous change. A copy of Revision 4 is being submitted to the Administrative Rules Coordinator with this amendment. Additional copies are available from the Department.

These amendments are identical to the ones published under Notice except for corrections to the committee title and the Department address.

These amendments are intended to implement Iowa Code chapter 321.

These amendments are to be published as adopted in the February 25, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective April 1, 1987.

Rule-making actions:

Amend rule 820—[06,K]2.1(321) as follows:

820—[06,K]2.1(321) **Manual.** The 1978 edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways" prepared by the National Joint Committee on Uniform Traffic Control Devices and published by the U.S. Department of Transportation, Federal Highway Administration, shall constitute the manual and specifications for a uniform system of traffic control devices for use upon the highways of this state.

2.1(1) Copies of the manual are available for examination at the Highway Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

2.1(2) The following revisions to the "Manual on Uniform Traffic Control Devices for Streets and Highways" are adopted by reference:

Revision No. 1 published December 1979

Revision No. 2 published December 1983

Revision No. 3 published September 1984

Revision No. 4 published March 1986

[Filed 2/6/87, effective 4/1/87]

[Published 2/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 2/25/87.

ARC 7388**TRANSPORTATION,
DEPARTMENT OF[820]****06 HIGHWAYS**

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2 as amended by 1986 Iowa Acts, chapter 1245, sections 1909 and 1926, the Department of Transportation on February 3, 1987, adopted amendments to 820—[06,K] Chapter 2, "Signing Manual," Iowa Administrative Code.

A Notice of Intended Action for these amendments was published in the December 17, 1986, Iowa Administrative Bulletin as **ARC 7219**.

Effective October 10, 1979, the Transportation Commission adopted the federal "Manual on Uniform Traffic Control Devices for Streets and Highways" as the Iowa manual pursuant to requirements of Iowa Code section 321.252. Subsequently, the Federal Highway Administration published three revisions to the manual which have been adopted by the Commission. Revision 4 was published in March 1986. Modifications contained in Revision 4 include seven changes in the use and

ARC 7390**TRANSPORTATION,
DEPARTMENT OF[820]****07 MOTOR VEHICLES**

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2 as amended by 1986 Iowa Acts, chapter 1245, sections 1909 and 1926, the Department of Transportation on February 3, 1987, adopted amendments to 820—[07,F] Chapter 8, "Regulations Applicable to Carriers," Iowa Administrative Code.

A Notice of Intended Action for these amendments was published in the December 17, 1986, Iowa Administrative Bulletin as **ARC 7213**.

This rule is being updated to reference the latest editions of the Code of Federal Regulations which contain the safety and hazardous materials regulations applicable to motor carriers.

TRANSPORTATION, DEPARTMENT OF [820] (cont'd)

Significant changes from the 1984 edition of the Federal Motor Carrier Safety Regulations (49 CFR 390-399) are as follows:

To the driver qualifications rules and the driving rules, added prohibitions against the transportation, possession, and use of drugs and other substances listed in Schedule I of the Drug Enforcement Administration's Schedules of Controlled Substances. This addition enables the motor carrier industry to reduce the risk of driver intoxication or deviant behavior caused by Schedule I drugs and other substances, such as heroin, LSD, marijuana, mescaline, and peyote.

In the rules on driver's record of duty status, reinstated the twelve-hour limitation in the 100-mile radius exemption from the record requirement and reinstated seven items previously deleted from recordkeeping, in compliance with an opinion of the U. S. Court of Appeals.

Significant changes from the 1984 edition of the hazardous materials regulations (49 CFR 107, 171-173, 177, and 178) are as follows:

Reclassified detonating cord to another explosive hazard class and made correlating changes in packaging standards.

Extended packaging and shipping alternatives, previously available only by exemption, to the general public.

Required special marking, labeling, packaging, placarding, and shipping for certain poisonous liquids with potentially severe inhalation hazards.

