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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and 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].

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee," include summaries of Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [453.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; and Agricultural Credit Corporation Maximum Loan Rates [535.12].

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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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

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441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 1990

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. 5	Jan. 24	Feb. 13	Feb. 28	Mar. 21	Apr. 25	July 23
Jan. 19	Feb. 7	Feb. 27	Mar. 14	Apr. 4	May 9	Aug. 6
Feb. 2	Feb. 21	Mar. 13	Mar. 28	Apr. 18	May 23	Aug. 20
Feb. 16	Mar. 7	Mar. 27	Apr. 11	May 2	June 6	Sep. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	May 16	June 20	Sep. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 25	Aug. 29	Nov. 26
May 25	June 13	July 3	July 18	Aug. 8	Sep. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 22	Sep. 26	Dec. 24
June 22	July 11	July 31	Aug. 15	Sep. 5	Oct. 10	Jan. 7 '91
July 6	July 25	Aug. 14	Aug. 29	Sep. 19	Oct. 24	Jan. 21 '91
July 20	Aug. 8	Aug. 28	Sep. 12	Oct. 3	Nov. 7	Feb. 4 '91
Aug. 3	Aug. 22	Sep. 11	Sep. 26	Oct. 17	Nov. 21	Feb. 18 '91
Aug. 17	Sep. 5	Sep. 25	Oct. 10	Oct. 31	Dec. 5	Mar. 4 '91
Aug. 31	Sep. 19	Oct. 9	Oct. 24	Nov. 14	Dec. 19	Mar. 18 '91
Sep. 14	Oct. 3	Oct. 23	Nov. 7	Nov. 28	Jan. 2 '91	Apr. 1 '91
Sep. 28	Oct. 17	Nov. 6	Nov. 21	Dec. 12	Jan. 16 '91	Apr. 15 '91
Oct. 12	Oct. 31	Nov. 20	Dec. 5	Dec. 26	Jan. 30 '91	Apr. 29 '91
Oct. 26	Nov. 14	Dec. 4	Dec. 19	Jan. 9 '91	Feb. 13 '91	May 13 '91
Nov. 9	Nov. 28	Dec. 18	Jan. 2 '91	Jan. 23 '91	Feb. 27 '91	May 27 '91
Nov. 23	Dec. 12	Jan. 1 '91	Jan. 16 '91	Feb. 6 '91	Mar. 13 '91	June 10 '91
Dec. 7	Dec. 26	Jan. 15 '91	Jan. 30 '91	Feb. 20 '91	Mar. 27 '91	June 24 '91
Dec. 21	Jan. 9 '91	Jan. 29 '91	Feb. 13 '91	Mar. 6 '91	Apr. 10 '91	July 8 '91

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.

ISSUE NUMBER	PRINTING SCHEDULE FOR IAB SUBMISSION DEADLINE	ISSUE DATE
12	Friday, November 23, 1990	December 12, 1990
13	Friday, December 7, 1990	December 26, 1990
14	Friday, December 21, 1990	January 9, 1991

NOTICE

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.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

The Administrative Rules Review Committee will hold its regular, statutory meeting Tuesday, December 11, 1990, 10 a.m. and Wednesday, December 12, 1990, 9 a.m. in Committee Room 22, State Capitol. The following rules will be reviewed:

Bulletin

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Penalty and interest provisions, 10.2, 10.5 to 10.111, 12.10, 12.11, 30.10, 37.10, 44.1 to 44.3, 44.7, 44.8, 46.5, 52.4(7),

52.5(3), 52.6, 58.4(3), 58.5(3), 58.6, 63.8 to 63.10, 81.8 to 81.10, 81.15, 86.2(14) to 86.2(20), 87.3(9) to 87.3(12),

88.3(14), 88.3(15), 89.6, 89.7, 104.8, 104.9, Notice ARC 1483A 11/28/90Adjustments to computed tax, 42.9(3), 42.9(4), Filed ARC 1431A 11/14/90Seed capital income tax credit, 42.10, 46.3(2)"a," 46.3(2)"b," 52.4, 52.6 to 52.10, Filed ARC 1482A 11/28/90Administration of marijuana and controlled substances stamp tax, ch 91, Notice ARC 1430A 11/14/90**STATUS OF BLACKS, COMMISSION ON THE[434]**

HUMAN RIGHTS DEPARTMENT[421] "umbrella"

Organization, public records and fair information practices, chs 1, 2, Notice ARC 1493A 11/28/90**TRANSPORTATION DEPARTMENT[761]**Interest on retained funds, ch 27, Notice ARC 1417A 11/14/90General requirements for highway construction, 125.1, Filed ARC 1466A 11/28/90RISE program, 163.1, 163.4(2)"a" and "g," 163.7(2)"a" and "i," 163.8(2)"i," 163.8(6)"d"(1), 163.9(2)"h," 163.9(6),
163.11(2)"a" and "d," Notice ARC 1476A 11/28/90Front windshields, windows or sidewings, 450.7, Filed ARC 1465A 11/28/90Regulations applicable to carriers, 520.1(1)"a" and "b," 520.1(2), 520.4, Filed ARC 1467A 11/28/90Commercial driver licensing, 520.4, 605.1(2), 605.3, 605.4, 605.5(3), 605.5(4), ch 607, Notice ARC 1416A,
also Filed Emergency ARC 1423A 11/14/90**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181] "umbrella"

Consent for the sale of goods and services, 1.6, Notice ARC 1429A 11/14/90Practice and procedure — attorneys, 7.2(7)"e," Notice ARC 1499A 11/28/90Energy efficiency and cost recovery, 7.4(4), 35.12, Notice ARC 1412A 11/14/90Service copies, 7.4(6)"e"(23), Notice ARC 1494A 11/28/90Consumer comment hearing options, 7.7(16), Notice ARC 980A Terminated ARC 1413A 11/14/90Utility audit workpaper documents, 16.9, Notice ARC 1497A 11/28/90Utility audit workpapers, 19.2, 20.2, 21.2, 22.2, Notice ARC 1045A Terminated ARC 1498A 11/28/90Exterior lighting, 20.16, Filed ARC 1414A 11/14/90Reorganization of public utilities, ch 32, Filed ARC 1495A 11/28/90**WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]**

General provisions, operations, petitions for rule making, declaratory rulings, industrial technology access

program, technology services support activities, Filed Emergency After Notice ARC 1437A 11/14/90

To All Agencies:

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
ATTORNEY GENERAL[61] DNA profiling, ch 8 IAB 11/14/90 ARC 1450A	Conference Room — 2nd Floor Hoover State Office Bldg. Des Moines, Iowa	December 12, 1990 9 a.m.
Noncredit property insurance in consumer credit transactions, ch 20 IAB 11/14/90 ARC 1447A	Conference Room — 2nd Floor Hoover State Office Bldg. Des Moines, Iowa	December 12, 1990 10 a.m.
Consumer credit insurance, ch 21 IAB 11/14/90 ARC 1446A	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	December 11, 1990 10 a.m.
Consumer credit — notification and fees, ch 22 IAB 11/14/90 ARC 1448A	Conference Room — 2nd Floor Hoover State Office Bldg. Des Moines, Iowa	December 10, 1990 1 p.m.
Motor vehicle advertising and sales practices, ch 27 IAB 10/31/90 ARC 1387A	Classroom B, 3rd Floor West State Historical Bldg. Des Moines, Iowa	November 30, 1990 9 a.m.
Record retention requirements under motor vehicle service trade practices Act, ch 29 IAB 10/31/90 ARC 1388A	Conference Room — 2nd Floor Hoover State Office Bldg. Des Moines, Iowa	November 28, 1990 9 a.m.
BLIND, DEPARTMENT FOR THE[111] Administrative organization and procedures, amendments to chs 1, 2, 12, 13 IAB 11/28/90 ARC 1474A	Conference Room—1st Floor 524 Fourth St. Des Moines, Iowa	December 18, 1990 1 p.m.
CITY FINANCE COMMITTEE[545] Operations of city finance committee — subcommittees, 1.4 IAB 11/14/90 ARC 1421A	Governor's Small Conference Room #11 State Capitol Bldg. Des Moines, Iowa	December 4, 1990 1 p.m.
CIVIL RIGHTS COMMISSION[161] Complaint process, 3.15(1), 3.15(4) IAB 11/14/90 ARC 1418A Employment policies, 8.55 IAB 11/14/90 ARC 1419A	Commission Office 211 East Maple St. Des Moines, Iowa Commission Office 211 East Maple St. Des Moines, Iowa	December 4, 1990 1 p.m. December 4, 1990 1 p.m.
ELDER AFFAIRS DEPARTMENT[321] Contract eldercare, 1.7, 6.14 IAB 11/28/90 ARC 1502A	Conference Room 202 Jewett Bldg. 914 Grand Ave. Des Moines, Iowa	December 19, 1990 10 a.m.
Technical corrections in conformance with Older Americans Act and CFR 1.7, 2.7(6)"a," 3.4, 4.1(3), 4.1(4), 4.21(2) IAB 11/28/90 ARC 1468A	Conference Room 202 Jewett Bldg. 914 Grand Ave. Des Moines, Iowa	December 19, 1990 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Flood plain development, elimination of milldams, rescind ch 74, amendments to chs 70, 71, 72, 73, 75 IAB 11/14/90 ARC 1443A	Conference Room — 5th Floor Wallace State Office Bldg. Des Moines, Iowa	December 6, 1990 1 p.m.
Underground storage tanks — overflow protection, 135.3(1)"c," 135.5(1)"c," 135.7(11) IAB 11/14/90 ARC 1445A	Auditorium — Oakdale Campus University of Iowa Iowa City, Iowa	December 4, 1990 11 a.m.
	Community Room City Hall Denison, Iowa	December 6, 1990 11 a.m.
	Conference Room Fourth Floor — East Half Wallace State Office Bldg. Des Moines, Iowa	December 7, 1990 11 a.m.
Underground storage tanks — determination of insolvency, 135.7(10) IAB 11/14/90 ARC 1440A	Auditorium — Oakdale Campus University of Iowa Iowa City, Iowa	December 4, 1990 11 a.m.
	Community Room City Hall Denison, Iowa	December 6, 1990 11 a.m.
	Conference Room Fourth Floor — East Half Wallace State Office Bldg. Des Moines, Iowa	December 7, 1990 11 a.m.
Financial responsibility for underground storage tanks, amendments to ch 136 IAB 11/14/90 ARC 1441A	Auditorium — Oakdale Campus University of Iowa Iowa City, Iowa	December 4, 1990 11 a.m.
	Community Room City Hall Denison, Iowa	December 6, 1990 11 a.m.
	Conference Room Fourth Floor — East Half Wallace State Office Bldg. Des Moines, Iowa	December 7, 1990 1 p.m.

HISTORICAL DIVISION[223]

Historic property rehabilitation tax exemption, new ch 47 IAB 11/28/90 ARC 1463A (See also ARC 1464A, herein)	Classroom A New Historical Bldg. Capitol Complex Des Moines, Iowa	December 20, 1990 10 a.m.
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HUMAN SERVICES DEPARTMENT[441]

Medicaid reimbursement policy, 78.3, 78.11(4), 79.1(5)"j" IAB 11/28/90 ARC 1480A	District Office Conference Room 201 City View Plaza 1200 University Des Moines, Iowa	December 20, 1990 10 a.m.
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INSPECTIONS AND APPEALS DEPARTMENT[481]

Health care facilities administration, 50.3(3) IAB 11/28/90 ARC 1478A	Conference Room Third Floor—Side 1 Lucas State Office Bldg. Des Moines, Iowa	December 18, 1990 2:30 p.m.
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JOB SERVICE DIVISION[345]

Unemployment insurance
administrative contribution
surcharge, claims for
unemployment insurance
benefits, 3.40(3), 4.1(25),
4.24(15)"i," 4.51(6)
IAB 11/14/90 ARC 1454A

Job Service Division
1000 E. Grand Ave.
Des Moines, Iowa

December 5, 1990
9:30 a.m.

LABOR SERVICES DIVISION[347]

General industry safety and health
rules, 10.20
IAB 11/28/90 ARC 1492A
Construction safety
and health rules, 26.1
IAB 11/28/90 ARC 1491A
Construction contractor
registration, amendments
to ch 150
IAB 11/28/90 ARC 1490A

Labor Services Division
1000 E. Grand Ave.
Des Moines, Iowa
Labor Services Division
1000 E. Grand Ave.
Des Moines, Iowa
Employment Services Dept.
1000 East Grand Ave.
Des Moines, Iowa

December 20, 1990
9 a.m.
(If requested)
December 20, 1990
9 a.m.
(If requested)
December 20, 1990
1 p.m.

NATURAL RESOURCE COMMISSION[571]

General license
requirements 15.1(2)
IAB 11/28/90 ARC 1487A

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

December 19, 1990
10 a.m.

Resource enhancement and
protection program: county, city
and private open spaces grants
program, amendments to ch 33
IAB 10/31/90 ARC 1382A

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

November 28, 1990
10 a.m.

Speed restrictions on
the Greene Impoundment
of the Shell Rock River, 40.35
IAB 11/28/90 ARC 1486A

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

December 19, 1990
9 a.m.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Testing and licensing of
installers and inspectors
of underground storage tank
systems, ch 15
IAB 11/14/90 ARC 1425A
(See also ARC 1424A)

Conference Room — 6th Floor
Lucas State Office Bldg.
East 12th and Walnut St.
Des Moines, Iowa

December 4, 1990
9 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Acquired immune
deficiency syndrome(AIDS),
amendments to ch 11
IAB 11/28/90 ARC 1503A
(See also ARC 1506A herein)

Conference Room—3rd Floor
Lucas State Office Bldg.
Des Moines, Iowa

December 18, 1990
10 a.m.

PUBLIC SAFETY DEPARTMENT[661]

State of Iowa
building code,
amendments to ch 16
IAB 11/28/90 ARC 1485A

Conference Room—3rd Floor
Wallace State Office Bldg.
Des Moines, Iowa

December 20, 1990
1 p.m.

Conference Room—2nd Floor
Wallace State Office Bldg.
Des Moines, Iowa

December 21, 1990
10 a.m.

RACING AND GAMING COMMISSION[491]

Application process for
excursion gambling boats,
20.10(5)"i," 20.21
IAB 11/14/90 ARC 1420A

Conference Room — 6th Floor
Lucas State Office Bldg.
Des Moines, Iowa

December 4, 1990
9 a.m.

STATUS OF BLACKS COMMISSION[434]

Organization, public records and fair
information practices, new chs 1,2
IAB 11/28/90 ARC 1493A

Human Rights Dept.
Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

December 21, 1990
11 a.m.

TRANSPORTATION DEPARTMENT[761]

Interest earned on retained
funds, ch 27
IAB 11/14/90 ARC 1417A

Department of Transportation
Complex
800 Lincoln Way
Ames, Iowa

January 8, 1991

RISE program,
amendments to ch 163
IAB 11/28/90 ARC 1476A

Department of Transportation
Complex
800 Lincoln Way
Ames, Iowa

January 8, 1991

Vehicle registration and
certificate of title;
handicapped identification
devices; motor vehicle
dealers, manufacturers and distributors,
amendments to chs 400, 411, 420
IAB 10/17/90 ARC 1322A

Department of Transportation
Complex
800 Lincoln Way
Ames, Iowa

December 4, 1990

Regulations applicable to carriers;
license issuance; commercial
driver licensing, 520.4, 605.1(2),
605.3 to 605.5, new ch 607
IAB 11/14/90 ARC 1416A
(See also ARC 1423A)

Department of Transportation
Complex
800 Lincoln Way
Ames, Iowa

March 5, 1991

Iowa airport registration,
720.10(2)"b," 720.10(3)"a"
IAB 10/3/90 ARC 1287A

Department of Transportation
Complex
800 Lincoln Way
Ames, Iowa

December 4, 1990

UTILITIES DIVISION[199]

Practice and
procedure—attorneys,
7.2(7)"e"
IAB 11/28/90 ARC 1499A

Hearing Room—1st Floor
Lucas State Office Bldg.
Des Moines, Iowa

January 3, 1991
10 a.m.

Energy efficiency cost
recovery, 7.4(4), 35.12
IAB 11/14/90 ARC 1412A

Hearing Room — 1st Floor
Lucas State Office Bldg.
Des Moines, Iowa

December 19, 1990
10 a.m.

Service copies,
7.4(6)"e"(23)
IAB 11/28/90 ARC 1494A

Hearing Room—1st Floor
Lucas State Office Bldg.
Des Moines, Iowa

January 15, 1991
10 a.m.

Utility audit workpaper
documents, 16.9
IAB 11/28/90 ARC 1497A

Hearing Room—1st Floor
Lucas State Office Bldg.
Des Moines, Iowa

January 8, 1991
10 a.m.

Complaint procedures,
19.4(1)"i," 20.4(2),
21.4(1)"f," 22.4(1)"b"
IAB 10/3/90 ARC 1312A

Hearing Room—1st Floor
Lucas State Office Bldg.
Des Moines, Iowa

November 19, 1990
10 a.m.

AGENCY IDENTIFICATION NUMBERS

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas".

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in lowercase type at the left-hand margin, e.g., Beef Industry Council, Iowa [101].

Implementation of reorganization is continuing and the following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

Beef Industry Council, Iowa[101]

Blind, Department For The[111]

CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Historical Division[223]

Library Division[224]

Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

High Technology Council[267]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

School Budget Review Committee[289]

Egg Council[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]

Industrial Services Division[343]

Job Service Division[345]

Labor Services Division[347]

EXECUTIVE COUNCIL[361]
 Fair Board[371]
 GENERAL SERVICES DEPARTMENT[401]
 Health Data Commission[411]
 HUMAN RIGHTS DEPARTMENT[421]
 Children, Youth, and Families Division[425]
 Community Action Agencies Division[427]
 Deaf Services, Division of[429]
 Persons With Disabilities Division[431]
 Spanish — Speaking People Division[433]
 Status of Women Division[435]
 HUMAN SERVICES DEPARTMENT[441]
 INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 LAW ENFORCEMENT ACADEMY[501]
 Livestock Health Advisory Council[521]
 MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
 Narcotics Enforcement Advisory Council[551]
 NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board[575]
 PERSONNEL DEPARTMENT[581]
 Petroleum Underground Storage Tank Fund
 Board, Iowa Comprehensive[591]
 PUBLIC DEFENSE DEPARTMENT[601]
 Disaster Services Division[607]
 PUBLIC EMPLOYMENT RELATIONS BOARD[621]
 PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners[650]
 Medical Examiners[653]
 Nursing Board[655]
 Pharmacy Examiners[657]
 PUBLIC SAFETY DEPARTMENT[661]
 Records Commission[671]
 REGENTS BOARD[681]
 Archaeologist[685]
 REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
 SECRETARY OF STATE[721]
 Sheep and Wool Promotion Board, Iowa[741]
 TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority, Iowa[765]
 TREASURER OF STATE[781]
 Uniform State Laws Commission[791]
 Veterinary Medicine Board[811]
 Voter Registration Commission[821]
 Wallace Technology Transfer Foundation[851]

REORGANIZATION—NOT IMPLEMENTED

Agencies listed below are identified in the Iowa Administrative Code with white tabs. These agencies have not yet implemented government reorganization.

Citizen's Aide[210]
 City Development Board[220]
 Corrections Department[291]
 Executive Council[420]
 Iowa Advance Funding Authority[515]
 Iowa Finance Authority[524]
 Library Department[560]
 Prison Industries Advisory Board[635]
 Product Development Corporation[636]
 Records Commission[710]
 Veterans Affairs[841]

ARC 1474A
BLIND, DEPARTMENT
FOR THE[111]

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 601L.6, the Commission for the Blind hereby gives Notice of Intended Action to combine Chapter 1, "Organization and Administration," Chapter 2, "Procedures," and Chapter 12, "Facilities," and amend Chapter 13, "Public Records and Fair Information Practices," Iowa Administrative Code.

These amendments update listings of public records, make technical corrections, and consolidate and clarify existing rules.

Chapters 1, 2, and 12 are combined into a new Chapter 1, "Administrative Organization and Procedures." Included are the following substantive changes:

(1) A specific meeting date for the Commission is abolished. Instead, the rules require that the Commission meet at least six times per year;

(2) Members of the Grants and Loans Review Committee are specified;

(3) Formerly confusing references to the general expendable trust fund have been clarified by appropriate reference to the Gifts and Bequests Fund and the Vending Facilities Fund; and

(4) Purchasing guidelines are delineated pursuant to 34 CFR 80:26.

Additionally, Chapter 13 is updated to include record systems which have been added since the listing was initially established in 1987.

Persons wishing to convey their views on these rules will have the opportunity for oral presentations at 1 p.m. on Monday, December 18, 1990, in the First Floor Conference Room of the Department for the Blind, 524 Fourth Street, Des Moines, Iowa. Written suggestions or comments may be directed to R. Creig Slayton, Director, Iowa Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. Written statements must be received by December 18, 1990.

These rules were adopted by the Commission for the Blind on November 7, 1990.

These rules are intended to implement Iowa Code chapters 17A, 22, and 601L.

The following revisions are proposed:

ITEM 1. Rescind Chapters 1, 2, and 12 and add a new Chapter 1 as follows:

CHAPTER 1
ADMINISTRATIVE ORGANIZATION
AND PROCEDURES

111—1.1(601L) Authority. There is established a department for the blind which shall carry out policies and programs as determined by the commission for the blind.

111—1.2(601L) History and function. To respond to the unique needs of the blind of Iowa, the general

assembly established the Iowa commission for the blind on April 1, 1925. Although specific programs for the blind have varied even in recent years, the basic mission to promote positive attitudes toward blindness has remained constant. As a result of state government reorganization in 1986, the commission for the blind became a division of the department of human rights. However, the 72nd general assembly restored the commission's separate status by establishing a department for the blind.

111—1.3(601L) Location and information. The central office of the department is located at 524 Fourth Street, Des Moines, Iowa 50309-2364, telephone (515)281-1333 (incoming WATS number (800)362-2587). District offices are located at 332 Higley Building, Cedar Rapids, Iowa 52401-1408, telephone (319)365-9111; First National Building, Suite 400, Waterloo, Iowa 50703-4725, telephone (319)235-1403; and 427 Frances Building, Sioux City, Iowa 51101-1203, telephone (712)258-0293. Information concerning department services may be obtained by contacting any of these offices.

111—1.4(601L) Definitions. The following definitions apply to the rules of the department for the blind:

"Blind" or "blindness," except as applicable to the business enterprises program, refers to the condition of an individual who meets one or more of the following criteria: (1) vision not more than 20/200 central visual acuity in the better eye, with ordinary corrective lenses, or a field defect in which the peripheral field has contracted to an extent that the widest diameter of visual field subtends to an angular distance of not greater than 20 degrees; (2) a combination of loss of visual acuity and loss of visual field which imposes an employment handicap which is substantially that of a blind person; (3) medical prognosis indicating a progressive loss of sight which will terminate in the condition described in condition one; (4) a visual impairment sufficient to warrant attendance at the Iowa braille and sight-saving school or programs for the severely visually impaired in the public schools; or (5) a visual impairment which by agreement of the division of vocational rehabilitation services of the Iowa department of education and the department is such that the individual can be best served by the department.

"Commission" means the three-member statutory commission for the blind.

"Department" means the department for the blind. The department is the state licensing agency for vending facilities under the Randolph-Sheppard Act.

"Director" means the director of the department for the blind.

"Division" means one of the four principal subunits of the department for the blind.

"Division administrator" means the chief of each of the four divisions of the department for the blind.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not expeditiously provided.

"Staff" means individuals employed by the department for the blind.

"State" means the state of Iowa.

111—1.5(601L) Commission. The duties and powers of the commission are as delineated in Iowa Code sections 601C.3 and 601L.3.

1.5(1) Meetings. The commission shall hold at least six meetings each year and as many additional meetings

BLIND, DEPARTMENT FOR THE[111] (cont'd)

as are needed to conduct business expeditiously and efficiently. To the maximum extent practicable, meetings will be held outside normal working hours to encourage attendance.

1.5(2) Chairperson. At the first regularly scheduled meeting of each calendar year, the commission shall elect a chairperson.

1.5(3) Notice. Notice of meetings, including the proposed agenda, will be posted at all offices of the department. Persons wishing to receive notice of meetings may file a request with the office of the director.

111—1.6(601L) Director. As the chief administrative officer for the department, the director shall be responsible for implementation of commission policies and for administration of programs and services in compliance with applicable federal and state laws and regulations.

111—1.7(601L) Divisions. The director has established the following divisions of the department:

1. Adult orientation and adjustment center
2. Business enterprises program
3. Field services
4. Library for the blind and physically handicapped

111—1.8(601L) Private association activity of staff. Staff shall not, on a significant regular basis, perform work for private associations or organizations (including organizations of or for the blind) during working hours or with use of department facilities unless arrangements have been formalized through a 28E agreement approved by the commission. Significant organizational activities prohibited in the absence of a formal 28E agreement include, but are not limited to: electioneering for organizational office, processing memberships, collecting dues, arranging for meetings and conventions, fundraising, canvassing, leafleting, picketing, preparing organizational mailings, and other activities of a purely organizational nature which are unrelated to official staff duties.

However, the department encourages staff to maintain frequent contact with blind individuals and organizations of the blind as well as civic, social, fraternal, and professional groups interested in working with blind individuals.

This rule is not intended to discourage telephone conversations and correspondence with individuals or attendance (with supervisory approval) at meetings of blind or related associations or organizations.

111—1.9(601L) Authorization for use of facilities. Department facilities are available for the use of groups of blind individuals or other groups interested in working with blind individuals when the activity does not interfere with the conduct of department business. Authorization for the use of facilities must be obtained from the director.

111—1.10(601L) Joint activities. When use of the department facility or the activity of staff is expected to be continual or significant, the department may enter into an agreement with any appropriate public or private entity pursuant to Iowa Code chapter 28E. The agreement must specify the purpose of the arrangement; the specific use of the facility or the specific activity of staff which is involved, as appropriate, remuneration (if appropriate); and any other necessary arrangements.

111—1.11(601L) Administration of the expendable trust fund. Pursuant to Iowa Code section 601L.3(8),

there is established an expendable trust fund maintained by the department of revenue and finance and administered by the department for the blind.

1.11(1) Gifts and bequests fund. The gifts and bequests fund is established to provide direct financial assistance in the form of grants or loans to blind Iowans which will materially assist in independent living or vocational success or to provide department services or support services for which other funds are not available. Grants or loans may not be given for the purpose of income maintenance or continuing support.

a. Use for department operations. Use of gifts and bequests for department operations must be approved by the commission.

b. Eligibility. Recipients of grants or loans must be blind individuals, as defined in rule 1.4(601L), who are residents of the state and whom the director or committee has determined to demonstrate a need for assistance.

c. Grants and loans review committee. There is established a grants and loans review committee which may review applications for grants and loans to be made from gifts and bequests, at the request of the director, and make recommendations to the commission for approval of grants and loans. The committee will consist of the assistant director, who will serve as chairperson; the division administrators, as defined in rule 1.4(601L); two additional staff members appointed by the director; and three blind individuals appointed by the commission upon the recommendation of the director. Appointed committee members shall serve two-year terms.

d. Application process. Applications must be submitted to the director for review and, if appropriate, recommendation to the grants and loans review committee. However, when the application is for a grant or loan in the amount of \$2,500 or less, the director may approve the application. Upon recommendation by the director, the grants and loans review committee will review an application. If approved by the grants and loans review committee, the application will be forwarded to the commission for final approval.

1.11(2) Vending facilities fund. The vending facilities fund is established to provide low interest loans to active licensed vendors. The director may approve loans from these moneys for use as start-up capital or for the purchase of inventory. Upon approval, the director will establish a repayment schedule.

1.11(3) Availability of records. Names of applicants or recipients of grants or loans from these funds are confidential records under subrule 13.13(2). Disclosure may be made only for routine use as delineated in rule 13.10(17A,22).

1.11(4) Deposit of funds. Documentation of funds received will be maintained by the office of the director. Funds will then be forwarded to the assistant director for processing and deposit in the expendable trust fund.

1.11(5) Record keeping. Financial records for these funds shall be maintained according to generally accepted accounting practices. The assistant director will submit a report detailing receipts and expenditures of the fund as a part of the financial reports prepared for each commission meeting.

111—1.12(601L) Purchasing procedures. Pursuant to federal regulations, the department has established four methods of procurement:

1.12(1) Procurement by small purchase procedures. For purchases of services, supplies or other property that do not cost more than \$5,000, price or rate quotations

BLIND, DEPARTMENT FOR THE[111] (cont'd)

will be obtained from an adequate number of qualified sources.

1.12(2) Procurement by formal bid. It is the policy of the department to purchase through the competitive bid process all goods and services costing in excess of \$5,000 in the aggregate.

a. Conditions. The following conditions are necessary for utilization of the formal bid process: (1) a complete specification or purchase description is available; (2) two or more eligible bidders are willing to compete for the bid award; and (3) the procurement lends itself to a firm fixed price contract so the determination of bid award can be made principally on the basis of price.

b. Eligible bidders. The department will make awards only to responsible bidders possessing the ability to perform successfully under the terms of the proposed contract. In making this determination, consideration will be given to: (1) bidder integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources.

c. Invitation to bid. The department will prepare a written "Invitation to Bid" which will include: (1) the deadline for receipt of bids by the department; (2) the date, time and place for formal bid opening; (3) a complete and specific description of the goods or services required; and (4) the name, address and telephone number of the department contact person who may provide bid information.

d. Award. All bids will be publicly opened at the time and place prescribed in the invitation.

e. Bid advertisement. Advertisement of a formal bid will be required for all nonexpendable items costing in excess of \$15,000 in the aggregate. The advertisement shall consist of a "Notice to Bidders" published in at least one daily paper in the state. The advertisement shall include: (1) the deadline for receipt of bids by the department; (2) the date, time and place of the formal bid opening; (3) a general description of goods or services required; and (4) the name, address and phone number of the person to be contacted to obtain official bid forms.

1.12(3) Procurement by competitive proposals. When conditions are not appropriate for use of the formal bid process, the department may utilize this method. The department will: (a) publicize all requests for proposals; (b) identify all evaluation factors and their relative importance; (c) honor any response to publicized requests for proposals to the maximum extent possible; and (d) make awards to the responsible person whose proposal is most advantageous to the program, with price and other factors considered.

1.12(4) Sole-source procurement. This is procurement through solicitation of a proposal from only one source, or when, after solicitation of a number of sources, competition is determined inadequate. Sole-source procurement may be used only when other available procurement procedures are infeasible and one of the following circumstances applies: (a) the goods or services are available only from a single source; (b) the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (c) the awarding agency authorizes noncompetitive proposals; or (d) after solicitation of a number of sources, competition is determined inadequate.

These rules are intended to implement Iowa Code chapter 601L.

ITEM 2. Amend rule 111—13.13(17A,22) by adding in alphabetical order the following record systems to the appropriate listings as follows:

Amend subrule **13.13(2)**, "LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED" segment, by adding the following:

Book transcription completion records

Braille thermoform request records

Amend subrule **13.13(3)**, "LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED" segment, by adding the following:

Book transcription completion records

Braille thermoform request records

Amend subrule **13.13(4)**, "ADMINISTRATION" segment, by adding the following:

Employee assistance fund information

Iowa head injury committee

Further amend subrule **13.13(4)** by adding to the "INDEPENDENT LIVING REHABILITATION SERVICES" segment the following:

Deaf-blind register

Independent living advisory committee, general information and minutes

In-service training grant, application and agendas

RCEP training advisory committee, general information and correspondence

Statewide independent living council, general information and minutes

ARC 1502A**ELDER AFFAIRS
DEPARTMENT[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 Iowa Code section 249D.14(9), the Department of Elder Affairs hereby gives Notice of Intended Action to amend Chapter 1, "Introduction," and Chapter 6, "Area Agency on Aging Planning and Administration," Iowa Administrative Code.

These amendments are proposed in response to AOA-P.I.-06- from the Administration on Aging directing state units on aging to provide guidance for potential activities involving contract eldercare.

An amendment to rule 1.7(249D) provides a definition of contract eldercare. Amendments in subrule 6.14(1) clarify entrepreneurial activities and eldercare contracts; subrule 6.14(3), paragraph "b," contains a technical correction; the addition of paragraphs "e" and "f" to subrule 6.14(3) is to clarify contract terms for eldercare; and new wording in subrule 6.14(5) is to provide direction for AAAs who contract to provide eldercare.

Any interested person may make written comments or suggestions on these proposed rules prior to December 19, 1990. Written comments should be directed to the Executive Director, Department of Elder Affairs, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50319.

ELDER AFFAIRS DEPARTMENT[321] (cont'd)

Oral or written comments may be submitted at a public hearing to be held at 10 a.m. on Wednesday, December 19, 1990, at Conference Room 202, Department of Elder Affairs, Jewett Building, 914 Grand Avenue, Des Moines, Iowa.

These rules are intended to implement Iowa Code chapter 249D.14.

The following amendments are proposed:

ITEM 1. Amend rule 321—1.7(249D) by the alphabetical addition of a new definition as follows:

“Contract eldercare” means employer-initiated and supported benefits for employees who have care giving responsibilities for elderly, disabled or frail family members. These benefits may include such services as information and referral and service planning and coordination.

ITEM 2. Amend subrule 6.14(1) as follows:

6.14(1) Definition. Entrepreneurial activity includes: the

a. The manufacturing, processing, selling, offering for sale, renting, leasing, delivering, dispensing, distributing or advertising of goods or services for profit, but does not include activities which an AAA is authorized or required to perform pursuant to the Older Americans Act or Iowa Code chapter 249D.

b. A contract or agreement that an AAA will provide specific named service(s) for third-party payees.

ITEM 3. Amend subrule 6.14(3), paragraph “b,” as follows:

b. An AAA that engages in entrepreneurial activities outlined in subrule 6.14(1), paragraph “a,” shall not create the impression that the activity is being carried on under governmental authority.

ITEM 4. Amend subrule 6.14(3) by the addition of new paragraphs “e” and “f” as follows:

e. A contract or agreement, such as for contract eldercare, made between an AAA and a funder of a specific service or services in the PSA, shall not restrict an AAA from contracting with other funder(s) of similar services.

f. Entrepreneurial activities shall benefit all appropriate and eligible persons, particularly those older persons in the greatest economic and social need and low-income minority persons, in the geographic area in which the activities are provided.

