IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapter 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

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"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

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 Iowa Administrative Bulletin.

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SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1992, to June 30, 1993	$221.00 plus $11.05 sales tax
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Third quarter	January 1, 1993, to June 30, 1993	$110.50 plus $5.53 sales tax
Fourth quarter	April 1, 1993, to June 30, 1993	$ 55.25 plus $2.76 sales tax

Single copies may be purchased for $15.00 plus $0.75 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

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Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515)281-8796

Schedule for Rule Making

1992

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
Dec. 6 '91	Dec. 25 '91	Jan. 14	Jan. 29	Feb. 19	Mar. 25	June 22
Dec. 20 '91	Jan. 8	Jan. 28	Feb. 12	Mar. 4	Apr. 8	July 6
Jan. 3	Jan. 22	Feb. 11	Feb. 26	Mar. 18	Apr. 22	July 20
Jan. 17	Feb. 5	Feb. 25	Mar. 11	Apr. 1	May 6	Aug. 3
Jan. 31	Feb. 19	Mar. 10	Mar. 25	Apr. 15	May 20	Aug. 17
Feb. 14	Mar. 4	Mar. 24	Apr. 8	Apr. 29	June 3	Aug. 31
Feb. 28	Mar. 18	Apr. 7	Apr. 22	May 13	June 17	Sep. 14
Mar. 13	Apr. 1	Apr. 21	May 6	May 27	July 1	Sep. 28
Mar. 27	Apr. 15	May 5	May 20	June 10	July 15	Oct. 12
Apr. 10	Apr. 29	May 19	June 3	June 24	July 29	Oct. 26
Apr. 24	May 13	June 2	June 17	July 8	Aug. 12	Nov. 9
May 8	May 27	June 16	July 1	July 22	Aug. 26	Nov. 23
May 22	June 10	June 30	July 15	Aug. 5	Sept. 9	Dec. 7
June 5	June 24	July 14	July 29	Aug. 19	Sep. 23	Dec. 21
June 19	July 8	July 28	Aug. 12	Sep. 2	Oct. 7	Jan. 4 '93
July 3	July 22	Aug. 11	Aug. 26	Sep. 16	Oct. 21	Jan. 18 '93
July 17	Aug. 5	Aug. 25	Sep. 9	Sept. 30	Nov. 4	Feb. 1 '93
July 31	Aug. 19	Sep. 8	Sep. 23	Oct. 14	Nov. 18	Feb. 15 '93
Aug. 14	Sep. 2	Sep. 22	Oct. 7	Oct. 28	Dec. 2	Mar. 1 '93
Aug. 28	Sep. 16	Oct. 6	Oct. 21	Nov. 11	Dec. 16	Mar. 15 '93
Sep. 11	Sept. 30	Oct. 20	Nov. 4	Nov. 25	Dec. 30	Mar. 29 '93
Sep. 25	Oct. 14	Nov. 3	Nov. 18	Dec. 9	Jan. 13 '93	Apr. 12 '93
Oct. 9	Oct. 28	Nov. 17	Dec. 2	Dec. 23	Jan. 27 '93	Apr. 26 '93
Oct. 23	Nov. 11	Dec. 1	Dec. 16	Jan. 6 '93	Feb. 10 '93	May 10 '93
Nov. 6	Nov. 25	Dec. 15	Dec. 30	Jan. 20 '93	Feb. 24 '93	May 24 '93
Nov. 20	Dec. 9	Dec. 29	Jan. 13 '93	Feb. 3 '93	Mar. 10 '93	June 7 '93
Dec. 4	Dec. 23	Jan. 12 '93	Jan. 27 '93	Feb. 17 '93	Mar. 24 '93	June 21 '93
Dec. 18	Jan. 6 '93	Jan. 26 '93	Feb. 10 '93	Mar. 3 '93	Apr. 7 '93	July 5 '93

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.

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
7	**Friday, September 11, 1992**	**September 30, 1992**
8	**Friday, September 25, 1992**	**October 14, 1992**
9	**Friday, October 9, 1992**	**October 28, 1992**

PLEASE NOTE:
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 following rules, in addition to the Agenda published in the August 19, 1992, Iowa Administrative Bulletin, will be reviewed by the Administrative Rules Review Committee at its regular, statutory meeting on Tuesday, September 8, 1992, 10 a.m. and Wednesday, September 9, 1992, 8:30 a.m. in Senate Committee Room 22, State Capitol.

Note: See also Agenda published in the Iowa Administrative Bulletin dated 8/19/92.

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Securities activities — state-chartered banks, 2.15, 2.15(1)"a," "g," and "h," 2.15(4)"d" and "e," 2.15(6), 2.15(6)"c" and "d," Filed **ARC 3312A** 9/2/92

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Water quality standards — certification for regional permits, 61.2(2)"h," Notice **ARC 3324A** 9/2/92

HISTORICAL DIVISION[223]
CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Terrace Hill endowment for the musical arts — first, second and third place scholarship awards, 57.2, Filed Emergency **ARC 3309A** 9/2/92

HUMAN SERVICES DEPARTMENT[441]

Medicaid policy and rates, including immunization replacement program, Medically Needy certification period, phototherapy bilirubin lights, Iowa Veterans Home per diem, 54.3(15), 77.37(26)"d," 78.1(2)"e," 78.1(3), 78.10(2)"b," 78.22, 78.23, 78.41(1)"c," 79.1(2), 79.1(7), 79.1(9)"d," 81.6(16)"a," "c," and "e," 82.5(11)"e"(4), 82.5(16)"c" and "g," 83.67, 86.1, 86.17, 86.18, Filed **ARC 3301A** 9/2/92

Enhanced services for high-risk pregnancies, 78.1(22), 78.21, 78.23, 78.25, 78.25(2), 78.25(3), 78.29(2), 78.30, 78.39, Notice **ARC 3299A**, also Filed Emergency **ARC 3300A** 9/2/92

Child support recovery program, 95.1, 95.11, 96.2, 96.13, 96.15(5), 98.3(2)"a," Filed **ARC 3296A** 9/2/92

Licensing and regulation of foster family homes, 113.18(2), Filed **ARC 3325A** 9/2/92

Policy, rates, and income guidelines for social services, 130.3(1)"d"(2), 130.3(1)"e," 130.3(3)"z," 150.1, 150.2(3), 150.2(4), 150.3(5)"a"(8), 150.3(5)"p," 150.3(5)"r," 150.3(5)"u"(3), 150.6, ch 153 title, division I preamble, 153.1, 153.2(4), 153.3(1), 153.3(3), 153.4(2), 153.4(3), 153.5(2) to 153.5(6), 153.6, 153.11 to 153.59, ch 157, rescind ch 132, Filed **ARC 3326A** 9/2/92

Foster care, 156.6(1), 156.9(2), 156.12(1), 156.20, 202.1, 202.2(5), 202.2(5)"a," 202.3(1) to 202.3(4), 202.6(3), 202.6(5), 202.7, 202.8(1), 202.8(2), 202.8(5), 202.9(1)"a"(9) and "b," 202.9(2)"b," 202.9(3), 202.13(3), 202.16(1)"f," 202.17, Filed **ARC 3306A** 9/2/92

Family development and self-sufficiency program (FaDSS), 165.3(3), 165.3(4), Filed **ARC 3298A** 9/2/92

Subsidized adoptions, 201.5(9), Filed **ARC 3297A** 9/2/92

INDUSTRIAL SERVICES DIVISION[343]
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Contested cases — expedited proceeding, payroll tax tables, 4.8(2)"i," 4.44, 8.8, Filed **ARC 3295A** 9/2/92

Contested cases — informal dispute resolution procedures, 4.28(5), 4.33, 4.40(3) to 4.40(5), 4.45 to 4.47, 8.2, 10.1(3) to 10.1(8), 10.3, Filed **ARC 3294A** 9/2/92

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

OSHA rules for general industry — 4,4' methylenedianiline (MDA), 10.20, Notice **ARC 3313A** 9/2/92

OSHA rules for general industry — asbestos, tremolite, anthophyllite, actinolite, and formaldehyde, 10.20, Filed Emergency After Notice **ARC 3315A** 9/2/92

OSHA rules for construction safety and health — 4,4' methylenedianiline (MDA), 26.1, Notice **ARC 3321A** 9/2/92

OSHA rules for construction safety and health — asbestos, tremolite, anthophyllite, and actinolite, 26.1, Filed Emergency After Notice **ARC 3314A** 9/2/92

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Lands and waters conservation fund program, 27.2(1), 27.5(6), 27.6(3), 27.7, 27.10, Filed **ARC 3310A** 9/2/92

Wildlife refuges, 52.1(1), 52.1(2)"b," Filed **ARC 3323A** 9/2/92

State parks and recreation areas — increase in sales tax rate for camping fees, 61.3(1), Filed Emergency **ARC 3287A** 9/2/92

Fishing regulations — sport fishing, 81.2(2), 81.2(5), Notice **ARC 3320A** 9/2/92

NATURAL RESOURCE COMMISSION[571](*cont'd*)

Aquaculture, ch 89, Notice **ARC 3319A** 9/2/92
Scientific collecting and wildlife rehabilitation — educational project permits, 111.1, 111.4, 111.7 to 111.9, Filed **ARC 3311A** 9/2/92

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

Eligibility for insurance, ch 10 title, 10.1(1)"d," 10.1(2)"e," 10.2(4), 10.3(1), 10.3(3), 10.3(5), Filed **ARC 3328A** 9/2/92
Guaranteed loan program, 12.1(2), Filed **ARC 3329A** 9/2/92
Community remediation, ch 13, Filed **ARC 3327A** 9/2/92

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Wholesale drug license — renewal and fees, 3.5, Notice **ARC 3289A** 9/2/92
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Discipline, 9.1(4)"q," 9.27, Notice **ARC 3291A** 9/2/92
Controlled substances, 10.10(6), 10.11, Notice **ARC 3292A** 9/2/92
Controlled substances — methcathinone, 10.20(1), Filed Emergency **ARC 3288A** 9/2/92
Wholesale drug licenses, 17.2(3), Notice **ARC 3293A** 9/2/92

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Hearing aid dealers, 120.1(4), 120.3, 120.6(4), 120.212(11)"d," Notice **ARC 3302A** 9/2/92
Psychology examiners, 240.10(1), Notice **ARC 3303A** 9/2/92
Speech pathology and audiology examiners — investigative and informal settlement procedures, 301.103, 301.110, Filed **ARC 3304A** 9/2/92

PUBLIC HEALTH DEPARTMENT[641]

Radiation — general provisions, amendments to 38.9 and Appendix A, Filed Emergency **ARC 3305A** 9/2/92

REVENUE AND FINANCE DEPARTMENT[701]

Inheritance, estate, and generation skipping transfer tax returns — confidentiality, 5.13(2)"cc" and "dd," 86.1(3), 86.1(4), 87.2, 88.2, Notice **ARC 3317A** 9/2/92
Prescription drugs and medical equipment — exemptions from sales and use tax, 20.7, 20.7(1), 20.8, 20.9(3)"a" and "e," 20.10, 20.11, Notice **ARC 3316A** 9/2/92
Individual income tax and withholding tax, 39.1(1), 39.1(2)"b," 39.1(3)"b," 39.1(7), 39.3(5), 39.5(8) to 39.5(11), 39.9, 40.43, 43.3(13), 46.1(1)"d"(1), 46.1(1)"e"(1), 46.1(1)"f"(1), 46.1(1)"g," Notice **ARC 3318A** 9/2/92
Fiduciary income tax, 89.8(1), Notice **ARC 3322A** 9/2/92

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Reorganization of functions, 1.5, 1.5(4), 1.5(6), 1.5(7), Filed Emergency **ARC 3307A** 9/2/92
Statement of financial accounting standard no. 106, 16.9, Notice **ARC 3308A** 9/2/92

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
CREDIT UNION DIVISION[189]		
Maintenance of allowance for loan losses account, 18.4(5), 18.5 IAB 8/19/92 **ARC 3273A**	Credit Union Division 200 E. Grand Ave., Suite 370 Des Moines, Iowa	September 8, 1992 9 a.m.
Mailed ballot voting procedure, ch 19 IAB 8/19/92 **ARC 3274A**	Credit Union Division 200 E. Grand Ave., Suite 370 Des Moines, Iowa	September 8, 1992 9 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Water quality standards, 61.2(2)"h" IAB 9/2/92 **ARC 3324A**	Conference Room (East Half) Fifth Floor West Wallace State Office Bldg. Des Moines, Iowa	September 24, 1992 1 p.m.
HUMAN SERVICES DEPARTMENT[441]		
Administration of food stamp program, amendments to ch 65, IAB 8/19/92 **ARC 3282A**	Conference Room — 6th Floor 221 4th Ave. S.E. Cedar Rapids, Iowa	September 9, 1992 10 a.m.
	417 E. Kanesville Blvd. Lower Level Council Bluffs, Iowa	September 9, 1992 10 a.m.
	Bicentennial Bldg. 428 Western Davenport, Iowa	September 9, 1992 10 a.m.
	City View Plaza, Conference Room 100 1200 University Des Moines, Iowa	September 10, 1992 10 a.m.
	Mohawk Square 22 North Georgia Ave. Mason City, Iowa	September 9, 1992 10 a.m.
	Conference Room 120 East Main Ottumwa, Iowa	September 9, 1992 1 p.m.
	Suite 624 507 7th St. Sioux City, Iowa	September 10, 1992 9 a.m.
	Pine Crest Bldg., Room 220 1407 Independence Ave. Waterloo, Iowa	September 9, 1992 10 a.m.

LABOR SERVICES DIVISION[347]		
OSHA rules for general industry, 10.20 IAB 9/2/92 **ARC 3313A**	Division of Labor Services 1000 E. Grand Ave. Des Moines, Iowa	September 24, 1992 9 a.m. (If requested)
OSHA rules for construction safety, 26.1 IAB 9/2/92 **ARC 3321A**	Division of Labor Services 1000 E. Grand Ave. Des Moines, Iowa	September 24, 1992 9 a.m. (If requested)
LIVESTOCK HEALTH ADVISORY COUNCIL[521]		
Recommendations, ch 1 IAB 8/5/92 **ARC 3206A**	Dean's Conference Room College of Veterinary Medicine Iowa State University Ames, Iowa	September 21, 1992 10 a.m.
NATURAL RESOURCE COMMISSION[571]		
Fishing regulations, 81.2(2), 81.2(5) IAB 9/2/92 **ARC 3320A**	Conference Room — 5th Floor Wallace State Office Bldg. Des Moines, Iowa	October 6, 1992 10 a.m.
Aquaculture, ch 89 IAB 9/2/92 **ARC 3319A**	Conference Room — 5th Floor Wallace State Office Bldg. Des Moines, Iowa	October 6, 1992 1 p.m.
STATE PUBLIC DEFENDER[493]		
Administration; petitions for rule making; declaratory rulings; public records and fair information practices; contracts for indigent defense services, chs 1, 2, 3, 4, 10 IAB 8/19/92 **ARC 3259A**	Linn County Courthouse 3rd Avenue Bridge Cedar Rapids, Iowa	September 17, 1992 1:30 p.m.
	Wallace State Office Bldg. Conference Room — 2nd Floor Des Moines, Iowa	September 14, 1992 9 a.m.
	Dubuque County Courthouse North Courtroom 720 Central Ave. Dubuque, Iowa	September 16, 1992 10 a.m.
	Western Iowa Tech Community College Bldg. A, Room 100 4647 Stone Ave. Sioux City, Iowa	September 15, 1992 10 a.m.
	Pine Crest Bldg., Room 201 1407 Independence Ave. Waterloo, Iowa	September 17, 1992 9 a.m.
TRANSPORTATION DEPARTMENT[761]		
Recreational trails, amendments to ch 165 IAB 8/5/92 **ARC 3210A**	Commission Room 800 Lincoln Way Ames, Iowa	September 3, 1992 10 a.m. (If requested)
UTILITIES DIVISION[199]		
Accounting, bill form, and cost studies for AOS companies and other interexchange utilities, 16.5(2), 22.4(3)"c," 22.12(1), 22.13(1), 22.19(6) IAB 8/5/92 **ARC 3207A**	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	September 9, 1992 10:30 a.m.

UTILITIES DIVISION[199](*cont'd*)

Statement of financial accounting standard no. 106, 16.9 IAB 9/2/92 **ARC 3308A**	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	October 26, 1992 10 a.m.
Customer billing practices, 22.1(3), 22.4(2), 22.4(3) IAB 7/22/92 **ARC 3178A**	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	September 9, 1992 10 a.m.
Local exchange utility certificates, 22.3(8), 22.4(1), 22.20 IAB 7/22/92 **ARC 3181A** **(See also ARC 3179A)**	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	September 9, 1992 9:30 a.m.

CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
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).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

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 small capitals 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]

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

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Iowa Advance Funding Authority[515]

Product Development Corporation[636]

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NOTICE—AGRICULTURAL CREDIT CORPORATION MAXIMUM LOAN RATE

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

November 1, 1989 – November 30, 1989	10.00%
December 1, 1989 – December 31, 1989	9.75%
January 1, 1990 – January 31, 1990	9.65%
February 1, 1990 – February 28, 1990	9.75%
March 1, 1990 – March 31, 1990	9.85%
April 1, 1990 – April 30, 1990	9.85%
May 1, 1990 – May 31, 1990	9.85%
June 1, 1990 – June 30, 1990	10.00%
July 1, 1990 – July 31, 1990	9.75%
August 1, 1990 – August 31, 1990	9.80%
September 1, 1990 – September 30, 1990	9.55%
October 1, 1990 – October 31, 1990	9.55%
November 1, 1990 – November 30, 1990	9.50%
December 1, 1990 – December 31, 1990	9.05%
January 1, 1991 – January 31, 1991	9.15%
February 1, 1991 – February 28, 1991	8.70%
March 1, 1991 – March 31, 1991	8.20%
April 1, 1991 – April 30, 1991	8.25%
May 1, 1991 – May 31, 1991	8.00%
June 1, 1991 – June 30, 1991	7.75%
July 1, 1991 – July 31, 1991	7.75%
August 1, 1991 – August 31, 1991	7.60%
September 1, 1991 – September 30, 1991	7.70%
October 1, 1991 – October 31, 1991	7.55%
November 1, 1991 – November 30, 1991	7.25%
December 1, 1991 – December 31, 1991	6.95%
January 1, 1992 – January 31, 1992	6.65%
February 1, 1992 – February 29, 1992	6.05%
March 1, 1992 – March 31, 1992	6.00%
April 1, 1992 – April 30, 1992	6.10%
May 1, 1992 – May 31, 1992	6.20%
June 1, 1992 – June 30, 1992	5.85%
July 1, 1992 – July 31, 1992	5.70%
August 1, 1992 – August 31, 1992	5.35%

ARC 3324A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission for the Department of Natural Resources gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The amendment provides certification pursuant to section 401 of the federal Clean Water Act (33 U.S.C. section 1341) for three Regional Section 404 permits proposed by the Rock Island District of the United States Army Corps of Engineers. Background information and the specific amendments are presented below.

Any interested person may file written comments on the amendment no later than September 24, 1992. These written comments should be directed to Ralph Turkle, Department of Natural Resources, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, FAX (515)281-8895. Questions or oral comments may be made to Mr. Turkle no later than September 24, 1992, at (515)281-7025.

Persons are invited to present written or oral comments at a public hearing on the amendments which will be held on September 24, 1992, 1 p.m., 5th Floor West Conference Room (East half), Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa.

BACKGROUND

The federal Clean Water Act and Iowa Code chapter 455B, Division III, Part 1, prohibit or regulate the discharge of pollutants to waters of the United States or waters of the state. For example, the National Pollutant Discharge Elimination System (NPDES) permit program regulates point source discharges of pollutants. The Section 404 Permit program is a related program administered by the U. S. Army Corps of Engineers to regulate discharges of dredged or fill material into waters of the United States. When an individual applies to the Corps for a 404 permit for regulated activities within Iowa, as part of the process the applicant must obtain a certification from the Department that the activity complies with Iowa's water quality standards. This certification is referred to as "401 certification" since it is required by Section 401 of the Clean Water Act. The Commission recently provided Section 401 water quality certification for 26 Corps Nationwide Section 404 permits.

Nationwide permits are issued for a period of five years and provide Corps authorization to allow activities that meet specified conditions to continue with a minimum of governmental interference. The nationwide permits authorize certain structures, discharges, or work affecting navigable waters of the United States throughout the nation. The three Regional Permits are similar to Nationwide Permits in that they will, if certified, provide blanket Section 404 permit authority for various types of construction activities. Regional Permits differ in that they are limited in geographical coverage and the Regional Permits would only cover activities within Iowa. Regional Permits are also issued for five-year periods.

PROPOSED ACTION

The Department concurs that the three Regional Permits contain conditions and procedures that ensure Iowa water quality standards will not be violated. The intended action is to certify the three Regional Permits. The following lists the applicant, project description and project location for each Regional Permit.

Renewal of Regional Permit 2 for Bank Stabilization on the Des Moines River in the State of Iowa as applied for by the U. S. Army Corps of Engineers. The renewal of the existing Regional Permit will authorize bank stabilization projects located in and along the Des Moines River except for:

1. Lacey Keosauqua State Park along the right bank of the Des Moines River from the Highway 1 bridge at Keosauqua to the bridge at Pittsburg, Iowa, Des Moines River mile 51.3 - 55.1;

2. Ottumwa, Iowa, from the Highway 34 bridge to C. M. St. P. & P.R.R. County Bridge, Des Moines River mile 93.1 - 96.8;

3. Red Rock Dam to Highway 30, Des Moines River mile 142.9 - 253.2; and

4. Shimek State Forest, Holst State Forest, Barley Memorial State Park, Woodmans Hollow State Park, and Dolliver State Park.

Project plans for bank stabilization measures authorized under Regional Permit 2 must conform to general and special conditions regarding types of materials, dimensions, prior notification procedures, etc., and must be designed to result in only minimal adverse cumulative effects on the environment.

Renewal of Regional Permit 12 for Boat Launching Facilities in the State of Iowa as applied for by the U. S. Army Corps of Engineers. This renewal of the existing Regional Permit will authorize the placement of fill below ordinary high water for boat launching facilities in the State of Iowa. Project plans for boat launching facilities authorized under Regional Permit 12 must conform to general and special conditions regarding types of materials, dimensions, prior notification procedures, etc., and must be designed to result in only minimal disturbance of the bank and the surrounding area.

Regional Permit 20 for Work Performed under PL 534 and PL 566 in Applicable Waters in the State of Iowa as applied for by the United States Department of Agriculture, Soil Conservation Service. This Regional Permit will authorize activities, such as dams, terraces, waterways and various conservation measures, which are performed periodically under PL 534 and PL 566. PL 534 is a specific authorization for seven counties in the Little Sioux River drainage basin for grade stabilization and some flood prevention activities. PL 566 authorizes small watershed programs throughout Iowa. This regional permit would apply to projects planned in compliance with Principles and Guidelines and National Environmental Policy Act requirements and after review by the various state and federal agencies. Processing the work under the Regional Permit would reduce unnecessary duplication and expedite the review time.

Copies of the Regional Permits are on file with the Administrative Rules Coordinator.

This Notice of Intended Action does not propose to modify existing, substantive water quality standards, but is intended to define the applicability of existing standards to the Corps Regional Permits.

This rule is intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendment is proposed.

Amend subrule **61.2(2)**, paragraph **"h,"** as follows:

h. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. United States Army Corps of Engineers (Corps) nationwide permits, 33 CFR 330, numbers 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, 26, 27, 32, 33, 34, 36, 37, 38, and 40, as promulgated November 22, 1991, are certified pursuant to Section 401 of the Clean Water Act. *Regional Permit numbers 2, 12, and 20 of the Rock Island District of the Corps are also certified.* No specific Corps permit or 401 certification is required for activities covered by these permits unless required by the nationwide permit or the Corps, and the activities are allowed subject to the terms of the nationwide *and Regional* Permits.

ARC 3299A

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 and 1992 Iowa Acts, Senate File 2393, sections 413 and 421, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

These amendments redefine and establish policy governing enhanced services for high-risk pregnancies.

The substance of these amendments was Adopted and Filed Emergency and is published herein as **ARC 3300A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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 September 23, 1992.

These amendments are intended to implement Iowa Code section 249A.4 and 1992 Iowa Acts, Senate File 2393, section 413.

ARC 3313A

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 10, "General Industry Safety and Health Rules," Iowa Administrative Code.

The amendment relates to occupational exposure to 4,4' methylenedianiline (MDA).

If requested by September 22, 1992, a public hearing will be held on September 24, 1992, 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 amendment. Written data or arguments to be considered in adoption may be submitted by interested persons no later than September 24, 1992, 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. This amendment will not necessitate additional annual expenditures exceeding $100,000 by any political subdivision or agency or any contractor providing services to political subdivisions or agencies.

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 September 23, 1992, 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.

This amendment is intended to implement Iowa Code section 88.5.

The following amendment is proposed.

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

57 Fed. Reg. 35666 (August 10, 1992)

ARC 3321A

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 relates to occupational exposure to 4,4' methylenedianiline (MDA).

If requested by September 22, 1992, a public hearing will be held on September 24, 1992, 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 amendment. Written data or arguments to be considered in adoption may be submitted by interested persons no later than September 24, 1992, 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. This amendment will not necessitate additional annual expenditures exceeding $100,000 by any political subdivision or agency or any contractor providing services to political subdivisions or agencies.

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 September 23, 1992, 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.

This amendment is intended to implement Iowa Code section 88.5.

The following amendment is proposed.

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

57 Fed. Reg. 35681 (August 10, 1992)

ARC 3320A

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 Supplement section 455A.5(6) the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 81, "Fishing Regulations," Iowa Administrative Code.

The proposed amendments would make various modifications to Chapter 81 which establishes season dates, territories, daily catch limits, possession limits and length limits for sport fishing.

Any interested person may make written suggestions or comments on these proposed amendments prior to October 7, 1992. Such written materials should be directed to Marion Conover, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, FAX (515)281-6794. Persons who wish to convey their views orally should contact the Bureau of

Fisheries at (515)281-5208 or at the fisheries offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on October 6, 1992, at 10 a.m. in the Conference Room on the Fifth Floor of the Wallace State Office Building, at which time persons may present their views 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 amendments.

These amendments are intended to implement Iowa Code sections 109.38, 109.39, 109.67 and 109.76.

The following amendments are proposed.

ITEM 1. Amend subrule **81.2(2)** by adding a third item to the numbered listing as follows:

3. Cedar River, Mitchell County, extending downstream from below the Otranto Dam as posted to the bridge on county road T26 south of St. Ansgar.

ITEM 2. Amend subrule 81.2(5) as follows:

81.2(5) Special trout regulations. A 14-inch minimum length limit shall apply on brown trout in Spring Branch Creek, Delaware County, from the spring source to county highway D5X as posted, and in portions of Bloody Run Creek, Clayton County, where posted. Fishing in the posted area of Bloody Run Creek, Spring Branch Creek and Hewett and Ensign Creeks (Ensign Hollow) shall be by artificial lure only. *Artificial lure means lures that do not contain or have applied to them any natural or man-made substances designed to attract fish by the sense of taste or smell.* All trout caught from the posted portion of Hewett and Ensign Creeks (Ensign Hollow), Clayton County, must be immediately released alive.

ARC 3319A

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 Supplement section 455A.5(6)"a," the Natural Resource Commission hereby gives Notice of Intended Action to create a new Chapter 89, "Aquaculture," Iowa Administrative Code.

These rules establish lists of approved aquaculture species and diseases detrimental to the state's fishery resources. Procedures for aquaculture units to obtain fish importation permits are also established.

Any interested person may make written suggestions or comments on these proposed rules prior to October 7, 1992. Such written materials should be directed to Marion Conover, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, FAX(515)281-6794. Persons who wish to convey their views orally should contact the Bureau of Fisheries at (515)281-5208 or at the fisheries offices on the fourth floor of the Wallace State Office Building.

Also there will be a public hearing on October 6, 1992, at 1 p.m. in the Fifth Floor Conference Room of the Wallace State Office Building at which time persons may present their views 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 rules.

These rules are intended to implement 1992 Iowa Acts, House File 2334, sections 4 and 5.

CHAPTER 89
AQUACULTURE

571—89.1(109) Approved aquaculture species. The following approved aquaculture species may be propagated and sold:

FISH

American Eel	Anguilla rostrata
Banded Darter	Etheostoma zonale
Banded Killifish	Fundulus diaphanus
Bigmouth Buffalo	Ictiobus cyprinellus
Bigmouth Shiner	Notropis dorsalis
Black Buffalo	Ictiobus niger
Black Bullhead	Ictalurus melas
Black Crappie	Pomoxis nigromaculatus
Blackchin Shiner	Notropis heterodon
Blacknose Dace	Rhinicthys atratulus
Blackside Darter	Percina maculata
Blackstripe Topminnow	Fundulus notatus
Blue Catfish	Ictalurus furcatus
Blue Sucker	Cycleptus elongus
Bluegill & Hybrids	Lepomis macrochirus
Bluntnose Minnow	Pimephales notatus
Bowfin	Amia calva
Brassy Minnow	Hybognathus hankinsoni
Brook Silverside	Labidesthes sicculus
Brook Stickleback	Culaea inconstans
Brook Trout	Salvelinus fontinalis
Brown Bullhead	Ictalurus nebulosus
Brown Trout	Salmo trutta
Bullhead Minnow	Pimephales vigilax
Central Mudminnow	Umbra limi
Central Stoneroller	Campostoma anomalum
Channel Catfish	Ictalurus punctatus
Common Carp	Cyprinus carpio
Common Shiner	Notropis cornutus
Creek Chub	Semotilus atromaculatus
Crystal Darter	Ammocrypta asprella
Emerald Shiner	Notropis atherinoides
Fantail Darter	Etheostoma flabellare
Fathead Minnow & Hybrids	Pimephales promelas
Flathead Catfish	Pylodictus olivaris
Flathead Chub	Hybopsis gracilis
Freshwater Drum	Aplodinotus grunniens
Ghost Shiner	Notropis buchanani
Gilt Darter	Percina evides
Gizzard Shad	Dorosoma cepedianum
Golden Redhorse	Moxostoma erythurum
Golden Shiner	Notemigonus crysoleucas
Goldeye	Hiodon alosoides
Goldfish	Carassius auratus
Gravel Chub	Hybopsis x-punctata

Greater Redhorse	Moxostoma valenciennesi
Green Sunfish	Lepomis cyanellus
Highfin Carpsucker	Carpiodes velifer
Horneyhead Chub	Nocomis biguttatus
Iowa Darter	Etheostoma exile
Ironcolor Shiner	Notropis chalybaeus
Johnny Darter	Etheostoma nigrum
Lake Chub	Couesius plumbeus
Largemouth Bass	Micropterus salmoides
Largescale Stoneroller	Campostoma oligolepis
Longear Sunfish	Lepomis megalotis
Longnose Dace	Rhinichthys cataractae
Longnose Gar	Lepisosteus osseus
Mimic Shiner	Notropis volucellus
Mississippi Silvery Minnow	Hybognathus nuchalis
Mooneye	Hiodon tergisus
Mosquito Fish	Gambusia affinis
Mottled Sculpin	Cottus bairdi
Mud Darter	Etheostoma asprigene
Muskellunge & Hybrids	Esox masquinongy
Northern Hog Sucker	Hypentelium nigricans
Northern Logperch	Percina caprodes
Northern Pike	Esox lucius
Northern Rock Bass	Ambloplites rupestris
Orangespotted Sunfish	Lepomis humilus
Ozark Minnow	Notropis nubilus
Pallid Shiner	Notropis amnis
Pirate Perch	Aphredoderus sayanus
Plains Minnow	Hybognathus placitus
Plains Topminnow	Fundulus sciadicus
Pugnose Minnow	Notropis emiliae
Pumpkinseed	Lepomis gibbosus
Quillback Carpsucker	Carpiodes cyprinus
Rainbow Darter	Etheostoma caeruleum
Rainbow Smelt	Osmerus mordax
Rainbow Trout	Oncorhynchus mykiss
Red Shiner	Notropis lutrensis
Redear Sunfish & Hybrids	Lepomis microlophus
Redfin Shiner	Notropis umbratilis
Redside Dace	Clinostomus elongatus
River Carpsucker	Carpiodes carpio
River Darter	Percina shumardi
River Redhorse	Moxostoma carinatum
River Shiner	Notropis blennius
Rosyface Shiner	Notropis rubellus
Sand Shiner	Notropis stramineus
Sauger & Hybrids	Stizostedion canadense
Shorthead Redhorse	Moxostoma macrolepidotum
Shortnose Gar	Lepisoteus platostomus
Shovelnose Sturgeon	Scaphirhynchus platorynchus
Sicklefin Chub	Hybopsis meeki
Silver Chub	Hybopsis storeriana
Silver Lamprey	Ichthyomyzon unicuspis
Silver Redhorse	Moxostoma anisurum
Silverband Shiner	Notropis shumardi
Skipjack Herring	Alosa chrysochloris
Slender Madtom	Noturus exilis
Slenderhead Darter	Percina phoxocephala
Slimy Sculpin	Cottus cognatus
Smallmouth Bass	Micropterus dolomieui
Smallmouth Buffalo	Ictiobus bubalus
Southern Redbelly Dace	Phoxinus erythrogaster
Speckled Chub	Hybopsis aestivalis
Spotfin Shiner	Notropis spilopterus
Spottail Shiner	Notropis hudsonius
Spotted Bass	Micropterus punctucatus
Spotted Sucker	Minytrema melanops
Starhead Topminnow	Fundulus notti
Stone Cat	Noturus flavus
Striped Bass & Hybrids	Morone saxatilis
Sturgeon Chub	Hybopsis gelida
Suckermouth Minnow	Phenacobius mirabilis
Tadpole Madtom	Noturus gyrinus
Topeka Shiner	Notropis topeka
Trout Perch	Percopsis omiscomaycus
Walleye & Hybrids	Stizostedion vitreum
Warmouth	Lepomis gulosus
Western Silvery Minnow	Hybognathus argyritis
White Amur	Ctenopharyngodon idella
White Bass & Hybrids	Morone chrysops
White Crappie	Pomoxis annularis
White Sucker	Catostomus commersoni
Yellow Bass	Morone mississippiensis
Yellow Bullhead	Ictalurus natalis
Yellow Perch	Perca flavescens

AMPHIBIANS

Bullfrog	Rana catesbeiana
Leopard Frog	Rana pipiens

REPTILES

Common Snapping Turtle	Chelydra serpentina
Painted Turtle	Chrysemys picta
Smooth Softshell	Trionyx muticus

571—89.2(109) Importation permit. An importation permit is required to receive, propagate or sell in the state any aquaculture species not listed in subrule 89.1(1). In addition, aquaculture units shall not import live fish, viable eggs, or semen of any species of the salmonid family (trout, salmon or char) and ictalurid family (catfishes and bullheads), unless the owner or operator possesses a fish importation permit. Importation permits may be applied for on forms provided by the department.

571—89.3(109) Disease-free certification. Importation permits will not be issued for live fish, viable eggs, or semen of any species of the salmonid family (trout, salmon or char) unless the owner or operator of an aquaculture unit provides a statement certifying the fish, eggs or semen to be free of the following diseases:

89.3(1) Diseases detrimental to the state's fishery resources.