Clarified specification of personnel capabilities and external radiation limitations for exclusive-use shipments of radioactive materials.

Excepted certain low-level radioactive material from most hazardous materials requirements when being transported for disposal or reclamation.

Adopted procedure for designating package-testing agencies.

Made miscellaneous editorial and technical corrections.

These amendments are identical to the ones published under Notice.

These amendments are intended to implement Iowa Code chapters 325, 327, 327A, and 327B.

These amendments are to be published as adopted in the February 25, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective April 1, 1987. Rules promulgated as emergency adopted and implemented as **ARC 7212**, published December 17, 1986, are rescinded effective April 1, 1987.

Rule-making actions:

Amend 820—[07,F] subrule 8.1(1), paragraphs "a" and "b," as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 C.F.R. parts 390-399 (October 1, 1984/1985).

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 C.F.R. parts 107, 171-173, 177, and 178 (November 1, 1984/1985).

[Filed 2/6/87, effective 4/1/87]

[Published 2/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 2/25/87.

ARC 7405**UTILITIES DIVISION [199]**

Pursuant to Iowa Code section 476.2, the Iowa State Utilities Board gives Notice that on February 6, 1987, the Board issued an order in Docket No. RMU-87-3, In Re: Tax Reform Revenue Adjustment "Order Adopting Rules on an Emergency Basis." The purpose of these rules [Chapter 30] is to recognize the substantial impact on the tax liability of rate-regulated, investor-owned utilities as a result of the Tax Reform Act of 1986 and prevent unnecessary utility revenue shortfalls or windfalls.

The Utilities Board has a statutory obligation in Iowa Code section 476.8 to determine just and reasonable rates. Consistent with that statutory obligation, the Board investigated the anticipated effect of federal tax reform in Docket No. INU-86-8, In Re: Effects of 1986 Federal Tax Reform, in which utilities were required to provide specified data to the Board regarding the effect of tax reform on the particular utility. The data filed in that docket indicates the potential for significant revenue changes as a result of federal tax reform. On its own motion, the Board has officially noticed the record in Docket No. INU-86-8 so the data supplied by the utilities becomes part of the rule-making record.

The information obtained in the investigation warrants an immediate regulatory response. For example, the Board believes it is unreasonable and unjust to permit continued collection by utilities of an expense predicated on a forty-six (46) percent corporate tax rate when that rate will be reduced to thirty-four (34) percent on July 1, 1987. Comprehensive tax reform is a unique and non-recurring event which must be recognized.

The potential windfall from tax reform should not accrue to the utility. Any windfall should be passed through to the ratepayer in the form of lower rates, just as any shortfall should be passed through in the form of higher rates.

The rules provide a procedure, subject to review and approval by the Board, which passes any revenue requirement changes generated by tax reform through to ratepayers. The formula in the rules is designed to incorporate all federal and state tax reforms affecting utility tax liability to maximize the accuracy of the revenue adjustment calculation.

The rules apply only to those rate-regulated investor-owned utilities which have not otherwise recognized the effects of tax reform in Board approved rates.

Pursuant to Iowa Code section 17A.4(2), the Board finds that notice and public participation before implementation of these rules is impracticable. Major provisions of the Tax Reform Act of 1986 will be effective on July 1, 1987. In order to prevent any unnecessary revenue shortfall or windfall to utilities, the Board must take immediate steps to require utilities to determine a revised revenue requirement and to design rates which reflect the revision. Because every rate-regulated, investor-owned utility in the state will be making two complex filings as a result of this rule making, the Board will need a minimum of sixty (60) days prior to July 1, 1987, to review the revenue adjustment calculation and the revised rates. The rates should be in effect on July 1, 1987, to reflect the most significant effect of the tax reform.

UTILITIES DIVISION[199] (cont'd)

At the same time, these rules are also being published as a Notice of Intended Action, identified as ARC 7406, to solicit written and oral comment from the public.

These rules implement Iowa Code section 476.8.