ITEM 5. Amend subrule 6.14(4), introductory paragraph and paragraphs “a” and “b,” as follows:

6.14(4) Information to the department Information procedures. Information to the department concerning activities in subrule 6.14(1), paragraph “a.”

a. The AAA will inform the department in writing not less than 90 calendar days prior to the initiation of an entrepreneurial activity of an ongoing nature, describing the proposed activity, proposed source of funds, and the needs being addressed. This submission of information applies to activities initiated subsequent to the effective date of this rule.

b. The department shall respond in writing within 30 calendar days after receipt of the information submitted by the AAA to acknowledge receipt, request clarification or request a delay in implementation, and provide a copy of the response to the commission for informational purposes. An AAA receiving no response from the department within 30 days may assume that no additional submission of information is required.

ITEM 6. Renumber subrule 6.14(5) as 6.14(6) and insert the following in lieu thereof:

6.14(5) Requirements for AAA. AAA contracting to provide any service, or combination of services, such as contract eldercare, shall:

a. Provide the contract to the department for review prior to signing;

b. Include the service(s) in the multiyear area plan, plan revisions and amendments; and

c. Require payment for service(s) to fully cover, at a minimum, all costs of service provision including overhead and administrative costs of the service to eliminate the possibility of the use of AOA Title III funds.

ARC 1468A

ELDER AFFAIRS
DEPARTMENT[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 Iowa Code section 249D.14, the Department of Elder Affairs hereby gives Notice of Intended Action to amend Chapter 1, “Introduction,” Chapter 2, “Department of Elder Affairs Established,” Chapter 3, “Commission Established,” and Chapter 4, “Department Planning Responsibilities,” Iowa Administrative Code.

These amendments are being proposed to make technical corrections and to bring the rules into conformity with the Older Americans Act and the Code of Federal Regulations effective August 31, 1988.

Any interested person may make written comments or suggestions prior to December 19, 1990. Written comments should be directed to the Executive Director, Department of Elder Affairs, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50319.

Oral or written comments may be submitted at a public hearing to be held at 10 a.m. on Wednesday, December 19, 1990, at Conference Room 202, Department of Elder Affairs, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa.

These proposed amendments are intended to implement Iowa Code section 249D.14.

The following amendments are proposed:

ITEM 1. Amend 321—1.7(249D), definition of “eligible individual,” as follows:

“Eligible individual” (ES) means any person aged 65 60 or older and the spouse of the person 65 60 or older regardless of the age of the spouse.

Further amend 321—1.7(249D) by adding the following new definitions in alphabetical order:

“Focal point” means a community facility established to encourage the maximum collocation and coordination of services for older individuals.

ELDER AFFAIRS DEPARTMENT[321] (cont'd)

"Frail" (AOA Title III-D) means having a physical or mental disability, including Alzheimer's disease or a related disorder with neurological or organic brain dysfunction that restricts the ability of an individual to perform normal daily tasks or which threatens the capacity of an individual to live independently.

"In-home service" means services delivered in the home to an elder that includes, but is not limited to, homemaker and home health aide service, visiting, telephone reassurance, chore maintenance, in-home respite care, adult day care, and minor modification of a home that is necessary to facilitate the ability of older individuals to remain at home.

"Severe disability" means a severe chronic condition attributable to mental or physical impairment of an individual that:

1. Is likely to continue indefinitely; and
2. Results in substantial functional limitation in three or more of the following major life activities:
 - Self-care.
 - Receptive and expressive language.
 - Learning.
 - Mobility.
 - Self-direction.
 - Capacity for independent living.
 - Economic self-sufficiency.

ITEM 2. Amend subrule 2.7(6), paragraph "a," to read as follows:

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

ITEM 3. Amend 321—3.4(249D), paragraph "2," to read as follows:

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

ITEM 4. Rescind subrule 4.1(3) in its entirety and insert in lieu thereof the following:

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

a. Determination of needs. This section shall contain a description of the methods used to determine the needs of elders in Iowa and a listing of the most critical needs, including priorities as identified by area agencies on aging.

b. Establishment of priorities. This section shall define the priorities addressed in the state plan and describe the process for identifying priorities.

c. Objectives. This section shall contain statewide objectives to implement the Act and other funding sources available to the department.

d. Administrative structure. This section shall include a description of the commission, the department, and the statewide aging network.

e. Resource allocation. This section shall contain an estimate of funding available to the department for implementation of the two-year state plan and a description of the method of distributing funds to planning and service areas.

f. Other. This section shall include required assurances and other appropriate attachments.

ITEM 5. Amend 321—4.1(249D) by adding the following new subrule:

4.1(4) Requirements for processing the state plan and state plan amendment.

a. The department shall hold at least one public hearing on the state plan.

b. The state advisory council shall review and make recommendations to the commission on the state plan.

c. The commission shall consider and approve the state plan or state plan amendment prior to submittal to the governor for approval and signature.

d. Each state plan or state plan amendment shall be signed by the governor and submitted to AOA to be considered for approval at least 45 calendar days before the effective date of the plan or the plan amendment.

ITEM 6. Amend subrule 4.21(2) as follows:

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

ARC 1463A**HISTORICAL DIVISION[223]****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 1990 Iowa Acts, chapter 1160, and Iowa Code section 303.1A, the Department of Cultural Affairs, on behalf of the Historical Division (State Historical Society of Iowa) gives Notice of Intended Action to adopt Chapter 47, "Historic Property Rehabilitation Tax Exemption," Iowa Administrative Code.

The proposed rules set forth a statement of purpose, define terminology, project eligibility, application procedures and review standards.

Any interested person or group may make written suggestions or comments on these proposed rules prior to December 20, 1990. Written comments should be directed to Administrator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319.

There will be a public hearing on December 20, 1990, at 10 a.m. in Classroom A of the new Historical Building, Capitol Complex, Des Moines, Iowa 50319. Persons may present their views at this hearing either orally or in writing.

These proposed rules are intended to implement 1990 Iowa Acts, chapter 1160, and Iowa Code section 303.2.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 1464A**. The content of that submission is incorporated here by reference.

ARC 1470A

HUMAN SERVICES
DEPARTMENT[441]

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 225C.6, the Department of Human Services proposes to amend Chapter 24, "Standards for Individual Case Management Services," Chapter 25, "Standards for the Service Coordination System," Chapter 26, "County Maintenance of Effort Calculations and Reporting," Chapter 28, "Policies for All Institutions," Chapter 31, "Reimbursement to Counties for Local Cost of Inpatient Mental Health Treatment," Chapter 33, "Community Mental Health Center Standards," Chapter 35, "Mental Health Service Provider Standards," and Chapter 36, "Community Supervised Apartment Living Arrangements," appearing in the Iowa Administrative Code.

These amendments obsolete a rule chapter which implemented a program which provided reimbursement to counties for the local cost of inpatient mental health treatment. The program has not been funded since 1981. In addition the amendments correct and update Iowa Code references and correct Department organizational references.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before December 19, 1990.

These rules are intended to implement Iowa Code sections 218.4, 227.4, 225C.4, 225C.6, 225C.18, 225C.19, 225C.21 and 225C.32, Iowa Code Supplement section 230A.16 and 1988 Iowa Acts, chapter 1276, section 14.

The following amendments are proposed:

ITEM 1. Amend the parenthetical implementation statute following each rule number in 441—Chapter 24 by striking "(72GA, ch1245)" and inserting "(225C)".

ITEM 2. Amend the implementation clause at the end of 441—Chapter 24 to read as follows:

These rules are intended to implement ~~1988 Iowa Acts, chapter 1245~~ Iowa Code section 225C.6.

ITEM 3. Amend 441—Chapter 25, Preamble, as follows:

The mental health and mental retardation commission is required to establish standards for the structure of a service coordination system which ensures a linkage between the service coordination system and individual case management services. The purpose of these rules is to define the responsibility of county and multicounty coordinating boards and advisory committees to ensure the availability of services, settings, and living arrangements to meet the needs of individuals with mental illness, mental retardation, or developmental disabilities. In order to accomplish this, the boards and committees must plan, organize resources, implement, evaluate and coordinate services. These standards apply to all county

and multicounty coordinating boards and advisory committees established through 1988 Iowa Acts; ~~chapter 1245~~ Iowa Code sections 225C.18 and 225C.19.

ITEM 4. Amend rule 441—25.2(72GA, ch1245) as follows:

Amend subrule 25.2(1), paragraph "a," subparagraph (3), as follows:

(3) The chairperson of the advisory committee established under ~~1988 Iowa Acts, chapter 1245, section 6~~ Iowa Code section 225C.19.

Further amend subrule 25.2(1), paragraph "b," subparagraph (1), as follows:

(1) The chairperson of the advisory committee established under ~~1988 Iowa Acts, chapter 1245, section 6~~ Iowa Code section 225C.19.

Amend subrule 25.2(2), introductory paragraph, as follows:

25.2(2) Duties of the coordinating board. Each coordinating board shall perform the duties as specified in Iowa Code section 225C.18, subsection 2, ~~as amended by 1988 Iowa Acts, chapter 1245,~~ which include the following:

ITEM 5. Amend subrule 25.3(2), introductory paragraph, as follows:

25.3(2) Duties. The advisory committee shall perform all of the duties specified in ~~1988 Iowa Acts, chapter 1245, section 2~~ Iowa Code section 225C.19, which include the following:

ITEM 6. Amend rule 441—25.5(72GA, ch1245) as follows:

Amend subrule 25.5(2), paragraph "b," as follows:

b. For plans submitted by the dates required in rule ~~441—25.5(72GA, ch1245)~~ 441—25.5(225C) the administrator shall approve the case management plan within 20 working days of receipt if it meets the requirements of subrule 25.5(1) and the plan shows that the county has allocated county funds for each fiscal year for the provision of case management services. The administrator will notify the county or counties in writing within five working days of the review of the plan if the plan does not meet the requirements of subrule 25.5(1). The notice shall identify the additional information required. The county or counties shall have 15 working days from receipt of the notice to submit the required information before the administrator makes the final approval decision. The approval decision shall be made within ten working days of receipt of the required information. Approval by the administrator does not ensure availability of state funds.

Amend subrule 25.5(4), paragraph "a," subparagraph (5), as follows:

(5) The county has not submitted the information on contracts as required in rule ~~441—25.6(72GA, ch1245)~~ 441—25.6(225C).

Further amend subrule 25.5(4), paragraph "b," subparagraph (4), as follows:

(4) Assurance that the department is in compliance with the standards established in rule ~~441—24.4(72GA, ch1245)~~ 441—24.4(225C).

ITEM 7. Amend the parenthetical implementation statute following each rule number in 441—Chapter 25 by striking "(72GA, ch1245)" and inserting "(225C)".

ITEM 8. Amend the implementation clause at the end of 441—Chapter 25 to read as follows:

HUMAN SERVICES DEPARTMENT[441] (cont'd)

These rules are intended to implement ~~1988 Iowa Acts, chapter 1245 Iowa Code sections 225C.6, 225C.18, 225C.19, and 225C.32.~~

ITEM 9. Amend 441—Chapter 26 by adding the following implementation clause at the end of the chapter:

These rules are intended to implement 1988 Iowa Acts, chapter 1276, section 14.

ITEM 10. Amend rule 441—28.1(218) by adding the following new definitions in alphabetical order:

“Administrator” means the administrator of the division of mental health, mental retardation, and developmental disabilities within the Iowa department of human services.

“Director” means the director of the Iowa department of human services.

“Superintendent” means the superintendent of any of the four mental health institutes and the two state hospital-schools.

ITEM 11. Amend subrule 28.2(4) as follows:

28.2(4) The rates for cost of hospitalization, established by the state director, shall be available by contacting the business manager of the mental health institute which serves that particular district in which the county of residence is located.

ITEM 12. Amend rule 441—28.9(218) as follows:

441—28.9(218) Donations. Donations of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the superintendent or designee. The superintendent or designee shall evaluate the donation in terms of the nature of the contribution to the hospital program. The superintendent or designee shall be responsible for accepting the donation and reporting the gift to the ~~director administrator~~, division of mental health, mental retardation, and developmental disabilities, ~~department of human services~~. All monetary gifts shall be acknowledged in writing to the donor.

ITEM 13. Amend subrule 28.11(5) as follows:

28.11(5) The ~~state director administrator~~ shall give consideration to granting exceptions to the established catchment areas when requested by the person seeking a voluntary admission or the committing court. The ~~state director's administrator's~~ decision shall be made within ~~forty-eight (48)~~ hours of receipt of the request. The decision shall be based on the clinical needs of the patient, the availability of appropriate program services, available bed space within the program at the requested institution and the consent of the superintendents of both institutions involved.

ITEM 14. Rescind and reserve 441—Chapter 31.

ITEM 15. Amend rule 441—33.5(225C,230A) as follows:

Amend subrule 33.5(6) as follows:

33.5(6) Report. Within a reasonable time following the completion of the on-site visit, the division shall send copies of the written report of the survey findings to the center board president and executive director. The original report shall be maintained at the division office for at least five (5) years and shall be available for inspection pursuant to Iowa Code chapter 22. Copies shall be made upon request and at the expense of the person requesting them. The report shall include the survey team's observations regarding: strengths and deficiencies, and a recommendation to the commission for an

accreditation decision. Within ten (10) days from receipt of the report, a center may send a written request to the ~~director administrator~~ of the division asking for an interview with one or more members of the survey team to discuss, clarify, or correct any information presented in the report.

Amend subrule 33.5(7), introductory paragraph and paragraphs “b” and “c,” as follows:

33.5(7) Accreditation decision. The ~~director administrator~~ shall submit the accreditation evaluation report and one of the following recommendations to the commission:

b. Instances of noncompliance with the standards were found in the data reviewed, but the center has submitted a plan of corrective action and implementation acceptable to the ~~division director administrator~~, and the center should be accredited.

c. Instances of noncompliance with the standards were found in the data reviewed. The center has not submitted a plan of corrective action and implementation which is acceptable to the ~~division director administrator~~ and should not be accredited.

The commission shall review the ~~director's administrator's~~ report and recommendation and shall make an accreditation or nonaccreditation decision.

Amend subrule 33.5(10) as follows:

33.5(10) Notification. When the commission makes the accreditation decision regarding a center, the commission shall request the ~~director administrator~~ to communicate the decision in writing to the center board president and executive director; Community Mental Health Centers Association of Iowa, Inc.; all appropriate public and private third-party payers; and the county board(s) of supervisors. If a center has received a federal construction grant, the division shall also communicate the accreditation decision in writing to the department of health and human services. The written communication shall indicate the reasons for the accreditation or nonaccreditation decision.

ITEM 16. Amend rule 441—35.9(225C) as follows:

441—35.9(225C) Notification. When the commission makes the accreditation or nonaccreditation decision regarding the facility, the ~~director administrator~~ of the division shall communicate the decision in writing to the facility.

ITEM 17. Redesignate rule 441—35.12(225C), paragraphs “a” to “f,” as subrules 35.12(1) to 35.12(6), respectively.

Further amend redesignated subrule 35.12(4) as follows:

35.12(4) The division shall coordinate with the ~~division of community services office of field support~~ for assessment of those facilities under purchase of service contract with the department of human services. The purpose of coordination shall be to avoid duplicative assessment of the facility by the two (2) divisions.

ITEM 18. Amend the implementation clause at the end of 441—Chapter 36 to read as follows:

These rules are intended to implement ~~1985 Iowa Code supplement section 225C.19 Iowa Code section 225C.21.~~

ITEM 19. Amend 441—Chapter 37 by adding the following implementation clause at the end of the chapter:

These rules are intended to implement Iowa Code section 227.4.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

ARC 1480A

HUMAN SERVICES
DEPARTMENT[441]

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)"5".

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

These amendments provide the following changes in Medicaid reimbursement policy:

1. Nonhospital-based ambulance services performed while a recipient is an inpatient of a hospital shall be covered by the hospital's DRG payment. Federal regulations at 42 CFR 412.50(b) provide that the Health Care Financing Administration does not pay any provider or supplier other than the hospital for services furnished to a beneficiary who is an inpatient, except for physicians' services reimbursable under 405.550(b) and services of an anesthetist employed by a physician reimbursable under 405.553(b)(4). Current rules speak only to hospital-based ambulance services. The Department's DRG payment is meant to reimburse hospitals for all inpatient services. When those services are not available on the hospital premises, the hospital is required to make arrangements to access those services or transfer the patient to another facility when appropriate. Separating services from the hospital DRG reimbursement would encourage fragmentation of billing and set a costly precedent.

2. Policy is revised to provide that hospital transfers, outliers, and readmissions within 31 days are subject to random review and readmissions to the same facility due to premature discharge shall not be paid a new DRG. Current policy provides for review of readmissions within seven days. This change represents the most current Medicare regulations in use for readmission review. In addition, these amendments provide that the DRG payment includes any special services required by the hospital, including a private room.

3. Policy regarding payment for services rendered by a hospital for tuberculosis or mental diseases is removed as it is no longer applicable or is covered elsewhere in the rules.

4. Clarification is provided regarding the reimbursement rate for hospitals when the Iowa Foundation for Medical Care determines that a lower level of care is required during utilization or outlier review.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before December 19, 1990.

Oral presentations may be made by appearing at the following meeting. Written comments will also be accepted at that time.

Des Moines — December 20, 1990
Des Moines District Office
City View Plaza, Conference Room 201
1200 University
Des Moines, Iowa 50314

10 a.m.

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

The following amendments are proposed:

ITEM 1. Amend rule 441—78.3(249A) as follows:
Amend the introductory paragraphs as follows:

441—78.3(249A) Inpatient hospital services. Payment for inpatient hospital admission is approved when it meets the criteria for inpatient hospital care as determined by the Iowa Foundation for Medical Care (IFMC) or the delegated hospitals. All cases are subject to random retrospective review. In addition, transfers, ~~inliers~~, outliers, and readmissions within ~~seven~~ 31 days; and select admissions and procedures are subject to random review. *Readmissions to the same facility due to premature discharge shall not be paid a new DRG. Selected admissions and procedures are subject to a 100 percent review.* Medicaid payment for inpatient hospital admissions is approved when it is the admissions are determined to meet the criteria for inpatient hospital care. (Cross-reference 78.28(5) Continuing hospitalization shall be approved if the patient's condition meets the severity of illness and intensity of services criteria established by the IFMC and the department. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50625, or in local hospital utilization review offices. No payment will be made for waiver days.

See rule 441—78.31(249A) for policies regarding payment of hospital outpatient services.

If the recipient is eligible for inpatient or outpatient hospital care through the Medicare program, payment will be made for deductibles and coinsurance applicable in that program.

Unless the recipient's physician determines that the patient must be isolated for medical reasons and that a private room is required, payment will be approved only for multiple-bed accommodations. *The DRG payment calculations include any special services required by the hospital, including a private room.*

Rescind and reserve subrule 78.3(8).

Amend subrules 78.3(13), 78.3(14), and 78.3(16) as follows:

78.3(13) Payment for patients in hospitals not participating in the skilled nursing or swing bed program determined by utilization review to require the skilled nursing care level of care shall be made at the median rate of those facilities providing skilled care participating in the skilled nursing program with the rate being adjusted as of January 1 each year. *Those hospitals participating in the skilled nursing or swing bed program will be reimbursed at their established skilled nursing care rate or swing bed rate.* This rate is effective (a) as of the date of notice by utilization review that the lower level of care is required or (b) for the days the Iowa foundation for medical care determines in an outlier review that the lower level of care was required.

78.3(14) Payment for patients in hospitals not participating in the nursing facility program determined by utilization review to require nursing facility intermediate care shall be made at the statewide average

HUMAN SERVICES DEPARTMENT[441] (cont'd)

medical assistance Medicaid nursing facility rate. Those hospitals participating in the nursing facility program will be paid at their established intermediate care rate. This rate is effective (a) as of the date of notice by utilization review that the lower level of care is required or (b) for the days the Iowa foundation for medical care determines in an outlier review that the lower level of care was required.

78.3(16) Payment will be made for medically necessary skilled nursing care when provided by a hospital participating in the swing bed program certified by the department of inspections and appeals and approved by the U.S. Department of Health and Human Services. Payment shall be at the average rate per patient day paid during the previous calendar year for routine skilled nursing services furnished by Iowa nursing facilities participating in the Medicaid skilled payment program.

Amend the implementation clause to read as follows:

This rule is intended to implement Iowa Code sections section 249A.4 and 249A.16, 1985 Iowa Acts, chapter 259, section 3, and 1989 Iowa Acts, chapter 318, section 2, subsection 11.

ITEM 2. Amend rule 441—78.11(249A) by adding the following new subrule:

78.11(4) Transportation of hospital inpatients. When an ambulance service provides transport of a hospital inpatient to a provider and returns the recipient to the same hospital (the recipient continuing to be an inpatient of the hospital), the ambulance service shall bill the hospital for reimbursement as the hospital's DRG reimbursement system includes all costs associated with providing inpatient services as stated in 79.1(5)"j."

ITEM 3. Amend subrule 79.1(5), paragraph "j," as follows:

j. Services covered by DRG payments. Medicaid adopts the Medicare definition of inpatient hospital services covered by the DRG prospective payment system *except as indicated herein*. As a result, combined billing for physician services is eliminated. Services provided by certified nurse anesthetists (CRNAs) employed by a physician are covered by the physician reimbursement. Payment for the services of CRNAs employed by the hospital are included in the hospital's reimbursement.

The cost for hospital-based ambulance transportation that results in inpatient admission and hospital-based ambulance services performed while the beneficiary recipient is an inpatient, in addition to all other inpatient services, is covered by the DRG payment. *The cost of nonhospital-based ambulance services performed while the recipient is an inpatient, in addition to all other inpatient services, is covered by the DRG payment. The nonhospital-based ambulance service providing transportation for a hospital inpatient shall bill the ambulance charges to the hospital in which the recipient is an inpatient. (See subrule 78.11(4).*

ARC 1469A

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

This amendment revises the definition of inpatient admission to be consistent with Medicare. Under current policy a patient is considered an outpatient only until the earliest of the following occurs: a formal inpatient admission; a deemed inpatient admission by virtue of the hospital's expectation of at least a 24-hour stay; or a deemed inpatient admission by virtue of an actual stay in the hospital for 24 consecutive hours.

The Department has received interpretation from the Health Care Financing Administration (HCFA) that hospital outpatient observation services may exceed 24 hours although they usually do not. An intermediary cannot direct a hospital to resubmit outpatient hospital claims as inpatient claims. Inpatient and outpatient hospital services are covered under separate provisions of the Medicare law and are paid for on different bases. However, HCFA does not favor the substitution of outpatient for inpatient services and recommends that cases involving periods of outpatient observation in excess of 24 hours should be reviewed to ensure the observation services are medically necessary.

Therefore, this amendment provides that a person is considered to be an inpatient when a formal inpatient admission occurs, when a physician intends to admit a person as an inpatient, or when a physician determines that a person being observed as an outpatient in an observation or holding bed should be admitted to the hospital as an inpatient. Provision is also made that cases involving outpatient observation status in excess of 24 hours will be reviewed by the Iowa Foundation for Medical Care for medical necessity.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before December 19, 1990.

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

The following amendment is proposed:

Rescind subrule 79.1(5), paragraph "p," and insert the following in lieu thereof:

p. Determination of inpatient admission. A person is considered to be an inpatient when a formal inpatient admission occurs, when a physician intends to admit a person as an inpatient, or when a physician determines that a person being observed as an outpatient in an observation or holding bed should be admitted to the hospital as an inpatient. In cases involving outpatient

HUMAN SERVICES DEPARTMENT[441] (cont'd)

observation status, the determinant of patient status is not the length of time the patient was being observed, but rather that the observation period was medically necessary for the physician to determine whether a patient should be released from the hospital or admitted to the hospital as an inpatient. Outpatient observation lasting greater than a 24-hour period will be subject to review by the Iowa foundation for medical care (IFMC) to determine the medical necessity of each case. For those outpatient observation cases where medical necessity is not established by the IFMC and cannot be found to be medically necessary on other grounds, reimbursement shall be denied for the services found to be unnecessary for the provision of that care, such as the use of the observation room.

ARC 1471A

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 173, "Family Planning Services," appearing in the Iowa Administrative Code.

This amendment provides that family planning clinical care services will be purchased as three separate units of service: the initial examination, an annual examination, and related services. This change will improve the Department's ability to identify exact services being purchased and ensure equity of purchased services across the state.

Due to changing medical procedures and techniques the exact expectations for providers of the different units of services will change from time to time, but the following descriptions set forth the general meaning for the units. The exact expectations will be set forth in the contracts and manual each year.

The initial examination shall consist of a complete medical history, urinalysis, hematocrit, height, weight, blood pressure, pelvic examination, pap, gonorrhea test, methods education, breast examination, sexually transmitted disease (STD) testing as indicated, contraceptive supplies, and one-year routine follow-up. The annual examination shall consist of an update of the medical history, laboratory work as indicated, height, weight, blood pressure, pelvic examination, gonorrhea test, breast examination, STD testing as indicated, contraceptive supplies, and one-year routine follow-up. Related services shall consist of abnormal pap repeats and follow-up, STD testing and treatment, Chlamydia testing, and infection testing and treatment.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before December 19, 1990.

This rule is intended to implement Iowa Code sections 234.21 to 234.28.

The following amendment is proposed:

Amend rule 441—173.1(234), definition of "Clinical care services," as follows:

"Clinical care services." Clinical care services include those services which assist a client in obtaining contraceptive devices and supplies from health practitioner resource persons such as physicians, nurse clinician, health clinic pharmacy or family planning center, in accordance with Iowa law. Units of service for clinical care are:

1. The initial examination.
2. An annual examination.
3. Related services.

ARC 1479A

HUMAN SERVICES
DEPARTMENT[441]

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 600.22, the Department of Human Services proposes to amend Chapter 201, "Subsidized Adoptions," appearing in the Iowa Administrative Code.

These amendments make the following changes to the subsidized adoption program:

1. Policies on which special services shall be paid by the Department are revised. Subsidized adoption funds shall not be used to supplement payment for a service available through Medicaid. Counseling or therapy services by a non-Medicaid provider shall be reimbursed only with prior approval from the district administrator or designee when: (1) The services are not available within a reasonable distance from the family, (2) The child and family were already receiving therapy or counseling from that provider and it would not be in the child's best interests to disrupt the service, or (3) The Medicaid provider lacks experience in working with foster, adoptive, or blended families.

Voluntary placements into foster care facilities are limited to 180 days, court-ordered placements must comply with the Adoption Assistance and Child Welfare Act of 1980, and placements into out-of-state foster care facilities are subject to the same placement conditions and payment limits as other foster care placements.

The limit of \$500 for attorney fees and court costs is removed.

2. The definition of "Mental retardation professional" is revised as the citation listed in the current definition has been rescinded. The proposed definition is that now used by the Department of Inspections and Appeals and is taken from the federal interpretive guidelines for intermediate care facilities for the mentally retarded.

3. A form is added to the rules which was inadvertently omitted earlier, and organizational titles and implementation clauses are corrected.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy

HUMAN SERVICES DEPARTMENT[441] (cont'd)

Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before December 19, 1990.

These rules are intended to implement Iowa Code sections 600.17 to 600.21 and 600.23.

The following amendments are proposed:

ITEM 1. Amend rule 441—201.1(600) as follows:

441—201.1(600) Administration. The Iowa department of human services, through the administrator of the division of ~~social services~~ *adult, children and family services*, shall administer the subsidized adoption program, in conformance with the legal requirements for adoption as defined in Iowa Code chapter 600.

ITEM 2. Amend rule 441—201.2(600), definition of "Mental retardation professional," as follows:

"Mental retardation professional" means the same as defined in the department of inspections and appeals ~~subrule 481—64.1(21)~~ *a person who has at least one year of experience working directly with persons with mental retardation or other developmental disabilities and who is one of the following:-*

1. A doctor of medicine or osteopathy.
2. A registered nurse.
3. A person who holds at least a bachelor's degree in a human services field including, but not limited to: social work, sociology, special education, rehabilitation counseling, and psychology.

ITEM 3. Amend subrule 201.5(1) as follows:

201.5(1) The amount of presubsidy or subsidy shall be negotiated between the department and the adoptive parents, and shall be based upon the needs of the child, and the circumstances of the family. When negotiations are completed, the Adoption Subsidy Agreement, Form SS-6602-0, shall be completed. *For cases that are eligible for subsidy where assistance is not currently required by the child or family but may be needed in the future, Form 470-0762, Agreement to Future Adoption Subsidy, shall be completed.*

ITEM 4. Amend subrule 201.6(1) as follows:

201.6(1) Special services only.

a. Reimbursement is provided to the adoptive family, or direct payment made to a provider, for ~~medical services, dental services, therapeutic services, supplies and equipment, nonrecurring expenses, or other special services required by the child's special needs.~~ *Any special service of \$500 or more not available through the Medicaid program must have prior approval from the central office adoption unit manager before expending funds: the following services:*

(1) *Outpatient counseling or therapy services. Reimbursement for outpatient individual or family services may be provided from a non-Medicaid provider only with approval from the district administrator or designee and when one of the following applies:*

1. *The services are not available within a reasonable distance from the family.*
2. *The child and the family were already receiving therapy or counseling from a non-Medicaid provider and it would not be in the child's best interest to disrupt the services.*
3. *The Medicaid provider lacks experience in working with foster, adoptive, or blended families.*

(2) *Inpatient services when the following criteria are met:*

1. *Voluntary placements are limited to 180 days.*

2. *Court-ordered placements shall comply with the Adoption Assistance and Child Welfare Act of 1980 and amendments.*

3. *Placements into foster care facilities outside Iowa shall be subject to the payment limits established in subrule 441—156.9(2) and the conditions for placement established in rule 441—202.8(600).*

(3) *Medical services not covered by the Medicaid program. An adoption subsidy payment shall not supplement the Medicaid payment to a Medicaid provider.*

(4) *Child care, as required by the child's special needs.*

(5) *Medical transportation not covered by Medicaid and the family's lodging and meals, if necessary, when the child is receiving specialized care or the child and family are required to stay overnight, as part of a treatment plan.*

(6) *Supplies and equipment as required by the child's special needs and unavailable through other resources.*

(7) *Attorney fees and court costs necessary to finalize the adoption, limited to the usual and customary fee for the area.*

(8) *Funeral benefits at the amount allowed for a foster child in accordance with subrule 441—156.8(5).*

a. b. *The need for special services shall be established by a report in the child's record from the private or public agency which had guardianship of the child, and substantiating information from specialists providing the services as defined in rule 441—201.2(600).*

b. *Attorney fees, a nonrecurring expense, shall be based on the usual and customary fee for the area but not to exceed \$500 per child.*

c. *For special needs children as defined in 201.3(1), medical assistance pursuant to 441—Chapter 76 may be the only service necessary to meet the child's needs.*

d. *When a special needs child who is in an adoptive home dies, the adoptive family may apply for funeral benefits in accordance with subrule 156.8(5).*

c. *Any single special service and any special service delivered over a 12-month period costing \$500 or more shall have prior approval from the central office adoption program manager prior to expending program funds.*

ITEM 5. Rescind the implementation clauses following rules 441—201.5(600), 441—201.8(600), 441—201.9(600), and 441—201.11(600) and insert the following implementation clause following 441—Chapter 201:

These rules are intended to implement Iowa Code sections 600.17 to 600.21 and 600.23.

ARC 1478A

INSPECTIONS AND APPEALS
DEPARTMENT[481]

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 10A.104(5) and 135C.14, the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 50, "Health Care Facilities Administration," Iowa Administrative Code.

INSPECTIONS AND APPEALS DEPARTMENT[481] (cont'd)

In accordance with 1990 Iowa Acts, chapter 1039, sections 2 and 3, the revisions combine intermediate care facilities and skilled nursing facilities under one level of licensure for nursing facilities and establish within that category two separate classifications, allowing the Department to use the existing rules for intermediate care facilities and skilled nursing facilities prior to the adoption of rules for nursing facilities.

Additionally, language has been updated to reflect the current location of standards used to determine licensure for the various types of facilities.

Consideration will be given to all written comments received by the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083, if received by December 18, 1990.

Oral comments may be made at a public hearing on December 18, 1990, at 2:30 p.m., Side 1 of the Third Floor Conference Room, Lucas State Office Building, Des Moines, Iowa.

This rule is intended to implement Iowa Code section 135C.1 as amended by 1990 Iowa Acts, chapter 1039.

The following amendment is proposed:

Rescind subrule 50.3(3) and insert in lieu thereof the following:

50.3(3) Standards used to determine whether a license is granted or retained are found in the rules of the department of inspections and appeals in the Iowa Administrative Code as follows:

- a. Hospitals, 481—Chapter 51;
- b. Birth centers, 481—Chapter 52;
- c. Hospices, 481—Chapter 53;
- d. Residential care facilities, 481—Chapters 57 and 60;
- e. Nursing facilities, 481—Chapters 58, 59 and 61;
- (1) Nursing facilities for intermediate care, 481—Chapters 58 and 61. Facilities that provide services to individuals who require nursing services which can be provided only under the direction of a registered nurse or a licensed practical nurse; or
- (2) Nursing facilities for skilled care, 481—Chapters 59 and 61. Facilities that provide services to individuals who require continuous nursing care services and related medical services, but do not require hospital care;
- f. Residential care facilities for persons with mental illness, 481—Chapters 60 and 62;
- g. Residential care facilities for the mentally retarded, 481—Chapters 60 and 63; and
- h. Intermediate care facilities for the mentally retarded, 481—Chapter 64.

ARC 1477A**INSPECTIONS AND APPEALS
DEPARTMENT[481]****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 10A.104(5) and 135C.14, the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 60, "Minimum Physical Standards for Residen-

tial Care Facilities," and Chapter 64, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

Item 1 updates language in an existing rule to make it consistent with the language in the new publication of the "National Electrical Code."

Item 2 deletes language requiring a facility licensed as an intermediate care facility for the mentally retarded to comply with 481—Chapter 61 which contains construction standards.

Item 3 corrects a reference to federal regulations due to a technical error to eliminate possible future confusion.

Consideration will be given to all written comments received by the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083, if received by December 18, 1990.

These rules are intended to implement Iowa Code sections 135C.2(2) and 135C.14(8).

The following amendments are proposed:

ITEM 1. Rescind subrule **60.12(1)**, paragraph "d," and insert in lieu thereof the following:

d. Electrical metallic tubing or rigid heavy wall conduit shall be used throughout the interior of the facility. In areas used for patient care, the grounding terminals of all receptacles and all noncurrent-carrying conductive surfaces of fixed electrical equipment likely to become energized that are subject to personal contact, shall be grounded by a green insulated copper conductor. The grounding conductor shall be sized in accordance with the requirements of the national electrical code and installed in electrical metallic tubing with the branch-circuit conductors supplying these receptacles or fixed equipment.