Viral Hemmorhagic Septicemia (VHS)
Infectious Pancreatic Necrosis (IPN)
Whirling Disease (Myxosoma cerebralis)
Infectious Hematopoietic Necrosis (IHN)
Ceratomyxosis (Ceratomyxa shasta)
Bacterial Kidney Disease (R. salmoninarium)
Proliferative Kidney Disease (PKD)
Enteric Redmouth (Yersinia ruckeri)
Vibriosis (vibrio sp.)

89.3(2) Reportable diseases. Reportable diseases are detrimental to individual aquaculture units and may be detrimental to wild fish populations. Reportable diseases are Enteric Septicemia of Catfish (Edwardsiella ictaluri) (ESC), Channel Catfish Virus Disease (CCVD) and Furunculosis (Aeromonas salmonicida). Disease certification statements are required for the diseases prior to importation of any live fish, viable eggs, or semen of any

species of the Ictalurid (catfishes and bullheads) and Salmonid (trout, salmon and char) families. Importation permits will be considered on a case-by-case basis for fish with reportable diseases.

89.3(3) Certified pathologists for inspection. All disease certification statements must be issued by approved certified pathologists. A list of approved certified pathologists will be made available to the owner or operator of the aquaculture unit requesting a fish importation permit.

These rules are intended to implement 1992 Iowa Acts, House File 2334, sections 4 and 5.

ARC 3289A

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76 and Iowa Code Supplement section 155A.17, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 3, "License Fees, Renewal Dates, Fees for Duplicate Licenses and Certification of Grades," Iowa Administrative Code.

The amendment was approved at the July 29, 1992, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendment increases fees and late payment penalties for drug wholesalers commensurate with the anticipated increases in Board expenditures regarding the inspection and regulation of drug wholesalers in Iowa pursuant to directives contained in the Prescription Drug Marketing Act of 1987.

Any interested person may submit data, views, and arguments, orally or in writing, on or before October 1, 1992, to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

This amendment is intended to implement Iowa Code Supplement section 155A.17.

The following amendment is proposed.

Amend rule 657—3.5(155A) as follows:

657—3.5(155A) Wholesale drug license—renewal and fees. A wholesale drug license shall be renewed no later than January 1 of each year. The fee for a new or renewal license shall be ~~$100~~ *$200*.

Failure to renew the license before February 1 following expiration shall require a renewal fee of ~~$200~~ *$300*. Failure to renew the license before March 1 following expiration shall require a renewal fee of ~~$300~~ *$400*. Failure to renew the license before April 1 following expiration shall require a renewal fee of ~~$400~~ *$500*. Failure to renew the license before May 1 following expiration shall require an appearance before the board and a renewal fee of ~~$500~~ *$600*. In no event shall the fee for late renewal of a wholesale drug license exceed ~~$500~~ *$600*.

ARC 3290A

PHARMACY EXAMINERS BOARD[657]

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 147.76, 155A.11, 155A.13, 155A.35, 258A.2, and 258A.3 and Iowa Code Supplement section 155A.17, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The amendments were approved at the July 29, 1992, regular meeting of the Iowa Board of Pharmacy Examiners.

Item 1 is a correction of a misspelled word. Item 2 changes terminology to more accurately address the intent of the certificate for all types of continuing education programs. Item 3 clarifies the continuing education program topics acceptable for completion of the drug therapy course requirement. Item 4 provides options for reactivation of an Iowa license to practice pharmacy which has been inactive. Rule 8.16(155A) is rescinded and the subject of that rule is addressed more completely in new rules 8.18(155A), 8.19(155A) and 8.20(155A). These pharmaceutical care rules are adopted in response to the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508). The federal law requires pharmacists to offer patient counseling to Medicaid recipients and identifies matters that should be included in such counseling. The new rules set minimum standards for patient records, drug review, and patient counseling for all patients. New rules 8.21(155A) and 8.22(155A) identify conditions under which a pharmacist may perform venipuncture and take a patient's blood pressure. New rules 8.23(155A) and 8.24(155A) define compounding and manufacturing to more accurately identify practices requiring wholesale drug licensure in Iowa.

Any interested person may submit data, views, and arguments, orally or in writing, on or before October 1, 1992, to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

PHARMACY EXAMINERS BOARD[657](*cont'd*)

These amendments are intended to implement Iowa Code sections 155A.11, 155A.13, 155A.35, 258A.2, and 258A.3 and Iowa Code Supplement section 155A.17.

The following amendments are proposed.

ITEM 1. Amend subrule **8.7(3)**, paragraph **"a,"** introductory paragraph, as follows:

a. An approved provider will be required to make available to individual pharmacists certificates that ~~prove attendance~~ *indicate successful completion* and participation in a continuing education program.

ITEM 2. Amend subrule 8.7(4) as follows:

8.7(4) Continuing education program topics. Effective July 1, 1991, all pharmacists are required to obtain a minimum of 50 percent of their required 3.0 continuing education units (CEUs) in ACPE-approved courses dealing with drug therapy including, but not limited to, topics such as *adverse drug reactions, biotechnology, clinical monitoring and drug utilization review, disease state, drug delivery systems, drug information, drug interactions, drug product selection, drugs, medical compliance, new drugs, nuclear pharmacy, OTC* therapeutics, pharmacology, ~~and~~ pharmacokinetics, *substance abuse, and general therapeutics.*

ITEM 3. Amend subrule **8.7(7)**, paragraph **"b,"** as follows:

b. Inactive license. Failure of a pharmacist to comply with the continuing education requirements during the renewal period will result in the issuance of a renewal card marked "inactive" upon submission of renewal application and fee. *Reactivation of an inactive pharmacist license shall be accomplished by the appropriate method described below. Internship, in each instance where internship is mentioned below, will be in a pharmacy approved by the board. The pharmacist will be issued a temporary "intern" card specifying the condition of internship.*

(1) An inactive pharmacist who wishes to become active *and who has been actively practicing pharmacy during the last five years in a state which does not require continuing education shall submit proof of continued licensure in good standing in the state or states of such practice. The pharmacist shall also complete one of the following options:*

1. Take and successfully pass the Iowa Drug Law Examination.

2. ~~must complete~~ *Complete 160 hours* ~~one month~~ internship for each year the pharmacist was on inactive status *(not to exceed 1,000 hours)*, or

3. ~~obtain~~ *Obtain* one and one-half times the number of continuing education credits required under 8.7(2) for each renewal period ~~they were~~ *the pharmacist was* inactive. ~~Internship will be in a pharmacy approved by the board. The pharmacist will be issued a temporary "intern" card specifying the condition of internship.~~

(2) An inactive pharmacist who wishes to become active and who has not been actively practicing pharmacy during the past five years, and whose license has been inactive for not more than five years, shall complete one of the following options:

1. Successfully pass all components of the licensure examination as required in 657—2.10(155A),

2. Complete 160 hours internship for each year the pharmacist was on inactive status, or

3. Obtain one and one-half times the number of continuing education credits required under 8.7(2) for each renewal period the pharmacist was inactive.

(3) An inactive pharmacist who wishes to become active and who has not been actively practicing pharmacy for more than five years shall petition the board for reactivation of the license to practice pharmacy under one or more of the following options:

1. Successfully pass all components of the licensure examination as required in 657—2.10(155A);

2. Complete 160 hours internship for each year the pharmacist was on inactive status (not to exceed 1,000 hours); or

3. Obtain one and one-half times the number of continuing education credits required under 8.7(2) for each renewal period the pharmacist was inactive.

ITEM 4. Amend subrule 8.13(1) as follows:

8.13(1) Definitions. Patient med ~~pek~~ *pak.* A patient med pak is a customized patient medication package prepared for a specific noninstitutionalized patient which comprises a series of immediate containers containing two or more prescribed solid oral dosage forms, each container being labeled with the time or the appropriate period for the patient to take its contents.

ITEM 5. Rescind and reserve rule **657—8.16(155A).**

ITEM 6. Adopt the following new rules:

657—8.18(155A) Pharmaceutical care—patient records.

8.18(1) A patient record system shall be maintained by all pharmacies for patients for whom prescription drug orders are dispensed. The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing. The pharmacist shall make a reasonable effort to obtain, record, and maintain the following information:

a. Full name of the patient for whom the drug is intended;

b. Address and telephone number of the patient;

c. Patient's age or date of birth;

d. Patient's gender;

e. Significant patient information including a list of all prescription drug orders obtained by the patient at the pharmacy maintaining the patient record during the two years immediately preceding the most recent entry showing the name of the drug or device, prescription number, name and strength of the drug, the quantity and date received, and the name of the prescriber; and

f. Pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

8.18(2) The pharmacist shall make a reasonable effort to obtain from the patient or the patient's agent, and shall record, any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs, including over-the-counter drugs, or devices currently being used by the patient which may relate to prospective drug review.

8.18(3) A patient record shall be maintained for a period of not less than two years from the date of the last entry in the profile record. This record may be a hard copy or a computerized form.

8.18(4) Information in the patient medication record shall be deemed to be confidential and may be released to other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist, the board or its representative, or any other person duly authorized by law to receive such information only on written release of the patient.

657—8.19(155A) Pharmaceutical care—prospective drug review. A pharmacist shall review the patient record and each prescription drug order presented for initial dispensing or refilling for purposes of promoting therapeutic appropriateness by identifying:

1. Overutilization or underutilization;
2. Therapeutic duplication;
3. Drug-disease contraindications;
4. Drug-drug interactions;
5. Incorrect drug dosage or duration of drug treatment;
6. Drug-allergy interactions;
7. Clinical abuse/misuse.

Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber.

657—8.20(155A) Pharmaceutical care—patient counseling.

8.20(1) Upon receipt of a prescription drug order or refill request and following a review of the patient's record, a pharmacist shall counsel or offer to counsel each patient or patient's caregiver on matters which, in the pharmacist's professional judgment, will enhance or optimize drug therapy. When the patient or the patient's agent is present, counseling shall be in person. When the patient or patient's agent is not present, counseling shall be by telephone. Such discussions shall include appropriate elements of patient counseling which may include:

a. The name and description of the drug;

b. The dosage form, dose, route of administration, and duration of drug therapy;

c. Intended use of the drug and expected action;

d. Special directions and precautions for preparation, administration, and use by the patient;

e. Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

f. Techniques for self-monitoring drug therapy;

g. Proper storage;

h. Prescription refill information;

i. Action to be taken in the event of a missed dose;

j. Pharmacist comments relevant to the individual's drug therapy including any other information peculiar to the specific patient or drug.

8.20(2) Alternative forms of patient information shall be used to supplement patient counseling when appropriate. Examples include written information leaflets, pictogram labels, and video programs.

8.20(3) Patient counseling, as described above, shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.

8.20(4) A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation.

657—8.21(155A) Skin puncture for patient training. A licensed pharmacist may perform skin puncture for purposes of training patients to withdraw their blood in order to perform self-assessment tests to monitor medical conditions including, but not limited to, diabetes. This does not preclude a pharmacist from performing venipuncture as authorized by institutional or clinic privileges.

657—8.22(155A) Blood pressure measurement. A licensed pharmacist may take a person's blood pressure and may inform the person of the results, render an opinion as to whether the reading is within a high, low, or normal range, and may advise the person to consult a physician of the person's choice.

657—8.23(155A) Compounding. "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

1. As a result of a practitioner's prescription drug order or initiative based on the prescriber/patient/pharmacist relationship in the course of professional practice, or
2. For the purpose of, or as an incident to, research, teaching, chemical analysis, and not for sale or dispensing.

Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

657—8.24(155A)Manufacturing."Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container. Manufacturing also includes the preparation, promotion, and marketing of commercially available products from bulk compounds for resale by pharmacists, practitioners, or other persons.

ARC 3291A

PHARMACY EXAMINERS BOARD[657]

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 147.76, 258A.4, and 258A.5, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 9, "Discipline," Iowa Administrative Code.

The amendments were approved at the July 29, 1992, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendments correct an incorrect subrule reference, adopt rules relating to recoupment of certain costs of disciplinary hearings conducted by the Board, and provide for a fee which may be charged to the respondent in a disciplinary hearing which results in disciplinary action against the licensee.

Any interested person may submit data, views, and arguments, orally or in writing, on or before October 1, 1992, to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code sections 258A.5 and 258A.6 and 1992 Iowa Acts, Senate File 2148.

The following amendments are proposed.

ITEM 1. Amend subrule **9.1(4)**, paragraph "q," as follows:

q. Failure to file the reports required by subrule ~~9.1(7)~~ *9.2(4)* concerning acts or omissions committed by another licensee.

ITEM 2. Adopt the following new rule:

657—9.27(74GA,SF2148) Disciplinary hearings—fees and costs.

9.27(1) Definitions. As used in this chapter in relation to a formal disciplinary action filed by the board against a licensee:

"Deposition" means the testimony of a person pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

"Expenses" means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 79.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

"Medical examination fees" means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

"Transcript" means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

"Witness fees" means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa, for purposes of providing testimony on the part of the state of Iowa. For the purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

9.27(2) The board may charge a fee not to exceed $75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. In addition to the fee, the board may recover from the licensee costs for the following procedures and personnel:

a. Transcript.

b. Witness fees and expenses.

c. Depositions.

d. Medical examination fees incurred relating to a person licensed under Iowa Code chapters 135E, 147, or 169.

9.27(3) Fees and costs assessed by the board pursuant to subrule 9.27(2) shall be calculated by the board's executive secretary/director and shall be entered as part of the board's final disciplinary order. The board's final disciplinary order shall specify the time period in which the fees and costs shall be paid by the licensee.

9.27(4) Fees and costs collected by the board pursuant to subrule 9.27(2) shall be allocated to the expenditure category of the board in which the hearing costs were incurred. The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

9.27(5) Failure of a licensee to pay the fees and costs assessed herein in the time specified in the board's final disciplinary order shall constitute a violation of a lawful order of the board.

This rule is intended to implement 1992 Iowa Acts, Senate File 2148.

ARC 3292A

PHARMACY EXAMINERS BOARD[657]

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 204.301, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendments were approved at the July 29, 1992, regular meeting of the Iowa Board of Pharmacy Examiners.

Item 1 requires the person administering a schedule II controlled substance within an institutional setting to personally document such usage and prohibits the delegation of such documentation. Item 2 adds information required on all controlled substances prescriptions to conform with amended federal regulations.

Any interested person may submit data, views, and arguments, orally or in writing, on or before October 1, 1992, to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code sections 204.306 and 204.308.

The following amendments are proposed.

ITEM 1. Adopt new subrule 10.10(6) as follows:

10.10(6) Controlled substance accountability. An individual who administers a schedule II controlled substance in an institutional setting must personally document usage and wastage on a separate, readily retrievable record system. Such documentation cannot be delegated to another individual.

ITEM 2. Amend rule 657—10.11(204), introductory paragraph, as follows:

657—10.11(204) Manner of issuance of prescriptions. All prescriptions for controlled substances shall be dated

as of, and manually signed on, the day when issued and shall bear the full name and address *of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; and the name, address,* and *DEA* registration number of the practitioner. A practitioner must manually sign a prescription in the same manner the practitioner would sign a check or legal document. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by those regulations.

ARC 3293A

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76 and Iowa Code Supplement section 155A.17, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 17, "Wholesale Drug Licenses," Iowa Administrative Code.

The amendment was approved at the July 29, 1992, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendment increases fees and late payment penalties for drug wholesalers commensurate with the anticipated increases in Board expenditures regarding the inspection and regulation of drug wholesalers in Iowa pursuant to directives contained in the Prescription Drug Marketing Act of 1987.

Any interested person may submit data, views, and arguments, orally or in writing, on or before October 1, 1992, to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

This amendment is intended to implement Iowa Code Supplement section 155A.17.

The following amendment is proposed.

Amend subrule 17.2(3) as follows:

17.2(3) An Iowa wholesale drug license shall expire on December 31 of each year. The fee for a new or renewal license shall be ~~$100~~ *$200*. A wholesale drug license form shall be issued upon receipt of the license application information required in subrule 17.3(1) and payment of the license fee.

Failure to renew the license before February 1 following expiration shall require a renewal fee of ~~$200~~ *$300*. Failure to renew the license before March 1 following expiration shall require a renewal fee of ~~$300~~ *$400*. Failure to renew the license before April 1 following expiration shall require a renewal fee of ~~$400~~ *$500*. Failure to renew the license before May 1 following expiration shall require an appearance before the board and a renewal fee of ~~$500~~ *$600*. In no event shall the fee for late renewal of the license exceed ~~$500~~ *$600*.

ARC 3302A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF EXAMINERS FOR THE LICENSING AND REGULATION OF HEARING AID DEALERS

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 154A.4, the Board of Examiners for the Licensing and Regulation of Hearing Aid Dealers hereby gives Notice of Intended Action to amend Chapter 120, "Board of Examiners for the Licensing and Regulation of Hearing Aid Dealers," Iowa Administrative Code.

The proposed amendments set a time limit for keeping incomplete applications and fees on file, clarify licensure by reciprocity, extend the time limit on applying for continuing education postapproval and reinstate the requirement to place in an advertisement relating to hearing aids the hearing aid dealer's name, office address, and telephone number.

Any interested person may make comments on the proposed amendments on or before September 22, 1992, addressed to Marilynn Ubaldo, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendments are intended to implement Iowa Code sections 154A.14, 154A.24 and 258A.2.

The following amendments are proposed.

ITEM 1. Add a new subrule 120.1(4) as follows:

120.1(4) Incomplete applications that have been on file for two years shall be considered invalid and be destroyed. The application fee is nonrefundable.

ITEM 2. Rescind rule 120.3(154A) and adopt the following in lieu thereof:

645—120.3(154A) Licensure by reciprocity. Applicants for licensure to practice as a hearing aid dealer in the state of Iowa who hold valid certificates or licenses to deal in and fit hearing aids in a state or jurisdiction which the board determines has requirements equivalent to or higher

than those provided in Iowa Code chapter 154A may be issued an Iowa license by reciprocity.