In accordance with Iowa Code section 17A.4(2), the following rules shall become effective April 1, 1987.

Add new Chapter 30 to read as follows:

CHAPTER 30

TAX REFORM REVENUE ADJUSTMENT

199—30.1(476) Applicability. Each rate-regulated investor-owned public utility shall include in its charges or rates to customers an amount attributable to state and federal tax liability no greater than the tax liability based on the Tax Reform Act of 1986.

199—30.2(476) General filing requirement. Each public utility subject to the provisions of this chapter shall determine and file, on or before May 1, 1987, the following information which shall be designated as confidential documents under Iowa Code section 422.20:

1. The revenue adjustment and all supporting workpapers.

2. The revised revenue requirement and all supporting workpapers.

199—30.3(476) Revenue adjustment. The revenue adjustment (RA) shall be calculated using 1986 data according to the following formulas:

$$RR_1 = (T_1 + NITC_1 + DT_1 - DTF_1)RF_1$$

$$RR_2 = (T_2 + NITC_2 + DT_2 - DTF_2)RF_2$$

$$RA = RR_1 - RR_2$$

RR_1 is the income tax expense portion (state and federal) of the revenue requirement calculated pursuant to income tax law prior to the Tax Reform Act of 1986.

RR_2 is the income tax expense portion (state and federal) of the revenue requirement calculated for income tax pursuant to the Tax Reform Act of 1986 and any state tax reform enacted in the 1987 legislative session.

RA is the revenue adjustment due to changes in the tax law.

T_1 is the income tax which is the taxable income before income tax times the composite statutory income tax rate less gross investment tax credit, calculated pursuant to tax law prior to the Tax Reform Act of 1986.

$NITC_1$ is the net investment tax credit which is the gross investment tax credit less amortization of deferred investment tax credit, calculated pursuant to tax law prior to the Tax Reform Act of 1986.

DT_1 is the deferred income tax which represents the (tax/book timing differences required to be normalized to obtain the income tax benefits of the timing differences plus tax/book timing differences allowed by the board to be normalized) times the statutory federal tax rate, calculated pursuant to tax law prior to the Tax Reform Act of 1986.

DTF_1 is the deferred income tax flowback under the tax law prior to the Tax Reform Act of 1986. It is the sum of tax/book timing differences for which deferred taxes have been accrued for such vintage years for which the timing differences have reached the point of turnaround times the federal income tax rate at which the deferred taxes were accrued.

RF_1 is the revenue factor which is calculated as 1 plus (the composite statutory income tax rate divided by one minus the composite statutory income tax rate), calculated pursuant to tax law prior to the Tax Reform Act of 1986.

T_2 is the income tax which is the taxable income before income tax times the composite statutory income tax rate less gross investment tax credit, pursuant to the Tax Reform Act of 1986 and any state tax reform enacted in the 1987 legislative session.

$NITC_2$ is the net investment tax credit which is the gross investment tax credit less amortization of deferred investment tax credit, pursuant to the Tax Reform Act of 1986 and any state tax reform enacted in the 1987 legislative session.

DT_2 is the deferred income tax which represents the (tax/book timing differences required to be normalized to obtain the income tax benefits of the timing differences plus tax/book timing differences allowed by the board to be normalized) times the statutory federal tax rate, pursuant to the Tax Reform Act of 1986 and any state tax reform enacted in the 1987 legislative session.

DTF_2 is the deferred income tax flowback under the Tax Reform Act of 1986 calculated as the amount of the timing of the aggregate deferred income taxes to the aggregate timing differences as of the beginning of the period in question.

RF_2 is the revenue factor which is calculated as 1 plus (the composite statutory income tax rate divided by one minus the composite statutory income tax rate), pursuant to the Tax Reform Act of 1986 and any state tax reform enacted in the 1987 legislative session.

199—30.4(476) Revised revenue requirement. The revised revenue requirement shall be the revenue collected for calendar year 1986 increased or decreased, as appropriate, by the revenue adjustment.