ITEM 2. Rescind subrule **64.3(1)**, paragraph "f" and insert in lieu thereof the following:

f. Meet all of the rules, regulations and standards contained in 481—Chapter 64.

ITEM 3. Amend rule **481—64.61(135C)** by striking the term "Subpart D" and inserting "Subpart B."

ARC 1481A**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 505.8, the Iowa Division of Insurance hereby gives Notice of Intended Action to amend Chapter 5, "Regulation of Insurers — General Provisions," Iowa Administrative Code.

These proposed rules [191—5.23(507C,515) and 191—5.24(507C,515)] adopt the National Association of Insurance Commissioners' (NAIC) Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition. Adoption is necessary in order for the Iowa Division of Insurance to meet the financial regulation

INSURANCE DIVISION[191] (cont'd)

standards of the NAIC accreditation program. The purpose of the new rules is to provide guidance as to when an insurer is in a financially hazardous or unsound condition and provide steps which the Division may take to remedy this situation.

Interested persons may submit written comments on these proposed rules not later than December 18, 1990. Written comments should be directed to Fred Haskins, Insurance Division, Sixth Floor, Lucas State Office Building, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code sections 507C.9, 507C.12, 507C.17, and 515.89.

The following new rules are proposed:

191—5.23(507C,515) Standards. The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policyholders, creditors or the general public, or in an unsound condition financially. The commissioner may consider:

5.23(1) Adverse findings reported in financial condition and market conduct examination reports.

5.23(2) The National Association of Insurance Commissioners Insurance Regulatory Information System and its related report.

5.23(3) The ratios of commission expense, general insurance expense, policy benefits and reserve increases to annual premium and net investment income which could lead to an impairment of capital and surplus.

5.23(4) The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to ensure the company's ability to meet its outstanding obligations as they mature.

5.23(5) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.

5.23(6) The insurer's operating loss in the last 12-month period or any shorter period of time including, but not limited to: net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders reduces such insurer's remaining surplus as regards policyholders below the minimum required.

5.23(7) Whether any affiliate, subsidiary or reinsurer of the insurer is insolvent as defined in Iowa Code section 507C.2(11), is threatened with insolvency, or is delinquent in payment of its monetary or other obligation.

5.23(8) Contingent liabilities, pledges or guarantees which either individually or collectively involve a total amount which, in the opinion of the commissioner, may affect the solvency of the insurer.

5.23(9) Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer.

5.23(10) The age and collectibility of receivables.

5.23(11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position.

5.23(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the

insurer or has furnished false and misleading information concerning an inquiry.

5.23(13) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer.

5.23(14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.

5.23(15) Whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

5.23(16) Whether the reserves for losses and loss expenses are understated or inadequate.

5.23(17) Whether the insurer possesses the capital and surplus, i.e., surplus as regards policyholders, required by the laws of this state.

191—5.24(507C,515) Commissioner's authority.

5.24(1) For the purposes of making a determination of an insurer's financial condition under this rule, the commissioner may:

a. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

b. Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

c. Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

d. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

5.24(2) If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the commissioner may revoke or suspend the insurer's certificate of authority to do business in this state or issue an order requiring the insurer to:

a. Reduce the total amount of present and potential liability for policy benefits by reinsurance;

b. Reduce, suspend or limit the volume of business being accepted or renewed;

c. Reduce general insurance and commission expenses by specified methods;

d. Increase the insurer's capital and surplus;

e. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

f. File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

g. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

h. Document the adequacy of premium rates in relation to the risks insured;

i. File, in addition to regular annual statements, interim financial reports on the form adopted by the

INSURANCE DIVISION[191] (cont'd)

National Association of Insurance Commissioners or on such format as promulgated by the commissioner.

5.24(3) Any insurer subject to an order under subrule 5.24(2) may request, pursuant to rule 191—3.5(17A,502,505), review of that order. Any ensuing hearing shall not be open to the public, unless the insurer requests otherwise.

These rules are intended to implement Iowa Code sections 507C.9, 507C.12, 507C.17, and 515.89.

55 Fed. Reg. 25094 (June 20, 1990)

55 Fed. Reg. 26431 (June 28, 1990)

55 Fed. Reg. 32014 (August 6, 1990)

55 Fed. Reg. 38677 (September 20, 1990)

55 Fed. Reg. 46053 (November 1, 1990)

This rule is intended to implement Iowa Code section 88.5.

ARC 1492A

LABOR SERVICES DIVISION[347]

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 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to adopt an amendment to rule 347—10.20(88) relating to occupational safety and health rules for general industry. The amendment relates to welding, cutting, and brazing, technical amendment; access to medical records, clarification; electrical safety-related work practices; control of hazardous energy sources (lockout/tagout), correction; and electrical safety-related work practices, correction.

If requested by December 18, 1990, a public hearing will be held on December 20, 1990, at 9 a.m. in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than December 21, 1990, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.

The Division has determined that this Notice of Intended Action may have an impact on small business. The Division has considered the factors listed in Iowa Code section 17A.31 and will issue a regulatory flexibility analysis as provided by Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than December 19, 1990, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

Amend rule 347—10.20(88) by inserting at the end thereof:

ARC 1491A

LABOR SERVICES DIVISION[347]

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 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

The amendment to rule 26.1(88) relates to concrete and masonry construction safety standards and lift slab construction operations.

If requested by December 18, 1990, a public hearing will be held on December 20, 1990, at 9 a.m. in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than December 21, 1990, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.

The Division has determined that this Notice of Intended Action may have an impact on small business. The Division has considered the factors listed in Iowa Code section 17A.31. The Division will issue a regulatory flexibility analysis as provided by Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than December 19, 1990, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

The following amendment is proposed:

Amend rule 347—26.1(88) by inserting at the end thereof:

55 Fed. Reg. 42328 (October 18, 1990)

This rule is intended to implement Iowa Code section 88.5.

ARC 1490A
LABOR SERVICES DIVISION[347]
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 91C.6, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 150, "Construction Contractor Registration," Iowa Administrative Code.

These amendments relate to bonding requirements for out-of-state contractors and the implementation of the biennial registration period.

A public hearing will be held on December 20, 1990, at 1 p.m. in the office of the Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than December 21, 1990, to Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.

The agency has determined that this Notice of Intended Action may have an impact on small business. The agency has considered the factors listed in Iowa Code section 17A.31. The agency will issue a regulatory flexibility analysis as provided by Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than December 19, 1990, to Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

These rules are intended to implement Iowa Code chapter 91C and Iowa Code Supplement section 91C.7(2)"b."

The following amendments are proposed:

ITEM 1. Amend subrule 150.4(2) to read as follows:

150.4(2) Place of business. The principal place of business of the contractor in the state of Iowa. If the contractor's principal place of business is outside the state of Iowa, the application shall state the address of the contractor's principal place of business and the name and address of the contractor's registered agent in Iowa.

ITEM 2. Amend subrule 150.4(3) to read as follows:

150.4(3) Telephone number. The telephone number of the contractor in the state of Iowa. If the contractor's principal place of business is outside the state of Iowa, the application shall state the telephone number of the contractor's principal place of business and the telephone number of the contractor's registered agent in Iowa.

ITEM 3. Amend subrule 150.4(6), paragraph "c," as follows:

c. An affidavit that the contractor is in compliance with notice required by Iowa Code section 87.2. A

statement that the contractor is not required to carry workers' compensation coverage.

ITEM 4. Amend subrule 150.6(1) to read as follows:

150.6(1) Application. Each application shall be accompanied by a biennial fee of ~~\$12.50~~ \$25.00. A fee is not required where a permissible amendment to an application is requested.

ITEM 5. Amend subrule 150.13(1), paragraph "c," as follows:

c. The identification of the contract including the project name, contract number or identification, a copy of the contract, and address where the work will be performed.

ITEM 6. Amend 347—Chapter 150 by adding the following new rule:

347—150.14(91C) Out-of-state contractor bonds alternatives.

150.14(1) Rule 150.13(91C) shall be suspended to the extent necessary to prevent any inconsistency with the requirements of federal law which may result in the denial of federal funds. In addition, contractors performing work undertaken on a federal-aid project for the federal highway administration shall submit a letter to the division from the Iowa department of transportation which states that the requirements of this rule are inconsistent with the federal requirements set forth in 23 CFR section 635.108 (1988). Upon receipt of the letter, the division shall thereby waive the requirements for the filing of a surety bond.

150.14(2) Blanket bond alternative. An out-of-state contractor may file a blanket bond with the division in an amount no less than \$50,000 in lieu of filing individual bonds for multiple contracts. If at any time the amount of the contracts in Iowa exceeds one million dollars, the out-of-state contractor shall submit a bond providing additional coverage.

ARC 1487A
NATURAL RESOURCE
COMMISSION[571]
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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 15, "General License Regulations," Iowa Administrative Code.

This amendment provides for a correction in the course-hour requirement for the hunter safety and ethics course from eight to ten hours as required in Iowa Code section 110.27, subsection (2).

Any interested person may make written suggestions or comments on the proposed rule prior to December 18, 1990. Such written materials should be directed to

NATURAL RESOURCE COMMISSION[571] (cont'd)

the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; FAX (515)281-8895. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the enforcement offices on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on December 19, 1990, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

This rule is intended to implement the provisions of Iowa Code section 110.27:

The following amendments are proposed.

Amend subrule 15.1(2), introductory paragraph, and paragraph 15.1(2) "c" as follows:

15.1(2) Procedure. Any person born after January 1, 1967, who does not complete the required ~~eight (8)~~ ten-hour hunter safety and ethics course (as described in Iowa Code Supplement section 110.27, subsection (1), must meet the following requirements to be eligible to purchase an Iowa hunting license:

c. If the applicant does not pass the second examination with a score of ~~ninety-five percent (95%)~~ 95 percent or more, the applicant must successfully complete the ~~eight (8)~~ ten-hour safety and ethics course to obtain a certificate of completion (as described in Iowa Code Supplement section 110.27, subsection (2)).

These amendments are intended to implement Iowa Code section 110.27.

the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; FAX (515)281-8895. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the enforcement offices on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on December 19, 1990, at 9 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing.

At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rule.

This rule is intended to implement the provisions of Iowa Code section 106.26.

The following amendment is proposed.

Amend Chapter 40 by adding the following rule:

571—40.35(106) Speed restrictions on the Greene Impoundment of the Shell Rock River. No motor boat shall be operated at a speed exceeding five miles per hour in the two zoned areas of the Greene Impoundment designated by buoys or other approved uniform waterway markers. The first zoned area extends from the dam in the city of Greene, upstream approximately one-quarter mile to the north boundary of the city park in which the lower boat ramp is located. The second zoned area extends from the county bridge over the Shell Rock River on the north side of section 28 of Union Township in Floyd County, downstream approximately one-quarter mile to the south boundary of Gates Bridge County Park. The city of Greene and Floyd County shall designate their respective speed zones with uniform waterway markers (buoys) approved by the natural resource commission.

This rule is intended to implement Iowa Code section 106.26.

ARC 1486A**NATURAL RESOURCE
COMMISSION[571]****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 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

This rule creates a five-mile-per-hour speed and distance zone at two locations on the Greene Impoundment of the Shell Rock River in Butler and Floyd Counties, Iowa, near the city of Greene.

Any interested person may make written suggestions or comments on the proposed rule prior to December 18, 1990. Such written materials should be directed to

ARC 1503A**PUBLIC HEALTH
DEPARTMENT[641]****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, the Department of Public Health hereby amends Chapter 11, "Acquired Immune Deficiency Syndrome (AIDS)," Iowa Administrative Code.

These rules [641—11.70(135) to 641—11.78(135)] implement the following changes in services available to HIV-infected patients:

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

1. Add home- and community-based services for HIV-infected patients under the list of covered services.
2. Establish rules to govern the payment of home- and community-based HIV-infected patients.
3. Establish income eligibility requirements.

A public hearing will be held on December 18, 1990, from 10 a.m. until noon in the Third Floor Conference Room of the Lucas State Office Building, Des Moines, Iowa.

Any person interested in submitting written comments may do so on or before December 18, 1990, addressed to David Fries, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules have also been Adopted and Filed Emergency and are published herein as **ARC 1506A**. The content of that submission is incorporated here by reference.

These rules are intended to implement Iowa Code section 135.11.

ARC 1485A**PUBLIC SAFETY
DEPARTMENT[661]****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 103A.5 and 103A.7 and 1990 Iowa Acts, chapter 1214, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby gives Notice of Intended Action to amend Chapter 16, "State of Iowa Building Code," Iowa Administrative Code.

1990 Iowa Acts, chapter 1214, established minimum standards for toilet facilities in places of public assembly and in restaurants, pubs, and lounges, and requires the State Building Code Commissioner to adopt rules pertaining to these facilities. Item 3 of these proposed amendments does so. Other items contained in this Notice of Intended Action correct and clarify other items in the State of Iowa Building Code.

Public hearings regarding these amendments will be held before the Building Code Advisory Council on the following dates:

December 20, 1990, at 1 p.m. in the third floor conference room of the Wallace State Office Building.

December 21, 1990, at 10 a.m. in the second floor conference room of the Wallace State Office Building.

Persons may present their views orally or in writing at these public hearings. Persons who wish to make oral presentations at the public hearings should contact the Building Code Bureau, State Fire Marshal Division, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, telephone (515)281-5132, at least one day prior to the first public hearing. Any written material regarding these rules should be directed to the Building Code Bureau at the above address. Persons who wish to convey their views orally may contact the Building Code Bureau by phone or in person at the Bureau's office.

The following amendments are proposed:

ITEM 1. Amend subrule **16.140(1)**, paragraph "e," as follows:

e. Delete Section 1214 and insert in lieu thereof the following:

Sec. 1214 Buildings containing five ~~four~~ or more individual dwelling units and all hotels and motels shall comply with the applicable provisions of Division VII of the Iowa state building code.

Further amend subrule **16.140(1)**, paragraph "e," by rescinding the note following paragraph "e."

ITEM 2. Amend subrule **16.400(1)**, paragraph "y," the last sentence, as follows:

The Iowa Administrative Code (IAC) 641—Chapter 15 provides the requirements for swimming pools and spas and (IAC) 567—Chapters 49 and 69 provide the criteria requirements for private water well and sewage disposal systems.

ITEM 3. Amend 661—Chapter 16 by adding the following new rule:

661—16.401(73GA, ch1214) Minimum toilet facility standard. The following table shall be used to determine the minimum number of plumbing fixtures which shall be installed for public use in places of assembly, restaurants, pubs and lounges constructed after January 1, 1991. Additions to or adding seating capacity in these types of occupancies shall require the installation of additional fixtures based upon the added number of occupants unless it can be shown that the present facilities comply for the total number of occupants including the additional occupants.

All water closets installed pursuant to this rule shall be water efficient water closets which use three gallons or less of water per flush.

PUBLIC SAFETY DEPARTMENT[661] (cont'd)

MINIMUM PLUMBING FIXTURES:

<i>Type of Building or Occupancy</i>	<i>Water Closets (Fixtures per person)</i>		<i>Urinals (Fixtures per person)</i>	<i>Lavatories (Fixtures per person)</i>	
	<i>Male</i>	<i>Female</i>		<i>Male</i>	<i>Female</i>
<i>Theatres, Auditoriums, Convention Halls, Stadiums, Arenas, Sports facilities, and etc.- for public use</i>	<i>1:1-100 2:101-200 3:201-400 Over 400 add one fixture for each additional 500 males and two for each 300 females</i>	<i>3:1-100 6:101-200 8:201-400</i>	<i>1:1-100 2:101-200 3:201-400 4:401-600 Over 600 add one fixture for each additional 300 males</i>	<i>1:1-200 2:201-400 3:401-750 Over 750, add one fixture for each additional 500 persons</i>	<i>1:1-200 2:201-400 3:401-750</i>
<i>Restaurants, Pubs and Lounges</i>	<i>1:1-50 2:51-150 3:151-300 Over 300, add one fixture for each additional 200 persons</i>	<i>1:1-50 2:51-150 4:151-300</i>	<i>1:1-150 Over 150, add one fixture for each additional 150 males</i>	<i>1:1-150 2:151-200 3:201-400 Over 400, add one fixture for each additional 400</i>	<i>1:1-150 2:151-200 3:201-400</i>

1. The division of occupancy is to be based upon one half being male and one half being female. The number of occupancies shall be as determined by use and occupancy class of the State Building Code or the local building code which is in effect.
2. The number may be graduated within the group such as: 6:101-200
3 fixtures are required for 100 persons.
4 fixtures are required for 101 to 133 persons.
5 fixtures are required for 134 to 166 persons.
6 fixtures are required for 167 to 200 persons.
3. Accessibility for the physically disabled shall be provided as required by Division VII of the State Building Code.

ITEM 4. Rescind subrule 16.704(5) and insert in lieu thereof the following:

16.704(5) Parking and passenger loading zones. Parking spaces, parking lots and passenger loading zones shall be in compliance with 661 IAC 18.

Rescind Figure 3, "Handicapped Parking Spaces."

ITEM 5. Rescind subrule 16.705(3) and Table 705A and insert in lieu thereof the following:

16.705(3) Accessibility within buildings and facilities. Public areas of buildings and facilities shall be accessible to and functional for the physically handicapped throughout.

a. New construction. Table 705A and the footnotes specify exceptions or special requirements for those occupancies which are listed. The occupancies are based upon those as defined in the Uniform Building Code. Any occupancy about which there is any question shall be classified by the state building code commissioner

and included in the group which its use most nearly resembles.

Once access to a building or facility has been attained from any entrance, accessibility to other levels shall be by ramp or elevator. Access to levels which are less than full story height may use other approved means.

NOTE: Grade level entrances at multiple levels does not meet the requirements of this code unless there is no physical communication whatsoever between levels within the building or facility.

For purposes of this rule, any skywalk or similar facility connecting two or more buildings or facilities and those routes used by the public through the connected buildings and facilities shall be considered a single facility and shall be accessible throughout. However, building a skywalk connection to an existing building will not require modifications outside the skywalk corridor except to provide access to the skywalk system.

PUBLIC SAFETY DEPARTMENT[661] (cont'd)

Table 705A. The following occupancies have exceptions or special requirements:

1. Assembly areas ^{5,9} (other than auditoriums)
2. Auditoriums ^{5,8,9}
3. Dormitories ^{3,11}
4. Dwellings ¹
5. Garage Parking ⁴
6. Hotels, Motels and Apartments ²
7. Library Reading Rooms ⁵
8. Offices and Multiple Tenant Office Buildings ³
9. Skating Rinks ⁵
10. Sales Rooms ¹⁰ (including basement, ground floor and upper floors)
11. Swimming Pools and Saunas ^{5,9}
12. Warehouses ³
13. Commercial Kitchens and Mechanical Equipment Rooms ³

NOTES (for Table 705A):

1. See Rule 661-16.706)103A for the requirements within dwellings in multiple-dwelling apartment units.
2. When more than three stories in height elevators or ramps are required. Hotels or motels shall have at least one level of guest rooms which is accessible for the physically handicapped, and five percent of the total number of guest rooms with a minimum of one, shall be functional for the physically handicapped.

The functional units, in hotels and motels, may be located on the floor or floors of wheelchair exit discharge to a public way. Toilet room doors in functional units in hotels or motels shall have a minimum of 32 inches of clear opening, with the door open at ninety degrees, and the door swing shall not interfere with the functional use of the facilities.

3. Access to floors other than that closest to grade may be by stairs only, except when the only available public toilet facilities are on other levels. Office buildings which have more than one tenant must provide accessibility to each tenant at grade level or by elevator or ramp (see 16.705(3) for accessibility within buildings).
4. Access to floors other than that closest to grade and to garages used in connection with apartment houses may be made by stairs only.
5. Access to secondary areas on balconies or mezzanines may be by stairs only except when such secondary areas contain the only available public toilet facilities.
6. When spectator space or seating is provided, an appropriate number of spaces must be provided for the physically handicapped.
7. Accessibility is not required.
8. Seating spaces shall be an integral part of the seating plan. The seating shall be provided at the rate of two percent of the total capacity with a minimum number of four. One-half of accessible spaces may be designed for patrons using braces, crutches, or similar aids. Patrons using wheelchairs shall be located on level grade.
9. Swimming pools shall use either a sloping water entry with the slope not exceeding 1:10 or mechanical or other devices for accessibility. Sloping water entries shall have handrails meeting the requirements of 16.705(1)"b". The surface of the sloping water entry shall be non-slip. Spas and other equipment which is part of a recreational or service facility shall be accessible to persons in wheelchairs.
10. Sales areas whether wholesale or retail shall be accessible and functional for the physically handicapped.
11. See UBC 405 for definition.

b. Existing construction. For existing buildings or facilities or parts of existing buildings or facilities which are required to meet the accessibility provisions of this code and in which practical difficulties exist in carrying out all of the provisions of this code, the following minimum requirements shall apply:

(1) At least one accessible route complying with subrules 16.704(3) and 16.704(4) shall be provided to the building or facility.

(2) If it is established by a person having that authority that no entrance used by the general public can comply, then access at another entrance or entrances may be used provided directional signage is clearly located and displayed.

(3) When toilets are provided, at least one shall comply with subrule 16.705(8); the toilet facility may be unisex.

(4) Accessible routes shall be provided within a building or facility to those areas open to the general public on at least the level of access for the physically handicapped complying with this subrule. Whenever practical all levels of a building or facility shall be accessible.

NOTE: For the purposes of paragraph "b," practical difficulties means: Changes giving full access having little likelihood of being accomplished without incurring an increased cost of 50 percent of the replacement value of the building, structure or facility involved.

These rules are intended to implement Iowa Code chapter 103A and 1990 Iowa Acts, chapter 1214.

ARC 1483A**REVENUE AND FINANCE
DEPARTMENT[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 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend the following chapters: Chapter 10, "Interest, Penalty, and Exceptions to Penalty"; Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest"; Chapter 30, "Filing Returns, Payment of Tax, Penalty and Interest"; Chapter 37, "Administration of the Environmental Protection Charge Imposed Upon Petroleum Diminution"; Chapter 44, "Penalty and Interest"; Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest"; Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues"; Chapter 63, "Administration"; Chapter 81, "Administration"; Chapter 86, "Inheritance Tax"; Chapter 89, "Fiduciary Income Tax"; and Chapter 104, "Hotel and Motel — Filing Returns, Payment of Tax, Penalty and Interest," Iowa Administrative Code.

These amendments will incorporate interest and penalty rules for cigarette, tobacco, motor fuel, individual income, withholding, corporation income, franchise, sales, use, retailer's use, environmental protection charge, inheritance, generation skipping transfer, estate taxes and hotel and motel tax into Chapter 10.

Recent legislation has changed the interest rate to be charged for payment of taxes and consolidated penalty provisions for untimely filed or paid taxes into one Code section. The Department's rules dealing with penalty and interest have been amended to reflect these changes.

Portions of the preceding chapters will be incorporated into Chapter 10. This will provide one chapter for penalty and interest provisions for all taxes.

The proposed rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined the proposed amendments will not have an impact on small business as defined in Iowa Code section 17A.31(1).

Any interested person may make written suggestions or comments on these proposed amendments on or before December 28, 1990. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the 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 December 21, 1990.

The following amendments and new rules are proposed.

ITEM 1. Amend rule 701—10.2(421), introductory paragraph, as follows:

701—10.2(421) Interest. Except where a different rate of interest is provided by Title XVI of the Iowa Code, the rate of interest on interest bearing taxes and interest bearing refunds arising under Title XVI is fixed for each calendar year by the director. *In addition to any penalty computed, there shall be added interest as provided by law from the original due date of the return. Any portion of the tax imposed by statute which has been erroneously refunded and is recoverable by the department shall bear interest as provided in Iowa Code section 421.7, subsection 2, from the date of payment of the refund, considering each fraction of a month as an entire month. Interest which is not judgment interest is not payable on sales and use tax, local option tax, and hotel and motel tax refunds. Herman M. Brown v. Johnson, 248 Iowa 1143, 82 N.W.2d 134 (1957); United Telephone Co. v. Iowa Department of Revenue, 365 N.W.2d 647 (Iowa 1985).*

ITEM 2. Amend rule 701—10.5(421), introductory paragraph, as follows:

701—10.5(421) Exceptions from penalty provisions for taxes due and payable on or after January 1, 1987, and for tax periods ending on or before December 31, 1990. The penalty provided for failure to remit at least ninety 90 percent (90%) of the tax due or of the tax due with the filing of the deposit form or return or to pay at least ninety 90 percent (90%) of the tax required to be shown as due on the return under Iowa Code section 98.28, 98.46, 324.65, 422.16, 422.25, 422.58, 422.66, 423.18, 424.17, 435.5, 450.63, 450A.12 or 451.12 shall not be assessed by the department or paid by the taxpayer under any of the following conditions:

ITEM 3. Amend rule 701—10.5(421), implementation clause, as follows:

This rule is intended to implement Iowa Code chapter 421 and 1989 Iowa Acts, chapter 131, section 13, subsection 4; section 29; and section 45, subsection 3, paragraph "c". 1990 Iowa Acts, chapter 1172.

ITEM 4. Amend 701 — Chapter 10 by adding the following new rules:

PENALTY FOR TAX PERIOD BEGINNING AFTER JANUARY 1, 1991

701—10.6(421) Penalties. A penalty shall be assessed upon all tax and deposits due under the following circumstances:

1. For failure to timely file a return or deposit form there is a 10 percent penalty. This penalty, once imposed, will be assessed on all subsequent amounts due or required to be shown due on the return or deposit form.

EXAMPLE: The taxpayer fails to timely file a return and fails to timely pay the tax due. The department will assess a 10 percent penalty for failure to timely file the return but will not assess a 5 percent penalty for failure to timely pay. The department subsequently audits the untimely filed return and determines additional tax is due. The department shall assess a 10 percent penalty on the additional tax found due by an audit.

2. For failure to timely pay the tax due on a return or deposit form, there is a 5 percent penalty.

3. For a deficiency of tax due on a return or deposit form found during an audit, there is a 5 percent penalty. For purposes of this penalty, the audit deficiency shall be assessed only when there is a timely filed return or deposit form.

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

Audit deficiency occurs when the department determines additional tax is due.

4. For willful failure to file a return or deposit form, there is a 75 percent penalty.

The penalty rates are uniform for all taxes and deposits due under this chapter.

The penalty for failure to timely file will take precedence over the penalty for failure to timely pay or an audit deficiency when more than one penalty is applicable.

5. Examples to illustrate the computation of penalty for tax periods beginning on or after January 1, 1991.

The following are examples to illustrate the computation of penalties imposed under rule 10.7(421). For purposes of these examples, interest has been computed at the rate of 12 percent per year or 1 percent per month. The tax due amounts are assumed to be the total amounts required to be shown due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax was paid.

EXAMPLE (a) - Failure to File.

a. Tax due is \$100.

b. Return filed 3 months and 10 days after the due date.

c. \$100 paid with the return.

The calculation for additional tax due is shown below:

Tax	\$100	
Penalty	10	(10% failure to timely file)
Interest	4	(4 months interest)
Total	\$114	
Less Payment	100	
Additional Tax due	\$ 14	

EXAMPLE (b) - Failure to Pay.

a. Tax due is \$100.

b. Return is timely filed.

c. \$0 paid.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	\$100	
Penalty	5	
Interest	5	(5 months interest)
Total	\$110	

EXAMPLE (c) - Failure to File and Failure to Pay.

a. Tax due is \$100.

b. Return is filed 2 months and 10 days after the due date.

c. \$0 paid.

The calculation for the total amount due 3 months after the due date is shown below:

Tax	\$100	
Penalty	10	(10% for failure to file)
Interest	3	(3 months interest)
Total Due in 3rd month	\$113	

EXAMPLE (d) - Audit on Timely Filed Return.

a. \$100 in additional tax found due.

b. Timely filed return.

c. Audit completed 8 months after the due date of the return.

d. Return showed \$100 as the computed tax, which was paid with the return.

The calculation for the total amount due is shown below:

Computed tax after audit	\$200	
Less tax paid with return	100	
Additional tax due	\$100	
Penalty	5	(5% for audit deficiency)
Interest	8	(8 months interest)
Total due	\$113	

EXAMPLE (e) - Audit on Late Return Granted an Exception From Failure to File.

a. Tax due is \$100.

b. Return filed 3 months and 10 days after the due date.

c. \$100 paid with the return.

d. Taxpayer is granted an exception from penalty for failure to file. (Return is then considered timely filed.)

e. Audit completed 8 months after the due date of the return. \$100 additional tax found due.

f. Return showed \$100 as the computed tax, which was paid with the return.

The computation for the total amount due is shown below:

Computed tax after audit	\$200	
Less tax paid with return	100	
Additional tax due	\$100	
Penalty	5	(5% for audit deficiency. No penalty for failure to file.)
Interest	8	(8 months interest)
Total due	\$113	

EXAMPLE (f) - Audit on Late Filed Return No Pay Return.

a. \$100 claimed as tax on the return.

b. \$100 in additional tax found due.

c. Return filed 3 months and 10 days after the due date.

d. Audit completed 8 months after the due date.

The computation for the total amount due is shown below:

Computed tax after audit	\$200	
Penalty	20	(10% for failure to file)
Interest	16	(8 months interest)
Total due	\$236	

701-10.7(421) Waiver of penalty—definitions. A penalty, if assessed, shall be waived by the department upon a showing of the circumstances stated below.

10.7(1) For purposes of these rules, the following definitions apply:

“Act of God” means an unusual and extraordinary manifestation of nature which could not reasonably be anticipated or foreseen and cannot be prevented by human care, skill, or foresight. There is a rebuttable presumption that an “act of God” that precedes the due date of the return or form by 30 days is not an act of God for purposes of an exception to penalty.

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"Immediate family" includes the spouse, children, or parents of the taxpayer. There is a rebuttable presumption that relatives of the taxpayer beyond the relation of spouse, children, or parents of the taxpayer are not within the taxpayer's immediate family for purposes of the waiver exceptions.

"Sanctioned self-audit program" means an audit performed by the taxpayer with forms provided by the department as a result of contact by the department to the taxpayer prior to voluntary filing or payment of the tax. Filing voluntarily without contact by the department does not constitute a sanctioned self-audit.

"Serious, long-term illness or hospitalization" means an illness or hospitalization, documented by written evidence, which precedes the due date of the return or form by no later than 30 days and continues through the due date of the return or form and interferes with the timely filing of the return or form. There is a rebuttable presumption that an illness or hospitalization that precedes the due date of the return or form by more than 30 days is not an illness or hospitalization for purposes of an exception to penalty. The taxpayer will be provided an automatic extension of 30 days from the date the return or form is originally due or the termination of the serious, long-term illness or hospitalization whichever is later without incurring penalty. The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred.

"Substantial authority" means the weight of authorities for the tax treatment of an item is substantial in relation to the weight of authorities supporting contrary positions.

In determining whether there is substantial authority, only the following will be considered authority: Applicable provisions of Iowa statutes; the Internal Revenue Code; Iowa administrative rules construing those statutes; court cases; administrative rulings; legal periodicals; department newsletters and tax return and deposit form instruction booklets; tax treaties and regulations; and legislative intent as reflected in committee reports.

Conclusions reached in treaties, legal opinions rendered by other tax professionals, descriptions of statutes prepared by legislative staff, legal counsel memoranda, and proposed rules and regulations are not authority.

There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is due to be filed or there was substantial authority on the last day of the taxable year to which the return relates.

The taxpayer must notify the department at the time the return, deposit form, or payment is originally due of the substantial authority the taxpayer is relying upon for not filing the return or deposit form or paying the tax due.

701—10.8(421) Penalty exceptions. Under certain circumstances the penalty for failure to timely file a return or deposit, failure to timely pay the tax shown due, or the tax required to be shown due with the filing of a return or a deposit form, or failure to pay following an audit by the department is waived.

When an exception is granted under subrule 10.9(1), the return or deposit form is considered timely filed for purposes of nonimposition of penalty only.

10.8(1) For failure to timely file a return or deposit form, the 10 percent penalty is waived upon a showing of the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date of the tax return or deposit form.

b. One late return allowed. A taxpayer required to file a return or deposit form quarterly, monthly, or semi-monthly is allowed one untimely filed return or deposit form within a three-year period. The use by the taxpayer of any other penalty exception under this subrule will not count as a late return or deposit form for purposes of this subsection.

The exception for one late return in a three-year period is determined on the basis of the tax period for which the return or form is due and not the date on which the return is filed.

c. Death of a taxpayer, member of the immediate family of the taxpayer, or death of the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing. There is a rebuttable presumption that a death which occurs more than 30 days before the original date the return or form is due does not interfere with timely filing.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return and paying the tax.

e. Destruction of records by fire, flood, or act of God.

f. The taxpayer presents proof that the taxpayer at the due date of the return, deposit form, or payment relied upon applicable, documented, written advice made specifically to the taxpayer, the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service. The advice should be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The advice must be current and not superseded by a court decision, ruling of a quasi-judicial body such as an administrative law judge, the director, or the state board of tax review, or by the adoption, amendment, or repeal of a rule or law.

g. Reliance upon the results of a previous audit was a direct cause for failure to file or pay where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or by adoption, amendment, or repeal of a rule or law.

h. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

i. The return, deposit form, or payment is timely, but erroneously mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

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10.8(2) For failure to timely pay the tax due on a return or deposit form, the 5 percent penalty is waived upon a showing of the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date of the tax return or deposit form.

b. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

c. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within 60 days of the final disposition of the federal government's audit.

d. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

e. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

f. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

g. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

h. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

10.8(3) For a deficiency of tax due on a return or deposit form found during an audit, the 5 percent penalty is waived under the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

d. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

701—10.9(421) Notice of penalty exception for one late return in a three-year period. The penalty exception for one late return in a three-year period will automatically be applied to a return or deposit form by the department if the taxpayer is eligible for the exception.

The exception for one late return in a three-year period is applied to the returns or deposit forms in the order they are processed and not in the order which the returns or deposit forms should have been filed.

10.10 to 10.19 Reserved.

ITEM 5. Amend **701—Chapter 10** by adding the following subheading after 10.19:

RETAIL SALES TAX

ITEM 6. Amend 701—12.10(422,423) as follows:

701—~~12.10~~ 10.20(422,423) No substantive change.

ITEM 7. Amend subrule 12.10(1) as follows:

~~12.10(1)~~ **10.20(1)** No substantive change.