ITEM 3. Amend subrule 120.6(4) as follows:

120.6(4) Postapproval of continuing education program. A licensee seeking credit for attendance and participation in an educational program which was not approved in advance by the board shall apply for approval to the board within ~~30~~ *90* days after the completion of the program, on a form provided by the board, stating the type of learning activity, the subject matter, the names and qualifications of the instructors and the number of continuing education credit hours earned. For the board to consider the application, the application must be received by the board within ~~30~~ *90* days following completion of the continuing education program and must include official verification of attendance. A licensee not complying with the requirements of this subrule shall be denied credit for the program.

ITEM 4. Add a new subrule **120.212(11)**, paragraph **"d,"** as follows:

d. Failure to place in an advertisement relating to hearing aids the hearing aid dealer's name, office address, and telephone number.

ARC 3303A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF PSYCHOLOGY EXAMINERS

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby gives Notice of Intended Action to amend Chapter 240, "Board of Psychology Examiners," Iowa Administrative Code.

The proposed amendment establishes the application fee for licensure by reciprocity.

Any interested person may make written comments on the proposed amendment on or before September 22, 1992. Comments should be addressed to Kathy Williams, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

This amendment is intended to implement Iowa Code section 147.80.

The following amendment is proposed.

Amend subrule **240.10(1)** by adding the following sentence at the end of the subrule:

Fee for application for psychology license by reciprocity is $250.

ARC 3317A

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 Chapter 5, "Public Records and Fair Information Practices," Chapter 86, "Inheritance Tax," Chapter 87, "Iowa Estate Tax," and Chapter 88, "Generation Skipping Transfer Tax," Iowa Administrative Code.

The amendments provide that inheritance tax, Iowa estate tax and generation skipping transfer tax returns are confidential and not public record at the Department of Revenue and Finance.

The proposed amendments 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 October 2, 1992. 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 September 25, 1992.

The amendments are intended to implement Iowa Code sections 450.68, 450A.12, 450B.7 and 451.12 as amended by 1992 Iowa Acts, Senate File 2393.

The following amendments are proposed.

ITEM 1. Amend subrule **5.13(2)** by adding the following new paragraph **"cc,"** relettering paragraph "cc" as **"dd,"** and adding an implementation sentence as follows:

cc. Inheritance tax returns, estate tax returns, and generation skipping transfer tax returns (Iowa Code sections 450.68, 450A.12, 450B.7 and 451.12).

~~cc.~~ *dd.* Any other records made confidential by law.

This rule is intended to implement Iowa Code chapters 450, 450A, 450B, and 451 as amended by 1992 Iowa Acts, Senate File 2393.

ITEM 2. Amend subrules 86.1(3) and 86.1(4) as follows:

86.1(3) Information deemed confidential. Federal tax returns, federal return information, *inheritance tax returns*, and the books, records, documents and accounts of any person, firm or corporation, including stock transfer

books, requested to be submitted to the department for the enforcement of the inheritance tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. section 6103 pertaining to confidentiality and disclosure of federal tax returns and federal return information.

86.1(4) Information not confidential. Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not deemed confidential by the department. ~~The total amount of inheritance tax paid is a matter of public record and is not deemed confidential. The amount of inheritance tax paid by an individual heir, beneficiary, donee, transferee or surviving joint tenant is a matter of public record. The final inheritance tax return is a matter of public record.~~

ITEM 3. Amend rule **701—86.1(450)**, implementation clause, as follows:

This rule is intended to implement Iowa Code chapters 22 and 450 and Iowa Code sections 421.2, 450.67, 450.68, ~~and~~ 450.94~~.~~ *and 450B.7 as amended by 1992 Iowa Acts, Senate File 2393.*

ITEM 4. Amend rule 701—87.2(451) as follows:

701—87.2(451) Confidential and nonconfidential information.

87.2(1) Confidential information. Federal tax returns, federal return information, *inheritance tax return,* and the books, records, documents and accounts of any person, firm or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the Iowa estate tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. section 6103 pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rule *701*—6.3(17A).

87.2(2) Information not confidential. Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not deemed confidential by the department. ~~The total amount of the tax paid is a matter of public record and is not confidential. The return on which the tax is reported is a matter of public record.~~

This rule is intended to implement Iowa Code ~~chapters 68A and 451.~~ *chapter 22 and chapters 450 and 451 as amended by 1992 Iowa Acts, Senate File 2393.*

ITEM 5. Amend rule 701—88.2(450A) as follows:

701—88.2(450A) Confidential and nonconfidential information.

88.2(1) Confidential information. Federal tax returns, federal return information, *Iowa generation skipping transfer tax returns,* and the books, records, documents and accounts of any person, firm or corporation, including stock transfer books, requested to be submitted to the department for the enforcement of the generation skipping transfer tax law, shall be deemed and held confidential by the department, subject to public disclosure only as provided by law. See 26 U.S.C. section 6103 pertaining to the confidentiality and disclosure of federal tax returns and federal return information. See rule *701*—6.3(17A).

88.2(2) Information not confidential. Copies of wills, probate inventories, trust instruments, deeds and other documents which are filed for public record are not deemed confidential by the department. ~~The information on the return on which the tax is reported which is a matter of public record is not confidential.~~

This rule is intended to implement Iowa Code chapters 22 and 450A *as amended by 1992 Iowa Acts, Senate File 2393.*

ARC 3316A

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 Chapter 20, "Foods for Human Consumption, Prescription Drugs, Insulin, Hypodermic Syringes, Diabetic Testing Materials, Prosthetic, Orthotic or Orthopedic Devices," Iowa Administrative Code.

1992 Iowa Acts, House File 2449, has substantially changed the law concerned with exemptions from sales and use tax for prescription drugs and medical equipment used by human beings. All changes which the legislation enacted are retroactive to January 1, 1987. As a result of the legislation, the rental of prescription devices, as well as their sale, is exempt from tax. Also exempted are sales or rentals of any drugs, devices, equipment, or supplies "covered" by Medicare or Medicaid. "Prosthetic devices" are defined to include ostomy, urological, or tracheostomy devices and supplies whether dispensed with or without a prescription. Gross receipts from the sale of any oxygen for human use (whether prescribed or not) and of all oxygen equipment for human use are exempted. Finally, claims for refunds which arise under the enactment as a result of sale or use occurring between January 1, 1987, and June 30, 1992, are not allowed unless filed prior to December 31, 1992.

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than September 22, 1992, 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. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 per-

sons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 2, 1992. 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 September 25, 1992.

The amendments are intended to implement Iowa Code section 422.45 as amended by 1992 Iowa Acts, House File 2449.

The following amendments are proposed.

ITEM 1. Amend rule 701—20.7(422,423), introductory paragraph, as follows:

701—20.7(422,423) Prescription drugs. Sales of prescription drugs as defined in 20.7(1) and dispensed for human use or consumption in accordance with 20.7(2) and 20.7(3) shall be exempt from sales tax. *On and after January 1, 1987, rentals of prescription devices which meet the definitions of "prescription drug" in subrule 20.7(1) below are exempt from service tax.* Gross receipts from the sales of oxygen prescribed by a licensed physician or surgeon, osteopath, or osteopathic physician or surgeon for human use or consumption are exempt from tax *prior to January 1, 1987. On and after January 1, 1987, gross receipts from the sales of any oxygen purchased for human use or consumption (whether prescribed or not) are exempt from tax.*

ITEM 2. Amend subrule **20.7(1)**, the unnumbered paragraph, as follows:

For purposes of this rule, any drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, for human use or consumption, shall be deemed a prescription drug and exempt from tax *if a prescription is required under Iowa state or federal law.* A nonexclusive list of prescription devices is: Anesthesia trays, artificial joints, biopsy needles and biopsy trays, drug infusion devices (such as hypodermic needles), insulin infusion devices, intravenous (IV) administrator sets (including IV connectors, solutions, and tubing), mylogram trays and pacemakers.

ITEM 3. Amend rule 701—20.8(422,423) as follows:

701—20.8(422,423) Insulin, hypodermic syringes, *oxygen equipment,* and diabetic testing materials. Sales of these items shall qualify for a sales tax exemption if they meet the definitions in 20.8(1) and are utilized for human use or consumption *and, in the case of oxygen equipment, a sale occurs on or after January 1, 1987. A rental of oxygen equipment occurring on or after January 1, 1987, may also be exempt if it is the rental of a prescription device or if the rental is covered by Medicare or Medicaid. See rules 20.7(422,423) and 20.10(422,423).*

20.8(1) Definitions.

a. Insulin—a preparation of the active principle of the pancreas, used therapeutically in diabetes and sometimes in other conditions.

b. Hypodermic syringe—an instrument for applying or administering liquids into any vessel or cavity beneath the skin. This shall include the needle portion of the syringe if it accompanies the syringe at the time of purchase and shall also include replacement needles.

c. Diabetic testing materials—all materials used in testing for sugar or acetone in the urine, including, but not limited to, Clinitest, Tes-tape, and Clinistix; also, all materials used in monitoring the glucose level in the blood, including, but not limited to, bloodletting supplies and test strips.

d. Oxygen equipment—all equipment used to deliver medicinal oxygen including, but not limited to, face masks, humidifiers, cannula, tubing, mouthpieces, tracheotomy masks or collars, regulators, oxygen concentrators, and oxygen accessory racks or stands.

20.8(2) When prescription not required. A prescription is not required in order for insulin, hypodermic syringes, *oxygen, oxygen equipment,* and diabetic testing materials to be exempt from sales tax.

This rule is intended to implement Iowa Code sections 422.45(14) *and 422.45(16) as amended by 1992 Iowa Acts, House File 2449.*

ITEM 4. Amend subrule **20.9(3)**, paragraph **"a,"** as follows:

a. "Prosthetic device"—a piece of special equipment designed to be a replacement or artificial substitute for an absent or missing part of the human body *on and after January 1, 1987, the term also includes ostomy, urological, and tracheostomy devices and supplies whether dispensed with or without a prescription.*

The following is a nonexclusive list of prosthetic devices:

Artificial arteries	*Ostomy cleaners and deodorizers**
Artificial breasts	*Ostomy stoma caps and paste**
Artificial ears	Penile implants
Artificial eyes	Prescription eyeglasses
Artificial heart valves	*Tracheostomy tubes**
Artificial implants	*Tracheostomy care and cleaning starter kits**
Artificial larynx	*Tracheostomy cleaning brushes**
Artificial limbs	*Tracheal suction catheters**
Artificial noses	*Urinary catheters**
Artificial teeth	*Urinary drainage bags**
Contact lenses	*Urinary irrigation tubing**
Cosmetic gloves	*Urinary pouches**
Hearing aids	
Organ implants	
*Ostomy pouch**	
*Ostomy clamps**	
*Ostomy belts**	

** Exempt as of January 1, 1987.*

ITEM 5. Amend paragraph **20.9(3)"e"** as follows:

e. "Medical devices"—the scope of the term medical devices is broader than the terms of prosthetic, orthotic, and orthopedic devices. While all *exempt* prosthetic, orthotic, and orthopedic devices are medical devices, not all medical devices are *exempt* prosthetic, orthotic, or orthopedic devices.

The following is a nonexclusive list of items that are medical devices or medical supplies, but are not prosthetic, orthotic, or orthopedic devices. *Their sales are taxable unless the sale of a medical device is the sale of a prescription device; (see rule 20.7(422,423)) or unless the sale of a medical device is "covered" by Medicare or Medicaid; (see rule 20.10(422,423)) or unless the sale of*

a medical device is the sale of oxygen equipment (see rule 20.8(422,423)).
Adhesive bandages
Anesthesia trays
Aneurysm clips
Arterial bloodsets
Aspirators
Athletic supporters
Atomizers
Autolit
Back cushions
Bathing aids
Bathing caps
Bed pans
Bedside rails
Bedside tables
Bedside trays
Bedwetting prevention devices
Belt vibrators
Biopsy needles
Biopsy trays
Blood administering sets
Blood cell washing equipment
Blood pack holders
Blood pack trays
Blood pack units
Blood pressure meters
Blood processing supplies
Blood tubing
Blood warmers
Breast pumps
Breathing machines
Cannula systems
Cardiac electrodes
Cardiac pacemakers
Cardiopulmonary equipment
Catheters
Catheter trays
Chair lifts
Clamps
Clip-on ash trays
Colostomy devices
Commode chairs
Connectors
Contact lens cases
Contact lens solution
Convoluted pads
Corrective pessaries
Cotton balls
Dialysis chairs
Dialysis supplies
Dialyzers
Dietetic scales
Disposable diapers
Disposable gloves
Disposable underpads
Donor chairs
Drainage bags
Dressings
Drug infusion devices
Dry aid kits for ears
EKG paper
Earmolds
Electrodes
Emesis basins
Endo trach tubes
Enema units
First-aid kits
Fistula sets
Foam slant pillows
Gauze bandages
Gauze packings
Gavage containers
Geriatric chairs
Grooming aids
Hand sealers
Hearing aid carriers
Hearing aid repair kits
Heart stimulators
Heat lamps
Heat pads
Hemodialysis devices
Hemolators
Hospital beds
Hot water bottles
Ice bags
Ident-a-bands
Ileostomy devices
Incontinent garments
Incubators
Infrared lamps
Inhalators
Insulin infusion devices
Interocular lenses
Iron lungs
Irrigation apparatus
Irrigation solutions
I.V. administering sets
I.V. connectors
I.V. solutions
I.V. tubing
Karaya paste
Karaya seals
Kidney dialysis machines
Laminar flow equipment
Latex gloves
Leukopheresis pumps
Lymphedema pumps
Manometer trays
Massagers
Maternity belts
Medigrade tubing
Modulung oxygenators
Moist heat pads
Myelogram trays
Myringotomy tubes
Nebulizers
Needles
Ostomy devices
Overbed tables
~~Oxygen equipment~~
Pacemaker equipment
Page turning devices

Pap smear kits
Paraffin baths
Physicians instruments
Pigskin
Plasma extractors
Plasmapheresis units
Plastic heat sealers
Prescribed device repair kits
Respirators
Resuscitators
Sauna baths
Security pouches
Servipak dialysis supplies
Shelf trays
Shower chairs
Side rails
Sitz bath kit
Small-vein infusion kits
Specimen containers
Spinal puncture trays
Sponges (surgical)
Stairway elevators
Steri-peel
Stoma bags
Stools
Stopcocks
Strap-on urinals
Suction equipment
Sun lamps
Surgical bandages
Surgical equipment
Suspensories
Sutures
Thermometers
Toilet aids
Tourniquets
Trach tubes
Transfer boards
Transfusion sets
Tube sealers
Underpads
Ureostomy devices
Urinals
Vacutainers
Vacuum units
Vaporizers
Venous blood sets
Vibrators
Whirlpools
X-ray film

~~It is presumed that the medical devices listed are not exempt from tax as a prosthetic or orthopedic device since they will ordinarily not be used for prosthetic or orthopedic purposes. However, if the taxpayer can show clear evidence that an item was used as a prosthetic or orthopedic device, it will be exempt from tax. Also, an item may be exempt from tax as a "prescription drug" under subrule 20.7(1).~~

ITEM 6. Amend Chapter 20 by adding the following new rule 701—20.10(422,423) and renumbering existing rule **701—20.10(422,423)** as **701—20.11(422,423)**.

701—20.10(422,423) Sales and rentals covered by Medicaid and Medicare. On and after January 1, 1987, gross receipts from the sale or rental of drugs, devices, equipment and supplies ("medications") which are covered by Title 18 (Medicare) or Title 19 (Medicaid) of the federal Social Security Act are exempt from tax.

A "covered sale or rental" is one for which any portion of the cost of medications is paid by the state of Iowa or the federal government as required by the Medicaid or Medicare programs. A sale or rental is "covered" even if a user of medications is required to pay a certain percentage or fixed amount of its cost. Covered sales or rentals include those for which a user of medications is reimbursed the cost of a purchase or rental; or sales or rentals for which any portion of the cost is paid by any private insurance company administering the Medicaid or Medicare programs on behalf of the state of Iowa or the federal government. The direct purchase or rental of any medications by the state of Iowa or the federal government is exempt from tax under existing law, and this rule is not applicable to it.

For an extensive list of medications the purchase or rental of which is covered by Medicaid see 441—Chapter 78, Iowa Administrative Code.

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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 Chapter 39, "Filing Return and Payment of Tax," Chapter 40, "Determination of Net Income," Chapter 43, "Assessments and Refunds," and Chapter 46, "Withholding," Iowa Administrative Code.

The 1992 Iowa Acts, House File 2486 and Senate File 2393, made numerous changes in the individual income tax laws and withholding tax laws. Most of the changes are retroactively applicable to January 1, 1992, for tax years beginning on or after that date. However, some of the changes are effective on July 1, 1992, and others are effective on January 1, 1993. The amendments increase the minimum income requirements for filing Iowa returns. The amendments provide that voter's registration forms are to be included in return booklets and return instructions for odd-numbered tax years instead of booklets and instructions for all tax years. The amendments show increased income amounts before individuals are required to pay Iowa income tax. The amendments show that the special tax computation for certain low-income taxpayers is computed on the basis of higher income thresholds.

The amendments describe a retroactive exemption for payments received by individuals providing unskilled in-home health care services to related persons. The exemption is retroactive to January 1, 1988, for tax years beginning on or after that date. The amendments provide that the statute of limitations for refund claims for taxes paid on 1988 returns on the supplemental assistance payments for in-home health care services will be considered timely if the refund claims are filed on or before April 30, 1993. The amendments provide for state income tax withholding from certain gambling winnings from slot machines on riverboats. The amendments also clarify that state income tax is to be withheld from lottery winnings and winnings from games of skill and chance and raffles to the extent the winnings exceed $600. The amendments provide that state income tax is to be withheld from parimutuel wagers in situations where the winnings exceed $1,000.

In addition, the implementation clauses are revised for all rules that are amended in this Notice.