199—30.5(476) Rate filing. On or before June 1, 1987, each public utility shall determine and file rates designed to collect an amount no greater than the revised revenue requirement. The rates shall be increased or decreased equitably among customer classes.

199—30.6(476) Board approval. Upon approval by the board, each public utility subject to the provisions of this chapter shall implement rates based on the revised revenue requirement beginning July 1, 1987. If a public utility has not yet received board approval, it shall file bond or other undertaking approved by the board conditioned upon refund in a manner to be prescribed by the board of any amount collected in excess of the revised revenue requirement.

[Filed without Notice 2/9/87, effective 4/1/87]
[Published 2/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 2/25/87.

OBJECTION

ECONOMIC DEVELOPMENT, DEPARTMENT OF[261]

At its February 11, 1987, meeting, the Administrative Rules Review Committee voted to object to the provisions of ARC 7291, Item 1, on the grounds that the "emergency" filing of this provision without prior notice and public participation constitutes an improper use of the emergency rule-making provisions and is therefore beyond the authority of the department. This filing appears in the Iowa Administrative Bulletin, January 14, 1987, and is codified as 261 Iowa Administrative Code rule 10.2 [renumbered 261—52.2].

This particular amendment changes the eligibility criteria for the funding of a business incubator center. The prior rule provided funding for the establishment of a center, the new rule provides funding for the aid and support of a center. Under this rule existing centers will be eligible to participate in the program. While this change confers a benefit on existing centers, it will also reduce the benefits available to new applicants. For this reason the committee does not believe that the rule should be implemented on an emergency basis. It is unclear whether the benefit of expanding the group of applicants eligible for funding outweighs the disadvantage of dividing the available funds into smaller amounts for more applicants. In the committee's opinion, this question could be best answered by notice and public participation on the proposal, held prior to its implementation.

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

January 1987

ATTORNEY GENERAL

Code Editor: Editorial Changes; Effect Of Opinion Of The Attorney General. 1982 Iowa Acts, ch. 1217; Iowa Code §§ 14.13, 282.2 (1985). Editorial changes in the Code are not to be substantive. An Attorney General's opinion establishes the substantive interpretation of a Code section until it is overruled, revised, withdrawn upon consideration or upset by court decision. An editorial change contrary to the Attorney General's opinion interpreting the gender references in section 282.2 was an inadvertent substantive change, and is therefore void and of no effect. (Donner to Peeters, Director, Legislative Service Bureau, and Brown, Acting Code Editor, Legislative Service Bureau, 1-7-87) #87-1-5

State Officers And Departments; Legal Representation. Iowa Code §§ 13.2(2)-(3); 25A.21-25A.22. In addition to the defense of tort claims brought against state employees under Code §§ 25A.21 and 25A.22, the Attorney General defends all actions brought against a state officer in the officer's official capacity under § 13.2(3). Under Code § 13.2(2) the Attorney General has discretion to determine when the interests of the State are served by providing legal representation to state officers and employees in suits or administrative proceedings brought against them in their personal capacity. (Osenbaugh to Richey, Board of Regents, 1-21-87) #87-1-14

CAMPAIGN FINANCE DISCLOSURE COMMITTEE

Gifts; Contributions. Ch. 56; §§ 56.2, 56.6, 56.10, 56.11; ch. 68B; § 68B.2. All contributions, including gifts, which are made to a candidate's committee of a state officeholder from a political committee or a registered lobbyist while the general assembly is in session must be reported in accordance with chapter 56. A gift is merely something transferred by one person to another without compensation regardless of the form and would include food and drink. Ultimately, the Campaign Finance Disclosure Commission would have authority to decide whether any particular gift constitutes a contribution to a candidate's committee of a state officeholder or a gift to the state officeholder in his or her personal or professional capacity unrelated to the candidate's committee. (Pottorff to Holden, State Senator, 1-21-87) #87-1-13