ITEM 8. Amend subrule 12.10(2) as follows:

~~12.10(2)~~ **10.20(2)** No substantive change.

ITEM 9. Amend subrule 12.10(3) as follows:

~~12.10(3)~~ **10.20(3)** Computations for tax periods for taxes initially due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991.

a. Penalty for failure to file return. Subsequent to December 31, 1986, a permit holder or other person who willfully fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return will be subject to penalty for this failure. The penalty for willful failure to file a deposit form or return is 75 percent of the amount required to be shown on the deposit form or return; see Iowa Code section 422.58(1). When it is appropriate to impose this 75 percent penalty, it will be in lieu of the penalty described in subrule ~~12.10(3)"b."~~ **10.20(3)"b."**

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least 90 percent of the tax due and owing on or before the due date of the deposit or return, there will be added to the amount of tax required to be shown on the deposit form or return a penalty of 15 percent of the tax due. Under ~~1985~~ Iowa Code section 422.58(1), the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, the portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed. No statutory basis for remission of the 15 percent penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than 90 percent of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule will include a penalty for additional tax shown to be due and owing as the result of an audit. See department subrule ~~44-3(7)~~ **10.41(6)** for examples which illustrate the computation of penalty for tax due on or after January 1, 1987, but for tax years ending before January 1, 1991.

c. Application of payments. All payments must be first applied to penalty, then interest, and the balance, if any,

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to the amount of tax then due in the order specified. See *Ashland Oil Inc. v. Iowa Department of Revenue and Finance*, 452 N. W.2d 162 (Iowa 1990). If penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the penalty, then the interest, then the tax for the oldest tax period; then to the penalty, interest, and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty, and interest for the three years is \$1,200. \$200 of this amount is tax for the year 1984. The permit holder remits a single payment of \$1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest, and tax owing for 1983. Any amount remaining would be applied first to penalty and then interest owing for 1984. The \$200 in tax due for the year 1984 would remain to be paid and would continue to accrue interest.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1987, and overdue and payable on that date. The date upon which the tax initially became delinquent determines which penalty applied. If the initial delinquency occurs prior to January 1, 1987, the ten 10 percent (10%) penalty applies. If the initial delinquency occurs on or after January 1, 1987, but for tax periods ending before January 1, 1991, only the flat rate penalties of seven and one-half or fifteen 7.5 or 15 percent apply. See rule 701-10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

See rule 701-10.5(421) for statutory exemptions to penalty for tax due and payable on or after January 1, 1987. See rule 701-10.8(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 422.58(1) as amended by 1986 Iowa Acts, chapter 1007 1990 Iowa Acts, chapter 1172.

ITEM 10. Amend rule 701-12.11(422,423) as follows:

~~701-12.11 10.21(422,423)~~ No substantive change, except paragraphs "a" to "h" are numbered "1" to "8," respectively.

10.22 to 10.29 Reserved.

ITEM 11. Amend 701-Chapter 10 by adding the following subheading:

USE TAX

ITEM 12. Amend rule 701-30.10(423) as follows:

~~701-30.10 10.30(423)~~ No substantive change.

ITEM 13. Amend subrule 30.10(1) as follows:

~~30.10(1) 10.30(1)~~ For taxes initially due and payable prior to January 1, 1985, failure to file a monthly deposit or use tax return or a corrected return or to pay use tax due on or before the due date shall result in a delinquent deposit or return and be subject to penalty and interest. See subrules ~~12.10(1), 12.10(2) and 12.10(3)~~ 10.20(1), 10.20(2), and 10.20(3) for computation of penalty.

ITEM 14. Amend subrule 30.10(2) as follows:

~~30.10(2) 10.30(2)~~ For taxes initially due and payable on or after January 1, 1985, but before January 1, 1987, only willful failure to file a monthly deposit or use tax return or a corrected return will be subject to penalty.

Persons who fail to timely pay use tax are subject to a penalty which cannot be waived by the director and may not be excused for reasonable cause. If the person who fails to timely pay use tax is a retailer maintaining a place of business in this state, the penalty for failure to pay will be 10 percent of the tax required to be paid. Department rule 30.1(423) describes in detail the persons who are subject to this 10 percent penalty. For any person who is not a retailer, the penalty for failure to timely pay use tax is 5 percent of the tax required to be paid.

See rule ~~12.10 10.20(422,423)~~ for computation of penalty and interest before January 1, 1991. See rule 701-10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

ITEM 15. Amend subrule 30.10(3) as follows:

~~30.10(3) 10.30(3)~~ For taxes initially due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991, only willful failure to file a monthly deposit or use tax return or a corrected return will be subject to penalty. Persons who fail to timely pay use tax are subject to a penalty which cannot be waived by the director and may not be excused for reasonable cause. If the person who fails to timely pay use tax is a retailer maintaining a place of business in this state, the penalty for failure to pay is 15 percent of the tax required to be paid. Department rule ~~30.1 10.30(423)~~ described in detail the persons who are subject to this 15 percent penalty. For any person who is not a retailer, the penalty for failure to timely pay use tax is seven and one-half 7.5 percent of the tax required to be paid. See rule 701-10.5(421) for statutory exemptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule ~~12.10 10.20(422,423)~~ for computation of penalty and interest for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701-10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 422.58 and 423.18 as amended by 1987 1990 Iowa Acts, House File 334 chapter 1172.

10.31 to 10.39 Reserved.

ITEM 16. Amend rule 701-37.10(73GA, ch131) as follows:

~~701-37.10(73GA, ch131)~~ Payment of the charge. The charge is due and payable on or before the last day of the month following each quarterly period unless otherwise indicated in this chapter. For circumstances described in subrule 37.9(4) above, the charge must be paid when the return must be filed. For penalty and interest on charges for tax periods beginning on or after January 1, 1991, see 701-Chapter 10.

This rule is intended to implement 1989 1990 Iowa Acts, chapter ~~131~~, section 20 chapter 1172.

ITEM 17. Amend 701-Chapter 10 by adding the following subheading:

INDIVIDUAL INCOME TAX

ITEM 18. Amend rule 701-44.1(422) as follows:

~~701-44.1 10.40(422)~~ General rule. The computation of penalty, as outlined in this chapter, shall apply to individual, fiduciary, and withholding tax. The penalty for failure to file an estimated declaration of individual income tax or for underpaying an estimated declaration of individual income tax is computed according to the

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provisions of the Internal Revenue Code as authorized by Iowa Code section 422.16(11)"e." The withholding and estimated tax provisions for waiver of penalty assessed on tax periods beginning before July 1, 1974, are authorized by Iowa Code section 422.16(13). For tax years beginning on or after July 1, 1974, the withholding tax provisions for waiver of penalty are authorized by Iowa Code section 422.16(10). For tax periods beginning on or after July 1, 1974, there is no authority in the Iowa Code to waive the penalty assessed for failure to file or for underpayment of an estimated declaration of individual income tax. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 422.16.

ITEM 19. Rescind rule 701—44.2(422).

ITEM 20. Amend rule 701—44.3(422) by rescinding the introductory paragraph and the remaining four unnumbered paragraphs.

ITEM 21. Amend subrule 44.3(1) as follows:
~~44.3(1)~~ 701—10.41(422) No substantive change.

ITEM 22. Amend subrule 44.3(2) as follows:
~~44.3(2)~~ 10.41(1) No substantive change.

ITEM 23. Amend subrule 44.3(3) as follows:
~~44.3(3)~~ 10.41(2) No substantive change.

ITEM 24. Amend subrule 44.3(4) as follows:
~~44.3(4)~~ 10.41(3) No substantive change.

ITEM 25. Amend subrule 44.3(5) as follows:
~~44.3(5)~~ 10.41(4) No substantive change.

ITEM 26. Amend subrule 44.3(6), introductory paragraph, as follows:

~~44.3(6)~~ 10.41(5) Computation for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991. Iowa Code section 422.25 provides for a penalty of seven and one-half 7.5 percent (7.5%) for the failure to pay at least ninety 90 percent (90%) of the tax shown due on or before the due date or for the failure to pay at least ninety 90 percent (90%) of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of tax shown to be due on the return.

ITEM 27. Amend subrule 44.3(6), last paragraph, as follows:

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods due and payable beginning on or after January 1, 1991.

ITEM 28. Amend subrule 44.3(7) as follows:

~~44.3(7)~~ 10.41(6) Examples to illustrate the computation of penalty for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991. The following are examples to illustrate the computation of penalty imposed under subrule ~~44.3(5)~~ 10.41(4). For the purpose of these examples only, interest has been computed at the rate of eight tenths .8 of one 1 percent per month. In addition, for the purpose of these examples, the tax due amounts are assumed to be the total amounts required to be shown due when considering whether the failure to pay penalty should be assessed on the basis

that less than ninety 90 percent (90%) of the tax was paid.

For additional examples to illustrate the computation of penalty see subrule ~~44.3(5)~~ 10.41(4) except for example "p." The examples in subrule ~~44.3(5)~~ 10.41(4) show penalty computed at five 5 percent (5%), however, penalty for failure to pay taxes due on or after January 1, 1987, but for tax periods ending before January 1, 1991, is seven and one-half 7.5 percent (7.5%). See subrule 10.6(5) for examples of computation of penalty for tax periods beginning on or after January 1, 1991.

ITEM 29. Amend rule 701—44.7(422) as follows:

~~701—44.7~~ 10.42(422) No substantive change.

ITEM 30. Amend rule 701—44.8(422) as follows:

~~701—44.8~~ 10.43(422) No substantive change.

10.44 to 10.49 Reserved.

ITEM 31. Amend 701—Chapter 10 by adding the following subheading:

WITHHOLDING

ITEM 32. Amend rule 701—46.5(422) as follows:

~~701—46.5~~ 10.50(422) Penalty and interest.

~~46.5(1)~~ 10.50(1) For tax due before January 1, 1985. See rules ~~44.2(422)~~, ~~44.3(422)~~, rule 10.41(422) and subrules ~~44.3(1)~~, ~~44.3(2)~~ and ~~44.3(3)~~ 10.41(1) and 10.41(2) for application and computation of penalty and interest on withholding taxes.

~~46.5(2)~~ 10.50(2) For tax due on or after January 1, 1985, but before January 1, 1987. Iowa Code section 422.16 provides for a penalty of 10 percent for the failure to pay at least 90 percent of the tax shown due on or before the due date or for the failure to pay at least 90 percent of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown due on the return as distinguished from the amount of tax shown to be due on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown due is not subject to waiver.

For examples on application of penalties, refer to subrule ~~44.3(5)~~ 10.41(4). The penalty assessed in these examples is 5 percent, where for withholding tax, the penalty is 10 percent for failure to pay at least 90 percent of the tax shown due on or before the due date or for failure to pay at least 90 percent of the tax required to be shown due on the return by the due date.

~~46.5(3)~~ 10.50(3) For tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991. Iowa Code section 422.16 provides for a penalty of 15 percent for the failure to pay at least 90 percent of the tax shown due on or before the due date or for the failure to pay at least 90 percent of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown due on the return as distinguished from the amount of tax shown to be due on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown due is not subject to waiver.

For examples on application of penalties, refer to subrule ~~44.3(7)~~ 10.41(6). The penalty assessed in these examples is 7.5 percent, where for withholding tax, the penalty is 15 percent for failure to pay at least 90 percent of the tax shown due on or before the due date or for failure to pay at least 90 percent of the tax required to be shown due on the return by the due date.

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See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 422.16.

10.51 to 10.55 Reserved.

ITEM 33. Amend 701—Chapter 10 by adding the following subheading ahead of renumbered 701—10.56(422):

CORPORATE TAX

ITEM 34. Rescind subrule 52.4(7).

ITEM 35. Amend subrule 52.5(3) as follows:

~~701—52.5(3)~~ 10.56(422) **Penalty and interest.** In computing penalty and interest for failure to file a timely return or to pay the minimum tax, refer to subrules 52.6(4) 10.57(1) and 52.6(5) 10.57(2). Effective for tax years beginning on or after January 1, 1986, estimate payments are required for minimum tax.

ITEM 36. Amend rule 701—52.6(422)* by rescinding subrules 52.6(1) and 52.6(2) and renumbering as follows:

~~701—52.6~~ 10.57(422) No substantive change.

~~52.6(3)~~ 10.57(1) No substantive change.

ITEM 37. Amend subrule 52.6(4)* by renumbering and amending the last unnumbered paragraph as follows:

~~52.6(4)~~ 10.57(2)

For examples on application of penalties, refer to subrule ~~44.3(3)~~ 10.41(2).

ITEM 38. Amend subrule 52.6(5)* by renumbering and amending the last unnumbered paragraph as follows:

~~52.6(5)~~ 10.57(3)

For examples on application of penalties, refer to subrule ~~44.3(5)~~ 10.41(4).

ITEM 39. Amend subrule 52.6(6)* as follows:

~~52.6(6)~~ 10.57(4) **Computation for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991.** Iowa Code section 422.25 provides for a penalty of seven and one-half 7.5 percent (7.5%) for the failure to pay at least ninety 90 percent (90%) of the tax shown due on or before the due date or for the failure to pay at least ninety percent 90 (90%) of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of tax shown to be due on the return.

In considering if penalty should be assessed for failure to pay, it must be determined whether tax payments and credits equal or exceed ninety 90 percent (90%) of the tax required to be shown on the return. Tax required to be shown on the return is defined as those taxes required to be computed under Iowa Code chapter 422, division III (income tax and minimum tax). Tax payments or credits to be applied against the tax required to be shown on the return are (1) Iowa estimate tax payments, (2) motor vehicle fuel tax credits, (3) tax payments made prior to the filing of the return, (4) any tax payment made with the return, and (5) credits allowed under Iowa Code section 422.33.

Therefore, if an audit results in additional tax which was required to be shown as due on the return by the

due date so that less than ninety 90 percent (90%) of the tax was paid, the additional tax is subject to penalty for failure to pay. All payments must be first applied to the penalty and then to the interest, and the balance, if any, to the amounts of tax then due.

The penalty for failure to pay at least ninety 90 percent (90%) of the tax required to be shown due is not subject to waiver.

In addition to the penalty computed above, there will be added interest as provided by law from the original due date of the return. Interest on refunds of any Any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department will bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

For examples on application of penalties for tax periods ending before January 1, 1991, refer to subrule ~~44.3(7)~~ 10.41(6). See subrule 10.6(5) for examples on application of penalties for tax periods beginning on or after January 1, 1991.

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

ITEM 40. Amend subrule 52.6(15)* as follows:

~~52.6(15)~~ 10.57(5)

10.58 to 10.65 Reserved.

ITEM 41. Amend 701—Chapter 10 by adding the following subheading:

FINANCIAL INSTITUTIONS

ITEM 42. Amend subrule 58.4(3) as follows:

~~58.4(3)~~ **Penalty and interest on unpaid tax.** In computing penalty and interest on unpaid tax, refer to rule ~~58.6(422)~~ 701—10.66(422).

ITEM 43. Amend subrule 58.5(3) as follows:

~~58.5(3)~~ **Penalty and interest.** In computing penalty and interest for failure to file a timely return or to pay the minimum tax, refer to subrules ~~58.6(4)~~ and ~~58.6(5)~~ 10.66(2) and 10.66(3). Effective for tax years beginning on or after January 1, 1986, estimate payments are required for minimum tax.

ITEM 44. Amend rule 701—58.6(422) as follows:

~~701— 58.6~~ 10.66(422) No substantive change.

ITEM 45. Rescind subrule 58.6(1).

ITEM 46. Rescind subrule 58.6(2).

ITEM 47. Amend subrule 58.6(3) as follows:

~~58.6(3)~~ 10.66(1) No substantive change.

ITEM 48. Amend subrule 58.6(4) by renumbering and amending the last paragraph as follows:

~~58.6(4)~~ 10.66(2)

For examples on application of penalties, refer to subrule ~~44.3(3)~~ 10.41(2).

ITEM 49. Amend subrule 58.6(5) by renumbering and amending the last paragraph as follows:

~~58.6(5)~~ 10.66(3)

For examples on application of penalties, refer to subrule ~~44.3(5)~~ 10.41(4).

*Renumbered as 52.10, ARC 1462A, Item 5, herein

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

ITEM 50. Amend subrule 58.6(6) first paragraph, as follows:

~~58.6(6)~~ **10.66(4)** Computation for tax due on or after January 1, 1987, *but for tax periods ending before January 1, 1991*. Iowa Code section 422.25 provides for a penalty of ~~seven and one-half~~ 7.5 percent (7.5%) for the failure to pay at least ~~ninety~~ 90 percent (90%) of the tax shown due on or before the due date or for the failure to pay at least ~~ninety~~ 90 percent (90%) of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of tax shown to be due on the return.

ITEM 51. Amend subrule **58.6(6)**, last two paragraphs, as follows:

For examples on application of penalties, refer to subrule ~~44.3(7)~~ **10.41(6)**.

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987, *but for tax periods ending before January 1, 1991*. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

ITEM 52. Amend subrule 58.6(14) as follows:

~~58.6(14)~~ **10.66(5)** No substantive change.

10.67 to 10.70 Reserved.

ITEM 53. Amend **701—Chapter 10** by adding the following subheading:

MOTOR FUEL

ITEM 54. Amend rule 701—63.8(324) as follows:

701—~~63.8~~ 10.71(324) Penalty. No substantive change.

ITEM 55. Rescind subrules **63.8(1)** and **63.8(2)**.

ITEM 56. Amend subrule 63.8(3) by renumbering and amending the second unnumbered paragraph as follows:

~~63.8(3)~~ **10.71(1)**

In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the report is filed, there is a continued failure to pay during the five-month period after the tax is due. The combined penalties for failure to file or pay shall not exceed ~~twenty-five~~ 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the report as distinguished from the amount of the tax shown to be due on the report. Therefore, if an audit results in an additional tax which was required to be shown as due on the report, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See subrule ~~44.3(3)~~ **10.41(2)** for examples of the penalty computation. These examples would also apply to the motor fuel tax.

ITEM 57. Amend subrule 63.8(4) by amending the introductory paragraph as follows:

~~63.8(4)~~ **10.71(2)** Computation for tax due on or after January 1, 1985, but before January 1, 1987. Iowa Code section 324.65 provides for a penalty of ~~five~~ 5 percent for the failure to pay at least ~~ninety~~ 90 percent of the tax shown due on or before the due date or for the failure to pay at least ~~ninety~~ 90 percent of the tax required to be shown due on the report by the due date. The penalty

is computed on the amount of tax remaining unpaid that is required to be shown due on the report as distinguished from the amount of tax shown to be due on the report. See subrule ~~44.3(5)~~ **10.41(4)** for examples of the penalty computation. These examples would also apply to the motor fuel tax.

ITEM 58. Amend subrule 63.8(5) as follows:

~~63.8(5)~~ **10.71(3)** Computation for tax due on or after January 1, 1987, *but before January 1, 1991*. Iowa Code section 324.65 provides for a penalty of ~~seven and one-half~~ 7.5 percent (7.5%) for the failure to pay at least ~~ninety~~ 90 percent (90%) of the tax shown due on or before the due date or for the failure to pay at least ~~ninety~~ 90 percent (90%) of the tax required to be shown due on the return by the due date. The penalty is computed on the amount of tax remaining unpaid that is required to be shown due on the report as distinguished from the amount of tax shown to be due on the report. See subrule ~~44.3(7)~~ **10.41(6)** for examples of the penalty computation for tax periods ending before January 1, 1991. See rule 701—10.6(421) for penalty computation for tax periods beginning on or after January 1, 1991. These examples would also apply to the motor fuel tax.

The penalty for failure to pay at least ~~ninety~~ 90 percent (90%) of the tax required to be shown due is not subject to waiver.

In addition to the penalty computed above there will be added interest as provided by law from the original due date of the report.

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987, *but for tax periods ending before January 1, 1991*. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

ITEM 59. Amend subrule 63.8(6) as follows:

~~63.8(6)~~ **10.71(4)** No substantive change.

ITEM 60. Rescind rule **701—63.9(324)**.

ITEM 61. Amend rule 701—63.10(324) as follows:

701—~~63.10~~ 10.72(324) No substantive change.

10.73 to 10.75 Reserved.

ITEM 62. Amend **701—Chapter 10** by adding the following subheading:

CIGARETTES AND TOBACCO

ITEM 63. Amend rule 701—81.8(98) as follows:

701—~~81.8~~ 10.76(98) Penalties. No substantive change.

ITEM 64. Amend subrule 81.8(1) by renumbering the subrule, rescinding paragraph "a," and amending the unnumbered paragraph preceding the implementation clause as follows:

~~81.8(1)~~ **10.76(1)**

See rule 701—10.5(421) for statutory exceptions to penalty for taxes due and payable on or after January 1, 1987. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

ITEM 65. Amend subrule 81.8(2) by renumbering the subrule, rescinding paragraph "a," subparagraphs (1) and (2) and amending the first unnumbered paragraph and the second unnumbered paragraph and relettering as follows:

~~81.8(2)~~ **10.76(2)**

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

The penalty imposed under subrule ~~81.8(2)~~ 10.76(2), paragraph "b," "a," is not subject to waiver for reasonable cause.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due and payable on or after January 1, 1987. See rule 701—10.8(421) for statutory exceptions to penalty for tax periods beginning on or after January 1, 1991.

ITEM 66. Amend rule 701—81.9(98) as follows:

701—81.9 10.77(98) Interest. No substantive change.

ITEM 67. Rescind subrule **81.9(1)**.

ITEM 68. Amend subrule 81.9(2) as follows:

81.9(2) 10.77(1) For tax due on or after January 1, 1985, but before January 1, 1991.

a. Cigarettes. There shall be assessed interest at the rate established by rule 701—10.2(421) from the due date of the tax to the date of payment counting each fraction of a month as an entire month. For the purpose of computing the due date of any unpaid tax, a FIFO inventory method shall be used for cigarettes and stamps. See subrule ~~44.3(5)~~ 10.41(4) for examples of penalty and interest.

b. Tobacco. The interest rate on delinquent tobacco tax is the rate established by rule 701—10.2(421) counting each fraction of a month as an entire month. If an assessment for taxes due is not allocated to any given month, the interest shall accrue from the date of assessment. See subrule ~~44.3(5)~~ 10.41(4) for examples of penalty and interest.

This rule is intended to implement Iowa Code sections 98.28 and 98.46 as amended by 1984 Iowa Acts, House File 2507 1990 Iowa Acts, chapter 1172.

ITEM 69. Amend rule 701—81.10(98) as follows:

701—81.10 10.78(98) No substantive change.

ITEM 70. Rescind subrule **81.10(1)**.

ITEM 71. Amend subrule 81.10(2) as follows and run in the text following the catchwords of renumbered **10.78(98)**:

81.10(2) For tax due on or after January 1, 1985, but for tax periods ending before January 1, 1991.

a. **10.78(1)** Cigarettes. The director has the power to waive or reduce the penalty imposed by Iowa Code section 98.31 if a violation of that statute is due to reasonable cause. See rule ~~81.15(98)~~ 10.79(98). The penalty imposed by Iowa Code section 98.28 is not subject to waiver for reasonable cause.

b. **10.78(2)** Tobacco. The penalty imposed is not subject to waiver for reasonable cause. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 98.31 and sections 98.28 and 98.46 as amended by 1984 Iowa Acts, House File 2507 1990 Iowa Acts, chapter 1172.

ITEM 72. Amend rule 701—81.15(98) as follows:

701—81.15 10.79(98) No substantive change.

10.80 to 10.84 Reserved.

ITEM 73. Amend **701—Chapter 10** by adding the following subheading:

INHERITANCE

ITEM 74. Amend subrule 86.2(14) as follows:

701—86.2(14) 10.85(422) No substantive change.

ITEM 75. Amend subrule 86.2(15) as follows:
86.2(15) 10.85(1) No substantive change.

ITEM 76. Amend subrule 86.2(16) as follows:
86.2(16) 10.85(2) No substantive change.

ITEM 77. Amend subrule 86.2(17) as follows:

86.2(17) 10.85(3) Interest — during an extension of time. During the period of an extension of time, any unpaid tax shall draw interest at the rate of ~~six 6~~ percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made during an extension of time shall first be credited to interest and the balance, if any, to the tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). Any outstanding tax obligation remaining after the expiration of an extension of time shall be deemed delinquent and shall be subject to penalty and draw interest at the rate of ~~eight 8~~ percent per annum from the date of the extension expiration until paid, if paid on or before December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

ITEM 78. Amend subrule 86.2(18) as follows:
86.2(18) 10.85(4) No substantive change.

ITEM 79. Amend subrule 86.2(19) as follows:
86.2(19) 10.85(5) No substantive change.

ITEM 80. Amend subrule 86.2(20) as follows:

86.2(20) 10.85(6) Penalty — failure to pay the tax due on or after January 1, 1987, but for deaths occurring before January 1, 1991. Effective for tax due and payable on or after January 1, 1987, a penalty of seven and one-half 7.5 percent (~~7.5%~~) is imposed for failure to timely pay at least ~~ninety 90~~ percent (~~90%~~) of the tax due with the filing of the return. The ~~seven and one-half 7.5~~ percent (~~7.5%~~) penalty is computed on the amount of tax that is required to be shown due (as distinguished from the tax shown due) that is not timely paid, taking into consideration any extensions of time granted to pay the tax due. Reasonable cause for the delinquency is not relevant. The fact the tax is delinquent alone determines the imposition of the penalty. The director cannot waive the penalty.

While the penalty for failure to file the return is abolished, the duty of the personal representative and the taxpayer as defined in Iowa Code section 450.5 to file a return and pay the tax due remains in full force and effect.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due and payable on or after January 1, 1987, but for deaths occurring before January 1, 1991. See rule 701—10.8(421) for statutory exceptions for deaths occurring on or after January 1, 1991.

10.86 to 10.89 Reserved.

ITEM 81. Amend **701—Chapter 10** by adding the following subheading:

IOWA ESTATE TAX

ITEM 82. Amend subrule 87.3(9) as follows:

701—87.3(9) 10.90(451) Penalty—delinquent return and payment. This ~~subrule rule~~ applies only to Iowa estate tax due and payable prior to January 1, 1985. Effective for estates of decedents dying on or after January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

failure to file the return or failure to pay the tax due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. The penalty imposed is based on the tax due and is in addition to the penalties imposed by *Iowa Code* chapter 450 for failure to file or pay the inheritance tax due. A request for waiver of penalty must be in writing and submitted to Fiduciary and Inheritance Tax Processing, P.O. Box 10467, Des Moines, Iowa 50306, and must identify the estate and set forth the reasons for the failure. All tax not paid within the time prescribed by law (taking into consideration any extensions of time to pay) draws interest at the rate of 8 percent per annum. All payments are first credited to penalty and interest and the balance, if any, to the tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). For estates of decedents dying prior to January 1, 1981, all tax not paid within the time prescribed by law (taking into consideration any extensions of time to file and pay) shall draw interest at the rate of 8 percent per annum. There is no penalty for failure to file and pay the tax for estates of decedents dying prior to January 1, 1981. For interest accruing after January 1, 1982, see rule 701-10.2(421) for the statutory interest rate.

ITEM 83. Amend subrule 87.3(10) as follows:
~~87.3(10)~~ 10.90(1) No substantive change.

ITEM 84. Amend subrule 87.3(11) as follows:
~~87.3(11)~~ 10.90(2) No substantive change.

ITEM 85. Amend subrule 87.3(12) as follows:
~~87.3(12)~~ 10.90(3) Penalty—failure to pay the tax due on or after January 1, 1985. Department of revenue and finance subrules ~~86.2(19)~~ and ~~86.2(20)~~ 10.85(5) and 10.85(6) implementing the penalty for failure to timely pay the inheritance tax due are also the rules implementing the penalty for failure to pay the Iowa estate tax due. See rule 701-10.6(421) for penalty for failure to pay the tax due for deaths occurring on or after January 1, 1991.

10.91 to 10.95 Reserved.

ITEM 86. Amend 701-Chapter 10 by adding the following subheading:

GENERATION SKIPPING TAX

ITEM 87. Amend subrule 88.3(14) as follows:
~~701-88.3(14)~~ 10.96(450A) Penalty—delinquent return and payment for deaths occurring before January 1, 1991. Effective for generation skipping transfers which are eligible for the federal credit for state generation skipping transfer tax under section 2604 of the Internal Revenue Code, a penalty of 7.5 percent of the tax due is imposed for failure to pay at least 90 percent of the tax due on or before the date prescribed for payment, taking into consideration any extension of time granted to pay the tax due. The penalty imposed cannot be waived by the director. However, penalty cannot be imposed if any of the five exceptions enumerated in Iowa Code section ~~421.24~~ 421.27 are established by the taxpayer. The term "tax due" means the correct amount of tax due which may, due to an audit or an adjustment in the amount of the federal generation

skipping transfer tax, be a different amount than the tax shown as due on the return. If a penalty is applicable, it is computed on the amount of the tax that has not been timely paid, taking into consideration any extension of time granted to pay the tax due. See rule 701-10.6(421) for penalty for delinquent return and payment of tax due for deaths occurring on or after January 1, 1991.

ITEM 88. Amend subrule 88.3(15) as follows:

~~701-88.3(15)~~ 10.97 (422) No substantive change.
10.98 to 10.100 Reserved.

ITEM 89. Amend 701-Chapter 10 by adding the following subheading:

FIDUCIARY INCOME TAX

ITEM 90. Amend rule 701-89.6(422) as follows:

~~701-89.6~~ 10.101(422) Penalties.

ITEM 91. Amend subrule 89.6(1) as follows:
~~89.6(1)~~ 10.101(1) Negligence penalty—delinquent returns and payment. This subrule is only applicable to tax that is due and payable prior to January 1, 1985. Effective for fiduciary income tax returns and tax due on or after January 1, 1981, a penalty of five 5 percent per month, not to exceed ~~twenty-five~~ 25 percent in the aggregate, is imposed for failure to file a fiduciary income tax return or to pay the tax required to be shown as due, within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or to pay shall not exceed ~~twenty-five~~ 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit of a fiduciary return results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See rules ~~44.1(422)~~ to ~~44.3(422)~~ 10.40(422) and 10.41(422) for individual income tax penalties and ~~44.3(3)~~ subrule 10.41(2) for examples of penalty computation for tax periods ending before January 1, 1991. See rule 701-10.6(421) for individual income tax penalties and subrule 10.6(5) for examples of penalty computation for tax periods beginning on or after January 1, 1991.

ITEM 92. Amend subrule 89.6(2) as follows:

~~89.6(2)~~ 10.101(2) Fraud penalty for tax returns ending before January 1, 1991. If the failure to file the fiduciary income tax return is willful or deliberate with the intention of evading tax or if a false return is willfully or deliberately filed for the purpose of evading the correct tax due, a penalty of ~~fifty~~ 50 percent of the amount of the tax required to be shown as due is imposed. The penalty for fraud shall be in lieu of the penalties provided in subrule ~~89.6(1)~~ 10.101(1).

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

ITEM 93. Amend subrule 89.6(3) as follows:

~~89.6(3)~~ **10.101(3)** Waiver of penalty. This subrule is only applicable to tax that is due and payable prior to January 1, 1985. A request for waiver of penalty must be in writing, in the form of an affidavit, and be submitted to the Fiduciary and Inheritance Tax Processing, P.O. Box 10467, Des Moines, Iowa 50306. It must identify the fiduciary income tax return, the taxable year for which the delinquency occurred and state the reasons for the failure. It is not sufficient for the taxpayer to simply establish that the failure was not willful. The reasons why the failure was reasonable must also be established. The affidavit must contain the facts on which a conclusion can be reached that the penalty should be waived. A mere statement of conclusions is not sufficient. See rule 701—10.8(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

ITEM 94. Amend subrule 89.6(4) by renumbering the subrule and amending paragraph "h" as follows:

~~89.6(4)~~ **10.101(4)**

h. Ordinary business care and prudence was exercised to provide for the timely filing of the return and payment of the tax due, but the filing or payment was nevertheless delinquent. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue* 320 N.W.2d 623 (Iowa 1982). See subrule ~~44.7(7)~~ for reasonable cause for delinquencies on individual income tax returns.

ITEM 95. Amend subrule 89.6(5) as follows:

~~89.6(5)~~ **10.101(5)** No substantive change.

ITEM 96. Amend subrule 89.6(6) as follows:

~~89.6(6)~~ **10.101(6)** No substantive change.

ITEM 97. Amend subrule 89.6(7) as follows:

~~701—89.6(7)~~ **10.102(422)** Penalty. Tax due and payable after December 31, 1984, but for tax periods ending before January 1, 1991. See subrules ~~44.3(4)~~ **10.41(3)** to ~~44.3(7)~~ **10.41(6)** for the penalty for tax that is due and payable after December 31, 1984, but for tax periods ending before January 1, 1991.

This rule is intended to implement Iowa Code sections 4.1, 422.25, and 622.106, and 1990 Iowa Acts, chapter 1172. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

ITEM 98. Amend rule 701—89.7(422) as follows:

~~701—89.7(1)~~ **10.103(422)** Interest.

~~89.7(1)~~ Interest on unpaid tax. Tax not paid within the time prescribed by law, including the period during an extension of time, draws interest at the rate of three-fourths of one percent per month for each month, or fraction of a month, that the tax liability remains unpaid until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made are first credited to penalty and interest due and then to the tax liability. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990).

10.104 to 10.109 Reserved.

ITEM 99. Amend **701—Chapter 10** by adding the following subheading:

HOTEL AND MOTEL

ITEM 100. Amend rule 701—104.8(422A) as follows:

~~701—104.8~~ **10.110(422A)** No substantive change.

ITEM 101. Amend subrule **104.8(1)** by rescinding the subrule.

ITEM 102. Amend subrule 104.8(2) as follows:

~~104.8(2)~~ **10.110(1)** No substantive change.

ITEM 103. Amend subrule 104.8(3) by renumbering and amending the second unnumbered paragraph as follows:

~~104.8(3)~~ **10.110(2)**

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). See rule subrule ~~44.3(5)~~ **10.41(4)** for examples of computation of penalty and interest for tax periods ending before January 1, 1991. See subrule 10.6(5) for examples of penalty computation for tax periods beginning on or after January 1, 1991.

ITEM 104. Amend subrule 104.8(4) as follows:

~~104.8(4)~~ **10.110(3)** Computation for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991. Iowa Code section 422.58(1) provides for a penalty of fifteen percent (15%) for the failure to remit at least ninety percent (90%) of the tax due with the filing of the return or pay less than ninety percent (90%) of the tax required to be shown on the return. For purposes of computing the penalty in case of failure to pay at least ninety percent (90%) of the amount required to be shown on the return, the tax will be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return.