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than September 22, 1992, 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. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 2, 1992. 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 September 25, 1992.

The amendments are intended to implement Iowa Code sections 48.21, 99B.21, 99D.16, 99E.19, 99F.18, 422.5, 422.7, 422.16 and 422.73 as amended by 1992 Iowa Acts, House File 2486 and Senate File 2393.

The following amendments are proposed.

ITEM 1. Amend subrule 39.1(1) as follows:

39.1(1) Residents. For each taxable year, every resident of Iowa, except any resident claimed as a dependent on another person's return, whose net income, as defined in Iowa Code section 422.7 is $4,000 or more ($5,000 or more for taxable years beginning on or after January 1, 1987, *but before January 1, 1992*), *($7,500 or more for taxable years beginning in the 1992 year), ($9,000 or more for taxable years beginning on or after January 1, 1993)* or who is required to file a federal income tax return *if it is for a tax year beginning before January 1, 1992*, must make, sign, and file a return. Each resident whose net income as defined in Iowa Code section 422.7 is $3,000 or more and who is claimed as a dependent on another person's return, or who is required to file a federal income tax return *if it is for a tax year beginning before January 1, 1992*, must make, sign, and file a return. In determining whether returns must be filed, income from all sources, taxable under this division, must be considered.

ITEM 2. Amend subrule **39.1(2)**, paragraph "**b**," as follows:

b. Tax years beginning on or after January 1, 1982. For each taxable year, every nonresident of Iowa must make, sign, and file an Iowa return if the nonresident meets one or more of the following conditions: (1) Is required to file a federal income tax return *if the taxable year begins before January 1, 1992*, (2) has a net income from all sources of $4,000 ($5,000 for tax years beginning on or after January 1, 1987, *but before January 1, 1992*), *($7,500 or more for taxable years beginning in the 1992 year), ($9,000 or more for taxable years beginning on or after January 1, 1993),* or (3) is claimed as a dependent on another person's return and had a net income from all sources of $3,000 or more. However, a nonresident is not required to file an Iowa individual income tax return if that individual has a net income, as defined in Iowa Code section 422.7, from sources within this state of less than $500.

ITEM 3. Amend subrule **39.1(3)**, paragraph "**b**," as follows:

b. Tax years beginning on or after January 1, 1982. For each taxable year, every part-year resident of Iowa must make, sign, and file an Iowa return if the part-year resident meets one or more of the following conditions: (1) is required to file a federal income tax return *if the taxable year begins before January 1, 1992*, (2) has a net income from all sources of $4,000 or more ($5,000 or more for tax years beginning on or after January 1, 1987, *but before January 1, 1992*), *($7,500 or more for tax years beginning in the 1992 year), ($9,000 or more for tax years beginning on or after January 1, 1993),* or (3) is claimed as a dependent on another person's return and had a net income from all sources of $3,000 or more.

ITEM 4. Amend subrule 39.1(7) and the implementation clause for rule **39.1(422)** as follows:

39.1(7) Returns filed for refund. A taxpayer with net income of less than $4,000 ($5,000 for tax years beginning on or after January 1, 1987, *but before January 1, 1992*), *($7,500 for tax years beginning in the 1992 year), ($9,000 for tax years beginning on or after January 1, 1993),* or $3,000 if the taxpayer is claimed as a dependent on another person's return, must file a return to receive a refund of any tax withheld.

This rule is intended to implement Iowa Code sections 422.5 and 422.13 as amended by *1992* ~~1988~~ Iowa Acts, Senate File *2393* ~~2074~~.

ITEM 5. Amend subrule 39.3(5) and the implementation clause for rule **39.3(422)** as follows:

39.3(5) Voter's registration forms in income tax booklets and income tax return instructions. Effective for tax

years beginning on or after January 1, 1989, income tax return booklets and income tax return instructions shall include two voter registration forms. The voter registration forms to be inserted into the income tax return instruction forms and booklets are to be designed by the voter registration commission. *However, effective July 1, 1992, the voter registration forms are to be inserted in the income tax return booklets and income tax return instructions only for odd-numbered tax years. Thus, the voter registration forms will not be included in the income tax return booklets for the 1992 tax year but are to be included in the booklets for 1993.*

This rule is intended to implement Iowa Code sections 48.21, 422.13, 422.21 and 422.22, *and 1992 Iowa Acts, Senate File 2393.*

ITEM 6. Amend subrules 39.5(8) and 39.5(9) as follows:

39.5(8) Five thousand dollar exemption. This subrule is applicable to all taxpayers for tax years beginning on or after January 1, 1979, and before January 1, 1987. For tax years beginning on or after January 1, 1987, *but before January 1, 1992,* this subrule applies only to single taxpayers. Individuals whose net income, as computed under Iowa Code section 422.7, plus the amount of a lump sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, is $5,000 or less are exempt from paying Iowa individual income tax subject to the following conditions:

a. Incomes of both husband and wife are considered in determining the exemption. The combined income regardless of filing status must be $5,000 or less in order to qualify for the exemption.

b. An individual, claimed as a dependent on another person's return, with an income of at least $3,000, but no more than $5,000, will be exempt from Iowa tax if:

(1) The person on whose return the dependent is claimed has a net income of $5,000 or less ($7,500 or less for tax years beginning on or after January 1, 1987, *but before January 1, 1992*), or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of $5,000 or less ($7,500 or less for tax years beginning on or after January 1, 1987, *but before January 1, 1992*).

If the payment of tax would reduce the net income to less than $5,000, the tax shall be reduced to that amount which would allow the taxpayer to retain a net income of $5,000. For example: If a taxpayer's net income is $5,025, and the computed tax after personal exemption and out-of-state credit is $45, the payment of $45 would reduce the net income below $5,000; therefore, the amount of tax due is reduced to $25 which enables the taxpayer to retain a net income of $5,000.

This provision for reducing tax does not apply for the Iowa minimum tax.

c. For tax years beginning on or after January 1, 1988, *but before January 1, 1991,* a taxpayer's net income shall include any tax-exempt pensions, annuities, or retirement allowances for public employees described in rule 40.4(422) for purposes of determining whether the taxpayer is exempt from state income tax under the $5,000 or less provision.

39.5(9) Seven thousand five hundred dollar exemption. For tax years beginning on or after January 1, 1987, *but before January 1, 1992,* all taxpayers, except single taxpayers described in subrule 39.4(1), whose net income as computed under Iowa Code section 422.7, plus the amount of a lump sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, is $7,500 or less, are exempt from paying Iowa individual income tax subject to the following conditions:

a. Incomes of both husband and wife are considered in determining the exemption. The combined income regardless of filing status must be $7,500 or less in order to qualify for the exemption. Subrule 39.5(9), paragraph "c," is applicable for taxpayers where one spouse has a net operating loss and the taxpayers file separate Iowa returns or separately on the combined return form.

b. An individual claimed as a dependent on another person's return with an income of at least $3,000, but not more than $7,500, will be exempt from Iowa tax if:

(1) The person on whose return the dependent is claimed has a net income of $7,500 or less, or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of $7,500 or less.

If the payment of tax would reduce the net income to less than $7,500, the tax shall be reduced to that amount which would allow the taxpayer to retain a net income of $7,500. For example: If a taxpayer's net income is $7,525, and the computed tax after personal exemption and out-of-state credit is $45, the payment of $45 would reduce the net income below *$7,500* ~~$7,525~~; therefore, the amount of tax due is reduced to $25 which enables the taxpayer to retain a net income of $7,500.

This provision for reducing tax does not apply to the Iowa minimum tax.

c. For tax years beginning on or after January 1, 1988, *but before January 1, 1991,* the taxpayer's net income shall include any tax-exempt pensions, annuities, or retirement allowances for public employees described in rule 40.4(422) for purposes of determining whether the taxpayer or taxpayers are exempt from state income tax under the $7,500 or less provision.

d. The $7,500 or less exemption from tax does not apply to married taxpayers filing separate returns or filing separately on a combined return in cases where one of the spouses has a net operating loss and elects to carry back or carry forward that loss as provided in Iowa Code section 422.9, subsection 3, and in rule 701—40.18(422). Taxpayers making this election must submit a statement advising the department of the election with their return. When separate returns are filed, election statements must be provided with both returns.

EXAMPLE 1. Taxpayers filed a combined Iowa return for 1987. One of the spouses had a net income of $22,500. The other spouse had a net operating loss of $15,000. The spouse with the net operating loss elected to carry this net operating loss to the 1988 tax year. Therefore, although the taxpayers have a combined net income of $7,500 or less, they did not qualify for exemption from tax since the taxpayers elected to carry forward the net operating loss.

EXAMPLE 2. Taxpayers filed a combined Iowa return for 1987. One spouse had a net operating loss of $10,000. The second spouse had a net income of $16,800. The taxpayers attached a statement with their return which indicated that the net operating loss would not be carried over or carried back. Since the taxpayers' combined income was $7,500 or less and they chose not to carry back or carry forward the net operating loss, the taxpayers quali-

fied for exemption from tax under the $7,500 or less exemption.

ITEM 7. Amend rule **701—39.5(422)** by adding the following new subrules and by amending the implementation clause for this rule as follows:

39.5(10) Eleven thousand five hundred dollar exemption and thirteen thousand five hundred dollar exemption. For tax years beginning on or after January 1, 1993, all taxpayers except single taxpayers described in subrule 39.4(1), whose net income as computed under Iowa Code section 422.7, plus the amount of a lump sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes, is $13,500 or less ($11,500 or less for tax years beginning in the 1992 calendar year), are exempt from paying Iowa individual income tax subject to the following conditions:

a. In the case of married taxpayers, the incomes of both spouses are considered in order to determine if the taxpayers qualify for exemption from tax. However, in the case of married taxpayers where one spouse has a net operating loss and the taxpayers file separate Iowa returns or separately on the combined return form, the taxpayers cannot receive the benefit of the exemption from tax if the spouse with the loss elects to carry back or carry forward that loss.

b. An individual claimed as a dependent on another person's return with an income of at least $3,000, but not more than $13,500 ($11,500 for tax years beginning in 1992), will be exempt from Iowa tax if:

(1) The person on whose return the dependent is claimed is filing as a single individual and has a net income of $9,000 or less ($7,500 or less for tax years beginning in 1992), or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of $13,500 or less ($11,500 or less for tax years beginning in 1992).

(3) The person on whose return the dependent is claimed is filing as an unmarried head of household or as a surviving spouse and has a net income of $13,500 or less ($11,500 or less for tax years beginning in 1992).

c. If the payment of tax would reduce the net income to less than $13,500 ($11,500 or less for tax years beginning in 1992), the tax shall be reduced to an amount which would allow the taxpayer to retain a net income of $13,500 ($11,500 for tax years beginning in 1992). For example: If a taxpayer's net income was $13,600 and the computed tax after personal exemptions and other credits was $300, the payment of $300 would reduce the income below $13,500; therefore, the amount of tax is reduced to $100 so the taxpayer can retain a net income of $13,500.

39.5(11) Seven thousand five hundred dollar exemption and nine thousand dollar exemption. For tax years beginning on or after January 1, 1993, single taxpayers described in subrule 39.4(1), whose net income as computed under Iowa Code section 422.7, plus the amount of a lump sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes is $9,000 or less ($7,500 or less for tax years beginning in the 1992 calendar year), are exempt from paying Iowa individual income tax subject to the following conditions:

a. An individual claimed as a dependent on another person's return with an income of at least $3,000 but not more than $9,000 ($7,500 for tax years beginning in 1992) will be exempt from tax if:

(1) The person on whose return the dependent is claimed has a net income of $9,000 or less ($7,500 or less for tax years beginning in 1992), or

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of $13,500 or less ($11,500 or less for tax years beginning in 1992).

(3) The person on whose return the dependent is claimed is filing as an unmarried head of household or as a surviving spouse and has a net income of $13,500 or less ($11,500 or less for tax years beginning in 1992).

b. If the payment of tax would reduce the net income to less than $9,000 ($7,500 for tax years beginning in 1992), the tax is reduced to an amount which will allow the taxpayer to retain a net income of $9,000 ($7,500 for tax years beginning in 1992).

This rule is intended to implement Iowa Code sections 422.5, 422.16, 422.17, 422.21, 422.24, and 422.25 as amended by *1992* ~~1988~~ Iowa Acts, Senate File *2393* ~~2074~~.

ITEM 8. Amend rule 701—39.9(422) as follows:

701—39.9(422) Special tax computation for all low-income taxpayers except single taxpayers. For tax years beginning on or after January 1, 1987, a special tax computation is available for determining the state income tax liability for all low-income taxpayers except single taxpayers described in subrule 39.4(1). Under this provision, the taxpayer multiplies the net income for tax year in excess of $7,500 *(net income in excess of $11,500 for tax years beginning in 1992) or (net income in excess of $13,500 for tax years beginning on or after January 1, 1993)* by the maximum individual income tax rate. The tax amount computed by this procedure is then compared to the tax amount on the individual's taxable income from the tax tables or the tax rate schedule. The taxpayer is subject to the lesser of *the* two tax amounts. In the case of married taxpayers electing to file separate returns or separately on the combined return form, the incomes of both spouses must be considered for purposes of determining the tax liability from the special tax computation. The tax liability calculated from the special tax computation is allocated between the spouses in the ratio of each spouse's net income to the combined net income of both spouses.

For example, a married couple's net income in 1987 was $8,200. The taxpayers elected to file separately on the combined return form for 1987. One spouse had a net income of $6,000, the second spouse had a net income of $2,200. There was no federal income tax withheld on the wages earned by either of the taxpayers. The spouse with the net income of $6,000 had a regular income tax liability of $105. The spouse with the net income of $2,200 had a regular income tax liability of $4. The special tax computation of these taxpayers is shown below:

Taxpayer's combined net income ($6,000 + $2,200)	$8,200
Less: Income not subject to special tax	7,500
Income subject to special tax	700
	x 9.98%
Special tax liability for 1987	$ 70

The taxpayers' special tax liability for 1987 was $70. The special tax is imposed since it is less than the taxpayers' regular tax liability of $109. This special tax liability is allocated to each spouse on the following basis:

Spouse 1		Spouse 2	
$6,000 / $8,200	x 70 = $51	$2,200 / $8,200	x 70 = $19

The special tax computation for low-income taxpayers is not available to married taxpayers filing separate state returns or to married taxpayers filing separately on the combined return form in instances where one of the spouses has a net operating loss described in Iowa Code section 422.9, subsection 3, and the spouse elects to carry back or carry forward the net operating loss.

This rule is intended to implement Iowa Code section 422.5 *as amended by 1992 Iowa Acts, Senate File 2393.*

ITEM 9. Amend Chapter 40 by adding the following new rule:

701—40.43(422) Retroactive exemption for payments received for providing unskilled in-home health care services to a relative. Retroactive to January 1, 1988, for tax years beginning on or after that date, supplemental assistance payments authorized under Iowa Code section 249.3, subsection 2, paragraph "a," subparagraph (2), which are received by an individual providing unskilled in-home health care services to a member of the caregiver's family are exempt from state income tax to the extent that the individual caregiver is not a licensed health care professional designated in Iowa Code section 147.13, subsections 1 through 10.

For purposes of this exemption, a member of the caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor such as grandparent and great-grandparent, and lineal decedent such as grandchild and great-grandchild, and those previously described relatives that are related by marriage or adoption. Those licensed health care professionals that are not eligible for this exemption include medical doctors, doctors of osteopathy, physician assistants, psychologists, podiatrists, chiropractors, physical therapists, occupational therapists, nurses, dentists, dental hygienists, optometrists, speech pathologists, and audiologists.

Taxpayers who paid state income tax on the supplemental assistance payments on individual income tax returns for tax years beginning in the 1988 calendar year and who are eligible for the exemption may claim refunds of state income tax paid on the assistance payments, if the refund claims are filed with the department of revenue and finance on or before April 30, 1993.

This rule is intended to implement Iowa Code section 422.7 as amended by 1992 Iowa Acts, House File 2486.

ITEM 10. Amend rule 701—43.3(422) by adding the following new subrule and amending the implementation clause for rule **43.3(422)**:

43.3(13) Refunds—statute of limitations for taxpayers who paid state income tax on 1988 returns on certain supplemental assistance payments. Notwithstanding the three-year statute of limitations in Iowa Code section 422.73, claims for refunds filed with the department on or before April 30, 1993, will be considered timely if filed on a 1988 state return where the refund claim is for state income tax paid on supplemental assistance payments paid to an individual who provided unskilled in-home health services to a member of the individual's family. For additional information on the retroactive exemption for supplemental assistance payments, see rule 701—40.43(422).

This rule is intended to implement Iowa Code sections *421.17, 422.2,* 422.16, and 422.73 as amended by *1992* ~~1991~~ Iowa Acts, ~~Senate File 536, and 421.17~~ *House File 2486.*

ITEM 11. Amend subrule **46.1(1)**, paragraph "**d,**" subparagraph **(1)**, as follows:

(1) Lottery winnings subject to withholding. Lottery winnings subject to withholding means any payment where the proceeds from a wager *exceed* ~~are~~ $600 ~~or more~~. The rules for determining the amount of proceeds from a wager under *Treasury* ~~regulation~~ *Regulation* section 31.3402(q)-1, paragraph "c," shall apply when determining whether the proceeds from Iowa lottery winnings are great enough so that withholding is required. This rule shall apply to winnings from tickets purchased from the Multistate Lottery to the extent the tickets were purchased within the state of Iowa.

ITEM 12. Amend subrule **46.1(1)**, paragraph "**e,**" subparagraph **(1)**, as follows:

(1) Prizes subject to withholding. Prizes subject to withholding means any payment of a prize where the amount *won* ~~paid~~ exceeds *$600* ~~six hundred dollars~~.