CIVIL RIGHTS

State Contract Compliance Requirements. Iowa Code §§ 19B.7, 73.16, as amended by 1986 Iowa Acts, ch. 1245, §§ 226, 832. Section 19B.7 requires that the Office of Management establish a contract compliance policy mandating nondiscrimination in and encouragement of the use of minority and women businesses by programs benefiting from state aid. This policy would apply to local governments which are benefiting from state financial assistance. Local governments receiving funds under Iowa Code chapter 315 are subject to § 19B.7. It is within the discretion of the Office of Management whether to require state agencies to develop the specifics of the procedures which will conform to § 19B.7 or to require state agencies to require the programs receiving state aid to develop those specifics. Section 19B.7 does not affect federal block grants to local governments. The set-aside provisions of § 73.16 do not apply to governing bodies of counties, townships, school districts, or cities. (Autry to Groninga, State Representative, 1-13-87) #87-1-9(L)

CONSTITUTIONAL LAW

Counties; Cities; Public Hospitals. Art. III, §§ 38A, 39A; Art. VIII, § 3, § 4; Art. XI, § 3, Const. of Iowa; ch. 28E, 331, 347, 347A, 364; §§ 28E.4, 97A.7, 97B.7, 331.304, 347.13, 347.14, 347A.1, 364.5, 380.1, 384.24, 384.26, 411.7, 452.10, 453.1, 453.16, 602.9111, Code of Iowa (1985). It is constitutionally permissible for political subdivisions to purchase stock in private corporations. However, cities and counties are presently preempted by statute from purchasing corporate stock, except for pension trust funds. County hospitals cannot purchase stock absent express statutory approval, which does not exist. City hospitals have only those powers delegated them by their respective cities and, thus, are preempted from purchasing corporate stock to the same extent as cities are. County and city hospitals may form an inter-governmental entity pursuant to ch. 28E, but such an entity cannot be formed as a private corporate entity. (Kirlin to Chapman, State Representative, 1-15-87) #87-1-10

COUNTIES AND COUNTY OFFICERS

Clerk of District Court. Iowa Code § 633.31(2)(k) (1985). The Clerk of District Court should assess fees as allowed by § 633.31 whenever a conservatorship is settled. No probate fee is charged where the conservator has merely commenced a lawsuit -- or is being sued -- and the assets of the estate are indeterminate. (Galenbeck to Poppen, Wright County Attorney, 1-7-87) #87-1-4(L)

Veteran Affairs Commission; Combination Of Veteran Affairs Commission With Other County Offices. Iowa Code ch. 250 (1985); §§ 250.1; 250.3; 250.6; 250.7; 331.321(4); and 331.323(1). (1) The legislature intended that the director, rather than the commission, of veteran affairs be one of the offices which may be combined with another county office under § 331.323(1). Such a combination is not a violation of § 250.12, which prohibits duties of the commission from being placed under any other county agency if the commission retains all final decision-making authority over commission business; (2) completion of paperwork by another county office for final action by the commission is not a violation of § 250.12; (3) a petition is required to combine offices under § 331.323(1); the board of supervisors has no authority to combine offices on its own motion; and (4) the commission, and not the board of supervisors, has original jurisdiction over a decision whether to terminate one of its employees; that employee then has a right to appeal to the board of supervisors under § 331.321(4). (Weeg to Poncy, State Representative, 1-6-87) #87-1-3(L)

FINANCIAL INSTITUTIONS

Iowa Industrial Loan Law. Iowa Code §§ 536A.2(5) and 536A.5. -The exclusion of savings and loan associations from coverage under chapter 536A does not prohibit a savings and loan association or its affiliate from holding an industrial loan company license. This opinion reverses 1972 Op.Att'yGen. 487. (Galenbeck to Richard D. Johnson, Auditor of State, 1-12-87) #87-1-6(L)