The penalty for failure to pay at least ninety percent (90%) of the tax required to be shown on the return is not subject to waiver.

All payments must be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). See subrule ~~44.3(7)~~ **10.41(6)** for examples of computation of penalty and interest.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. See rule 701—10.2(421) for the statutory interest rate.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 422A.1 and 422.58 as amended by 1986 Iowa Acts, House File 764.

ITEM 105. Amend rule 701—104.9(422A) by renumbering and adding the following unnumbered paragraph before the implementation clause:

~~701—104.9~~ **10.111(422A)**

See rule 701—10.6(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

10.112 to 10.115 Reserved.

ARC 1493A
STATUS OF BLACKS
COMMISSION[434]
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)"6".

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 601K.143, the Iowa Commission on the Status of Blacks hereby gives Notice of Intended Action to adopt Chapter 1, "Organization," and Chapter 2, "Public Records and Fair Information Practices," Iowa Administrative Code.

Chapter 1 sets forth the organization of the Commission and Division on the Status of Blacks within the Department of Human Rights. Chapter 2 deals with public records and the fair information practices Act and adopts the department's rules by reference, which are basically uniform. The Division Administrator is the custodian of the Division's records.

Any person may make written suggestions or comments on these proposed rules prior to December 21, 1990. Advanced written material should be directed to the Iowa Commission on the Status of Blacks, Lucas State Office Building, Des Moines, Iowa, 50319.

There will be a public hearing at 11 a.m., December 21, 1990, in the Department of Human Rights conference room, Lucas State Office Building, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing; however, persons wishing to schedule an oral presentation should so advise the Division by contacting Gary Lawson prior to the hearing at the office of the Division on the Status of Blacks, Department of Human Rights, at (515) 281-3855.

These rules are intended to implement Iowa Code sections 17A.22 and 601K. 141 to 601K.149.

The following rules are proposed:

CHAPTER 1
ORGANIZATION

434—1.1(601K) Commission on the status of blacks.

1.1(1) Commission established. The commission on the status of blacks is established, pursuant to Iowa Code section 601K.142, consisting of nine members. The members of the commission are appointed by the governor, to serve terms of not more than four years per appointment, and confirmed by the senate. In addition, the director of the department of human rights will serve as an ex-officio member of the commission.

1.1(2) Nominations. Nominations for commission officers shall be made in March of each year. An official ballot shall be prepared and ballots shall be cast at the May meeting.

1.1(3) Election. Officers shall hold office for one year, July 1 through June 30, unless removed by two-thirds vote of the commission. No officer shall hold the same office for more than two consecutive terms.

1.1(4) Meetings. The commission on the status of blacks shall meet every other month and may hold special meetings on the call of the chairperson. Six members of the commission shall constitute a quorum. A simple

majority of the quorum is necessary to carry or defeat a motion.

a. Nonattendance. In accordance with Iowa Code section 69.15, any person who has been appointed to serve on the commission shall be deemed to have submitted a resignation from the commission if any of the following occurs:

(1) The person does not attend three or more consecutive regular meetings.

(2) The person attends less than half of the regular meetings in any period of twelve calendar months, beginning July 1.

b. Persons wishing to appear before the commission shall submit a written request to the division administrator not less than four weeks prior to a scheduled meeting. The written request shall include ten copies of any materials the requester desires the commission to review. Presentations may be made at the discretion of the chairperson and only upon matters appearing on the agenda.

c. Special meetings may be called by the chairperson only upon finding good cause and shall be held in strict accordance with Iowa Code chapter 21.

d. Cameras and recording devices may be used at open meetings, provided they do not obstruct the meeting.

e. The presiding officer of a meeting may exclude any person from the meeting for repeated behavior that disrupts the meeting.

f. Cases not covered by these rules shall be governed by Robert's Rules of Order (newly revised edition).

1.1(5) Minutes. Minutes of the commission meetings are prepared and sent to all commission members. Approved minutes are available at the division office for inspection during regular business hours.

1.1(6) Duties. In accordance with Iowa Code section 601K.146, the commission shall:

a. Serve as an information clearinghouse on programs and agencies operating to assist blacks. Clearinghouse duties shall include, but are not limited to:

(1) Service as a referral agency to assist blacks in securing access to state agencies and programs.

(2) Service as a liaison with federal, state, and local governmental units and private organizations on matters relating to blacks.

(3) Service as a communications conduit to state government for black organizations in the state.

(4) Stimulation of public awareness of the problems of blacks.

(5) Conduct conferences and training programs for blacks, public and private agencies and organizations, and the general public.

(6) Coordinate, assist, and cooperate with public and private agencies in efforts to expand equal rights and opportunities for blacks in the areas of employment, economic development, education, health, housing, recreation, social welfare, social services, and the legal system.

(7) Serve as the central permanent agency for the advocacy of services for blacks.

(8) Provide assistance to and cooperate with individuals and public and private agencies and organizations in joint efforts to study and resolve problems relating to the improvement of the status of blacks.

(9) Publish and disseminate information relating to blacks, including publicizing their accomplishments and contributions to this state.

STATUS OF BLACKS COMMISSION[434] (cont'd)

(10) Evaluate existing and proposed programs and legislation for their impact on blacks.

(11) Coordinate or conduct training programs for blacks to enable them to assume leadership positions.

(12) Conduct surveys of blacks to ascertain their needs.

(13) Assist the department of personnel in the elimination of underutilization of blacks in the state's workforce.

(14) Recommend legislation to the governor and the general assembly designed to improve the educational opportunities and the economic and social conditions of blacks in the state.

1.1(7) Additional authority. In accordance with 601K.147, the commission may do any or all of the following:

a. Do all things necessary, proper, and expedient in accomplishing the duties listed in 1.1(6) and this rule.

b. Hold hearings.

c. Issue subpoenas, in accordance with Iowa Code section 17A.13, so that all departments, divisions, agencies, and offices of the state shall make available, upon request of the commission, information which is pertinent to the subject matter of the study and which is not by law confidential.

d. Enter into contracts, within the limits of funds made available, with individuals, organizations, and institutions for services furthering the objectives of the commission as listed hereinbelow:

e. The commission shall study the changing needs and problems of blacks in this state, and recommend new programs, policies, and constructive action to the governor and the general assembly including, but not limited to, the following areas:

(1) Public and private employment policies and practices.

(2) Iowa labor laws.

(3) Legal treatment relating to political and civil rights.

(4) Black children, youth, and families.

(5) The employment of blacks and the initiation and sustaining of black businesses and black entrepreneurship.

(6) Blacks as members of private and public boards, committees, and organizations.

(7) Education, health, housing, social welfare, human rights, and recreation.

(8) The legal system, including law enforcement, both criminal and civil.

(9) Social service programs.

e. Seek advice and counsel of informed individuals and organizations, in the accomplishment of the objectives of the commission.

f. Apply for and accept grants of money or property from the federal government or any other source, and upon its own order use this money, property, or other resources to accomplish the objectives of the commission.

434—1.2(601K) Division on the status of blacks. The division on the status of blacks, within the department of human rights, was created pursuant to Iowa Code section 601K.1 and is required to advocate, coordinate, implement, and provide services to, and on behalf of, black citizens. The commission on the status of blacks is responsible for establishing policies for the division on the status of blacks to be carried out by the administrator of the division as set out in Iowa Code section 601K.145.

434—1.3(601K) Organization.

1.3(1) Location. The division on the status of blacks consists of an office located in the Department of Human Rights, first floor, Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is (515)281-3855. The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday.

1.3(2) Composition of staff.

a. **Administrator.** The governor shall appoint the administrator, subject to confirmation by the senate. The administrator shall serve at the pleasure of the governor. The administrator is responsible for the overall administration of the program. The administrator recruits, interviews, appoints, trains, supervises, evaluates, and terminates staff; plans and oversees the execution of the budget; ensures provision of adequate services in the application of policies, rules, and regulations; determines the number and type of personnel and makes staffing and budgetary recommendations to the commission; develops, establishes, and maintains cooperative working relations with public and private agencies and organizations; identifies legislative issues; interprets program objectives and promotes public interest in and the acceptance of the division on the status of blacks; and maintains an adequate reporting system for necessary records.

b. **Consultants.** The consultant is responsible for planning programs for the division; developing training activities consistent with program requirements; facilitating and presenting training activities to private and public agencies; identifying and making application to grant programs to assist with program initiatives; organizing and implementing informational programs that serve the public; and conducting research and studies that are necessary to program operations.

CHAPTER 2

**PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES**

434—2.1(22) Adoption by reference. The commission adopts by reference 421—Chapter 2, Iowa Administrative Code.

434—2.2(22) Custodian of records. The custodian for the records maintained by this division is the division administrator.

ARC 1476A

**TRANSPORTATION
DEPARTMENT[761]**

Notice of Intended Action

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 307.12 and 307A.2, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 163, "RISE Program," Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761] (cont'd)

Items 1, 4, 6, 7 and 8 implement 1990 Iowa Acts, chapter 1140, which created the community builder program and requires an applicant's certification status under that program to be considered during the evaluation of a RISE application. The amendments define the community builder program, require a RISE application to state certification status, award bonus points for certification under the program, and require an uncertified applicant who is awarded RISE funds to initiate and establish a community builder program. Item 7 also assigns maximum points to each rating factor and Item 8 concerns repayment of RISE funds for noncompliance with a project agreement.

Item 2 implements Iowa Code section 315.4 as amended by 1989 Iowa Acts, chapter 293, which reduced the county portion of the RISE fund from 1/2 cent to 1/20 cent per gallon, required that each June 30 the uncommitted county RISE funds be credited to the secondary road fund, and stipulated that the state share of RISE be used only for projects on the commercial and industrial network.

Items 3 and 5 make advance right-of-way acquisition for a RISE project eligible for future funding participation if acquisition is justified and an eligibility waiver is granted at the time of acquisition. Item 3 also clarifies funding eligibility when project construction requires the replacement of utilities located on private property.

Item 9 amends the implementation clause.

These amendments are intended to implement Iowa Code chapter 315, 1989 Iowa Acts, chapter 293, and 1990 Iowa Acts, chapter 1140.

On January 8, 1991, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the Transportation Commission shall consider these proposed amendments.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation at the Commission meeting. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010.

5. Be delivered to this office or postmarked no later than December 21, 1990.

The Department shall notify a person or agency properly requesting an oral presentation of the time of day scheduled for the presentation.

Proposed rule-making actions:

ITEM 1. Amend rule 761—163.1(315) by adding the following definition in alphabetical order:

"Community builder program" means the program created in 1990 Iowa Acts, chapter 1140. The program is administered by the department of economic development and is intended to encourage cities, counties, and unincorporated communities to implement planning efforts for community, business and economic development.

ITEM 2. Amend paragraphs 163.4(2)"a" and "g" as follows:

a. Allocation among roadway jurisdictions. The RISE fund shall be allocated as specified in Iowa Code section 315.4 as amended by 1989 Iowa Acts, chapter 293. as follows: 50 percent for the use of the department on primary road and state park road projects; 25 percent for the use of the counties on secondary road, state park road and county conservation parkway projects; and 25 percent for the use of the cities on city street and state park road projects. The commission shall take these percentages into account when funding RISE projects. Multiyear commitments are permitted under these rules.

g. Carryover of funds. The commission need not commit the spending of all RISE funds available during a programming cycle. Uncommitted funds may be carried over to the next programming cycle or used for immediate opportunity projects. On June 30 of each year, all uncommitted county funds shall be credited to the secondary road fund.

ITEM 3. Amend paragraphs 163.7(2)"a" and "i" as follows:

a. Any and all costs incurred prior to a funding commitment by the commission *except advance right-of-way costs to protect or preserve a project corridor. If there is an extreme urgency involving right-of-way acquisition, a potential applicant may formally request from the department a written waiver which, if granted, will permit the applicant to acquire the right-of-way immediately without jeopardizing the eligibility of the acquisition costs for future RISE funding. Granting of the waiver shall not imply or guarantee that a subsequent application which includes the acquisition costs will be funded. The request for the advance eligibility must include justification regarding the urgency of the acquisition, a description of the land to be acquired, and a map showing its location. The advance eligibility waiver must be requested and approved prior to the applicant's acquisition of the land in question, and the RISE application which includes the acquisition costs must be received by the department within two years following the granting of the waiver, or the waiver is not valid.*

i. Electric, water, natural gas, telephone and other utility construction, reconstruction or adjustment *except when utilities located on private property are replaced or relocated for project construction.*

ITEM 4. Amend subrule 163.8(2) by adding paragraph "j" as follows:

i. Documentation of the applicant's certification under the community builder program. If not certified, the applicant shall provide a plan to accomplish certification.

ITEM 5. Amend subparagraph 163.8(6)"d"(1) as follows:

(1) This participation shall include only those items listed as eligible for RISE funding, and may be in the form of cash, or the value of design engineering and construction inspection services, or the cost of eligible advance right-of-way acquisitions pursuant to paragraph 163.7(2)"a." The applicant shall provide documentation to the department supporting the value of any noncash contribution to the project.

ITEM 6. Amend subrule 163.9(2) by adding paragraph "h" as follows:

h. Documentation of the applicant's certification under the community builder program. If not certified, the applicant shall provide a plan to accomplish certification.

TRANSPORTATION DEPARTMENT[761] (cont'd)

ITEM 7. Amend subrule 163.9(6) as follows:

163.9(6) Rating factors. The following factors and potential rating points shall be used in assessing applications for local development projects; assessment of these factors shall be the responsibility of the department.

a. Development potential. This factor measures the degree of certainty involved in the economic development activity to be supported by the proposed RISE project and the potential for future job growth. *Maximum points: 35.*

b. Economic impact. This factor measures the economic impact of the development activity to be supported by the proposed RISE project, including the number of direct jobs assisted, investment leveraging, the percentage of out-of-state sales and in-state suppliers, the impact on competition and diversification, and the quality of job factors. *Maximum points: 20.*

c. Local commitment and initiative. This factor measures the level of effort being put forth by the applicant to attract economic development and the adequacy of the supporting infrastructure. *Maximum points: 35 (includes 5 bonus points for applicant's certification under the community builder program).*

d. Transportation need. This factor measures the condition and quality of existing road or street service. *Maximum points: 4.*

e. Area economic need. This factor measures the economic condition of the area. *Maximum points: 6.*

ITEM 8. Amend paragraphs 163.11(2)"a" and "d" as follows:

a. Agreement. After a funding commitment has been made for a project located on secondary roads, city streets or county conservation parkways, the department shall enter into a project agreement with those local jurisdictions whose roads, streets or parkways are a part of the project. The agreement shall delineate responsibilities for project planning, design, right-of-way, contracting, construction and materials inspection, and documentation. The agreement shall require that a business assisted by the project which acquires or merges with an Iowa corporation within three years following the RISE application shall make a good faith effort to hire the workers of the merged or acquired company. *The agreement shall also require that if an applicant awarded RISE funds is not certified under the community builder program, the applicant shall initiate a process to establish a community builder program within six months of the award and shall complete the process within three years of the receipt of the award.*

d. Remedies for noncompliance with project agreement. The commission may revoke funding commitments, seek require repayment of RISE funds loaned or granted, or take both actions when the county or city has not fulfilled the terms of the project agreement.

ITEM 9. Amend the implementation clause at the end of 761—Chapter 163 as follows:

These rules are intended to implement Iowa Code section 312.2(16,17) and chapter 315 and 1989 Iowa Acts, chapter 293, section 16, and 1990 Iowa Acts, chapter 1140, section 10.

ARC 1496A

UTILITIES DIVISION[199]

Notice of Inquiry

Pursuant to Iowa Code sections 476.1 and 476.2, the Iowa Utilities Board (Board) gives notice that on November 8, 1990, the Board issued an order in Docket No. NOI-90-2, Recovery of Nuclear Plant Nonfuel Expenses Through Automatic Adjustment Mechanisms, initiating an inquiry to investigate automatic adjustment or expedited recovery mechanisms for nuclear plant nonfuel expenses. The purpose of this inquiry is to permit Utilities Division staff, the Consumer Advocate Division of the Department of Justice (Consumer Advocate), electric utilities, and other interested persons to engage, without direct Board oversight, in a fact-finding process to generate policy recommendations for future Board action. The recommendations resulting from this inquiry may result in a rule making to establish a recovery mechanism for nuclear plant nonfuel expenses, or may result in some other subsequent formal proceeding.

The inquiry will be directed by Don Judisch, Supervisor, Electric Rates, Bureau of Rate and Safety Evaluation, who will serve as inquiry manager. All correspondence regarding the inquiry will be directed to him at the following address:

Don Judisch
Utilities Division
Lucas State Office Building
Des Moines, Iowa 50319

The procedural steps in the inquiry will be as follows:

Step 1. The initiating order and this notice will be mailed to all rate-regulated electric companies and the Consumer Advocate. In addition, this notice will be published in the Iowa Administrative Bulletin.

Step 2. Persons intending to participate in the inquiry will notify the inquiry manager in writing of that intent within 14 days of publication of this notice in the Iowa Administrative Bulletin. Participation in the inquiry by persons failing to meet the deadline will be permitted by the Board upon good cause shown.

Step 3. Within seven days after the deadline for filing notices of intent to participate, the inquiry manager will compile a service list based on the responses to the notice of inquiry and will mail copies of the order initiating the notice of inquiry to all persons on the service list.

Step 4. Within 21 days after mailing the order initiating the notice of inquiry, participants may submit by mailing an original and five copies of the responses to the issues raised in the notice to the inquiry manager and a copy to each person on the service list.

Step 5. The inquiry manager will schedule one or more work sessions for the participants to exchange ideas, ask questions, and express concerns. The inquiry manager will prepare and mail to each participant on the service list an agenda for each work session.

Step 6. Division staff will prepare for the Board's consideration a staff report summarizing the input from the participants and may make specific recommendations regarding recovery of nuclear plant nonfuel expenses. The staff report will be mailed to each inquiry participant on the service list.

Step 7. Within 21 days after mailing of the staff report, any participant or group of participants may file a dissenting report making different recommendations.

UTILITIES DIVISION[199] (cont'd)

It is anticipated that this process will take approximately five months to complete from the date of publication of the Notice of Inquiry in the Iowa Administrative Bulletin.

ARC 1499A**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 Iowa Utilities Board (Board) gives notice that on November 8, 1990, the Board issued an order in Docket No. RMU-90-33, In Re: Practice and Procedure—Attorneys, "Order Commencing Rule Making," to consider the amendment of 199 IAC 7.2(7)"e."

The first sentence of the subrule currently makes reference to attorneys licensed to practice in Iowa. A strict interpretation of the rule would prohibit lawyers not licensed to practice in Iowa from appearing before the Board. Such an interpretation is too rigid and does not conform to current practice. Many of the utility companies subject to the Board's jurisdiction also operate in other states and have counsel on staff or on contract who are licensed to practice in only one state. The Board has determined that there is no reason to require attorneys to be licensed in Iowa to practice before the Board. There are additional changes to the rule to eliminate unnecessary or redundant language.

Any interested person may file a written statement of position pertaining to the proposed amendment. The statement must be filed on or before December 18, 1990, by filing an original and ten copies in a form substantially complying with subrule 2.2(2). All communications shall clearly indicate the author's name and the docket number in which the comment is submitted. All communications shall be directed to the Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled on January 3, 1991, at 10 a.m. in the First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa, for the purpose of receiving comments.

These rules are intended to implement Iowa Code section 476.2.

The following amendments are proposed:

Amend subrule 7.2(7), paragraph "e," as follows:

e. Any party to the proceeding may appear and be heard by ~~an a licensed~~ attorney at law. ~~authorized to practice in the state of Iowa.~~ A natural person may appear and be heard in ~~his the person's~~ own behalf. A corporation or association may appear and present evidence by ~~any bona fide an~~ officer or employee.; ~~provided however~~ *However*, only persons admitted to ~~practice as licensed attorneys and counselors at law~~ shall represent a party in ~~proceedings before this the~~ board

in any matter involving the exercise of legal skill or knowledge except with consent of the board. All persons appearing in proceedings before this board shall conform to the standard of ethical conduct required of attorneys before the courts of Iowa. ~~If any person does not conform to such standards, the board may decline to permit such person to appear in any proceeding.~~

This rule is intended to implement Iowa Code section 476.2.

ARC 1494A**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.

The Iowa Utilities Board (Board) hereby gives notice that on November 9, 1990, the Board issued an order in Docket No. RMU-90-32, In Re: Service Copies, "Order Commencing Rule Making," pursuant to Iowa Code sections 476.2, 476.6, 476.15, 476.31 to 476.33, and 17A.4(476) to consider an amendment to 199 IAC 7.4(6)"e"(23).

This amendment, proposed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), would require parties to provide Consumer Advocate with three copies of testimony, exhibits, and other information filed in rate case proceedings. The rule currently requires one copy of these items to be provided to Consumer Advocate. Consumer Advocate stated in its petition for rule making that three copies are required so that its attorneys and investigating experts can have simultaneous access to review the material. Consumer Advocate said that such simultaneous review is crucial because of the strict time constraints imposed upon parties in a rate case proceeding, particularly with respect to filing objections to temporary rates. Pursuant to 199 IAC 7.4(11)"b," Consumer Advocate has 30 days for filing objections to temporary rates. Since the evidence filed is often voluminous, Consumer Advocate stated that it is forced to spend some of its limited time and resources either copying the information or requesting an additional copy from the utility.

Under Iowa Code sections 17A.4(1)"a" and "b," all interested parties may file written comments on the proposed rule no later than December 18, 1990, by filing an original and ten copies of the comments substantially complying with the form prescribed in 199 IAC 2.2(2) (1990). All written statements should be directed to the Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319. An oral presentation is scheduled in this docket for 10 a.m. on January 15, 1991, in the Utilities Board's First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa. Pursuant to 199 IAC 3.7, all interested persons may participate in this oral presentation.

UTILITIES DIVISION[199] (cont'd)

These rules are intended to implement Iowa Code sections 476.2, 476.6, 476.15, and 476.31 to 476.33.

Amend subparagraph 7.4(6)"e"(23), unnumbered paragraph 1, as follows:

Unless otherwise provided, ten (10) copies of all testimony and exhibits, and four (4) copies of all other information, shall be filed. In addition, ~~one copy~~ *three copies* of each of the preceding items shall be provided to the consumer advocate.

ARC 1497A**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.

The Iowa Utilities Board hereby gives notice that on November 5, 1990, the Board issued an order in Docket No. RMU-90-31, In Re: Utility Audit Workpaper Documents, "Order Commencing Rule Making," pursuant to Iowa Code sections 476.2 and 17A.4, to consider amendments to 199 IAC 16.

These amendments would require every rate-regulated utility to make available at its home office, upon the request of the Consumer Advocate Division of the Department of Justice (Consumer Advocate), all outside auditor workpapers and related audit notes. Similar amendments were the subject of a rule-making petition filed by the Consumer Advocate and docketed by the Board as Docket No. RMU-90-21[ARC 1045A IAB 7/11/90]. After receiving a large number of negative comments regarding the amendments proposed in Docket No. RMU-90-21, the Board terminated that rule making[ARC 1498A herein]. The revised amendments noticed in this docket were proposed by the Consumer Advocate in its Counter Statement of Position in Docket No. RMU-90-21. This rule making is being initiated upon the Board's own motion to receive public comment upon the revised amendments proposed by Consumer Advocate. At the suggestion of Consumer Advocate and Iowa Electric Light and Power Company, the Board is proposing an amendment to 199 IAC 16, rather than to 199 IAC 19, 20, 21, and 22.

Under Iowa Code sections 17A.4(1)"a" and "b," all interested persons may file written comments on the proposed rule no later than December 18, 1990, by filing an original and ten copies of the comments substantially complying with the form prescribed in 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled in this docket for 10 a.m. on January 8, 1991, in the Utilities Board's First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa. Pursuant to 199 IAC 3.7, all interested persons may participate in this oral presentation.

The following new rule is proposed:

199—16.9(476) Audit workpapers. For the purposes of the following rule, "audit workpapers" is defined as records kept by an auditor of the procedures applied, tests performed, information obtained, and pertinent conclusions reached in the engagement. Examples of workpapers are audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the auditor.

A rate-regulated utility shall make available independent auditor's audit workpapers at the utility's office, unless audit workpapers are already available for review at the independent auditor's office in the same city. Consumer advocate staff, utilities division staff, or a party to a contested case proceeding shall have the right to examine audit workpapers for the most recent five fiscal years. The examination shall take place at either the utility's office or the office of the independent auditor, as designated by the requesting party. A written request for access to audit workpapers shall be (delivered to the utility) (issued) no less than seven days prior to review of audit workpapers. Within five days of receipt of the request for production of audit workpapers, a utility may file an objection to the request. If an objection is not timely filed or is overruled, the audit workpapers must be made available either in accordance with the written request or within five days of the overruling of the utility's objection, whichever is later.

ARC 1498A**UTILITIES DIVISION[199]****Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.4(1)"b," the Iowa Utilities Board (Board) gives notice that on November 5, 1990, the Board issued an order in Docket No. RMU-90-21, In Re: Utility Audit Workpapers, "Order Terminating Rule Making."

On June 22, 1990, the Board issued an order in this docket commencing a rule making to consider the adoption of amendments to 199 IAC 19.2, 20.2, 21.2, and 22.2. The proposed rule making was published in the Iowa Administrative Bulletin on July 11, 1990, as **ARC 1045A**. These amendments, proposed by the Consumer Advocate Division of the Department of Justice, would have required every rate-regulated utility to maintain at its home office copies of all outside auditor workpapers and related audit notes. Consumer Advocate stated in its petition for rule making that, during rate proceedings, its staff routinely conducts on-site investigations of utility's books. Consumer Advocate asserted that these audit materials provide valuable information concerning utility accounting and income tax practices directly bearing on utility rates. The availability of audit workpapers at a utility's home office would facilitate more cost-efficient investigation of proposed rates and charges. Consumer Advocate stated that it is not aware of any obstacles to prevent a utility from contracting with independent auditors or consultants to obtain at

UTILITIES DIVISION[199] (cont'd)

least the right to maintain a copy of these documents at the utility's headquarters.

In order to allow for public comment on the proposed rules, a deadline of August 7, 1990, was set for written comments. Also, an oral presentation was held on August 21, 1990. Eighteen commenters submitted written comments, and 12 commenters appeared at the oral presentation. Commenters included the Consumer Advocate Division of the Department of Justice (Consumer Advocate), the Iowa Society of Certified Public Accountants, the American Institute of Certified Public Accountants, the Auditor of the State of Iowa, four accounting firms, one water utility, four telephone utilities, one gas utility, two electric utilities, and five combination gas and electric utilities. All commenters except Consumer Advocate were opposed to the rule. Several commenters pointed out that utility audit documents are the property of the auditor, according to Iowa Code section 116.31 and current auditing standards. The auditors commenting stated that it is not common practice for auditors to allow their clients access to these documents and that allowing such access would compromise the audit process. Additionally, several commenters submitted that an audit firm representative would be required to be present when auditing docu-

ments are examined by audit clients. Utility commenters stated that they should not be required to maintain copies of documents which are in the control of a third party. The Iowa Society of Certified Public Accountants asserted that the proposed rules exceed the scope of the statute they are intended to implement. Most of the commenters concurred that the proposed rules would be onerous for both the auditors and the utilities, and that the cost would far exceed the benefit. Finally, most commenters agreed that current methods for review of audit material are sufficient. Pursuant to the negative comments received by the Board, Consumer Advocate filed in this rule making a "Counter Statement of Position," which proposed a revised rule. Two commenters have filed comments regarding the revised rule proposed by Consumer Advocate.

The Board has given due consideration to each of the comments received and to Consumer Advocate's filing of a "Counter Statement of Position." Due to the negative comments regarding the rule originally proposed by Consumer Advocate, the Board hereby terminates **ARC 1045A**. In order to allow public comment on the revised rule proposed by Consumer Advocate in its "Counter Statement of Position," the Board will begin a separate rule making [published herein as **ARC 1497A**].

ARC 1464A**HISTORICAL DIVISION[223]****Adopted and Filed Emergency**

Pursuant to the authority of the 1990 Acts, chapter 1160, and Iowa Code section 303.1A, the Department of Cultural Affairs, on behalf of the Historical Division (State Historical Society of Iowa), hereby emergency adopts and implements Chapter 47, "Historic Property Rehabilitation Tax Exemption," Iowa Administrative Code.

The 1990 Iowa Acts, chapter 1160, created a tax exemption program for the substantial rehabilitation of historic properties. These rules state the purpose of the exemption, define terminology, state project standards, and provide application procedures.

In accordance with Iowa Code section 17A.4(2), the Department of Cultural Affairs, Historical Division (State Historical Society of Iowa), finds that public notice and participation before adoption of these emergency rules on an interim basis is unnecessary, impracticable, and contrary to the public interest. The benefits of permitting the public to begin to make application for and receive property tax exemptions outweigh the benefits of public comment in establishing rules to define the administration of the program in the interim period before permanent rule making can be accomplished.

In accordance with Iowa Code section 17A.5(2)"b"(2), the State Historical Society of Iowa also finds the usual effective date of these rules should be waived and the rules be made effective November 7, 1990, upon filing with the Administrative Rules Coordinator. The rules confer a benefit by allowing the application for and receiving of property tax exemptions.

These rules are also published herein under Notice of Intended Action as **ARC 1463A**.

These rules are intended to implement 1990 Iowa Acts, chapter 1160, and Iowa Code section 303.2.

The following rules are adopted:

CHAPTER 47**HISTORIC PROPERTY
REHABILITATION TAX EXEMPTION**

223—47.1(303) Purpose. Property owners desiring property tax benefits for substantial rehabilitation of historic buildings may apply for certification of completed work to the historic preservation bureau of the state historical society. Applicants are encouraged to apply for preliminary review and approval prior to start of rehabilitation work to prevent delays in certification of completed work or denials caused by unacceptable rehabilitation work.

Approved certifications of completed work may then be filed by the property owner with the assessor of the jurisdiction who shall certify the eligibility of the property for exemption and forward the application to the board of supervisors.

223—47.2(303) Definitions. The definitions listed in Iowa Code section 17A.2 and rules 223—1.2(303) and 223—35.2(303) shall apply for terms as they are used throughout this chapter. In addition, the following definitions apply:

"Application for certification" means the application for approval of substantial rehabilitation work to a historic property filed with the historic preservation bureau of the society.

"Application for exemption" means the application for a property tax exemption filed with the assessor for the substantial rehabilitation work on a historic property certified as approved by the state historic preservation officer.

"Base year valuation" means the assessed valuation for the building on January 1 of the year in which the rehabilitation work was initiated.

"Exemption" means the temporary release from the increase in valuation due to certified substantial rehabilitation of a historic property and is dependent on maintaining the certification from the state historic preservation officer.

223—47.3(303) Program administration.

47.3(1) The historic preservation bureau of the society shall review and evaluate proposed and completed substantial rehabilitation applications. The state historic preservation officer shall provide applicants of approved projects with a certification of completed work.

47.3(2) Boards of supervisors shall establish their priorities for which an exemption may be granted. Examples of exemption priorities may be: a maximum annual dollar amount of exemptions allowed on a first-come basis; types of historic properties as defined in 1990 Iowa Acts, chapter 1160, section 1; property types defined by use or location; exclusion of properties within a tax increment financing or special municipal improvement district; or other criteria specified by the board of supervisors. An annual priority list shall be established by boards of supervisors as required by 1990 Iowa Acts, chapter 1160, section 1.

47.3(3) An annual report listing all historic properties in the county for which an exemption has been granted shall be prepared by the assessor on or before July 1, submitted to the respective county auditor and to the state historic preservation officer.

223—47.4(303) Eligibility.

47.4(1) All applications for exemption eligibility submitted to the assessor and board of supervisors shall have received a certification of completed work from the state historic preservation officer. The approved certification shall be attached to the exemption application.

47.4(2) Applications for eligibility shall be evaluated using the board of supervisors' adopted priority list.

223—47.5(303) Application for exemption procedure.

47.5(1) All applications for exemption shall be submitted on the historic property rehabilitation tax exemption form prescribed by the department of revenue and finance. All applications shall have attached an approved application for certification of completed work. Forms may be obtained from the Department of Revenue and Finance, Capitol Complex, Des Moines, Iowa 50319; Bureau of Historic Preservation, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, telephone (515)281-8719; or the office of the appropriate assessor or board of supervisors.

47.5(2) Applications for certification of completed work shall provide historical, architectural and financial information; and plans, photographs and maps as required on the application form.

a. Part 1 of the application form shall establish the significance of the property. As a minimum, current photographs of all exterior sides of the building, the streetscape and representative views of the interior shall

HISTORICAL DIVISION[223] (cont'd)

be provided. Where property is within a National Register Historic District or area of historic significance as defined in Iowa Code section 303.20 or 303.34, a map locating the property within the boundaries of the area shall be provided.

b. Part 2 of the application form shall detail the existing conditions and the proposed rehabilitation workplan. Photographs shall show specific areas of work and both the interior and exterior conditions prior to the start of work.

c. Request for Certification of Completed Work (part 3) shall document the completed work. Photographs shall show specific areas where work has been completed and both the interior and exterior conditions after the completion of work.

d. Applicants are strongly encouraged to obtain approvals on parts 1 and 2 of the application prior to the start of work. Applicants shall file completed part 3 application forms with the historic preservation bureau on or before December 31 for work completed that calendar year. Applicants whose work is approved shall file certifications of completed work as part of their application for exemption with their assessor on or before March 1 of the appropriate tax year.

47.5(3) Materials submitted to the historic preservation bureau shall not be returned.

47.5(4) In some localities or with some funding sources, other preservation or design-related reviews may be required before any rehabilitation occurs. The process of application for certification of completed work as part of historic property rehabilitation tax exemption program does not substitute for any other reviews/applications which may be required of property owners.

47.5(5) Inquiries concerning information required, historic property eligibility, and review criteria should be addressed to the Bureau of Historic Preservation, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319; telephone (515)281-8719.

223—47.6(303) Review and approval standards for applications for certification.

47.6(1) Project certification shall be based on the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, 36 CFR Part 67.7 (1990), National Park Service, Preservation Assistance Division, Washington, D.C. 20013-7127.

47.6(2) The standards apply equally to interior and exterior work. All reviews shall consider the entire rehabilitation project, including any new construction on site, rather than only a limited segment of the project; and the certification shall be based on conformity of the total project to the standards.