ITEM 13. Amend subrule **46.1(1)**, paragraph "**f,**" subparagraph **(1)**, to read as follows:

(1) Pari-mutuel winnings subject to withholding. *For winnings paid from January 1, 1987, through June 30, 1992,* ~~Winnings~~ *winnings* subject to withholding means any payment of winnings from a pari-mutuel wager where the proceeds (winnings less amount wagered) are subject to federal income tax withholding under Treasury Regulation section 31.3402(q)-1(b). Under Treasury Regulation section 31.3402(q)-1(b), federal income tax is to be withheld only if the proceeds from the wager (a) exceed $1,000 and (b) are at least 300 times as large as the amount of the wager.

For winnings paid on or after July 1, 1992, winnings subject to withholding are winnings in excess of $1,000.

ITEM 14. Amend subrule **46.1(1)** by adding the following new paragraph:

g. Withholding from winnings from riverboat gambling. Effective for winnings paid on or after July 1, 1992, from slot machines on riverboat gambling vessels, withholding of state income tax is required if the winnings exceed $1,200.

ITEM 15. Amend the implementation clause for rule **701—46.1(422)** to read as follows:

This rule is intended to implement ~~Iowa Code Supplement section 422.16 and~~ Iowa Code sections 99B.21, *99D.16,* 99E.19, *99F.18,* ~~and~~ 422.15 *and 422.16 as amended by 1992 Iowa Acts, Senate File 2393.*

ARC 3322A

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 Chapter 89, "Fiduciary Income Tax," Iowa Administrative Code.

The amendment clarifies the income items allowed for a distribution deduction for Iowa fiduciary income tax purposes.

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

The Department has determined the proposed amendment 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 this proposed amendment on or before October 2, 1992. 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 September 25, 1992.

The amendment is intended to implement Iowa Code sections 422.4, 422.5, 422.6 and 422.7.

The following amendment is proposed.

Amend subrule 89.8(1) by adding the following paragraph:

For purposes of a distribution deduction under this chapter, an estate or trust shall receive a distribution deduction only for income taxable to Iowa. For example, municipal interest will be included in the distribution deduction because it is taxable to Iowa. U.S. government interest would not be included because it is not taxable to Iowa.

NOTICE—USURY

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

February 1, 1990 – February 28, 1990	9.75%
March 1, 1990 – March 31, 1990	10.25%
April 1, 1990 – April 30, 1990	10.50%
May 1, 1990 – May 31, 1990	10.50%
June 1, 1990 – June 30, 1990	10.75%
July 1, 1990 – July 31, 1990	10.75%
August 1, 1990 – August 31, 1990	10.50%
September 1, 1990 – September 30, 1990	10.50%
October 1, 1990 – October 31, 1990	10.75%
November 1, 1990 – November 30, 1990	11.00%
December 1, 1990 – December 31, 1990	10.75%
January 1, 1991 – January 31, 1991	10.50%
February 1, 1991 – February 28, 1991	10.00%
March 1, 1991 – March 31, 1991	10.00%
April 1, 1991 – April 30, 1991	9.75%
May 1, 1991 – May 31, 1991	10.00%
June 1, 1991 – June 30, 1991	10.00%
July 1, 1991 – July 31, 1991	10.00%
August 1, 1991 – August 31, 1991	10.25%
September 1, 1991 – September 30, 1991	10.25%
October 1, 1991 – October 31, 1991	10.00%
November 1, 1991 – November 30, 1991	9.75%
December 1, 1991 – December 31, 1991	9.50%
January 1, 1992 – January 31, 1992	9.50%
February 1, 1992 – February 29, 1992	9.00%
March 1, 1992 – March 31, 1992	9.00%
April 1, 1992 – April 30, 1992	9.25%
May 1, 1992 – May 31, 1992	9.50%
June 1, 1992 – June 30, 1992	9.50%
July 1, 1992 – July 31, 1992	9.50%
August 1, 1992 – August 31, 1992	9.25%
September 1, 1992 – September 30, 1992	8.75%

ARC 3308A

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 sections 17A.4, 17A.7, 476.1, 476.2, and 476.9, the Utilities Board (Board) gives notice that on August 13, 1992, the Board issued an order in Docket No. RMU-92-5, In Re: Statement of Financial Accounting Standard No. 106, "Order Granting Petition and Commencing Rule Making Proceedings," to consider an amendment to 199 IAC 16. The rule making is being commenced in response to a petition filed by U S West Communications, Inc., GTE Central, and Vista Telephone Company of Iowa (collectively, Petitioners) on June 19, 1992. The petition for rule making was joined in by Iowa-Illinois Gas and Electric Company (Iowa-Illinois) on July 9, 1992. The Petitioners and Iowa-Illinois requested the Board to consider amendments to its accounting rules which would identify the Board's position on Statement of Financial Accounting Standard (SFAS) No. 106 and establish standards under which the Board would recognize accrual accounting for postretirement benefits other than pensions.

At present, utilities account for these benefits as the benefits are paid. The petition seeks an amendment which would authorize the utilities to account for these benefits using an accrual method with the amount accrued

based upon an actuarial study. The proposed amendment is designed to recognize SFAS No. 106, issued in December 1990 by the Financial Accounting Standards Board (FASB). FASB is a professional association which establishes a common set of accounting standards, procedures, and conventions commonly known as Generally Accepted Accounting Principles (GAAP).

The Board has granted the "Petition for Rulemaking." In light of the change in accounting standards mandated by FASB as reflected in SFAS No. 106, the Board has decided it is appropriate to commence this rule making in order to receive comments from the public on the proposed accounting amendments. More complete information will assist the Board in determining whether to adopt the proposal.

Pursuant to Iowa Code section 17A.4(l)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendment. The statement must be filed on or before September 22, 1992, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All communications shall clearly indicate the author's name and address and make specific reference to this docket. 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 October 26, 1992, at 10 a.m. in the First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa, for the purpose of receiving comments. Pursuant to 199 IAC 3.7(17A,474), all interested persons may participate in this proceeding.

This amendment is intended to implement Iowa Code sections 17A.4, 17A.7, 476.1, 476.2, and 476.9.

The following amendment is proposed.

Adopt new rule 199—16.9(476) as follows:

199—16.9(476) Postretirement benefits other than pensions. Accrual accounting for postretirement benefits other than pensions in accordance with Statement of Financial Accounting Standard No. 106 (SFAS 106) will be permitted where:

1. The accrued postretirement benefit obligations have been funded in a segregated and restricted account or alternative arrangements have been approved by the board.

2. The net periodic postretirement benefit cost and accumulated postretirement benefit obligations have been determined by an actuarial study completed in accordance with the specific methods required and outlined by SFAS 106.

3. The transaction obligation is amortized in accordance with SFAS 106.

ARC 3309A

HISTORICAL DIVISION[223]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3 and 303.17, the Terrace Hill Commission hereby amends Chapter 57, "Terrace Hill Endowment for the Musical Arts," Iowa Administrative Code.

These amendments provide for second and third place awards and make provision for the circumstance where the first place winner is unable to accept the prize.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary, in that the amendments increase the prizes offered in the competition and will not operate to the detriment of any person.

The Commission further finds, in compliance with Iowa Code section 17A.5(2)"d"(2) that the normal effective date of these amendments, 35 days after publication, should be waived on the grounds that the amendments confer a benefit on the public by increasing the prizes offered in the musical competition.

These amendments are intended to implement Iowa Code section 303.17.

These amendments became effective on August 14, 1992.

The following amendments are adopted.

Amend rule 57.2(303) as follows:

223—57.2(303) Scholarship established. The Terrace Hill commission maintains an endowment fund to be used for the sole purpose of providing a biennial grant, *and a one-time second- and third-place grant,* to an Iowa high school senior or resident who will be an entering freshman piano major *or minor* at one of Iowa's public or private colleges or universities. The scholarship is called "The First Lady of Iowa Award from the Terrace Hill Endowment for the Musical Arts." The successful applicant shall receive a one-time grant of not less than $2,000. One thousand dollars of this grant will be presented each year for a two-year period. *In the event the successful applicant is disqualified or otherwise unable to utilize the grant, the judges may choose to award the grant to the second- or third-place applicant. Such a decision must be accompanied by a written statement in which the judges set out their opinion that the second- or third-place contestant has sufficient talent to merit the increased award.* The cash award may be supplemented by other benefits, publicity or opportunities as may be arranged by the commission.

In addition to the first-place grant, a one-time $750 grant will be made to the second-place applicant and a one-time $500 grant will be made to the third-place applicant. The grants will be paid directly to the college or university attended by the applicants.

The successful applicant is not eligible to compete again for the grant.

[Filed Emergency 8/14/92, effective 8/14/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3300A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 1992 Iowa Acts, Senate File 2393, sections 413 and 421, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

These amendments establish policy governing enhanced services for high-risk pregnancies. Physicians, rural health clinics, other clinics, maternal health centers, nurse-midwives, birth centers, and federally qualified health centers are required to complete a risk assessment twice during a Medicaid recipient's pregnancy to determine if the recipient has a high-risk pregnancy using Form 470-2942, Medicaid Prenatal Risk Assessment. If the woman is determined to have a high-risk pregnancy, the woman shall be referred for enhanced services. Currently maternal health centers and Health Maintenance Organizations (HMOs) provide enhanced services.

These amendments also redefine enhanced services which shall include additional care coordination, additional health education, social services, nutrition education, and a postpartum home visit. Under current policy any pregnant woman may receive Medicaid payment for enhanced services. Under this policy, only women determined to be at high risk will be eligible for payment of the enhanced services package through Medicaid.

Persons not determined high risk may receive a basic health education and care coordination package through Maternal Health Services.

The Department of Human Services and the Department of Public Health developed the risk assessment criteria contained on Form 470-2942 jointly.

The Department of Human Services finds that notice and public participation are impracticable because there is not adequate time to implement the regular rule-making process and to carry out 1992 Iowa Acts, Senate File 2393, section 413, by September 1, 1992. The Department has no choice in implementing these provisions which are legislative mandates. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

These amendments are also published herein as a Notice of Intended Action, ARC 3299A, to allow for public comment.

The Department finds that 1992 Iowa Acts, Senate File 2393, sections 413 and 421, allow these amendments to be effective immediately upon filing, unless a later effective date is specified. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(1).

The Council on Human Services adopted these amendments August 12, 1992.

These amendments are intended to implement Iowa Code section 249A.4 and 1992 Iowa Acts, Senate File 2393, section 413.

These amendments became effective September 1, 1992.

The following amendments are adopted:

ITEM 1. Amend rule 441—78.1(249A) by adding the following new subrule 78.1(22):

78.1(22) Risk assessments. Risk assessments, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. Enhanced services includes care coordination, health education, social services, nutrition education, and a postpartum home visit. Additional reimbursement shall be provided for obstetrical services related to a high-risk pregnancy. (See description of enhanced services at subrule 78.25(3).)

ITEM 2. Amend rule 441—78.21(249A) as follows:

441—78.21(249A) Rural health clinics. Payment will be made to rural health clinics for the same services payable under the Medicare program (Title XVIII of the Social Security Act). Payment will be made for sterilization in accordance with 78.1(16).

Utilization review shall be conducted of Medicaid recipients who access more than 24 outpatient visits in any 12-month period from physicians, family and pediatric nurse practitioners, federally qualified health centers, other clinics, and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the recipient lock-in program.

Risk assessments, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. See description of enhanced services at subrule 78.25(3).

ITEM 3. Amend rule 441—78.23(249A) as follows:

441—78.23(249A) Other clinic services. Payment will be made on a fee schedule basis to facilities not part of a hospital, funded publicly or by private contributions, which provide medically necessary treatment by or under the direct supervision of a physician or dentist to outpatients. Payment will be made for sterilization in accordance with 78.1(16).

Utilization review shall be conducted of Medicaid recipients who access more than 24 outpatient visits in any 12-month period from physicians, family and pediatric nurse practitioners, federally qualified health centers, other clinics, and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the recipient lock-in program.

Risk assessments, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. See description of enhanced services at subrule 78.25(3).

ITEM 4. Amend rule 441—78.25(249A), introductory paragraph, as follows:

441—78.25(249A) Maternal health centers. Payment will be made for prenatal and postpartum medical care and *limited care coordination and health education services for persons who are not determined high risk. Payment will be made for* enhanced perinatal services *for persons determined high risk. These services* ~~including~~ *include additional* health education *services*, nutrition counseling, social services, ~~and case management~~ *additional care coordination services, and one postpartum home visit. Additional prenatal and postpartum reimbursement will be made for persons determined to be high risk. Risk assessments using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, additional reimbursement shall be provided for the enhanced services related to a high-risk pregnancy.*

Further amend rule 441—78.25(249A) by renumbering subrule **78.25(2)** as subrule **78.25(3)** and inserting the following new subrule 78.25(2):

78.25(2) The services provided to a person determined to be low risk include:

a. Prenatal and postpartum medical care.

b. Health education which shall include:

(1) Importance of continued prenatal care.

(2) Normal changes of pregnancy including both maternal changes and fetal changes.

(3) Self-care during pregnancy.

(4) Comfort measures during pregnancy.

(5) Danger signs of pregnancy.

(6) Labor and delivery including the normal process of labor, signs of labor, coping skills, danger signs, and management of labor.

(7) Preparation for baby including feeding, equipment, and clothing.

(8) Education on the use of over-the-counter drugs.

(9) Education about HIV protection.

c. Care coordination services which shall include:

(1) Presumptive eligibility.

(2) Referral to WIC.

(3) Referral for dental services.

(4) Referral to physician or midlevel practitioners.

(5) Risk assessment.

(6) Arrangements for delivery, as appropriate.

(7) Arrangements for prenatal classes.

(8) Departmental multiprogram application.

(9) Hepatitis screen.

(10) Referral for eligible services.

Amend renumbered subrule 78.25(3) as follows:

78.25(~~2~~ *3*) Enhanced perinatal services may be provided by licensed dietitians; persons with at least a bachelor's degree in social work, counseling, sociology or psychology; physicians; and registered nurses employed by or on contract with the center *if the patient is determined to have a high-risk pregnancy using Form 470-2942, Medicaid Prenatal Risk Assessment.* A physician must be involved in staffing the patients receiving enhanced services.

Enhanced services are as follows:

a. ~~Case management~~ *Care coordination*, the coordination of comprehensive prenatal services, shall be provided by a registered nurse or a person with at least a bachelor's degree in social work, counseling, sociology or psychology and shall include:

(1) ~~Outreach and community education to promote early entry into care.~~ *Developing an individual plan of care based on the client's needs, including pregnancy and personal and interpersonal issues. This package includes counseling (such as coaching, supporting, educating, listening, encouraging, and feedback), referral, and assistance for other specified services such as mental health.*

(2) Ensuring that the client receives all components *as appropriate* (medical, education, nutrition, ~~and~~ psychosocial, *and postpartum home visit*).

(3) Risk tracking.

~~(4) Assistance in arranging for prenatal classes and delivery plans.~~

~~(5) Referral for family planning, child health and women, infants and children (WIC) services postpartum.~~

b. Education services shall be provided by a registered nurse ~~upon entry into the system, third trimester and postpartum. Contacts may be more frequent for clients with special needs.~~ Education shall include *as appropriate*:

(1) ~~Normal anatomy and physiology of pregnancy.~~ *Education about high-risk medical conditions.*

(2) ~~Relief measures for common discomforts.~~ *High-risk sexual behavior.*

(3) ~~Signs or symptoms indicating need to contact physician.~~ *Smoking cessation.*

(4) ~~Dental care and oral hygiene with dental referral, if indicated (may be completed by dental hygienist).~~ *Alcohol usage education.*

(5) ~~Anatomy and physiology of labor and delivery, signs of labor, relaxation and breathing.~~ *Drug usage education.*

(6) ~~Postpartum self-care and infant care.~~ *Environmental and occupational hazards.*

c. Nutrition services shall be provided by a licensed dietitian ~~upon entry into the system, second or third trimester and postpartum. Contacts may be more frequent for clients with special problems.~~ Nutrition assessment and counseling shall include:

(1) ~~The relationship between proper nutrition and good health.~~ *Initial assessment of nutritional risk based on height, current and prepregnancy weight status, laboratory data, clinical data, and self-reported dietary information.*

(2) ~~Special dietary needs during pregnancy.~~ *Ongoing nutritional assessment.*

(3) ~~Promotion of positive changes in food habits.~~ *Development of an individualized nutritional care plan.*

(4) ~~Instructions and support for infant feeding, either breast or bottle as selected by client.~~ *Referral to food assistance programs if indicated.*

(5) Nutritional intervention.

d. Psychosocial services shall be provided by a person with at least a bachelor's degree in social work, counseling, sociology or psychology ~~upon entry into the system, two additional times during the pregnancy and once postpartum. Contacts may be more frequent for a client with special needs.~~ Psychosocial assessment and counseling shall include:

(1) A *psychosocial assessment including: needs assessment,* profile of client demographic factors, mental and physical health *history and* concerns, adjustment to pregnancy and future parenting, and environmental needs.

(2) A profile of the client's family composition, patterns of functioning and support systems.

(3) An assessment-based plan of care, ~~crisis~~ *risk tracking,* counseling and anticipatory guidance as appropriate, and referral and follow-up services.

e. A postpartum home visit within two weeks of postpartum shall be provided by a registered nurse and shall include:

(1) Assessment of mother's health status.

(2) Physical and emotional changes postpartum.

(3) Family planning.

(4) Parenting skills.

(5) Assessment of infant health.

(6) Infant care.

(7) Grief support for unhealthy outcome.

(8) Parenting of a preterm infant.

(9) Identification and referral to community resources as needed.

ITEM 5. Amend subrule 78.29(2) by adding the following new paragraph at the end of the subrule:

Risk assessments, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. (See description of enhanced services at subrule 78.25(3).)