INCOMPATIBILITY OF OFFICES

Conflict Of Interest. Iowa Code ch. 273; Iowa Code § 281.4 (1985). The doctrine of incompatibility does not apply where an employee of an Area Education Agency, AEA, is also a member of the board of directors of a school district within the AEA. Conflict of interest problems are decided on the basis of the particular facts and circumstances in each case. We do not decide evidentiary questions. (Fleming to Murphy, State Senator, 1-22-87) #87-1-15(L)

MUNICIPALITIES

Home Rule Authority, Payment Of Punitive Damages. Iowa Const., Art. III, §§ 31, 38A, 39A; Iowa Code §§ 613A.4(5), 613A.8. A municipality is not prohibited from indemnifying an employee for an award of punitive damages. (Csenbaugh to Stream, Mahaska County Attorney, 1-12-87) #87-1-7(L)

PUBLIC RECORDS

Criminal Law: Confidentiality Of Victim Impact Statements.
 1986 Iowa Acts, ch. 1178; Iowa Code ch. 910A; Iowa Code §§ 4.6, 4.7, 22.1, 22.2, 22.7, 602.1601, 901.2, 901.3, 901.4, 901.5, 910A.4, 910A.5, 910A.6, 910A.7, 910A.8, 910A.9, 910A.17 (1985). A victim impact statement is part of the presentence investigation report and is therefore confidential under Iowa Code § 901.4. (Hansen to O'Brien, State Court Administrator, 1-20-87) #87-1-12(L)

STATE OFFICERS AND DEPARTMENTS

Commission On Aging And Area Agencies On Aging. Sale Of Insurance By Area Agencies On Aging. 42 U.S.C. § 3001 et seq.; Iowa Code chapter 249B (1985); Senate File 2175, 71st C.A., 2d Sess. §§ 1012, 1013, 1014. An area agency on aging has no authority to conduct or own an insurance business in its capacity as a governmental agency. The area agency on aging may not take actions which cause it to appear that an insurance business is carried on under governmental authority. An insurance business may be incompatible with the area agency's role as a quasi-governmental body. (Osenbaugh to Tynes, 1-6-87) #87-1-1(L)

Iowa Sheep And Wool Promotion Board. Iowa Code sections 25A.2(1), 25A.2(3), 25A.2(5)(b), 25A.21 (1985); Iowa Code Supp. sections 182.2, 182.4(1), 182.4(2), 182.5, 182.11, 182.12, 182.13, 182.14, 182.16, 182.18, 182.20, 182.21 (1985); 1985 Iowa Acts, chapter 199, section 5; 1985 Iowa Acts chapter 207; 28 U.S.C. § 2671. The Iowa Sheep and Wool Promotion Board is not a state agency under § 25A.2(1), so that Board members are not state employees to whom the state owes a duty to defend and indemnify under § 25A.21. An employee of an organization or entity which receives funds from the Board may not serve as a Board member under § 182.13. (Benton to Cochran, 1-12-87) #87-1-8(L)

TAXATION

Property Acquisitions Under The Municipal Housing Law Of Iowa Code Ch. 403A (1985). Iowa Code §§ 403A.10, 427.18 and 441.46 (1985). Sections 427.18 and 441.46 impose property tax for the full fiscal year on property acquired during the fiscal year under § 403A.10 if the property was taxable on July 1 of that fiscal year. (Miller to Mertz, Marion County Attorney, 1-6-87) #87-1-2(L)

Requirement Of Tax Clearance Statement; County Liability For Rent On Abandoned Mobile Home. Iowa Code §§ 135D.24(4), 135D.24(6), and 562B.27(1) (1985). A mobile home park owner is not required to obtain a tax clearance statement prior to removing an abandoned mobile home from the park. A county is not liable for rent and utilities due on an abandoned mobile home merely because it has a tax lien on the mobile home. If the county acquires a tax deed to the mobile home, it is liable for rent and utilities accruing after that date. (Mason to Richards, Story County Attorney, 1-20-87) #87-1-11(L)

STATUTES CONSTRUED

1985 CODE

OPINION

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