47.6(3) If required documentation is incomplete and the review and evaluation cannot be completed, the project shall be denied the requested certification. The applicant shall be notified by the society.

223—47.7(303) Appeals. Decisions made by the society or its designee adversely affecting applicants may be appealed pursuant to 221—Chapter 3.*

These rules are intended to implement Iowa Code section 303.2 and 1990 Iowa Acts, chapter 1160.

[Filed Emergency 11/7/90, effective 11/7/90].

[Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

* The Historical Division anticipates an emergency filing of 221 IAC 3 on December 7, 1990.

ARC 1488A

NATURAL RESOURCE
COMMISSION[571]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 15, "General License Regulations," Iowa Administrative Code.

Pursuant to 1990 Iowa Acts, chapter 1198, sections 3 and 4, these rules establish a point system for the purpose of weighing the seriousness of fish and wildlife violations in order to determine the duration of license suspension or revocation periods for habitual offenders.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 5, 1990, as ARC 1233A.

Three verbal comments were received by telephone during the comment period. All three verbal comments supported our rules.

The Fish and Wildlife Division staff made the following changes: Paragraph 15.6(2)"b"—"Entering information. Upon receipt of the information from the clerks of court, the department will enter this information into a computerized system." Paragraph 15.6(2)"c"—"Disposition report information. Information from the disposition report that will be entered into a computerized system which includes, but may not be limited to, the following:" Subrule 15.6(5)—"If a person pleads guilty or is found guilty of an offense for which points have been established by this rule but is given a deferred judgment or a suspended sentence by the court, the assigned points will become part of that person's violation record and apply toward a department suspension or revocation."

The Commission finds, pursuant to Iowa Code section 17A.5(2)"b," that the normal effective date of these rules, 35 days after publication, should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator. The Commission finds that the rules confer a benefit by allowing implementation of the habitual offender scoring system. This will expedite the enforced protection of fish and wildlife from habitual offenders.

These rules are intended to implement 1990 Iowa Acts, chapter 1198, sections 3 and 4.

These rules became effective upon filing with the Administrative Rules Coordinator [November 9, 1990].

Amend Chapter 15 by adding the following rule:

571—15.6(109) Habitual offenders—revocation and suspension of hunting, fishing, and trapping privileges from those persons who are determined to be habitual offenders.

15.6(1) Definitions. For the purpose of this rule.

"Department" means the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034.

"Habitual offender" means any person who has equaled or exceeded five points for convictions in Iowa Code chapter 109, 109A, 109B, 110, 110A, or 110B during a consecutive three-year period as provided in 15.6(3).

"License" means a license, permit, or certificate to hunt, fish, or trap listed in Iowa Code chapter 109, 109A, 109B, 110, 110A, or 110B.

"Licensee" means the holder of any license.

"Revocation" means the taking or cancellation of an existing license.

NATURAL RESOURCE COMMISSION[571] (cont'd)

"Suspension" means bar or exclude one from applying for or acquiring licenses for future seasons.

15.6(2) Record-keeping procedures. For the purpose of administering this rule it shall be the responsibility of the clerk of district court for each county to deliver, on a weekly basis, disposition reports of each charge filed under Iowa Code chapters 109, 109A, 109B, 110, 110A, and 110B to the department. Dispositions and orders of the court of all cases filed on the chapters listed in this subrule shall be sent to the department regardless of the jurisdiction or the department of the initiating officer.

a. License suspensions. In the event of a license suspension pursuant to Iowa Code section 109.133, the clerk of court shall immediately notify the department.

b. Entering information. Upon receipt of the information from the clerks of court, the department will enter this information into a computerized system.

c. Disposition report information. Information from the disposition report that will be entered into a computerized system which includes, but may not be limited to, the following:

County of violation, name of defendant, address of defendant, social security or driver's license number, date of birth, race, sex, height, weight, date and time of violation, charge and Iowa Code section, officer name/C-number who filed charge, and date of conviction.

15.6(3) Point values assigned to convictions. For the purposes of defining a habitual offender, the person shall be classified as a habitual offender when the person equals or exceeds a total of five points during a consecutive three-year period using the values attached to the following offenses, and multiple convictions of the same offense will be added as separate convictions:

a. Convictions of the following offenses shall have a point value of three attached to them:

- (1) Illegal sale of birds, game, fish, or bait.
- (2) More than double the possession or bag limit for any species of game or fish.
- (3) Hunting, trapping, or fishing during the closed season.
- (4) Hunting by artificial light.
- (5) Hunting from aircraft, snowmobiles, or all-terrain vehicles.
- (6) Any violation involving threatened or endangered species.
- (7) Any license violations of Iowa Code chapter 109B except section 109B.6.
- (8) Any violation of nonresident license requirements.
- (9) No fur dealer license (resident or nonresident).
- (10) Illegal taking or possession of protected nongame species.
- (11) The taking of any fish, game, or furbearing animal by illegal methods.
- (12) Illegal taking, possession, or transporting of a raptor.
- (13) Hunting, fishing, or trapping while under license suspension or revocation.
- (14) Illegal removal of fish, minnows, frogs, or other aquatic wildlife from a state fish hatchery.
- (15) Any fur dealer license violations.
- (16) Any resident or nonresident making false claims to obtain a license.

b. Convictions of the following offenses shall have a point value of two attached to them:

- (1) Hunting, fishing, or trapping on a refuge.
- (2) Illegal possession of fur, fish, or game.

(3) Chasing wildlife from or disturbing dens.

(4) Having more than the legal possession or bag limit but less than double the possession or bag limit for any species of fish or game.

(5) Possession of undersized or oversized fish.

(6) Snagging of game fish.

(7) Hunting within 200 yards of occupied building or feedlot.

(8) No resident deer or turkey license.

(9) Illegal importation of fur, fish, or game.

(10) Failure to exhibit catch to an officer.

(11) Trapping or poisoning game birds, or poisoning game animals.

(12) Violations of Iowa Code section 109.64 pertaining to private fish hatcheries.

(13) Violations of the fur dealers reporting requirements.

(14) Violation of Iowa Code section 109.126 pertaining to taxidermy.

(15) Loaded gun in a vehicle.

(16) Attempting to take any fish, game, or furbearing animals by illegal methods.

c. All other convictions of provisions in Iowa Code chapter 109, 109A, 109B, 110, 110A, or 110B shall have a point value of one attached to them.

15.6(4) Length of suspension or revocation. The term of license suspension or revocation shall be determined by the total points accumulated during any consecutive three-year period, according to the following: five points through eight points is one year, nine points through twelve points is two years, and thirteen points or over is three years. Any person convicted pursuant to Iowa Code subsection 109.134(2) shall have an additional suspension of one year. Any person convicted pursuant to Iowa Code subsection 109.134(3) shall have an additional suspension of two years. Any person convicted pursuant to Iowa Code subsection 109.134(4) shall have an additional suspension of three years. If a magistrate suspends the privilege of a defendant to procure another license and the conviction contributes to the accumulation of a point total that requires the department to initiate a suspension, the term of suspension shall run consecutively up to a maximum of five years. After a five-year suspension, remaining time will be calculated at a concurrent rate.

15.6(5) If a person pleads guilty or is found guilty of an offense for which points have been established by this rule but is given a deferred judgment or a suspended sentence by the court, the assigned points will become part of that person's violation record and apply toward a department suspension or revocation.

15.6(6) Notification of intent to suspend or revoke license. If a person reaches a total of five or more points, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 561—7.16(17A,455A). If the person requests a hearing, it shall be conducted in accordance with 561—Chapter 7.

15.6(7) Dates of suspension or revocation. The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in 15.6(5) or upon issuance of an order suspending or revoking the license after the hearing. The person shall immediately surrender all licenses and shall be barred from obtaining new licenses for the full term of the suspension or revocation.

NATURAL RESOURCE COMMISSION[571] (cont'd)

15.6(8) Magistrate authority. This chapter does not limit the magistrate authority as described in Iowa Code section 110.21.

[Filed Emergency After Notice 11/9/90, effective 11/9/90]
[Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

ARC 1506A**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 11, "Acquired Immune Deficiency Syndrome (AIDS)," Iowa Administrative Code.

These rules [641—11.70(135) to 641—11.78(135)] implement the following changes in services available to HIV-infected patients:

1. Add home- and community-based services for HIV-infected patients under the list of covered services.
2. Establish rules to govern the payment of home- and community-based HIV-infected patients.
3. Establish income eligibility requirements.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation would be contrary to the public interest in that it would create a significant delay in the availability of a service for which a substantial need exists.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules, 35 days after publication, should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on November 9, 1990, as they confer a benefit upon the public by allowing payment for services not currently covered by acquired immune deficiency syndrome (AIDS) financial assistance.

The rules are also published herein under Notice of Intended Action as **ARC 1503A**.

The rules were adopted by the Board of Health on November 7, 1990.

These rules became effective November 9, 1990.

The rules are intended to implement Iowa Code section 135.11.

The following new rules are adopted:

HOME- AND COMMUNITY-BASED SERVICES

641—11.70(135) Program explanation. Home- and community-based HIV health services grant will provide home- and community-based health service for low-income HIV-positive individuals who are certified by a physician to be medically or chronically dependent. The services will be provided by Medicare-certified public and private hospices or home health agencies.

The purpose of the program is to provide financial assistance for home care services in order to avoid long-term or repeated inpatient or resident care to eligible persons who are HIV-positive and are considered to be medically or chronically dependent.

641—11.71(135) Definitions. For the purpose of rules 641—11.70(135) to 11.78(135), the following definitions shall apply:

"Applicant" means a person who applies to the certified agency providing service. An application from or on behalf of an unemancipated minor under 18 years of age, or any disabled person who is 18 years of age or older who is still dependent and living in the home, shall be processed as if the applicant were a minor.

"Approved medications" means those drugs approved by FDA for the treatment of HIV infection and opportunistic infections.

"Certified agency" means Medicare-certified by the health care financing administration as hospice or home health agency.

"Chronically dependent" means that the individual has been certified by a physician as being unable to perform, without substantial assistance from another individual, because of physical or cognitive impairment arising from infection with the etiologic agent for acquired immune deficiency syndrome, at least two of the following activities of daily living: bathing, dressing, toileting, transferring, and eating, or having a similar level of disability due to cognitive impairment.

"Department" means the Iowa department of public health.

"Durable medical equipment" means items allowed by the Medicare and Medicaid Guide as published in the 1989 Commerce Clearing House, Inc.

"Family members" means members that include grandparents, parents, siblings, spouses, children, or significant others.

"HIV" means human immunodeficiency virus.

"HIV-positive" means the positive results of a laboratory analysis for the presence of antibodies to the human immunodeficiency virus.

"Home care services" means provision by trained and supervised persons of assistance with activities of daily living, essential housekeeping, meal preparation (which includes shopping for food), transportation for medical appointments, and personal laundry.

"Laboratory analysis" means blood test analysis by a public, private, or hospital clinical laboratory confirming antibodies to the human immunodeficiency virus by confirmatory western blot.

"Medically dependent" means that the individual has been certified by a physician as:

1. Requiring the routine use of appropriate medical services which may include home intravenous drug therapy to prevent or compensate for the individual's serious deterioration, arising from infection with the etiologic agent for acquired immunodeficiency syndrome, of physical health or cognitive function, and

2. Being able to avoid long-term or repeated care as an inpatient or resident in a hospital, nursing facility, or other institution if home- and community-based health services are provided to the individual.

"Patient" means a person who applies to the certified agency for financial assistance and who is approved to receive the assistance.

"Period of eligibility" means the 12-month maximum time frame for which financial assistance may be approved.

"Physician" means a person who is licensed under Iowa Code chapter 148, 150, or 150A.

"Program" means the HIV reimbursement program conducted by the department as payor of last resort.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

641—11.72(135) Covered services.

11.72(1) Services will be allowed that follow a physician's written plan of treatment and include the following:

- a. Homemaker/home health aide services and personal care services furnished in the individual's home,
- b. Durable medical equipment,
- c. Day treatment or other hospitalization services,
- d. Home intravenous drug therapy including prescription drugs administered intravenously as part of such therapy,
- e. Routine diagnostic tests that can be performed at the patient's residence.

11.72(2) The following services will not be allowed:

- a. Drawing blood in home for laboratory testing,
- b. In-patient hospital services,
- c. Nursing facility services,
- d. Treatment with drugs not administered in the home,
- e. Property purchase/major remodeling,
- f. Major medical equipment.

641—11.73(135) Reimbursement. The certified agency will submit all claims to the division of family and community health for reimbursement. The department will reimburse for services/equipment to each provider.

Patients will not be eligible to receive services/equipment that exceed 65 percent of the estimated national average monthly payments for extended care services. The estimated national average monthly payment of \$2,930 was specified in the Federal Register Volume 55, No. 41, dated March 1, 1990. The certified agency will receive up to \$1,904.50 per month for services provided for each eligible patient. The department will reimburse for services/equipment to each provider assuring patient confidentiality. Transportation expense will be reimbursed at existing state rates. Reimbursement for services will not be made to family members.

641—11.74(135) Eligibility criteria. The certification process to determine eligibility for services under the program will include the following requirements:

11.74(1) Residency. To be eligible for financial assistance, applicants shall be residents of the state of Iowa. Residence is that place in which a person is living for other than a temporary purpose. Residence once acquired continues until the person abandons it and acquires residence elsewhere. Temporary absence is the absence of a person during which time there is intent to return, or because of a change in intent, the person does return. A temporary absence from the state of Iowa shall not be deemed to have interrupted residency requirements.

11.74(2) Certification. Individuals will be considered eligible if they are HIV-positive and certified to be medically or chronically dependent by a physician. This means positive results of a laboratory analysis for the presence of antibodies to the human immunodeficiency virus. Confirmatory test shall be analysis by a clinical laboratory currently approved to do HIV testing by the department.

11.74(3) Income. Income guidelines shall be set at 300 percent of the most recent poverty income guidelines published by the U.S. Department of Health and Human Services (DHHS). Income guidelines will be adjusted following any change in Department of Health and Human Services guidelines.

11.74(4) Eligibility. Determinations must be done at least once annually. Income determination will include monthly income and resources minus monthly expense.

a. Income will include, but not be limited to, the following:

- (1) Salary money or wages
- (2) Social security
- (3) Business/property income
- (4) Pensions
- (5) Dividends
- (6) S S I / A D C
- (7) Net income from nonfarm self-employment
- (8) Net income from farm self-employment
- (9) Income from estates or trusts

b. Resources will include, but not be limited to, the following:

- (1) Savings account
- (2) Checking account
- (3) Stocks, bonds, CDs

c. Monthly expense will include, but not be limited to the following:

- (1) Medical insurance premiums
- (2) Pharmacy bills
- (3) Medical bills above and beyond insurance
- (4) Housing
- (5) Utilities
- (6) Other

641—11.75(135) Application procedures. Persons seeking assistance shall apply to the certified agency providing service by completing a financial data form supplied by the Iowa department of public health to the certified agency. It will be the responsibility of the certified agency to verify the individual's eligibility.

Individuals must complete a medical status form provided by the Iowa department of public health to the certified agency prior to determining eligibility.

The date of application shall be the date the application is received by the certified agency. The certified agency shall notify the department of eligible clients within ten working days. The department will approve or deny eligibility for reimbursement within ten working days based on the availability of funds.

Approved applicants will receive financial assistance for time periods not to exceed 12 months. If during an approved period the patient experiences a change in medical or financial status, the patient shall notify the certified agency providing services in writing within 30 days of the date and nature of the change. Upon receipt of this information, the agency shall evaluate the patient in accordance with the eligibility criteria; and any subsequent change in financial assistance shall become effective the month following the change in medical or financial status. Patients shall be notified by certified mail of any change in financial assistance. Failure of the patient to notify the certified agency of any change in medical or financial status during an approved period of eligibility may deny to that patient any increase in financial assistance that may otherwise have been allowed. Failure of the patient to notify the certified agency of any change in medical or financial status during an approved period of eligibility which would have caused a decrease in financial assistance may result in the recovery of financial assistance.

641—11.76(135) Confidentiality. Confidentiality as set out in Iowa Code section 141.23 will be maintained by the certified agency per the agency and department policies.

641—11.77(135) Right to appeal. The appeal process will adhere to rules as found in the Iowa Code chapter

PUBLIC HEALTH DEPARTMENT[641] (*cont'd*)

17A and the rules adopted by the department in 641 IAC 173.

641—11.78(135) Continuation of program. The continuation of this reimbursement program depends on the availability of federal funds.

These rules are intended to implement Iowa Code section 135.11.

[Filed Emergency 11/9/90, effective 11/9/90]

[Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

ARC 1462A**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Department of Agriculture and Land Stewardship hereby amends Chapter 68, "Dairy," Iowa Administrative Code.

The rule requires the protection of the water supply used in a dairy facility.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 11, 1990, as ARC 1034A. Public comments were solicited until July 31, 1990, and no comments or suggestions were received.

This rule is identical to that published under Notice.

This rule shall become effective January 2, 1991.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [68.35] is being omitted. This rule is identical to that published under Notice as ARC 1034A, IAB 7/11/90.

[Filed 10/30/90, effective 1/2/91]
[Published 11/28/90]

[For replacement pages for IAC, see IAC Supplement, 11/28/90.]

ARC 1473A**CULTURAL AFFAIRS
DEPARTMENT[221]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 303.1A, the Department of Cultural Affairs hereby adopts Chapter 8, "Cultural Enrichment Grant (CEG) Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 1990, as ARC 1134A. These rules were adopted by the Department on September 12, 1990.

These rules establish the Cultural Enrichment Grant (CEG) Program, set forth a statement of purpose, establish eligibility requirements, and create an application, review, and selection process.

As a result of a review of the proposed rules, the appeals process for the grant program has been renamed "Informal Appeals," in recognition of the availability of a formal appeal through the "Contested Case" appeals process. The Department is preparing rules on contested cases for later adoption. Other changes and corrections were nonsubstantive in nature.

These rules shall become effective on January 2, 1991.

These rules are intended to implement 1990 Iowa Acts, chapter 1272.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986,

the text of these rules [new ch 8] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as ARC 1134A, IAB 8/8/90.

[Filed 11/8/90, effective 1/2/91]
[Published 11/28/90]

[For replacement pages for IAC, see IAC Supplement, 11/28/90.]

ARC 1472A**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 225C.6 and 1990 Iowa Acts, chapter 1270, section 38, the Department of Human Services hereby adopts Chapter 39, "Mental Health, Mental Retardation, and Developmental Disabilities Special Services Fund," Iowa Administrative Code.

The Seventy-third General Assembly, in 1990 Iowa Acts, chapter 1270, section 24, appropriated \$750,000 for mental health, mental retardation, and developmental disabilities special services as follows:

1. \$550,000 was allocated to provide supplemental per diems to community-based residential care facilities. The per diem was restricted to clients placed from the state hospital-schools and persons averted from placement in a state hospital-school who meet the appropriate level of functioning for this type of care.

2. \$200,000 was allocated to provide funds for construction and start-up costs to develop community living arrangements to provide for persons who are mentally ill and homeless. These funds could have been used to match federal Stewart B. McKinney Homeless Assistance Act funds. However, federal regulations required local project sponsors, endorsed by the state, to apply for the federal funds. No local sponsors were able to complete the federal applications.

These amendments establish policies for implementation of supplemental per diem payments to counties for placement of persons in community residential care facilities for the mentally retarded and allocation of funds for construction and start-up costs to develop community living arrangements to provide for persons who are mentally ill and homeless.

Selection of persons for the supplemental per diems will be on a first-come, first-served basis. The date of receipt of a contract from a county shall be the date the Department uses as notice of intent to place a person into the community. First priority shall be given to persons ready for outplacement from the state hospital-schools, and secondary consideration will be given to persons who may be averted from placement. If the demand exceeds the funding level, a waiting list will be established. Placement must be into a community-based residential care facility for the mentally retarded of five beds or less unless a special dispensation is granted by the administrator of the Division of Mental Health,

HUMAN SERVICES DEPARTMENT[441] (cont'd)

Mental Retardation, and Developmental Disabilities. Payment will be made based on the person's level of functioning as determined by the Inventory for Client and Agency Planning. A three-way contract shall be entered into with the Department, the county of legal settlement, and the provider. The county shall bill the Department on a monthly basis for the supplemental per diem.

A task force consisting of representatives from the Iowa State Association of Counties, the Association of Retarded Persons, the Iowa Association of Residential and Rehabilitation Facilities, Polk County Health Services and various Departmental representatives from around the state met to develop the policies contained in these rules.

A county or combination of counties or a person or agency approved in writing by a county or multicounty board of supervisors may apply for construction and start-up costs for community residential programs for adults who are homeless and have a mental illness. The amount that is allocated to each recipient is contingent upon the funds available. The Mental Health and Mental Retardation Commission shall award all grants.

These rules were previously filed emergency and published in the September 5, 1990, Iowa Administrative Bulletin as ARC 1198A. Notice of Intended Action to solicit comment on that submission was published in the Iowa Administrative Bulletin on September 5, 1990, as ARC 1197A. These rules are identical to those published under Notice of Intended Action.

The Mental Health and Mental Retardation Commission adopted these rules November 6, 1990.

These rules are intended to implement 1990 Iowa Acts, chapter 1270, section 24, subsections 2 and 3.

These rules shall become effective February 1, 1991.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [ch 39] is being omitted. These rules are identical to those published under Notice as ARC 1197A, and Filed Emergency as ARC 1198A, IAB 9/5/90.

[Filed 11/8/90, effective 2/1/91]

[Published 11/28/90]

[For replacement pages for IAC, see IAC Supplement, 11/28/90.]

ARC 1500A

LABOR SERVICES DIVISION[347]

Adopted and Filed

Pursuant to the authority of 1990 Iowa Acts, chapter 1134, section 6, the Labor Commissioner hereby adopts an amendment to Chapter 1, "Description of Organization and Procedures Before the Division," and adds a new Chapter 160, "Employer Requirements Relating to Non-English Speaking Employees," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as ARC 1008A on June 27, 1990.

The rules were simultaneously Adopted and Filed Emergency as ARC 1007A.

A public hearing was held on July 19, 1990, at 9 a.m. A comment was received relative to rule 347—160.7(73GA, ch 1134). The comment requested that the rule apply to only non-English speaking employees. This comment was rejected. A comment requested a clarification as to the information required to be provided to a non-English speaking employee covered by the Act. An amendment was made to rule 347—160.3(73GA, ch 1134) to address the concern. An amendment was made to subrule 160.7(3) to address the concern of the Administrative Rules Review Committee.

These rules will become effective January 2, 1991, at which time the Emergency Adopted and Filed rules are hereby rescinded.

These rules are intended to implement 1990 Iowa Acts, chapter 1134.

ITEM 1. Amend rule 347—1.3(91) to read as follows:

347—1.3(91) Department of employment services, division of labor services. The division is the office of the commissioner and consists of the commissioner and those employees who discharge the duties and responsibilities imposed upon the commissioner by the laws of this state. The commissioner has control, supervision and authority to enforce the following chapters and sections of the Iowa Code: *section 30.7, Iowa Emergency Response Commission, Duties to be Allocated to Department of Employment Services*; Chapter 88, Occupational Safety and Health; Chapter 88A, Safety Inspection of Amusement Rides; Chapter 88B, Removal and Encapsulation of Asbestos; Chapter 89, Boilers and Unfired Steam Pressure Vessels; Chapter 89A, State Elevator Code; Chapter 89B, Hazardous Chemicals Risks—Right to Know; Chapter 90A, Boxing and Wrestling; Chapter 91, Division of Labor Services; Chapter 91A, Wage Payment Collection; Chapter 91C, Registration of Construction Contractors; *Iowa Code Supplement Chapter 91D, Minimum Wage Law; 1990 Iowa Acts, chapter 1134, Employer Requirements Relating to Non-English Speaking Employees*; Chapter 92, Child Labor; Chapter 94, State Free Employment Service and Employment Agencies; Chapter 95, License for Employment Agencies; and section 327F.37, Sanitation and Shelter. The division consists of four bureaus: Occupational Safety and Health Enforcement Bureau (enforces occupational safety and health rules in workplaces through inspections based on accidents, complaints, and programmed inspections); Occupational Safety and Health Consultation and Education Bureau (conducts occupational safety and health inspections at the request of an employer and conducts educational programming); Inspections and Reporting Bureau (conducts amusement ride, elevator and boiler inspections and maintains statistical information on the worker's illnesses and injuries and the division's inspection activities); and Employee Protection Bureau (responsible for child labor, wage payment and collection, *minimum wage*, employment agency licensing, workplace standards, asbestos removal and encapsulation contractor licensing permits and ~~worker certification~~ *licensing of professions engaged in removal and encapsulation*, community and emergency response right to know, *EPCRA, out-of-state construction contractor bonding*, and construction contractor registration). The licensing and supervision of professional boxing and wrestling is the responsibility

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of the commissioner. Information may be obtained and submissions or requests may be made by contacting the Department of Employment Services, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The telephone number is (515)281-3606. All correspondence and payment of fees and costs relating to the division shall be submitted directly to the division.

ITEM 2. The following new chapter is adopted:

CHAPTER 160

EMPLOYER REQUIREMENTS RELATING TO
NON-ENGLISH SPEAKING EMPLOYEES

347—160.1(73GA, ch1134) Purpose and scope. The rules in this chapter are intended to implement and clarify the division of labor's responsibilities under 1990 Iowa Acts, chapter 1134. These rules apply to employees employed on an hourly basis. These rules would apply to employees paid a salary, piece, task or other basis of calculation unless specifically exempted by rule 347—215.4(73GA, ch14). These rules apply to employers whose total employment of employees paid on an hourly basis in this state exceeds 100.

347—160.2(73GA, ch1134) Definitions. The definitions in 1990 Iowa Acts, chapter 1134, section 2, are adopted with the following clarifications or additions:

"Act" means the non-English speaking employee services Act, 1990 Iowa Acts, chapter 1134.

"Applicant" means an employer, employee, or non-English speaking employee as those terms are defined in the Act.

"Business day" means those days an office is open and staffed with the person(s) capable of processing employees' requests for transportation provided in Iowa Code Supplement section 91E.3(2).

"Commissioner" means the commissioner of the division of labor services of the department of employment services or the commissioner's designee.

"Primary" means of first rank, importance, or value.

"Work site" means a single physical location where business is conducted or where services or industrial operations are performed, for example: a factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.

347—160.3(73GA, ch1134) Comprehension of employment. The Act and these rules apply to employees who do not speak, read, write, or understand English to a degree necessary for comprehension of the terms, conditions, and daily responsibilities of employment. The following include, as a minimum, the terms, conditions and daily responsibilities of employment which an employee must be able to comprehend in English:

160.3(1) The minimum number of hours an employee can expect to work on a weekly basis.

160.3(2) The hourly wages of the position of employment, including the starting hourly wage.

160.3(3) All mandatory and elective benefits.

160.3(4) A description of the responsibilities and tasks of the position of employment.

160.3(5) The safety and health risks, known to the employer, to the employee involved in the position of employment.

160.3(6) Information and training on hazardous chemicals in the employee's work area.

160.3(7) Safety signs and symbols that warn of potential dangers and hazards at the work site.

160.3(8) The purpose of forms used by the employer including:

a. Orientation,

b. Insurance,

c. Accidents at the work site, and

d. Other forms the employee is required to complete or answer.

160.3(9) The employer's requirement to provide an interpreter if more than 10 percent of the employer's employees speak the same non-English language.

160.3(10) An ability to effectively communicate with a nurse or other medical personnel at the work site.

347—160.4(73GA, ch1134) Interpreters.

160.4(1) Interpreter available. An interpreter shall be made available at the work site when an employer has more than 10 percent of its employees that are non-English speaking and speak the same non-English language. At least one interpreter shall be available at each work site for each entire shift on which the non-English speaking employees are employed.

160.4(2) Interpreters provided. An interpreter shall be provided to all non-English speaking employees in order to comply with subrules 160.3(1) to 160.3(10).

160.4(3) Spanish-speaking interpreters. If a Spanish-speaking interpreter is needed, the employer shall select an interpreter from the list of interpreters developed by the commissioner. Persons on the commissioner's list will be selected from a statewide list of interpreters provided by the Spanish-speaking people commission.

160.4(4) Interpreters for languages other than Spanish. If an interpreter is needed for a language other than Spanish, the employer shall select an interpreter capable of interpreting information needed relative to the items listed in subrules 160.3(1) to 160.3(10).

347—160.5(73GA, ch1134) Community services referral agent.

160.5(1) Referral agent available. A referral agent shall be employed by the employer when the employer has more than 10 percent of its employees who speak the same non-English language. The employer shall provide to employees at each work site the name of the person who is designated as having the primary responsibility as the referral agent. The information shall be provided in the language of the non-English speaking employees.

160.5(2) Referral agent's responsibilities. The primary responsibility of the person employed as the employer's referral agent shall be to develop and maintain a list of contact persons and agencies, telephone numbers, and addresses of the community services provided in the work site's community. The referral agent shall assist non-English speaking employees in working with and through those services.

347—160.6(73GA, ch1134) Active recruitment of non-English speaking employees. Active recruitment includes, but is not limited to, the following:

160.6(1) Placement of employment opportunity advertising or notices in non-English publications or non-English advertising in English language publications located, or within a general circulation located in another state more than 500 miles from the place of employment;

160.6(2) Placement of employment opportunity advertising or notices through non-English radio, television, signs, posters or any other form of media located in another state more than 500 miles from the place of employment;

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160.6(3) The use of any non-English language by an employer, or representative of the employer, at any point in the recruitment or hiring process; or

160.6(4) The solicitation of present or past non-English speaking employees for the purpose of recruitment or hiring of other non-English employees residing in other states more than 500 miles from the work site.

347—160.7(73GA, ch1134) Employee's return to location of recruitment.

160.7(1) This rule applies to employees as defined in the Act who:

- a. Are English and non-English speaking,
- b. Were recruited from a location more than 500 miles from the work site,
- c. Who resign from employment within four calendar weeks of the date of initial employment. Periods of temporary layoff shall not be included in the 28-day computation, and
- d. Are employed by an employer as defined in the Act.

160.7(2) If an employee requests to return to the place of recruitment as provided in this rule, the employer shall provide public transportation at no cost to the employee. If means of public transportation is not available to the place of recruitment, the employer shall provide the transportation to the closest location to the place of recruitment. This location shall be made known to the recruit prior to hiring. If an employee requests to travel to a place other than that of recruitment, the employer is not required to provide transportation.

160.7(3) The 500-mile distance between the recruitment and work site locations shall be determined by use of official state maps in effect at the time of the recruitment.

347—160.8(73GA, ch1134) Inspections and investigations. This rule pertains to either the enforcement of the Act or to the granting of exemptions.

160.8(1) Inspections and investigations shall take place at the times and places as the commissioner may direct.

160.8(2) Inspections and investigations may be conducted without prior notice by correspondence, telephone conversation, review of materials submitted to the commissioner, or by a physical inspection of the work site.

160.8(3) The commissioner may interview persons at the work site and utilize other reasonable inspection or investigatory techniques.

160.8(4) Inspection or investigation shall be conducted to preclude unreasonable disruptions to the operations at the work site.

160.8(5) In the event the commissioner is not permitted to fully conduct an inspection or investigation, an administrative warrant may be sought.

347—160.9(73GA, ch1134) Exemptions. This rule contains procedures for the application and grant of exemptions from the requirements of the Act or the rules in this chapter. These rules shall be construed to secure a prompt and just conclusion of proceeding subject to this rule.

160.9(1) An exemption may be granted by the commissioner where reasonable.

160.9(2) An applicant desiring an exemption shall file a written application with the commissioner which shall include:

- a. The name, address and telephone number of the applicant;

- b. The address or location of the work site affected;
- c. A description of the operation or type of work site;
- d. A listing of the section of the Act or rules to which the exemption would apply;

e. A representation of the impact of compliance on the part of the applicant;

f. A representation of why the exemption would be reasonable;

g. If the applicant is an employer, a description of how employees and non-English speaking employees have been informed of the application and their rights to petition the commissioner for a hearing;

h. If the applicant is an employee or non-English speaking employee, a description of how the employer has been informed of the application and the employer's rights to petition the commissioner for a hearing;

i. A request for a hearing, if one is desired; and

j. Any other information the commissioner may request.

160.9(3) At the time the application is received, the commissioner shall promptly provide the applicant with a notice of receipt of application which shall be posted where notices are customarily posted for employees. If the applicant is an employee or non-English speaking employee, the employer shall post the notice when provided to the employer.

160.9(4) If the applicant is an employer, any affected employee or affected non-English speaking employee may request a hearing. If the applicant is an employee or non-English speaking employee, the affected employer may request a hearing. Any request for a hearing on the application shall be done by notifying the commissioner within 14 calendar days of posting of the notice provided under subrule 160.9(3).

160.9(5) Any hearing held shall be conducted pursuant to the rules in 347—Chapter 300, Iowa Administrative Code.

347—160.10(73GA, ch1134) Enforcement and penalties.

160.10(1) If the commissioner finds any violations subject to a civil penalty, the commissioner shall issue a notice of violation to the employer and propose a civil penalty which shall be sent to the employer by certified mail. The employer shall have 14 calendar days from receipt of the notice of violation or proposed civil penalty to inform the commissioner by mail of the intent to contest the notification or proposed penalty. After receipt of the employer's notification, the commissioner shall afford the employer the opportunity for a hearing. The hearing shall be conducted pursuant to the rules in 347—Chapter 300.

160.10(2) If the commissioner finds any violations subject to a criminal penalty, the commissioner shall notify the county attorney for the county in which the violation occurred or the employer's work site is located in the county where the employee or non-English speaking employee was employed or to be employed.

These rules are intended to implement 1990 Iowa Acts, chapter 1134.

[Filed 11/9/90, effective 1/2/91]

[Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

ARC 1501A

LABOR SERVICES DIVISION[347]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner hereby adopts an amendment to rule 347—10.20(88) relating to occupational safety and health rules for general industry. The amendment relates to occupational exposures to hazardous chemicals in laboratories; corrections; air contaminants; and welding, cutting and brazing.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on June 27, 1990, as **ARC 1009A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for July 19, 1990. No comments were received. There are no changes from the Notice.

This rule shall become effective January 2, 1991.

Amend rule 347—10.20(88) by inserting at the end thereof:

- 55 Fed. Reg. 7967 (March 6, 1990)
- 55 Fed. Reg. 12110 (March 30, 1990)
- 55 Fed. Reg. 12819 (April 6, 1990)
- 55 Fed. Reg. 13696 (April 11, 1990)
- 55 Fed. Reg. 19259 (May 9, 1990)

This rule is intended to implement Iowa Code section 88.5.