ITEM 6. Amend rule 441—78.30(249A) as follows:

441—78.30(249A) Birth centers. Payment will be made for prenatal, delivery, and postnatal services. *Risk assessments, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. (See description of enhanced services at subrule 78.25(3).)*

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

ITEM 7. Amend rule 441—78.39(249A) as follows:

441—78.39(249A) Federally qualified health centers. Payment shall be made for services as defined in section 1905(a)(2)(C) of the Social Security Act.

Utilization review shall be conducted of Medicaid recipients who access more than 24 outpatient visits in any 12-month period from physicians, family and pediatric nurse practitioners, federally qualified health centers, other clinics, and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the recipient lock-in program.

Risk assessments, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. See description of enhanced services at subrule 78.25(3).

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

[Filed Emergency 8/14/92, effective 9/1/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3315A

LABOR SERVICES DIVISION[347]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 88.5, 17A.3(1) and 17A.5(2), the Labor Commissioner adopts an amendment to Chapter 10, "General Industry Safety and Health Rules," Iowa Administrative Code.

This amendment relates to occupational exposure to asbestos, tremolite, anthophyllite and actinolite and occupational exposure to formaldehyde, correction.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 8, 1992, as ARC 3158A.

LABOR SERVICES DIVISION[347](*cont'd*)

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for July 30, 1992. No comments were received.

This amendment is identical to the Notice.

Pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), this amendment shall become effective upon publication on September 2, 1992. The Commissioner finds that this amendment confers a benefit on employees by permitting them to be provided with safety and health equal those found in states under federal OSHA's jurisdiction and is necessary because of the safety and health of employees in this state.

This amendment is intended to implement Iowa Code section 88.5.

The following amendment is adopted.

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

57 Fed. Reg. 24330 (June 8, 1992)
57 Fed. Reg. 24701 (June 10, 1992)

[Filed Emergency After Notice 8/14/92, effective 9/2/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3314A

LABOR SERVICES DIVISION[347]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 88.5, 17A.3(1) and 17A.5(2), the Labor Commissioner adopts an amendment to Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

The amendment relates to occupational exposure to asbestos, tremolite, anthophyllite and actinolite.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 8, 1992, as **ARC 3157A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for July 30, 1992. No comments were received.

This amendment is identical to the Notice.

Pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), this amendment shall become effective upon publication on September 2, 1992. The Commissioner finds that this amendment confers a benefit on employees by permitting them to be provided with safety and health equal those found in states under federal OSHA's jurisdiction and is necessary because of the safety and health of employees in this state.

This amendment is intended to implement Iowa Code section 88.5.

The following amendment is adopted.

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

57 Fed. Reg. 24330 (June 8, 1992)

[Filed Emergency After Notice 8/14/92, effective 9/2/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3287A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

These amendments incorporate the recent increase in the sales tax rate into fees for camping and related services in Iowa's state parks, recreation areas and forests.

In compliance with Iowa Code section 17A.4(2) the Natural Resource Commission finds that notice and public participation are unnecessary because there is no change in the total dollar amount paid by the public for these services; the change is the decreased fee and increased sales tax amounts which total to the current public cost.

The Natural Resource Commission finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of the amendments should be waived and the amendments be made effective upon filing with the Administrative Rules Coordinator on August 7, 1992, because the statute increasing sales tax so provides.

These amendments are intended to implement Iowa Code sections 111.3, 111.35, and 111.47 and 1992 Iowa Acts, Second Extraordinary Session, Senate File 2393.

These amendments became effective August 7, 1992, upon filing with the Administrative Rules Coordinator.

The following amendments are adopted.

Amend subrule 61.3(1) as follows:

61.3(1) Camping.

	Fee	Sales Tax	Total
a. Nonmodern areas	~~$4.81~~ *$4.76*	~~.19~~ *.24*	$5.00
b. Modern areas	~~6.73~~ *6.67*	~~.27~~ *.33*	7.00
c. Per person over the basic unit of six	.48	.02	.50
d. Chaperoned, organized youth group per group	~~9.61~~ *9.52*	~~.39~~ *.48*	10.00
e. Electricity	~~1.92~~ *1.90*	~~.08~~ *.10*	2.00
This fee will be charged in addition to the camping fee on sites where electricity is available (whether it is used or not)			
f. Additional vehicle permitted under subrule 61.5(9)"c"	~~3.85~~ *3.81*	~~.15~~ *.19*	4.00
g. Cable television hookup	~~.96~~ *.95*	~~.04~~ *.05*	1.00
h. Sewer and water hookup	~~1.92~~ *1.90*	~~.08~~ *.10*	2.00
i. Camping tickets (book of 21)	~~134.61~~ *133.33*	~~5.39~~ *6.67*	140.00

In areas which are subject to local option sales tax, the fee shall be administratively adjusted so that persons camping in those areas will pay the same total cost applicable in other areas.

Camping tickets shall be valid for the calendar year in which the book is purchased and the calendar year immediately following.

Sales tax on the fee stated in "c" will be figured on the applicable total dollar amount collected by the person in charge of the camp area.

[Filed Emergency 8/7/92, effective 8/7/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

10.20(1) Amend Iowa Code subsection 204.204(6) by adding the following new paragraph "c" to the list of substances included in schedule I, stimulants:

c. Methcathinone. Some other names: Ephedrone; 2-Methylamino-1-Phenylpropan-1-one; Monomethylpropion; UR 1431.

[Filed Emergency 8/10/92, effective 8/10/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3288A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 204.201, the Iowa Board of Pharmacy Examiners hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment was approved during the July 29, 1992, meeting of the Board of Pharmacy Examiners.

The purpose of the amendment is to provide for the temporary designation of controlled substances to bring Iowa law into conformance with federal law and to delete current subrule 10.20(1). The substance of current subrule 10.20(1) is a designated schedule III controlled substance in Iowa Code Supplement section 204.208(6). This temporary designation places methcathinone in Iowa Code section 204.204. Methcathinone has been placed in schedule I by the United States Department of Justice, Drug Enforcement Administration, effective May 1, 1992.

In compliance with Iowa Code subsection 17A.4(2), the Board finds that notice and public participation are unnecessary in that the deleted subrule has already been made part of Iowa statutes. The Board also concurs with the findings of the Drug Enforcement Administration that the substance methcathinone has a high potential for abuse and does not have an accepted medical use in treatment in the United States. These findings are consistent with placing this substance in schedule I of the Iowa Uniform Controlled Substances Act.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this rule, 35 days after publication, should be waived. These changes confer a benefit on the public by subjecting the manufacture, distribution, and possession of this substance to the regulatory controls of Iowa Code chapter 204 and should become effective upon filing with the Administrative Rules Coordinator on August 10, 1992.

The amendment is intended to implement Iowa Code section 204.201.

The following amendment is proposed.

Rescind subrule 10.20(1) and adopt the following in lieu thereof:

ARC 3305A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code subsections 135.11(16) and 136C.3(4), the Iowa Department of Public Health hereby amends Chapter 38, "General Provisions," Iowa Administrative Code.

The purpose of these amendments to 38.9(136C) and Appendix A is to add omissions to Chapter 38 which were adopted by the Board of Health at their meeting held July 8, 1992. The amendments were approved; however, because of staff errors, the amendments were not transmitted to the Administrative Rules Coordinator on July 17, 1992. This meant that the adopted amendments were not published in the August 5, 1992, Iowa Administrative Bulletin.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and unnecessary because the items in question went through the public hearing process on June 18, 1992, and were considered and adopted by the Board of Health on July 8, 1992.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and the amendments be made effective on September 9, 1992. The reason for this date is to coincide with the effective date of the new Chapter 38.

These amendments are intended to implement Iowa Code chapter 136C.

These amendments will become effective on September 9, 1992.

The following amendments are adopted.

ITEM 1. Amend subrules 38.9(2) through 38.9(7) as follows:

38.9(2) Notice of violation.

a. In response to an alleged violation ~~or~~ *of* any provision of the Iowa Code, these rules, the conditions of an authorization issued by the agency or any order issued by the agency, the ~~supervisor, radiological health section (RHS)~~ *agency* may serve on the regulated entity a written notice of violation; a separate notice may be omitted if an order pursuant to 38.9(3) or demand for information pursuant to 38.9(5) is issued that otherwise identifies the apparent violation. The notice of violation will concisely

state the alleged violation(s) and will require that the regulated entity submit, within 30 days of the date of the notice or other specified time, a written explanation or statement in reply including:

(1) Corrective steps which have been taken by the regulated entity and the results achieved;

(2) Corrective steps which will be taken; and

(3) The date when full compliance will be achieved.

b. The notice may require the regulated entity subject to the jurisdiction of the agency to admit or deny the violation and to state the reasons for the violation, if admitted. It may provide that, if an adequate reply is not received within the time specified in the notice, the agency may issue an order or a demand for information as to why the ~~license, registration, certificate or other document subject to regulation by the agency~~ *authorization* should not be modified, suspended, or revoked or why such other action as may be proper should not be taken.

38.9(3) Orders.

a. The agency may institute a proceeding to modify, suspend, or revoke ~~a license, registration, or certificate or for such~~ *an authorization or to take* other action as may be proper by serving on the regulated entity an order which will:

(1) Allege the violations with which the regulated entity is charged, or the potentially hazardous conditions or other facts deemed to be sufficient grounds for the proposed action;

(2) Provide that the regulated entity may file a written answer to the order under oath or affirmation within 20 days of its date, or such other time as may be specified in the order;

(3) Inform the regulated entity of its right, within 20 days of that date of the order, or such other time as may be specified in the order, to demand a hearing on all or part of the order, except in a case where the regulated entity has consented in writing to the order;

(4) Specify the issues for hearing; and

(5) State the effective date of the order; if the agency finds that the public health, safety, or interest so requires or that the violation or conduct causing the violation is willful, the order may provide, for stated reasons, that the proposed action be immediately effective pending further order.

b. A regulated entity who receives an order may respond to an order *under this subrule* by filing a written answer under oath or affirmation. The answer shall specifically admit or deny each allegation or charge made in the order and may set forth the matters of fact and law on which the regulated entity relies, and, if the order is not consented to, the reasons as to why the order should not have been issued. Except as provided in paragraph "d" of this subrule, the answer may demand a hearing.

c. If the answer demands a hearing, the agency will issue an order designating the time and place of hearing.

d. An answer or stipulation may consent to the entry of an order in substantially the form proposed in the order *with respect to all or some of the actions proposed in the order*. The consent, in the answer or other written document, of the regulated entity to whom the order has been issued shall constitute a waiver by the regulated entity of a hearing, findings of fact and conclusions of law, and of all right to seek agency and judicial review or to contest the validity of the order in any forum as to those matters which have been consented to or agreed to or on which a hearing has not been requested. An order that has been consented to shall have the same force and effect as an order made after hearing by a presiding officer or the agency, and shall be effective as provided in the order.

38.9(4) Settlement and compromise. At any time after the issuance of an order designating the time and place of hearing in a proceeding to modify, suspend, or revoke ~~a license, registration, or certificate, or for other action,~~ *an authorization,* the staff and a regulated entity may enter into a stipulation for the settlement of the proceeding or the compromise of a civil penalty. The stipulation or compromise shall be subject to approval by the designated presiding officer or, if none has been designated, by the chief administrative law judge, according due weight to the position of the staff. The presiding officer, or if none has been designated, the chief administrative law judge, may order such adjudication of the issues as deemed to be required in the public interest to dispose of the proceeding. If approved, the terms of the settlement or compromise shall be embodied in a decision or order settling and discontinuing the proceeding.

38.9(5) ~~Reserved.~~ *Demand for information.*

a. The agency may issue to a regulated entity a demand for information for the purpose of determining whether an order under 38.9(3) should be issued, or whether other action should be taken, which demand will:

(1) Allege the violations with which the regulated entity is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for issuing the demand; and

(2) Provide that the regulated entity must file a written answer to the demand for information under oath or affirmation within 20 days of its date, or such time as may be specified in the demand for information.

b. A regulated entity to whom the agency has issued a demand for information under this subrule must respond to the demand by filing a written answer under oath or affirmation. The regulated entity's answer shall specifically admit or deny each allegation or charge made in the demand for information, and shall set forth the matters of fact and law on which the licensee relies. A person other than a licensee may answer as described above, or by setting forth its reasons why the demand should not have been issued and, if the requested information is not provided, the reasons why it is not provided.

c. Upon review of the answer filed pursuant to 38.9(5)"a"(2), or if no answer is filed, the agency may institute a proceeding pursuant to 38.9(3) to take such action as may be proper.

d. An answer may consent to the entry of an order pursuant to 38.9(3) in substantially the form proposed in the demand for information. Such consent shall constitute a waiver as provided in 38.9(3)"d."

38.9(6) Civil penalties.

a. Before instituting any proceeding to impose a civil penalty under Iowa Code section 136C.4, the ~~RHS supervisor or the supervisor's designee, as appropriate,~~ *agency* shall serve a written notice of violation upon the person charged. This notice may be included in a notice issued pursuant to 38.9(2). The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged and shall identify specifically the particular provision or provisions of the law, rule, regulation, license, permit, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be pro-

tested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the agency, if any, unless compromised, remitted, or mitigated, the fee shall be collected by civil action, pursuant to Iowa Code section 136C.4.

b. Within 20 days of the date of a notice of violation or other time specified in the notice, the person charged may either pay the penalty in the amount proposed or answer the notice of violation. The answer to the notice of violation shall state any facts, explanations, and arguments denying the charges of violation, or demonstrating any extenuating circumstances, error in the notice of violation, or other reason why the penalty should not be imposed and may request remission or mitigation of the penalty.

c. If the person charged with violation fails to answer within the time specified in 38.9(6)"b," an order may be issued imposing the civil penalty in the amount set forth in the notice of violation described in 38.9(6)"a."

d. If the person charged with violation files an answer to the notice of violation, the ~~RHS supervisor or the supervisor's designee,~~ *agency*, upon consideration of the answer, will issue an order dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. The person charged may, within 20 days of the date of the order or other time specified in the order, request a hearing.

e. If the person charged with violation requests a hearing, the agency will issue an order designating the time and place of hearing.

f. If a hearing is held, an order will be issued after the hearing by the presiding officer or the agency dismissing the proceeding or imposing, mitigating, or remitting the civil penalty.

g. The ~~RHS supervisor or the supervisor's designee, as appropriate,~~ *agency* may compromise any civil penalty, subject to the provisions of 38.9(4).

h. If the civil penalty is not compromised, or is not remitted by ~~the RHS supervisor or the supervisor's designee, as appropriate,~~ the presiding officer~~,~~ or the agency, and if payment is not made within ten days following either the service of the order described in 38.9(6)"c" or "f," or the expiration of the time for requesting a hearing described in 38.9(6)"d," the ~~RHS supervisor or the supervisor's designee,~~ *agency* ~~as appropriate,~~ may refer the matter to the attorney general for collection.

i. Except when payment is made after compromise or mitigation by the Department of Justice or as ordered by a court of the state, following reference of the matter to the attorney general for collection, payment of civil penalties imposed under Iowa Code section 136C.4 shall be made by check, draft, or money order payable to the Treasurer, State of Iowa, and mailed to the ~~Director,~~ Iowa Department of Public Health.

38.9(7) Requests for action under this rule.

a. Any person may file a request to institute a proceeding pursuant to 38.9(3) to modify, suspend, or revoke ~~a license, registration, or certificate, or for such other action~~ *an authorization* as may be proper. Such a request shall be addressed to the ~~Supervisor, Radiological Health Section,~~ *Chief,* Bureau of Environmental Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319. The requests shall specify the action requested and set forth the facts that constitute the basis for the request. The ~~RHS supervisor~~ *bureau chief* will discuss the matter with staff to determine appropriate action in accordance with 38.9(7)"b."

b. Within a reasonable time after a request pursuant to 38.9(7)"a" has been received, the ~~RHS supervisor~~ *bureau chief* shall either institute the requested proceeding in accordance with this rule or shall advise the person who made the request in writing that no proceeding will be instituted, in whole or in part, with respect to the request, and the reasons for the decision.

c.(1) The ~~RHS supervisor's~~ *bureau chief's* decisions under this rule will be filed and within 25 days after the date of the ~~RHS supervisor's~~ *bureau chief's* decision under this rule that no proceeding will be instituted or other action taken in whole or in part, the agency may on its own motion review that decision, in whole or in part, to determine if the ~~RHS supervisor~~ *bureau chief* has abused discretion. This review power does not limit in any way either the agency's supervisory power over delegated staff actions or the agency's power to consult with the staff on a formal or informal basis regarding institution of proceedings under this rule.

(2) No petition or other request for agency review of a ~~RHS supervisor's~~ *bureau chief's* decision under this rule will be entertained by the agency.

ITEM 2. Amend Appendix A as follows:

APPENDIX A

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR RHS ENFORCEMENT ACTIONS

The following statement of general policy and procedure explains the enforcement policy of the Iowa department of public health, (agency), bureau of environmental health, radiological health section, and its staff in initiating enforcement actions, and of presiding officers of the state attorney general's office in reviewing these actions. This statement is applicable to enforcement in matters involving the public health and safety and the environment. This is a policy statement and not a rule, and, therefore, the agency may deviate from this statement of policy and procedure as is appropriate under the circumstances of a particular case. ~~*(Any reference made to "licensee" or "license" in this statement also refers to any registration [registrant], certification [certificate holder], or any other document and holder of such document authorizing specific activities related to the use of radioactive materials or radiation-producing machines, which has been issued by and is subject to the regulatory authority of the agency).~~ *As used in this policy statement:*

"Regulated entity" means licensee, registrant, certificate holder, or any other person in possession of a document or who has submitted documentation that authorizes or recognizes specific activities related to the possession and use of radioactive materials or radiation-producing machines, which has been issued by and is subject to the regulatory authority of the agency, and

"Authorization" means license, registration, certificate, permit, or any other document issued or received by the agency that authorizes specific activities related to the possession and use of radioactive materials or radiation-producing machines in Iowa.