[Filed 11/9/90, effective 1/2/91]
[Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

ARC 1489A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 111.4, the Natural Resource Commission hereby amends Chapter 18, "Rental Fee Schedule for State-Owned Property, Riverbed, Lakebed, and Waterfront Lands," Iowa Administrative Code.

The amendment increases fees for leasing state-owned fee title, dedicated and sovereign lands under the jurisdiction of the Department of Natural Resources.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 5, 1990, as **ARC 1232A**.

A public hearing was held on September 27, 1990, at 10 a.m. in the conference room on the fourth floor of the Wallace State Office Building, at which time no person attended. One written comment was received in which opposition to fee increase was expressed.

These rules are identical to the Notice of Intended Action and will become effective January 2, 1991.

These rules are intended to implement Iowa Code sections 111.4 and 111.25.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [18.2,18.3,18.4] is being omitted. These rules are identical to those published under Notice as **ARC 1232A**, IAB 9/5/90.

[Filed 11/9/90, effective 1/2/91]
[Published 11/28/90]

[For replacement pages for IAC, see IAC Supplement, 11/28/90.]

ARC 1484A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 106.34A, the Natural Resource Commission adopts Chapter 49, "Operation of Motor Vehicles in Meandered Streams, Navigable Streams, and Trout Streams," Iowa Administrative Code.

These rules define meandered streams, navigable streams, and trout streams; establish the methods for selecting streams to be included; and provide a list of those streams in which motor vehicles shall not be operated.

Notice of Intended Action was published in the June 27, 1990, Iowa Administrative Bulletin as **ARC 992A**. No verbal comments were received at the public hearing held on August 6, 1990. Written suggestions were received which included the following changes:

Rules 49.2(106) and 49.4(106) were revised to differentiate between motor vehicles and watercraft; in rule 49.3(106), the following phrase was deleted: "Appeals to the director's decision may be made to the Natural Resource Commission"; in rule 49.4(106), additions to the list include Beaver Creek in Polk, Dallas and Boone Counties, Walnut Creek in Polk County; the Mississippi River in Allamakee County, and the Skunk River in Lee County; deletions from the list include Yellow Spring Creek in Des Moines County; corrections to the list were made in Cedar and Warren Counties; more precise termini for navigable streams were included for several streams, primarily in southeast Iowa; rule 49.5(106) was added which lists meandered streams separately.

These rules will become effective January 2, 1991.

These rules are intended to implement Iowa Code Supplement subsections 106.34A(1) and (3).

The following new chapter is adopted:

CHAPTER 49

OPERATION OF MOTOR VEHICLES IN MEANDERED STREAMS, NAVIGABLE STREAMS AND TROUT STREAMS

571—49.1(106) Purpose and intent. This chapter implements Iowa Code Supplement section 106.34A and identifies meandered streams, trout streams, and navigable streams in which motor vehicles may not be operated.

571—49.2(106) Definitions.

"Department" means the department of natural resources.

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"Meandered stream" means a lake or stream which at the time of the original government survey was so surveyed as to mark, plat and compute acreage of adjacent fractional sections.

"Motor vehicle" means a vehicle which is self-propelled, but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires and are not operated upon rails. A motor vehicle is not a watercraft as defined in Iowa Code section 106.2(32).

"Navigable stream" means all streams which can support a vessel capable of carrying one or more persons during a total of a six-month period in one out of every ten years.

"Trout stream" means a cold-water stream which, by natural or artificial methods, supports trout fish species.

571—49.3(106) Stream identification process.

49.3(1) The names and locations of trout streams and navigable streams shall be provided by the department's district fisheries supervisors to the administrator of the parks, recreation and preserves division and the administrator of the fish and wildlife division.

49.3(2) The division administrators of the fish and wildlife division and the parks, recreation and preserves division will provide a list of navigable streams and trout streams to the director for review.

49.3(3) The director will approve a list of navigable streams and trout streams for the purpose of this rule.

49.3(4) As per Iowa Code subsection 17A.6(3), the department will provide upon request a complete list of meandered streams, navigable streams and trout streams which are included as a part of this rule.

571—49.4(106) Motor vehicle prohibition in meandered streams, trout streams and navigable streams. Motor vehicles shall not be operated in any portion of a meandered stream, trout stream, or navigable stream when covered by water except as provided for in Iowa Code Supplement section 106.34A(22). A vessel operating on any of the streams listed in this rule must be operating by floating on the water as a result of the buoyant force of the water. A vessel propelled by tires in contact with the bed of the stream is not a watercraft for the purpose of this rule. For the purpose of this rule, meandered streams, trout streams and navigable streams include the following:

COUNTY	RIVER/STREAM	LOCATION
Adair	Middle Nodaway River	Adams/Adair line to Hwy. 92
	Middle River	All
	West Fork-Middle Nodaway	Mouth to County Road N51
Adams	East Nodaway River	Adams/Taylor line to County Road H24
	Middle Nodaway River	All
Allamakee	Bear Creek	Mouth, S1,T99N,R6W to West Line S30,T100N,R6W
	Clear Creek	Mouth, S35,T100,R5W to North Line S15,T100N,R5W
	Clear Creek	Mouth, S29,T99N,R3W to West Line S25,T99N,R4W
	Cota Creek	Mouth, S26,T97N,R3W to West Line S10,T97N,R3W
	Dousman Creek	Mouth, S33,T96N,R3W to South Line S36,T96N,R3W
	French Creek	Mouth, S1,T99N,R5W to East Line S23,T99N,R5W
	Hickory Creek	Mouth, S23,R96N,R5W to South Line S28,T96N,R5W
	Irish Hollow Creek	Mouth, S21,T100N,R4W to North Line S17,T100N,R4W
	Little Paint Creek	Mouth, S32,T97N,R3W to North Line S30,T97N,R3W
	Mississippi River	All
	Norfolk Creek	Mouth, S6,T96,R5W to Conf. w/Teeple Creek, S24,T97N,R6W
	Paint Creek	Conf. w/Little Paint Creek, S32,T97N,R3W to Road Crossing, S18,T97N,R4W

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COUNTY	RIVER/STREAM	LOCATION
	Patterson Creek	Mouth, S29,T99N,R6W to East Line S3,T98N,R6W
	Silver Creek	Mouth, S4,T99N,R5W to South Line S31,T99N,R5W
	Suttle Creek	Mouth, S18,T96N,R4W to South Line S31,T96N,R4W
	Teeple Creek	Mouth, S24,T97N,R6W to West Line S11,T97N,R6W
	Trout Run a/k/a Erickson's Brook	Mouth, S16,T98N,R4W to North Line S8,T98N,R4W
	Unnamed Creek	Mouth, S12,T99N,R4W to West Line S12,T99N,R4W
	Unnamed Tributary to Village Creek	Mouth, S23,T98N,R4W to West Line S23,T98N,R4W
	Unnamed Tributary to Yellow River	Mouth, S13,T96N,R5W to North Line S12,T96N,R5W
	Upper Iowa River	Mouth, S36,T100N,R4W to West Line S31,T100N,R6W
	Village Creek	Mouth, S33,T99N,R3W to West Line S19,T98N,R4W
	Waterloo Creek	Conf. w/Bear Creek, S35,T100N,R6W to North Line S8,T100N,R6W
	Wexford Creek	Mouth, S5,T98N,R2W to West Line S25,T98N,R3W
	Yellow River	Mouth, S34,T96N,R3W to West Line S24,T96N,R5W
Appanoose	Chariton River	Missouri Line to Rathbun Dam
	North Chariton River	Rathbun Lake to Hwy. 14.
	South Chariton River	Appanoose/Wayne Line to Rathbun Lake.
Benton	Bear Creek	Benton County Line to Mouth at Cedar River
	Cedar River	All
	Iowa River	All
	Mud Creek	Road Crossing W1/2 S13,T84N,R11W to Mouth at Cedar River
	Opossum Creek	SE1/4 S5,T84N,R9W to Benton/Linn Line
	Prairie Creek 2	Road Crossing N1/2 S24,T83N,R12W to Benton/Linn Line
	Wolf Creek	All
Black Hawk	Beaver Creek	Mouth, S34,T90N,R14W to West County Line, S31,T90N,R14W
	Black Hawk Creek	Mouth, S22,T89N,R13W to West County Line, S6,T87N,R14W
	Cedar River	All

NATURAL-RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	Shell Rock River	Mouth, S4,T90N,R14W to North County Line, S4,T90N,R14W
	Wapsipinicon River	All
	West Fork Cedar River	All
	Wolf Creek	Mouth, S19,T87N,R11W to South County Line
Boone	Beaver Creek	West line of S10, T82N, R28W to South County Line
	Des Moines River	All
Bremer	Cedar River	All
	Shell Rock River	All
	Wapsipinicon River	All
Buchanan	Wapsipinicon River	All
Buena Vista	Little Sioux River	All
	North Raccoon River	South County Line to North Line of S15,T91N,R36W
	Beaver Creek	All
	Hartgraves Creek	West County Line to Mouth at West Fork of Cedar River
Butler	Maynes Creek	West County Line to Mouth at West Fork of Cedar River
	Shell Rock River	All
	West Fork Cedar River	All
Calhoun	Cedar Creek	South County Line to S31,T87N,R31W
	North Raccoon River	All
Carroll	Middle Raccoon River	South County Line to West Line of S23,T84N,R35W
	North Raccoon River	All
Cass	East Nishnabotna River	All
Cedar	Cedar River	All
	Clear Creek	East Line of S21, T82N, R4W to Mouth at Cedar River.
	Rock Creek	Road Crossing North Line Section 1, T81N, R3W to Mouth at Cedar River.
	Sugar Creek	Road Crossing North Line Section 29, T81N, R2W to South County Line.
	Wapsipinicon River	All

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
Cerro Gordo	Beaverdam Creek	I-35 to Franklin County Line
	E Branch-Beaverdam Creek	Hwy. 65 to Mouth at Beaverdam Creek
	Shell Rock River	All
	Spring Creek	County Road B15 to Mouth at Winnebago River
	Willow Creek	Hwy. 18 to Mouth at Winnebago River
	Winnebago River	All
Cherokee	Grey Creek	North Line of S22,T93N,R40W to Mouth at Mill Creek
	Little Sioux River	All
	Maple River	North Line of S5,T90N,R39W to Ida County Line
	Mill Creek	North Line S13,T93N,R41W to Mouth at Little Sioux River
	Perry Creek	North Line of S5,T91N,R40W to Mouth at Little Sioux River
	Rock Creek	East line of S4,T91N,R41W to Mouth at Little Sioux River
	West Fork, Little Sioux River	North Line of S12,T92N,R42W to Plymouth County Line
	Willow Creek	North Line S30,T91N,R41W to Mouth at Little Sioux River
Chickasaw	Cedar River	All
	Little Cedar River	All
	Little Turkey River	All
	Wapsipinicon River	All
Clay	Little Sioux River	All
	Ocheyedan River	All
Clayton	Bear Creek	South Line S18,T91N,R4W to South Line S26,T91N,R5W
	Bloody Run Creek	Mouth, S15,T95N,R3W to South Line S21,T95N,R4W
	Brownfield Creek	Mouth, S25,T91N,R4W to Source, S31,T91N,R3W
	Buck Creek	Mouth, S32,T92N,R2W to West Line, S9,T93N,R3W
	Cox Creek	Conf. w/Spring Creek, S25,T92N,R6W to South Line S12,T91N,R6W
	Dry Mill Creek	Mouth, S25,T93N,R5W to West Line S9,T93N,R4W

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	Hewett Creet	Mouth, S11,T92N,R6W to South Line S29,T92N,R6W
	Maquoketa River	South Line S32,T91N,R6W to West Line S19,T91N,R6W
	Miners Creek	Mouth, S20,T92N,R2W to West Line S1,T92N,R3W
	Mink Creek	Mouth, S30,T93N,R6W to West Line S19,T93N,R6W
	Mossy Glen Creek	Mouth, S3,T91N,R5W to South Line S3,T91N,R5W
	Mississippi River	All
	North Cedar Creek	Mouth, S8,T94N,R3W to Source, S24,T94N,R4W
	Pecks Creek	Mouth, S1,T91N,R3W to South Line S15,T91N,R3W
	Pine Creek	Mouth, S26,T91N,R4W to Conf. w/Brownfield Creek, S25,T91N,R4W
	Sny-Magill Creek a/k/a Magill	Mouth, S23,T94N,R3W to West Line S6,T94N,R3W
	South Cedar Creek a/k/a Cedar	North Line S7,T92N,R3W to North Line S24,T93N,R4W
	Spring Creek a/k/a Kleinlein Creek	Mouth, S25,T92N,R6W to Source, S10,T91N,R6W
	Steeles Brook	Mouth, S26,T91N,R4W to South Line S34,T91N,R4W
	Turkey River	All
	Unnamed Tributary to Sny-Magill a/k/a West Fork	Mouth, S7,T94N,R3W to West Line S7,T94N,R3W
	Volga River	All
Clinton	Brophys Creek	South Line of S4,T81N,R5E to Mouth at the Wapsipinicon River
	Drainage Ditch 12	South Line of S30,T82N,R2E to Mouth at the Wapsipinicon River
	Elk River	South Line of S5,T83N,R6E to mouth at the Mississippi River
	Harts Mill Creek	South Line of S8,T81N,R6E to Mouth at Mill Creek
	Mill Creek	South Line of S14,T81N,R6E to Mouth with Mississippi River
	Mississippi River	All
	Silver Creek	South Line of S22,T82N,R3E to S6,T80N,R4E
	Wapsipinicon River	All
Crawford	Boyer River	All

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	Soldier River	All
Dallas	Beaver Creek	All
	Des Moines River	All
	Middle Raccoon River	All
	Raccoon River	All
	South Raccoon River	All
Davis	Des Moines River	All
Decatur	Long Creek	DeKalb Wildlife Area to Mouth at the Thompson River
	Thompson River	All
	Weldon River	Missouri Border to Hwy. 2
Delaware	Fenchel Creek	Mouth, S5,T90N,R6W to Richmond Springs, S4,T90N,R6W
	Fountain Spring Creek a/k/a Odell Branch	Mouth, S10,T90N,R4W to West Line S9,T90N,R4W
	Little Turkey River	North County Line, S1,T90N,R3W to South Line S11,T90N,R3W
	Maquoketa River	All
	Schechtman Branch	Mouth, S14,T90N,R4W to South Line S14,T90N,R4W
	South Branch Fountain Spring Creek	Mouth, S10,T90N,R4W to West Line S16,T90N,R4W
	Spring Branch	Mouth, S10,T88N,R5W to Spring Source, S35,T89N,R5W
	Steeles Branch	North County Line, S4,T90N,R4W to West Line S5,T90N,R4W
	Twin Springs Creek	Mouth, S2,T90N,R4W to Spring Source S12,T90N,R4W
Des Moines	Brush Creek	South Line of S5,T69N,R3W to Mouth at the Skunk River
	Cedar Fork Creek	West Line of S31,T72N,R3W to Mouth at the Flint River
	Dolbee Creek	East Line of S24,T72N,R2W to S31,T71N,R1W
	Flint River	County Line to Mouth at the Mississippi River
	Knotty Creek	East Line of S25,T71N,R3W to the Mouth at the Flint River
	Hawkeye Creek	North Line of S30,T72N,R3W to Mouth at the Mississippi River

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	Long Creek	South Line of S3,T69N,R4W to the Mouth at the Skunk River
	Mississippi River	All
	Skunk River	All
	Spring Creek	South Line of S15,T69N,R3W to Mouth at the Mississippi River
	Tributary to Flint River	South Line of S27,T71N,R3W to Mouth at the Flint River
Dickinson	Little Sioux River	All
	Milford Creek	S12,T98N,R37W to Mouth at Little Sioux River
	West Branch, Little Sioux River	South Line of S27,T100N,R38W to Mouth at West Fork of Little Sioux River
	West Fork, Little Sioux River	South Line of S24,T100N,R38W to Mouth at Little Sioux River
Dubuque	Bloody Run	Mouth, S34,T90N,R2E to West Line S21,T90N,R2E
	Catfish Creek	South Line S9,T88N,R2E to Source S36,T88N,R1E
	Cloie Branch	Mouth, S5,T89N,R2E to West Line S5,T89N,R2E
	Hogans Branch	Mouth, S35,T89N,R1W to Gravel Road West Line S9,T88N,R1W
	Little Maquoketa River	S5,T88N,R1W to Mouth at Mississippi River
	Middle Fork Little Maquoketa River a/k/a Bankston Creek	West Line S31,T90N,R1E to North Line S33,T90N,R1W
	Mississippi River	All
	North Fork, Maquoketa River	All
	Paint Hollow Creek a/k/a White Pine Creek	North County Line, S6,T90N,R2W to Spring Source S8,T90N,R2W
Emmet	East Fork, Des Moines River	Tuttle Lake Outlet to East County Line
	West Fork, Des Moines River	All
Fayette	Bass Creek a/k/a Turners	Mouth, S3,T95N,R9W to West Line S3,T95N,R9W
	Bear Creek	Mouth, S25,T93N,R7W to West Line S6,T92N,R7W
	Bell Creek	Mouth, S10,T94N,R7W to West Line S8,T94N,R7W
	Brush Creek	Mouth, S8,T92N,R7W to Road Crossing S20,T92N,R7W

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	Little Turkey River	Mouth, S18,T95N,R8W to North Line S5,T95N,R10W
	Maquoketa River	East Line S24,T91N,R7W to Conf. w/Hwy. 3
	Mink Creek	East Line S24,T93N,R7W to West Line S15,T93N,R7W
	Otter Creek	Mouth, S13,T94N,R7W to S22,T94N,R8W
	Turkey River	All
	Unnamed Creek a/k/a Glovers Creek	Mouth, S22,T94N,R8W to West Line S15,T94N,R8W
	Unnamed Creek a/k/a Grannis Creek	Mouth, S30,T93N,R7W to Source, E1/4 S36,T93N,R8W
	Volga River	East County Line to South Line S22,T93N,R8W
Floyd	Cedar River	All
	Little Cedar River	All
	Shell Rock River	All
	Winnebago River	All
Franklin	Bailey Creek	South Line of S13,T93N,R20W to Mouth at the West Fork, Cedar River
	Beaverdam Creek	North County Line to Mouth at the West Fork, Cedar River
	Hartgraves Creek	South Line of S28,T92N,R19W to East County Line
	Iowa River	All
	Maynes Creek	East Line of S30,T91N,R20W to East County Line
	Otter Creek	East Line of S31,T93N,R20W to Mouth at Hartgraves Creek
	Spring Creek	Beeds Lake Outlet to Mouth at Otter Creek
	West Fork, Cedar River	East Line of S19,T93N,R19W to East County Line
Fremont	East Nishnabotna River	Mouth at Nishnabotna River to East County Line
	Missouri River	All
	Nishnabotna River	Missouri/Iowa Line to South Line of S25,T68N,R41W
	West Nishnabotna River	Mouth at Nishnabotna River to North County Line
Greene	Cedar Creek	Mouth at North Raccoon River to North County Line
	North Raccoon River	All
Grundy	Black Hawk Creek	East Line of S35,T88N,R17W to Black Hawk County Line

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	North Black Hawk Creek	NE1/4 S8,T88N,R15W to Black Hawk County Line
	South Beaver Creek	E1/2 S3,T88N,R18W to Butler County Line
	Wolf Creek	N1/2 of S31,T86N,R17W to Black Hawk County Line
Guthrie	Middle Raccoon River	All
	South Raccoon River	East County Line to County Road F32
Hamilton	Boone River	All
	Brewers Creek	Mouth at Boone River to County Road R27
	Eagle Creek	Mouth at Boone River to Wright County Line
	Skunk River	County Line to Hwy. 175
	White Fox Creek	Mouth at Boone River to Wright County Line
Hancock	East Fork, Iowa River	South County Line to Hwy. 18
	West Fork, Iowa River	South County Line to County Road B55
	Winnebago River	All
Hardin	Elk Creek	Mouth at Iowa River to County Road D35
	Honey Creek	South County Line to County Road D65
	Iowa River	All
	South Fork, Iowa River	Mouth at Iowa River to Hwy. 359
Harrison	Boyer River	All
	Little Sioux River	All
	Missouri River	All
	Soldier River	All
Henry	Big Creek	North Line of S31,T72N,R5W to S19,T70N,R5W
	Cedar Creek	County Line to Mouth at the Skunk River
	Crooked Creek	Mouth at S31,T73N,R7W to East Section Line
	East Fork, Crooked Creek	All
	Little Cedar Creek	South County Line to Mouth at Cedar Creek
	Mud Creek	South line of S15,T70N,R5W to Mouth at the Skunk River
	Skunk River	All
Howard	Beaver Creek	Mouth, S19,T100N,R12W to County Road A23
	Bohemian Creek	East Line S13,T97N,R11W to West Line S2,T97N,R11W

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	Chialk Creek	Mouth, S1,T98N,R11W to Road Crossing, S36,T99N,R11W
	Nichols Creek	East Line S13,T100N,R11W to County Road V58
	Staff Creek	Mouth, S7,T100N,R13W to County Road V10
	Turkey River	East Line S12,T98N,R11W to Hwy. 9
	Upper Iowa River	East Line S12,T100N,R11W to North Line S11,T100N,R14W
	Wapsipinicon River	South Line S17,T97N,R14W to West Line S19,T98N,R14W
Humboldt	Des Moines River	South County Line to Conf. of East and West Fork of Des Moines River
	East Fork, Des Moines River	Mouth at the Des Moines River to North County Line
	West Fork, Des Moines River	Mouth at the Des Moines River to West County Line
Ida	Little Sioux River	All
	Maple River	All
Iowa	Bear Creek	West County Line to Mouth at the Iowa River
	Iowa River	All
	North Fork, English River	All
	Old Man Creek	West Line of S35,T79N,R10W to East County Line
Jackson	Brush Creek	North Line S23,T85N,R3E to North Line S1,T85N,R3E
	Cedar Creek	Mouth, S30,T85N,R3E to East Line S29,T85N,R3E
	Little Mill Creek	Mouth, S13,T86N,R4E to West Line S29,T86N,R4E
	Maquoketa River	All
	Mill Creek a/k/a Big Mill Creek	Conf. w/Little Mill Creek S13,T86N,R4E to West Line S1,T86N,R3E
	Mississippi River	All
	North Fork, Maquoketa River	West County Line to Mouth at the Maquoketa River
	Ozark Spring Run	Mouth, S32,T86N,R1E to Spring Source S32,T86N,R1E
	Pleasant Creek	East Line S11,T85N,R4E to West Line S15,T85N,R4E
	Unnamed Creek	Mouth, S7,T86N,R2E to West Line S11,T86N,R1E

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	South Fork, Big Mill	Mouth, S8,T86N,R4E to West Line S17,T86N,R4E
	Storybook Hollow	Mouth, S7,T86N,R4E to South Line S12,T86N,R3E
	Unnamed Creek	Mouth, S1,T86N,R3E to West Line S2,T86N,R3E
Jasper	Indian Creek	All
	North Skunk River	All
	South Skunk River	All
Jefferson	Brush Creek	South Line of S18,T72N,R8W to the East County Line
	Cedar Creek	All
	Competine Creek	West County Line to Mouth at Cedar Creek
	Skunk River	All
	Walnut Creek	East Line of S22,T73N,R9W to the Mouth at the Skunk River
Johnson	Cedar River	All
	Clear Creek	West County Line to Mouth at the Iowa River
	Iowa River	All
	Old Mans Creek	West County Line to Mouth at the Iowa River
Jones	Buffalo Creek	West County Line to Mouth at the Wapsipinicon River
	Maquoketa River	All
	North Fork, Maquoketa River	All
	Wapsipinicon River	All
Keokuk	Bridge Creek	South Line of S23,T76N,R12W to the Mouth at the North Skunk River
	Cedar Creek	East Line of S19,T76N,R13W to the Mouth at the North Skunk River
	North Skunk River	West County Line to Mouth at the Skunk River
	Rock Creek	South Line of S21,T76N,R12W to Mouth at Cedar Creek
	South Fork, English River	West County Line to Mouth at the English River
	South Skunk River	West County Line to Mouth at the Skunk River
	Skunk River	All

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
Kossuth	Buffalo Creek	West Line of S4,T97N,R27W to Mouth at the East Fork, Des Moines River
	East Fork, Des Moines River	All
Lee	Big Sugar Creek	South Line of S26,T69N,R6W to Mouth at the Mississippi River
	Des Moines River	All
	Little Sugar Creek	South Line of S24,T68N,R7W to Mouth at the Des Moines River
	Lost Creek	South Line of S32,T69N,R4W to Mouth at the Mississippi River
	Mississippi River	All
	Pitman Creek	South Line of S10,T68N,R5W to Mouth at the Mississippi River
	Skunk River	All
Linn	Cedar River	All
	Prairie Creek	West County Line to Mouth at Cedar River
	Wapsipinicon River	All
Louisa	Big Slough Creek	East Line of S7,T74N,R5W to Mouth at Long Creek
	Cedar River	All
	Goose Creek	West County Line to Mouth at the Iowa River
	Iowa River	All
	Long Creek	South Line of S30,T75N,R5W to the Mouth at the Iowa River
	Mississippi River	All
	Muscatine Slough	North County Line to County Road Bridge in S31,T75N,R3W
	Muskrat Lake	S16,T74N,R3W to Mouth at the Iowa River
Lucas	Chariton River	Rathbun Lake to Hwy. 14
Lyon	Big Sioux River	All
	Little Rock River	East County Line to Mouth at Rock River
	Rock River	All
Madison	Clanton Creek	South Line of S32,T75N,R26W to the East County Line
	Middle River	All

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	Thompson River	All
Mahaska	Cedar Creek	West County Line to Mouth at Des Moines River
	Des Moines River	All
	North Skunk River	All
	Skunk River	All
Marion	Des Moines River	All
	Skunk River	All
	Whitebreast Creek	West County Line to Mouth at Des Moines River
Marshall	Honey Creek	North County Line to Mouth at Iowa River
	Iowa River	All
	Minerva Creek	NW1/4 S9,T85N,R20W to Mouth at Iowa River
	Timber Creek	County Road Bridge in S24,T83N,R18W to Mouth at Iowa River
Mills	Missouri River	All
	West Nishnabotna River	All
Mitchell	Beaver Creek	Mouth at S1,T98N,R16W to North Line S8,T99N,R15W
	Burr Oak Creek	County Road T46 to North Line S5,T98N,R16W
	Cedar River	South Line S13,T97N,R17W to North Line S8,T100N,R18W
	Little Cedar River	South Line S13,T97N,R15W to North Line S7,T100N,R16W
	Otter Creek	Mouth at S21,T100N,R18W to North Line S11,T100N,R18W
	Rock Creek	Conf. w/Goose Creek S35,T98N,R18W to Hwy. 9
	Spring Creek	Mouth at S13,T97N,R17W to North Line S8,T97N,R16W
	Turtle Creek	Mouth at S23,T99N,R18W to East Line S7,T99N,R17W
	Wapsipinicon River	East County Line to North Line of S20,T100N,R15W
Monona	Little Sioux River	All
	Maple River	Mouth at Little Sioux River to North County Line
	Missouri River	All
	Soldier River	All
	West Fork, Little Sioux River	Mouth at Little Sioux River to North County Line

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
Montgomery	East Nishnabotna River	All
	Middle Nodaway River	Mouth at Nodaway River to East County Line
	Nodaway River	All
Muscatine	Cedar River	All
	Mississippi River	All
	Mud Creek	West Line of S5,T78N,R1E to Mouth at Mississippi River
	Muscatine Slough	South Line of S4,T76N,R2W to South County Line
	Pike Run	South Line of S34,T78N,R3W to S19,T77N,R3W
	Pine Creek	Wildcat Den State park to Mouth at Mississippi River
	Sugar Creek	North County Line to Mouth at the Cedar River
	Wapsinonoc Creek	North County Line to Mouth at the Cedar River
	Weise Slough	S19,T78N,R3W
O'Brien	Little Sioux River	All
Osceola	Little Rock River	All
	Ocheyedan River	All
Page	East Nishnabotna River	All
	East Nodaway River	East County Line to Mouth at the Nodaway River
	Nodaway River	All
	Tarkio River	Hwy. 2 to South County Line
Palo Alto	West Fork, Des Moines River	All
Plymouth	Big Sioux River	All
	Floyd River	All
	West Fork, Little Sioux River	All
Pocahontas	Lizard Creek	West Line of S2,T90N,R31W to East County Line
	North Branch, Lizard Creek	North Line of S6,T91N,R31W to Mouth with Lizard Creek
	Pilot Creek	West Line of S9,T92N,R31W to Mouth with the West Fork, Des Moines River
	West Fork, Des Moines River	All

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
Polk	Beaver Creek	All
	Des Moines River	All
	North River	All
	Raccoon River	All
	South Skunk River	All
	Walnut Creek	All
Pottawattamie	East Nishnabotna River	All
	Missouri River	All
	West Nishnabotna River	All
Poweshiek	Bear Creek	NW1/4 S8,T80N,R14W to the East County Line
	North Fork, English River	North Line of S23,T79N,R14W to East County Line
	North Skunk River	All
Ringgold	East Fork, Grand River	South County Line to Hwy. 2
	Grand River	South County Line to Hwy. 66
	Platte River	All
	Thompson River	All
Sac	Big Cedar Creek	West Line of S10,T88N,R35W to the Mouth at the North Raccoon River
	Boyer River	West Line of S5,T89N,R37W to South County Line
	Indian Creek	North Line of S7,T87N,R36W to Mouth at the North Raccoon River
	North Raccoon River	All
	Outlet Creek	East Line of S35,T87N,R36W to Mouth at Indian Creek
Scott	Lost Creek	North Line of S32,T80N,R5E to Mouth at the Wapsipinicon River
	Mississippi River	All
	Mud Creek	County Road Bridge in S11,T79N,R1E to Mouth at the Wapsipinicon River
	Wapsipinicon River	All
Sioux	Big Sioux River	All
	Floyd River	Hwy. 18 to South County Line
	Rock River	All

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
Story	Skunk River	All
Tama	Iowa River	All
	Salt Creek	West Line of S28,T84N,R13W to Mouth at the Iowa River
	Wolf Creek	All
Taylor	East Fork, 102 River	Hwy. 49 to South County Line
	Platte River	All
	West Fork, 102 River	Hwy. 2 to South County Line
Union	Platte River	All
	Thompson River	All
Van Buren	Cedar Creek	All
	Des Moines River	All
Wapello	Des Moines River	All
Warren	Clanton Creek	West County Line to Mouth at Des Moines River
	Middle River	West County Line to Mouth at Des Moines River
	North River	All
	South River	All
	Whitebreast Creek	All
Washington	Camp Creek	North Line of S33,T77N,R7W to the Mouth at English River
	Clemons Creek	West Line of S9,T75N,R8W to the South Line S14,T75N,R8W
	Crooked Creek	East Line of S28,T76N,R9W to Henry County Line
	Dutch Creek	South Line of S21,T75N,R9W to the Mouth at the Skunk River
	East Fork, Crooked Creek	All
	English River	All
	Goose Creek	East County Line to East Line of S22,T76N,R6W
	Honey Creek	Lake Darling to Mouth at the Skunk River
	Iowa River	All
	Long Creek	East County Line to West Line of S26,T75N,R6W
	North Fork, Long Creek	East Line of S3,T75N,R7W to Mouth at Long Creek

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	Skunk River	All
	Smith Creek	West County Line to Mouth at the English River
	South Fork, Long Creek	County road W61 to Mouth at Long Creek
	Williams Creek	South County Line to Mouth at East Fork, Crooked Creek
Wayne	North Chariton River	Rathbun Lake to Hwy. 14
	South Chariton River	Rathbun Lake to County Road S56
Webster	Brushy Creek	North Line of S8, T88N, R27W to Mouth at the Des Moines River
	Deer Creek	North line of S16, T90N, R29W to Mouth at the Des Moines River
	Des Moines River	All
	North Branch, Lizard Creek	West County Line to Mouth at Des Moines River
	Prairie Creek	West Line of S29, T88N, R28W to Mouth at the Des Moines River
Winnebago	Winnebago River	All
Winneshiek	Bear Creek	East Line, S25, T100N, R7W to East Line of S29, T100N, R7W
	Bohemian Creek	Mouth at Turkey River to West Line S18, T97N, R10W
	Canoe Creek	County Road W38 to West Line S8, T99N, R8W
	Casey Spring	Mouth in S25, T99N, R9W to West Line S26, T99N, R9W
	Coldwater Creek	Mouth S32, T100N, R9W to North Line S11, T100N, R10W
	Coon Creek	Mouth S2, T98N, R7W to NW1/4 S13, T98N, R7W
	Dry Run Creek	Mouth S17, T98N, R8W to West Line S36, T98N, R9W
	East Pine Creek	Mouth S28, T100N, R9W to North Line of S9, T100N, R9W
	Martha Creek	Mouth S6, T99N, R9W to West Line of S13, T99N, R10W
	Middle Bear Creek	Mouth S14, T100N, R7W to North Line S16, T100N, R7W
	Nichols Creek	Mouth S18, T100N, R10W to West Line S18, T100N, R10W
	North Bear Creek	Conf. w/South Bear Creek, S25, T100N, R7W to East Line of S10, T100N, R7W
	North Canoe Creek	Mouth S22, T99N, R8W to North Line S1, T99N, R8W
	Pine Creek	Mouth at Upper Iowa River to the North Line S7, T100N, R9W

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	Pine Creek	Mouth at Canoe Creek to the North Line S21, T99N, R7W
	Paint Creek	East Line S13, T99N, R7W to West Line S11, T99N, R7W
	Silver Creek	Mouth at Upper Iowa River to North Line S26, T100N, R9W
	Smith Creek	Conf. w/Trout Creek in S21, T98N, R7W to South Line S33, T98N, R7W
	Ten Mile Creek	Mouth at Upper Iowa River to Conf. w/Walnut Creek at S18, T98N, R9W
	Trout Creek	Mouth at Upper Iowa River to Conf. w/Smith Creek at S21, T98N, R7W
	Trout Creek	Mouth at Upper Iowa River to East Line of S27, T98N, R8W
	Twin Springs Creek	West Line of S17, T98N, R8W to Mouth at Upper Iowa River
	Trout Run Creek	Road Crossing at NW1/4 S1, T97N, R8W to mouth at Trout Creek
	Upper Iowa River	All
Woodbury	Big Sioux River	All
	Floyd River	All
	Little Sioux River	All
	Maple River	All
	Missouri River	All
	West Fork, Little Sioux River	All
Worth	Beaver Creek	Hwy. 9 to Mouth at Winnebago River
	Deer Creek	County Road S56 to East County Line
	Elk Creek	Hwy. 105 to Mouth at Shell Rock River
	Shell Rock River	All
	Willow Creek	Hwy. 9 to Mouth at Winnebago River
	Winans Creek	Hwy. 9 to Mouth at Winnebago River
Wright	Boone River	All
	Eagle Creek	County Road R33 to South County Line
	East Fork, Iowa River	North County Line to Mouth at Iowa River
	Iowa River	South Line of S19, T93N, R23W to East County Line

NATURAL RESOURCE COMMISSION[571] (cont'd)

COUNTY	RIVER/STREAM	LOCATION
	West Fork, Iowa River	North County Line to Mouth at Iowa River
	White Fox Creek	County Road R38 to South County Line

571—49.5(106) Motor vehicle prohibition in meandered streams. Motor vehicles shall not be operated in any part of the beds of meandered streams, including dry sandbars. Meandered streams are the following:

1. Iowa river. From Mississippi river to west line T81N, R11W, Iowa county, due north of Ladora.
2. Cedar river. From Iowa river to west line T89N, R13W, Black Hawk county, at the east edge of Cedar Falls.
3. Raccoon river. From Des Moines river to west line of Polk county.
4. Wapsipinicon river. From Mississippi river to west line T86N, R6W, Linn county, northwest of Central City.
5. Maquoketa river. From Mississippi river to west line T84N, R3E, Jackson county, due north of Maquoketa.
6. Skunk river. From Mississippi river to north line of Jefferson county, at the southwest edge of Coppock.
7. Turkey river. From Mississippi river to west line T95N, R7W, Fayette county, northwest of Clermont.
8. Nishnabotna river. From Missouri river to north line T67N, R42W, Fremont county, northeast of Hamburg.
9. Upper Iowa river. From Mississippi river to west line Section 28, T100N, R4W, Allamakee county, about two and one-half miles upstream from its mouth.
10. Little Maquoketa river. From Mississippi river to west line Section 35, T90N, R2E, Dubuque county, about one mile upstream from its mouth.

[Filed 11/9/90, effective 1/2/91]
 [Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

ARC 1507A
PROFESSIONAL LICENSURE
DIVISION[645]

BOARD OF BARBER EXAMINERS
 Adopted and Filed

Pursuant to the authority of Iowa Code section 158.15, the Board of Barber Examiners hereby amends Chapter 20, "Barber Examiners," Iowa Administrative Code.

This amendment was published under Notice of Intended Action in the August 22, 1990, Iowa Administrative Bulletin, as **ARC 1192A**. The amendment was adopted by the Board of Barber Examiners on October 30, 1990. There are no changes from the Notice of Intended Action.

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

This rule will become effective January 2, 1991.

Amend subrule 20.102(3) as follows:

20.102(3) It is conducted by individuals who have a special education, training, and experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and is accompanied by a paper, manual or written outline which substantially pertains to the subject matter of the program. *At least one instructor in the program must be a licensed barber.* Except as may be allowed pursuant to 20.107(258A), no licensee shall receive credit exceeding 10 percent of the annual total required hours for self-study, including television viewing, video or sound-recorded programs, correspondence work, or research, or by other similar means as authorized by the board.

[Filed 11/9/90, effective 1/2/91]
 [Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

ARC-1505A
PUBLIC HEALTH
DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11(13) the Iowa Department of Public Health on November 7, 1990, adopted amendments to Chapter 73, "Special Supplemental Food Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

A Notice of Intended Action for these rules was published in the August 22, 1990, Iowa Administrative Bulletin as **ARC 1189A**.

A public hearing was held on September 11, 1990, to accept public comments on the Notice. No comments were submitted, either in writing or at the hearing. These rules are identical to those published under Notice.

Item 1 redefines and expands the classes of individuals who are authorized to determine eligibility for the WIC Program. It clarifies that using standardized screening tools, including a diet history (food frequency), and applying standardized criteria to determine eligibility for the WIC Program are not a nutrition assessment as defined under rules promulgated by the Iowa Board of Dietetic Examiners.

Item 2 defines the scope of normal nutrition education that can be provided by individuals other than licensed dietitians and clarifies that all nutrition counseling and development of care plans for high risk participants must be by licensed dietitians.

These amendments are intended to implement Iowa Code section 135.11(19).

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [73.5, 73.9] is being omitted. These rules are identical to those published under Notice as ARC 1189A, IAB 8/22/90.

[Filed 11/9/90, effective 1/2/91]
[Published 11/28/90]

[For replacement pages for IAC, see IAC Supplement, 11/28/90.]

ARC 1504A**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 135.13, the Department of Public Health hereby adopts amendments to Chapter 110, "Office of Rural Health," Iowa Administrative Code.

These amendments clarify the advisory committee appointment timetables and divide the two-year appointment cycles to avoid appointing a whole new committee every other year.

A public hearing was held on September 25, 1990. There are no changes from the Notice of Intended Action published in the Iowa Administrative Bulletin on September 5, 1990, as **ARC 1244A**.

The amendments were approved by the Iowa Board of Public Health on November 7, 1990.

This rule is intended to implement Iowa Code Supplement section 135.13.

This rule will become effective on January 2, 1991.

The following amendments are adopted.

Amend subrules 110.4(4) and 110.4(6) to read as follows:

110.4(4) Vacancies. Vacancies will be filled in the same manner in which the original appointment was made. In the case of a vacancy the chairperson will notify the agency of their need to appoint another representative. *Appointments shall fill out the original term of office.*

110.4(6) Term of appointment. Term of appointment is for two years with no more than three consecutive terms, excepting the department of public health representative. Exceptions for individual reappointment from associations represented shall be determined by the director of public health. *Nongubernatorial and non-legislative advisory committee members shall be appointed initially for one year and thereafter appointed for two-year terms on even-numbered years. Other members shall be appointed for two-year terms on odd-numbered years.*

[Filed 11/9/90, effective 1/2/91]
[Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

ARC 1482A**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 42, "Adjustments to Computed Tax"; Chapter 46, "Withholding"; and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, volume XIII, number 7, on October 3, 1990, page 627, as **ARC 1300A**.

The 1990 Iowa Acts, chapters 1196 and 1248, made a number of changes in the individual income tax law and corporate income tax law. These rules allow taxpayers who anticipate being eligible for the child and dependent care credit on the return for the tax year to claim additional allowances for state income tax withholding purposes which will reduce the amounts to be withheld for these individuals. Although this change is applicable on July 1, 1990, the rule specifies that this revision will apply to state income tax withholding from wages paid on or after January 1, 1991. This delay is designed to give withholding agents time to comply with this change. The rules also set out the other allowances that are available for state income tax withholding purposes. These rules provide that individual taxpayers and corporate taxpayers who invest in securities of a qualified business or a qualified seed capital fund may claim a seed capital credit against their Iowa income tax liabilities. Individual taxpayers may claim the seed capital credit for qualified investments made on or after April 26, 1990, but prior to January 1, 1993. Corporate taxpayers may claim the seed capital credit for investments made on or after July 1, 1991, but prior to January 1, 1994. The implementation clauses of these rules are revised to show that the rule revisions were made to support 1990 legislative Acts.

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

These amendments will become effective January 2, 1991, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 422.11D, 422.16 and 422.33 as amended by 1990 Iowa Acts, chapters 1196 and 1248.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to chs 42,46,52] is being omitted. These rules are identical to those published under Notice as **ARC 1300A**, IAB 10/3/90.

[Filed 11/9/90, effective 1/2/91]
[Published 11/28/90]

[For replacement pages for IAC, see IAC Supplement, 11/28/90.]

ARC 1466A
TRANSPORTATION
DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the State Transportation Commission, on November 6, 1990, adopted amendments to Chapter 125, "General Requirements and Covenants for Highway and Bridge Construction," Iowa Administrative Code.

The Notice of Intended Action for Chapter 125 was published in the September 19, 1990, Iowa Administrative Bulletin as ARC 1255A.

Chapter 125 currently adopts by reference Sections 1101 to 1105 of the Standard Specifications for Highway and Bridge Construction, Series of 1984, and supplemental specifications issued up to and including December 5, 1989, which alter these sections.

This rule-making action changes the December 5, 1989, date to January 2, 1991. This date change incorporates three revisions to the standard specifications. These revisions add two new articles to the standard specifications and amend one article. The articles are summarized below.

The first change to the standard specifications is new article 1103.08, which requires a prime contractor to disclose the names of subcontractors or the amount of reduced subcontracting work.

The second change to the standard specifications is new article 1102.18, which establishes affirmative action requirements relating to disadvantaged business enterprises for prime contractors on federal-aid projects.

These new articles implement 1990 Iowa Acts, chapter 1161, sections 3 and 4, respectively.

The third change to the standard specifications is amended article 1105.16. This article provides that a contractor may submit value engineering proposals to the contracting authority. The purpose of the article is to encourage a contractor to suggest alternative lower cost or more efficient construction.

The full text of these articles was published in the Notice of Intended Action, ARC 1255A, and has not changed.

The Administrative Rules Review Committee at its October 10, 1990, meeting reviewed the Notice of Intended Action and had questions regarding the availability of specifications. To address these questions, the Department has further amended Chapter 125 by deleting the last sentence of current rule 125.1(307A) and by adding subrules 125.1(1) to 125.1(3). These new subrules explain in more detail how specifications may be obtained.

These amendments to Chapter 125 will become effective January 2, 1991.

The following amendments are adopted:

761—125.1(307A) General requirements for highway construction. Sections 1101 to 1105 of the Standard Specifications for Highway and Bridge Construction, Series of 1984, and supplemental specifications issued up to and including December 5, 1989, January 2, 1991, which alter these sections constitute the standards and requirements governing terminology, proposal requirements and conditions, approval for award and award of contracts, scope of work and control of work for highway construction and maintenance performed under

contracts awarded by the highway division of the department. Copies of Sections 1101 to 1105 may be obtained from the Highway Division, Department of Transportation, Ames, Iowa 50010.

125.1(1) The publication entitled "Standard Specifications for Highway and Bridge Construction" may be obtained from the Central Warehouse, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. Copies of the publication are also available for examination at various highway division central, district and resident offices located throughout the state.

125.1(2) Copies of supplemental specifications may be obtained from the Office of Contracts, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

125.1(3) Supplemental specifications applicable to a particular project also accompany each bidding proposal issued for that project.

This rule is intended to implement Iowa Code section 307A.2.

[Filed 11/7/90, effective 1/2/91]

[Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

ARC 1465A

TRANSPORTATION
DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on November 6, 1990, adopted an amendment to 761—Chapter 450, "Motor Vehicle Equipment," Iowa Administrative Code.

A Notice of Intended Action for this rule was published in the September 5, 1990, Iowa Administrative Bulletin as ARC 1201A, and the identical rule, adopted and filed emergency, was published in the same Iowa Administrative Bulletin as ARC 1200A.

Rule 450.7(321) clarifies the federal regulation concerning the amount of luminous transmittance required for driving visibility in a motor vehicle. The light transmittance standard is a clarification of a currently effective regulation and not a newly adopted regulation. As requested by the Administrative Rules Review Committee, the rule also provides a form for physician certification of an exemption from the requirement for persons suffering from a severe light sensitive condition.

This rule is identical to the one published under Notice of Intended Action except for deletion of the word "briefly" in subrule 450.7(2).

This rule is intended to implement Iowa Code chapter 321 and will become effective January 2, 1991.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [450.7] is being omitted. With the

TRANSPORTATION DEPARTMENT[761] (cont'd)

exception of the change noted above, these rules are identical to those published under Notice as **ARC 201A**, IAB 9/5/90.

[Filed 11/7/90, effective 1/2/91]
[Published 11/28/90]

[For replacement pages for IAC, see IAC Supplement, 11/28/90.]

ARC 1475A**TRANSPORTATION
DEPARTMENT[761]****Note: Rules not subject to Iowa Code chapter 17A**

Pursuant to the authority of Iowa Code subsections 321.454(2) and 321.457(3), the Transportation Commission, on November 6, 1990, amended 761—Chapter 510, "Designated Highway System," by amending rule 761—510.1(321). This rule lists the highways that may be used by longer and wider vehicles. The amendment adds eight routes to the list of highways and is effective November 6, 1990. This rule is exempt from the rule-making provisions of Iowa Code chapter 17A, but is published in the Iowa Administrative Code as a convenience to persons who need to use the rule.

Rule-making action:

Amend subrule **510.1(1)** by striking the words: "IA 4 Wallingford N. to Estherville" and inserting in lieu thereof the words: "IA 4 Wallingford N. to Minnesota"; and by striking the words: "US 52 Luxemborg to Burr Oak" and inserting in lieu thereof the words: "US 52 Luxemborg N. to Minnesota"; and by striking the words: "US 63 Missouri N. to Chester" and inserting in lieu thereof the words: "US 63 Missouri N. to Minnesota"; and by striking the words: "US 65 US 30 N. to Northwood" and inserting in lieu thereof the words: "US 65 US 30 N. to Minnesota"; and by striking the words: "US 69 S. Jct US 65 N. to IA 105" and inserting in lieu thereof the words: "US 69 S. Jct US 65 N. to Minnesota"; and by striking the words: "IA 148 Bedford N. to I-80" and inserting in lieu thereof the words: "IA 148 Missouri N. to I-80"; and by striking the words: "US 218 Missouri N. to St. Ansgar" and inserting in lieu thereof the words: "US 218 Missouri N. to Minnesota"; and by striking the words: "IA 276 US 71 N. to IA 327" and inserting in lieu thereof the words: "IA 276 US 71 N. to Minnesota".

[Filed 11/8/90, effective 11/6/90]
[Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

ARC 1467A**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on November 6, 1990, adopted amendments to 761—Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

A Notice of Intended Action for these amendments was published in the September 5, 1990, Iowa Administrative Bulletin as **ARC 1202A**, and the identical amendments, adopted and filed emergency, were published in the same Iowa Administrative Bulletin as **ARC 1203A**.

As authorized by Iowa Code sections 321.449 and 321.450, the Department is adopting the latest editions of the Code of Federal Regulations which contain the Federal Hazardous Materials Regulations and the Federal Motor Carrier Safety Regulations.

The significant changes from the 1988 edition of hazardous materials regulations are:

Parts 107, 171, 172, 173, 177, 178 and 180: These amendments revise and clarify certain commodity sections in Part 173, reorganize the cargo specifications in Part 178, and provide for vacuum-loaded cargo tanks. It establishes a new Part 180 consisting of regulations transferred from other parts to consolidate the cargo tank specification requirements.

Part 171.8: The definition for "cargo tank" was revised to be consistent with the definition for "bulk package."

Part 171.12a: Requires shipments of hazardous materials being imported into the United States from Canada to be in compliance with the requirements for emergency response information specified in Subpart G of Part 172.

Part 171.16: Revises the hazardous materials incident report to provide more meaningful and comprehensive data on incidents, especially in terms of causation and consequence factors. This section also requires the carrier to retain a copy of the report at the principal place of business for two years.

Part 171.301c: Requires marking the technical name of the hazardous material on nonbulk packages which contain hazardous materials. The technical name must be shown in parentheses immediately following the proper shipping name.

Part 172.101: Revises the list of hazardous substances and reportable quantities.

Part 172.201: Requires that shipping papers must contain an emergency response telephone number for the description of the hazardous material being shipped.

Part 172.203: Requires that the technical name must be shown on shipping papers that contain generic descriptions for hazardous materials.

Part 172.602: Prescribes requirements for providing and maintaining emergency response information during transportation and at facilities where hazardous materials are loaded for transportation, stored incidental to transportation, or otherwise handled during any phase of transportation.

Part 172.604: Provides requirements for the person offering a hazardous materials 24-hour emergency response telephone number that must be maintained for a hazardous materials emergency.

TRANSPORTATION DEPARTMENT[761] (cont'd)

Parts 173 and 178: Require rear bumpers or rear-end tank protection devices to be installed on cargo tank trucks (power units, commonly called bobtails), which are operated in combination with cargo tank full trailers.

Part 173.33: Prohibits a cargo tank from being loaded with any hazardous material that may produce an unsafe condition.

Part 173.154: Adds requirements for pressure relief devices on specified cargo tanks.

Part 173.252: Clarifies the maximum thickness for the tank shell and head, excluding lining, cladding or corrosion allowance.

Part 173.273: Requires the use of a spring-loaded pressure relief valve and allows the use of a frangible disc.

Part 173.315: Permits safety relief valves to be certified by the valve manufacturer in place of an authorized inspector.

Part 173.318: Requires that the flow capacity and rating of pressure relief devices be verified and certified by the manufacturer of the device.

The significant changes from the 1988 edition of motor carrier safety regulations are:

Parts 390, 391 and 393 eliminate the intracity zone exemption to the Federal Motor Carrier Safety Regulations.

A two-year grandfather clause for drivers who have been operating under the original "intracity zone" exemption is effective until November 15, 1990. After November 15, 1990, those drivers will no longer be able to drive commercial motor vehicles in interstate commerce.

Part 391.41: Requires a driver to be physically examined every two years and meet the physical requirements in Part 391.41. Drivers who do not meet the medical or physical requirements as of July 1, 1988, may continue to drive under the grandfather provision of the Act only within an exempt intracity zone. Those drivers may continue to drive a commercial motor vehicle wholly within an intracity zone provided the examining physician determines during a subsequent examination that a particular condition, which would cause a driver to be unqualified, has not substantially worsened since July 1, 1988.

Parts 391 and 394: Establish minimum standards for antidrug programs of interstate motor carriers, including testing of drivers for the use of controlled substances. However, random and mandatory postaccident drug testing implementation have been deferred.

Part 393: Includes editorial and clarification changes and moves definitions from Part 393 to Part 390.

Part 393.75: Prohibits use of damaged tires and requires tire load ratings to meet the Federal Motor Vehicle Standards.

Part 393.76: Allows fluid-filled mattresses in sleeper berths.

Part 393.83: Requires exhaust system. Prohibits the use of patches in exhaust system or leaking at any point below or forward of the driver/sleeper compartment or on a bus, forward of any window or door.

Part 393.84: Prohibits flooring that is permeated with oil or other substances likely to cause injury to a person using the floor as a traction surface.

Part 393.87: Allows projecting loads to extend up to 4 inches beyond the side of the vehicle before flags are required at each point where a lamp is required.

Part 396.17: Establishes maximum standards for annual or more frequent inspections of commercial motor vehicles engaged in interstate commerce. If a state has no mandatory inspection program, the inspection can be one performed by federal or Iowa personnel during the roadside inspection program. The inspections can also be performed by the carrier's qualified inspectors, commercial garages or similar qualified businesses. The annual inspections for interstate carriers will be effective upon emergency rule-making implementation. The annual inspection for intrastate carriers will become effective on October 1, 1991.

Part 396.19: Identifies qualifications for inspector.

Part 396.21: Identifies record-keeping requirements for inspections performed under Part 396.17.

Part 396.23: Identifies method for carrier to meet the requirements of Part 396.17 through a state's roadside inspection program.

Appendix G: Identifies standards for minimum periodic inspections.

There were also miscellaneous editorial and technical corrections.

The Department is also adopting an amendment to exempt intrastate operators for one year from the annual vehicle inspection requirement and is amending the out-of-service rule to authorize issuance by any Iowa peace officer.

These amendments are identical to the ones published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 321 and will become effective January 2, 1991.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to ch 520] is being omitted. These rules are identical to those published under Notice as ARC 1203A, IAB 11/28/90.

[Filed 11/7/90, effective 1/2/91]

[Published 11/28/90]

[For replacement pages for IAC, see IAC Supplement, 11/28/90.]

ARC 1495A**UTILITIES DIVISION[199]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, and Iowa Code Supplement sections 476.76 and 476.77, the Utilities Board (Board) gives notice that on November 9, 1990, the Board issued an order in Docket No. RMU-90-17, In Re: Reorganization of Public Utilities, "Order Adopting Rules."

On March 30, 1990, the Board issued an order in this docket commencing a rule making to consider the adoption of a new chapter, 199 IAC 32. The proposed rule making was published in the Iowa Administrative Bulletin on April 18, 1990, as ARC 822A. The purpose of the proposed rules was to implement Iowa Code sections 476.76 and 476.77, which gives the Board

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authority to review and evaluate proposals for reorganizations of public utilities.

Twelve commenters submitted written comments, and eight commenters were represented at the oral presentation held on May 21, 1990. Commenters included the Consumer Advocate Division of the Department of Justice, Iowa Power Inc., Iowa-Illinois Gas and Electric Company, Iowa Electric Light and Power Company, the Iowa Telephone Association, Iowa Southern Utilities Company, US West Communications d/b/a Northwestern Bell Telephone Company, Iowa Public Service Company, Peoples Natural Gas Company, Interstate Power Company, the Iowa Association of Municipal Utilities, and Central Telephone Company (Centel).

Rule 32.1(476) defines persons to whom the chapter applies. The proposed rule contained a typographical error which will be corrected in the adopted rule. In addition, the Board will adopt in part a recommendation made by Centel that the chapter not apply to transfers or removals of assets made specifically pursuant to a Board order deregulating a telephone service or facility. However, the Board will limit this exception to transfers or removals of assets made specifically pursuant to a Board deregulation order within 12 months of the approval of the telephone company's accounting separation plan. The unlimited exception sought by Centel is not warranted.

Iowa Code Supplement subsection 476.76(1) uses the phrase "substantial part of a public utility's assets" in defining reorganization. Rule 32.2(476) lists various factors the Board will consider in determining whether a reorganization proposal meets this threshold. Several commenters suggested that a percentage of total asset threshold be utilized instead of the proposed standards, but there was no agreement on the percent to be used. If the percentage were set too high, problems could be created with the transfer of essential facilities, as these transfers might then not fall within the definition of a "substantial part of a public utility's assets." While the Board is not completely satisfied with the proposed guidelines, the Board will adopt the proposed rule as providing the best standards available now. The Board will commence a new rule making to consider a dollar jurisdictional amount, \$500,000, below which a utility would not have to file an application. This is patterned after section 203 of the Federal Power Act.

Rule 32.3(476) provides that an applicant may seek a declaratory ruling. The Board will not reduce its time for acting on a declaratory ruling from 30 to 15 days, as suggested by one commenter, and will not include a provision specifically allowing a nonapplicant to file for a declaratory ruling. A nonapplicant has an opportunity to object to any proposed reorganization.

Rule 32.4(476) sets forth the requirements for an application for reorganization. In light of the comments received, the Board will add a new paragraph specifically stating that if any of the information is not applicable to the type of reorganization being proposed, the applicant shall, in lieu of providing the information, state the reasons why the particular information is not applicable. The Board recognizes that all of the information requested will not be applicable to all types of reorganization proposals. The Board will not, however, adopt Consumer Advocate's proposal that all information of any relevance to the proposed reorganization be filed with the application. This proposal is overbroad and creates some problems with privileged information. In

addition, while the time period for reviewing a proposal is short, discovery is available to Consumer Advocate to obtain additional information on selected requirements.

Iowa Code Supplement subsection 476.77(2) provides that a "proposal for reorganization shall be deemed to have been approved unless the Board disapproves the proposal within 45 days after its filing." Rule 32.5(476) will be clarified, in response to the comments, to state that a proposal is not effective for at least 45 days, unless the Board issues an order affirmatively approving the proposed reorganization.

Rule 32.6(476) provides that, in addition to a reorganization proposal, an applicant file a statement of intent if assets are removed or transferred to a nonregulated environment. This rule would apply even if the entity involved would not have to file a reorganization proposal. The proposed rule generated significant comment. One commenter suggested that an annual statement summarizing asset transfers be required and that some jurisdictional threshold be set. Commenters were concerned about an extra reporting requirement each time an assets transfer took place.

The Board will not adopt proposed rule 32.6(476), but will institute a separate rule making dealing with asset transfers outside the context of a reorganization. The requirement of rule 32.6(476) will be made part of the filing requirements for a reorganization proposal, however, in subrule 32.4(2), paragraph "h."

Rule 32.7(476) allows the Board to reject a reorganization filing if it does not contain sufficient information for the Board to review the proposal. The Board will adopt this rule as proposed, as the Board believes there is inherent authority to reject insufficient filings.

No other changes will be made to the proposed rules, other than to renumber the rules to account for the deletion of rule 32.6(476). The Iowa Association of Municipal Utilities suggested that language be included which would allow the Board to impose conditions on the approval of a reorganization proposal. However, Iowa Code Supplement section 476.77 does not grant the Board this authority, but merely gives the Board the authority to "disapprove" a reorganization proposal.

Several commenters proposed various revisions to the procedural rules contained in proposed rule 32.10(476). In view of the expedited hearing process, each case will most likely have deadlines tailored to the specific proposal. No change will be made in the proposed rule.

Having given due consideration to each of the comments received, the Board will adopt the rules as revised. The adopted rules will become effective on January 2, 1991.

The following new chapter is adopted:

CHAPTER 32 REORGANIZATION

199—32.1(476) Applicability and definition of terms.

1. This chapter applies to any person who intends to acquire, sell, lease, or otherwise dispose indirectly or directly of the whole or any substantial part of a public utility's assets; or purchase, acquire, sell, or otherwise dispose of the controlling capital stock of any public utility, either directly or indirectly. Either individually or on a joint basis, a proposal for reorganization shall be filed by the person(s) to whom this chapter applies. All terms used in this chapter not otherwise defined shall be defined as the terms are defined in Iowa Code

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Supplement section 476.72. "Proposal for reorganization" means the application for approval of a reorganization including the supporting testimony, evidence and filing requirements identified in rule 32.4(476).

2. This chapter does not apply to transfers or removals of a public utility's assets which are made specifically pursuant to a board deregulation order, as long as those transfers or removals occur within 12 months of the board's approval of an accounting separation plan.

199—32.2(476) Substantial part of a public utility's assets. In determining whether a reorganization involves a "substantial part of a public utility's assets," the board will consider various factors including, but not limited to, the monetary value of the assets in question, the potential effects of the acquisition or disposition of the assets on the operations and the viability of the utility, the potential effects of the acquisition or disposition of the assets on the public utility's ratepayers, the potential effects on jurisdictional allocations and authority, the potential effects on the provision of utility service in Iowa, and the potential effects on the public interest.

The following hypothetical examples are intended to illustrate the application of these factors:

1. A combination electric-gas utility proposes to sell its gas distribution system to another utility. The purchase and sale would involve a substantial part of both utilities' assets. By contrast, a similar utility proposes to acquire a municipal gas distribution system in a small city. The acquisition would not involve a substantial portion of the utility's assets.

2. An electric utility proposes to transfer the generating and transmission components of its electric system to an affiliate. The assets proposed to be transferred would involve a substantial part of the utility's assets.

3. An electric utility proposes to sell its 40 percent interest in a 650 MW electrical generating station to another utility. The sale and purchase would involve a substantial part of both utilities' assets. By contrast, a utility proposes to sell a 100-mile transmission line to another utility. Unless the line serves as an essential facility or "bottleneck" connection, the sale would not constitute a substantial portion of the utility's assets.

4. A public utility proposes to sell a fleet of service trucks for use in providing utility service. The sale would not involve a substantial part of the utility's assets.

5. A telephone utility proposes to transfer the assets of its research operation or its directory publishing business to an affiliate. Either transfer would involve a substantial part of the utility's assets.

6. A utility proposes to transfer \$5,000,000 of capital to an investment affiliate. Five million dollars represents 1 percent of the utility's total assets. Such a transfer would not involve a substantial part of a utility's assets.

199—32.3(476) Declaratory rulings. Any person may request a determination as to whether the action it proposes would constitute a reorganization or whether the assets involved would constitute a substantial part of a public utility's assets, as defined in Iowa Code section 476.72 and these rules, by filing a petition for declaratory ruling, as set out in 199—Chapter 4.

199—32.4(476) Proposal for reorganization—filing requirements. Any person who intends to accomplish a reorganization shall file supporting testimony and evidence with its proposal for reorganization, which shall include, but not be limited to, the following information:

32.4(1) General information.

a. A statement of the purposes of the reorganization and a description of the events which led to the reorganization.

b. An analysis of the alternatives to the proposed reorganization which were considered and their impact on rates and services, if any.

32.4(2) Reorganization details.

a. Written accounting policies and procedures for the subsequent operation, including the type of system of accounts to be used.

b. Staffing changes due to the proposed reorganization.

c. The situs of the books and records of the public utility after reorganization and their availability to the board.

d. A description of the proposed accounting to be utilized in any transfer of assets necessary to accomplish reorganization.

e. The proposed method for:

(1) Accounting for and allocating officer's time between the public utility and any affiliates, and

(2) Compliance with the board's rules on affiliate transactions and relationships.

f. Copies of all contracts which directly relate to the reorganization. If there are any unwritten contracts or arrangements, a summary of the unwritten contracts or arrangements verified by an officer of the operating company shall be provided.

g. Before and after organizational charts for the affected public utility and affiliates.

h. A statement of any proposed physical removal of assets from the board's jurisdiction to another jurisdiction or removal or transfer of assets from a regulated to a nonregulated environment.

32.4(3) Financial details.

a. An analysis of whether the affected public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure and corporate financial integrity, is impaired.

b. A description of the financing components of the proposed reorganization.

c. Information concerning the funding provided to any new entity created by the proposed reorganization.

d. Current and proposed reorganization balance sheets and capital structures.

e. Stockholder annual report for two years preceding the year of filing for all affected companies.

32.4(4) Impact of reorganization.

a. A cost-benefit analysis which describes the projected benefits and costs of reorganizing. The benefits and costs should be quantified in terms of present value. The sources of such benefits and costs shall be identified.

b. An analysis of the projected financial impact of the proposed reorganization on the ratepayers of the affected public utilities for the first five years after reorganization.

c. An analysis of the effect on the public interest. Public interest means the interest of the public at large, separate and distinct from the interest of the public utility's ratepayers. The analysis should include a discussion of the reorganization's impact on the economy of the state and the communities where the utility is located.

If more than one public utility is involved in a reorganization, the information shall be submitted for all public utilities involved.

32.4(5) If any information required by subrules 32.4(1) through 32.4(4) is not applicable to the type of reorgani-

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zation being proposed, the applicant shall, in lieu of providing the information, state the reason(s) why the particular information is not applicable to the proposal.

199—32.5(476) Effective date. A proposed reorganization shall not become effective until at least 45 days after the date the proposal for reorganization has been submitted to the board unless the board issues an order affirmatively approving the proposed reorganization.

199—32.6(476) Insufficient filing. The board may reject for filing within 21 days any proposal for reorganization that does not contain sufficient information for the board to evaluate the proposal for reorganization. The board shall fully describe any deficiencies in a reorganization plan which is rejected for filing.

199—32.7(476) Additional information authorized. The board may require an applicant to file information in addition to the information required by rule 32.4(476).

199—32.8(476) Waivers. Any public utility or applicant may file an application for waiver of the provisions of this chapter. The application shall include a detailed statement of why review of a proposed reorganization is not necessary or in the public interest.

199—32.9(476) Procedural matters. Because of statutory time limitations, an expedited procedural schedule shall be utilized for proposals for reorganiza-

tion. The board may order additional specific procedures as needed for the expedited hearing process.

32.9(1) Within 15 days after a proposal for reorganization and supporting testimony is filed, the consumer advocate and any intervenors shall file any written testimony and exhibits. This will allow the board an opportunity to consider the testimony and exhibits prior to the 21-day deadline for issuing a notice of hearing. However, failure to file written testimony and exhibits within 15 days shall not preclude the consumer advocate and any intervenors from presenting witness testimony and exhibits at any hearing ordered by the board to be held with respect to the proposed reorganization.

32.9(2) Responses to data requests shall be made within five days from the date of service.

32.9(3) When a hearing on the proposed reorganization is scheduled, the applicant, consumer advocate, and any intervenors shall file a joint statement of the issues at least five days prior to the date of hearing.

These rules are intended to implement Iowa Code Supplement section 476.77.

[Filed 11/9/90, effective 1/2/91]

[Published 11/28/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/28/90.

EFFECTIVE DATE DELAY**[Pursuant to §17A.8(9)]**

AGENCY	RULE	EFFECTIVE DATE DELAY
Human Services Department[441]	81.10(5) (IAB 10/17/90 ARC 1324A)	Effective date 12/1/90 delayed until adjournment of the 1991 Session of the General Assembly by the Administrative Rules Review Committee at its November 13, 1990, meeting.



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 40

- WHEREAS,** the Governor's Alliance on Substance Abuse is the designated agency to receive Drug Control and System Improvement Grant Program funding from the Bureau of Justice Assistance of the United States Department of Justice; and
- WHEREAS,** the Bureau of Justice Assistance strongly urges that application for such grant funds be developed by a Drug and Violent Crime Policy Board; and
- WHEREAS,** the Bureau of Justice Assistance suggests that such board be made up of state and local officials and operational level representatives from all components of the criminal justice system, as well as from the prevention and treatment activity; and
- WHEREAS,** the Prevention and Education Council established pursuant to section 80.1 of the Code of Iowa is made up of such representatives, except a member of the judiciary; and
- WHEREAS,** with agreement of the Judicial Department of Iowa which has agreed to nominate a sitting judge from the Iowa court system to make full representation on a Drug and Violent Crime Policy Board; and
- WHEREAS,** Chairpersons of the Law Enforcement Coordinating Committees from United States Attorney Offices in Iowa are regularly included in all meetings of the Prevention and Education Council and sit as non-voting

members on that council relative to State Grant funding decisions, all pursuant to Bureau of Justice Assistance guidelines,;

NOW THEREFORE,

I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested me by the laws and Constitution of the State of Iowa do hereby create the Iowa Drug and Violent Crime Policy Board.

The Board shall be composed of the members of the Prevention and Education Council established pursuant to section 80.1 of the Code of Iowa, and, a sitting judge of the Iowa court system to be nominated by the Judicial Department of Iowa and appointed by the Governor and the Chairpersons of the Law

Enforcement Coordinating Committees from United State Attorney Offices in Iowa, who shall sit as non-voting members relative to grant funding decisions.

The Alliance is created to be responsible for development of the Iowa application for Drug Control and System Improvement Grant Program funds and to serve as a forum for communication and a structure for coordination with respect thereto.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines, Iowa this 1st day of November in the year of our Lord on thousand nine hundred and ninety.



Terry E. Branstad
Governor

ATTEST:
Elaine Baxter
Secretary of State

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