I. Introduction and purpose.

A. The purpose of the RHS enforcement program is to promote and protect the radiological health and safety of the public, including employee's health and safety and the environment by:

(1) Ensuring compliance with RHS rules and license conditions;

(2) Obtaining prompt correction of violations and adverse quality conditions which may affect safety;
(3) Deterring future violations and occurrences of conditions adverse to quality; and
(4) Encouraging improvement of ~~licensee~~ *regulated entity* performance and, by example, that of industry, including the prompt identification and reporting of potential safety problems.

B. Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with ~~licensees~~ *regulated entities* who do not achieve the necessary meticulous attention to detail and the high standard of compliance which RHS expects. Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of these policies and procedures. In no case, however, will ~~licensees~~ *regulated entities* who cannot achieve and maintain adequate levels of protection be permitted to conduct ~~licensed~~ *authorized* activities.

II. Statutory authority and procedural framework.

A. Statutory authority.

The RHS's enforcement jurisdiction is drawn from Iowa Code chapter 17A, Iowa administrative procedure Act.

B. Procedural framework.

Rule 641—38.9(136C) sets forth the procedures the RHS uses in exercising its enforcement authority. Subrule 38.9(2) sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 38.9(6). This subrule provides that the appropriate IDPH employee initiates the civil penalty process by issuing a notice of violation and proposed imposition of a civil penalty. The ~~licensee~~ *regulated entity* is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the ~~licensee's~~ *regulated entity's* response, the ~~RHS supervisor~~ *bureau chief* may mitigate, remit, or impose the civil penalty. An opportunity is provided for a hearing if a civil penalty is imposed.

The procedure for issuing an order to show cause why a ~~license~~ *an authorization* should not be modified, suspended, or revoked or why such other action should not be taken is set forth in 38.9(3). The mechanism for modifying ~~a license~~ *an authorization* by order is set forth in 38.9(5). These subrules provide an opportunity for a hearing to the affected ~~licensee~~ *regulated entity*. However, the RHS is authorized to make orders immediately effective if the public health, safety or interest so requires or, in the case of an order to show cause, if the alleged violation is willful.

III. Severity of violations.

Regulatory requirements have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process.

Consequently, violations are categorized in terms of five categories of severity to show their relative importance within each of the following five activity areas:

1. Radioactive materials.
2. Electronic products.
3. Radon.
4. Tanning facilities/operators and other sources of nonionizing radiation.
5. 641—Chapter 42 credentialing (see appropriate sections of Supplements III, IV, and VII).

These categories of severity for violations are listed separately for each of the section's regulatory programs in the supplements near the end of this appendix.

Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level V violations are the least significant. Severity Levels I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern. Severity Level V violations are of minor safety or environmental concern.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in the radioactive materials program is not necessarily directly comparable to that associated with Severity Level I violations in electronic products program or radon program. While examples are provided in Supplements I through V for determining the appropriate severity level for violations in each of the five activity areas, the examples are neither exhaustive nor controlling.

These examples do not create new requirements. Each is designed to illustrate the significance which the RHS places on a particular type of violation of RHS requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

In each case, the severity level of a violation will be characterized at the level best suited to the significance of the particular violation. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

The severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indication of willfulness. The term "willfulness" as used here embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertant clerical errors in a document submitted to the RHS. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position of the person involved in the violation (e.g., first-line supervisor or senior manager), the significance of any underlying violation, the intent of the violator (e.g., negligence not amounting to careless disregard or deliberateness), and the economic advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

The RHS expects ~~licensees~~ *regulated entities* to provide full, complete, timely, and accurate information and reports. Accordingly, unless otherwise categorized in the supplements, the severity level of a violation involving the failure to make a required report to the RHS will be based upon the significance of and the circumstances surrounding the matter that should have been reported. A ~~licensee~~ *regulated entity* will not normally be cited for a failure to report a condition or event unless the ~~licensee~~ *regulated entity* was actually aware of the condition or

event which it failed to report. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter.

IV. Enforcement conferences.

Whenever the RHS has learned of the existence of a potential violation for which a civil penalty or other escalated enforcement action may be warranted, or recurring noncompliance on the part of a ~~licensee~~ *regulated entity*, the RHS will normally hold an enforcement conference with the ~~licensee~~ *regulated entity* prior to taking enforcement action. The RHS may also elect to hold an enforcement conference for other violations, e.g., Severity Level IV violation which, if repeated, could lead to escalated enforcement action. The purpose of the enforcement conference is to (1) discuss the violations, their significance and causes, and the ~~licensee's~~ *regulated entity's* corrective actions, (2) determine whether there are any aggravating or mitigating circumstances, and (3) obtain other information which will help determine the appropriate enforcement action.

In addition, during the enforcement conference, the ~~licensee~~ *regulated entity* will be given an opportunity to explain to the RHS what corrective actions, if any, were taken or will be taken following discovery of the potential violation. ~~Licensees~~ *Regulated entities* will be told when a meeting is an enforcement conference. Enforcement conferences will not normally be open to the public.

When needed to protect the public health and safety, escalated enforcement action, such as the issuance of an immediately effective order modifying, suspending, or revoking ~~a license~~ *an authorization*, will be taken prior to the enforcement conference. In such cases, an enforcement conference may be held after the escalated enforcement action is taken.

V. Enforcement actions.

This section describes the enforcement sanctions available to RHS and specifies the conditions under which each may be used. The basic sanctions are notices of violations, civil penalties, and orders of various types. Additionally, related administrative mechanisms such as bulletins, confirmatory action letters, and notices of deviation are used to supplement the enforcement program. In selecting the enforcement sanctions to be applied, RHS will consider enforcement actions taken by other federal and state regulatory bodies having concurrent jurisdiction, such as in transportation matters. Usually, whenever a violation of RHS requirements is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, action by RHS is appropriate in the form of a notice of violation requiring a formal response from the recipient describing its corrective actions. The relatively small number of cases involving elevated enforcement action receives substantial attention by the public, and may have significant impact on the ~~licensee's~~ *regulated entity's* operation. These elevated enforcement actions include civil penalties; orders modifying, suspending or revoking ~~licenses~~ *authorizations*; or orders to cease and desist from designated activities.

A. Notice of violation.

A notice of violation is a written notice setting forth one or more violations of a legally binding requirement. The notice normally requires the recipient to provide a written statement describing (1) corrective steps which have been taken and the results achieved; (2) corrective steps which will be taken to prevent recurrence; and (3) the date when full compliance will be achieved. RHS may require responses to notices of violation to be under oath. Normally, responses under oath will be required only in connection with civil penalties and orders.

RHS uses the notice of violation as the standard method for formalizing the existence of a violation. A notice of violation is normally the only enforcement action taken, except in cases where the criteria for civil penalties and orders, as set forth in Sections V.B. and V.C., respectively, are met. In such cases, the notice of violation will be issued in conjunction with the elevated actions.

However, violation findings warranting the exercise of discretion under Section V.G.1. will generally not result in a notice of violation. In addition, for isolated Severity Level V violations, a notice of violation normally will not be issued regardless of who identifies the violation provided that the ~~licensee~~ *regulated entity* has initiated appropriate corrective action before the inspection ends. In these situations, a formal response from the ~~licensee~~ *regulated entity* is not required and the inspection report or official field notes serve to document the violations and the corrective actions. However, a notice of violation will normally be issued for willful violations, if past corrective actions for similar violations have not been sufficient to prevent recurrence, or if the circumstances warrant increasing the severity of Level V violations to a higher severity level.

~~Licensees~~ *Regulated entities* are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable ~~licensee~~ *regulated entity* quality assurance measures or management controls. Generally, however, ~~licensees~~ *regulated entities* are held responsible for the acts of their employees. Accordingly, this policy should not be construed to excuse personnel errors.

B. Civil penalty.

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified ~~licensing~~ *authorizing* provisions of the Iowa Code or supplementary RHS rules or orders, (2) any requirement for which ~~a license~~ *an authorization* may be revoked, or (3) reporting requirements under 641—Chapter 40. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations.

Civil penalties are proposed absent mitigating circumstances for Severity Level I and II violations, are considered for Severity Level III violations, and may be imposed for Severity Level IV violations that are similar to previous violations for which the ~~licensee~~ *regulated entity* did not take effective corrective action.

In applying this guidance for Severity Level III violations, RHS may, notwithstanding the mitigating and escalating factors in this section, refrain from proposing a civil penalty for violations that warrant the exercise of discretion under Section V.G. As to Severity Level IV violations, RHS normally considers civil penalties only for similar Severity Level IV violations that occur after the date of the last inspection or within two years, whichever period is greater.

Civil penalties will normally be assessed for knowing and conscious violations of the reporting requirements of 641—Chapter 40, and for any willful violation of any agency requirement including those at any severity level.

RHS imposes different levels of penalties for different severity level violations and different classes of ~~licensees~~ *regulated entities*. Tables 1A and 1B show the basic civil

penalties for various regulated programs. The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and health of employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the RHS's intention that the economic impact of a civil penalty be such that it puts a ~~licensee~~ *regulated entity* out of business (orders rather than civil penalties are used when the intent is to terminate ~~licensed~~ *authorized* activities) or adversely affects a ~~licensee's~~ *regulated entity's* ability to safely conduct ~~licensed~~ *authorized* activities. The deterrent effect of civil penalties is best served when the amount of such penalties takes into account a ~~licensee's~~ *regulated entity's* "ability to pay." In determining the amounts of civil penalties for ~~licensees~~ *regulated entities* for whom the tables do not reflect the ability to pay, RHS will consider as necessary and increase or decrease on a case-by-case basis.

RHS attaches great importance to comprehensive ~~licensee~~ *regulated entity* programs for detection, correction, and reporting of problems that may constitute, or lead to, violation of regulatory requirements. This is emphasized by giving credit for effective ~~licensee~~ *regulated entity* audit programs when ~~licensees~~ *regulated entities* find, correct, and report problems expeditiously and effectively. To encourage ~~licensee~~ *regulated entity* self-identification and correction of violations and to avoid potential concealment of problems of safety significance, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations which are identified, reported (if required), and effectively corrected by the licensee.

On the other hand, ineffective ~~licensee~~ *regulated entity* programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant RHS-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, RHS intends to apply its full enforcement authority where such action is warranted, including issuing appropriate orders and assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $1000 per violation per day. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of such involvement may not be used to mitigate a civil penalty.

Allowance of mitigation could encourage lack of management involvement in ~~licensed~~ *authorized* activities and a decrease in protection of the public health and safety.

RHS reviews each proposed civil penalty case on its own merits and adjusts the base civil penalty values upward or downward appropriately. Tables 1A and 1B identify the base civil penalty values for different severity levels, activity areas, and classes of ~~licensees~~ *regulated entities*. In accordance with Iowa Code section 136C.4, the values expressed in Table 1A may be invoked upon any violator of these rules repeatedly for each day of continuing violation. After considering all relevant circumstances, adjustments to these values may be made for the factors described below:

(1) Identification and reporting.

Reduction of up to 50 percent of the base civil penalty shown in Table 1A may be given when a ~~licensee~~ *regulated entity* identifies the violation and promptly reports the violation to the RHS. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the ~~licensee~~ *regulated entity* does not take immediate action to correct the problem upon discovery. On the other hand, the base penalty may be increased by as much as 50 percent if the RHS identifies the violation provided the ~~licensee~~ *regulated entity* should have reasonably discovered the violation before the RHS identified it.

(2) Corrective action to prevent recurrence.

Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the ~~licensee~~ *regulated entity* takes corrective action, including actions to prevent recurrence, may result in up to a 50 percent increase or decrease in the base civil penalty shown in Table 1A. For example, very extensive corrective action may result in reducing the proposed civil penalty as much as 50 percent of the base value shown in Table 1A. On the other hand, the civil penalty may be increased as much as 50 percent of the base value if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the timeliness of the corrective action, degree of ~~licensee~~ initiative, and comprehensiveness of the corrective action *by the regulated entity*, such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

(3) Past performance.

Reduction by as much as 100 percent of the base civil penalty shown in Table 1A may be given for prior good performance. On the other hand, the base civil penalty may be increased as much as 100 percent for prior poor performance.

In weighing this factor, consideration will be given to, among other things, the effectiveness of previous corrective action for similar problems, overall performance, and prior performance including Severity Level IV and V violations in the area of concern. For example, failure to implement previous corrective action for prior similar problems may result in an increase in the civil penalty. For purpose of assessing past performance, violations within the past two years of inspection at issue or the period within the last two inspections, whichever is longer, will be considered.

(4) Prior notice of similar events.

The base civil penalty may be increased as much as 100 percent for cases where the ~~licensee~~ *regulated entity* had prior knowledge of a potential problem as a result of a ~~licensee~~ review *by the regulated entity*, a specific RHS or industry notifications or other reasonable indication of a potential problem, and had failed to take effective preventive steps. Prior notice may include findings of RHS, the ~~licensee~~ *regulated entity*, or industry made at other facilities of the ~~licensee~~ *regulated entity* where it is reasonable to expect the ~~licensee~~ *regulated entity* to take action to prevent similar problems at the facility subject to the enforcement action at issue.

(5) Multiple occurrences.

The base civil penalty may be increased as much as 100 percent where multiple examples of a particular violation are identified during the inspection period.

(6) Duration.

The duration of the violation may also be considered in assessing a civil penalty. A greater civil penalty may be imposed if a violation continues for more than a day. For example:

1. If a ~~licensee~~ *regulated entity* is aware of the existence of a condition which results in an ongoing violation and fails to initiate corrective action, each day the condition existed may be considered as a separate violation and, as such, subject to a separate additional civil penalty.

2. If a ~~licensee~~ *regulated entity* (a) is unaware of a condition resulting in a continuing violation but clearly should have been aware of the condition or (b) had an opportunity to correct the condition but failed to do so, a separate violation and attendant civil penalty may be considered for each day that the ~~licensee~~ *regulated entity* clearly should have been aware of the condition or had an opportunity to correct the condition, but failed to do so.

3. Alternatively, whether or not a ~~licensee~~ *regulated entity* is aware or clearly should have been aware of a violation that continues for more than one day, the base civil penalty may be increased as much as 100 percent to reflect the added significance resulting from the duration of the violation.

The above factors are additive. Notwithstanding the statements in subparagraph (6), paragraphs "1" to "3" above, civil penalties for any one violation shall not exceed $1000 per day, with a maximum amount of $5000, regardless of its duration.

The tables and the mitigating factors determine the civil penalties which may be addressed for each violation. However, to focus on the fundamental underlying causes of a problem for which enforcement action appears to be warranted, the cumulative total for all violations which contributed to or were unavoidable consequences of that problem may be based on the amount shown in the table for a problem of that severity level, as adjusted. If an evaluation of such multiple violations shows that more than one fundamental problem is involved, each of which, if viewed independently, could lead to civil penalty action by itself, then separate civil penalties may be assessed for each such fundamental problem. In addition, the failure to make a required report of an event requiring such reporting is considered a separate problem and will normally be assessed a separate civil penalty, if the ~~licensee~~ *regulated entity* is aware of the matter that should have been reported.

C. Orders.

An order is a written RHS directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to be proper (see 38.9(3) and 38.9(5).

Orders may also be issued in lieu of, or in addition to, civil penalties, or may be issued as follows:

(1) ~~License~~ *Authorization* modification orders are issued when some change in ~~licensee~~ *regulated entity*, equipment, procedures, or management controls is necessary.

(2) Suspension orders may be used:

1. To remove a threat to the public health and safety or the environment;

2. To stop facility construction when further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component, or the ~~licensee's~~ *regulated entity's* quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;

3. When the ~~licensee~~ *regulated entity* has not responded adequately to other enforcement action;

4. When the ~~licensee~~ *regulated entity* interferes with the conduct of an inspection or investigation; or

5. For any reason not mentioned above for which ~~license~~ *authorization* revocation is legally authorized.

Suspensions may apply to all or part of the ~~licensed~~ *authorized* activity. Ordinarily, ~~a licensed~~ *an authorized* activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

(3) Revocation orders may be used:

1. When a ~~licensee~~ *regulated entity* is unable or unwilling to comply with RHS requirements,

2. When a ~~licensee~~ *regulated entity* refuses to correct a violation,

3. When a ~~licensee~~ *regulated entity* does not respond to a notice of violation where a response was required,

4. When a ~~licensee~~ *regulated entity* refuses to pay a fee required by Iowa Code section 136C.10, or

5. For any other reason for which revocation is authorized under the rules.

(4) Cease and desist orders are typically used to stop an unauthorized activity that has continued after notification by RHS that such activity is unauthorized.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the RHS believes a basis could reasonably exist for not taking the action as proposed, the ~~licensee~~ *regulated entity* will ordinarily be afforded an opportunity to show cause why the order should not be issued in the proposed manner.

D. Escalation of enforcement sanctions.

RHS considers violations of Severity Level I, II, or III to be serious. If serious violations occur, RHS will, where necessary, issue orders in conjunction with civil penalties to achieve immediate corrective actions and to deter further recurrence of serious violations. RHS carefully considers the circumstances of each case in selecting and applying the sanction(s) appropriate to the case in accordance with the criteria described in Sections V.B. and V.C.

Examples of enforcement actions that could be taken for similar Severity Level I, II, or III violations are set forth in Table 2. The actual progression to be used in a particular case will depend on the circumstances. However, enforcement sanctions will normally escalate for recurring similar violations.

E. Enforcement actions involving individuals.

Enforcement actions involving individuals are significant personnel actions, which will be closely controlled and judiciously applied. An enforcement action will normally be taken only when there is little doubt that the individual fully understood, or should have understood, the responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence) failed to take required actions which have actual or potential safety significance. Most transgressions of individuals at the level of Severity Level III, IV, or V violations will be handled by citing only the ~~facility licensee~~ *regulated entity*.

More serious violations, including those involving the integrity of an individual (e.g., lying to the RHS) concern-

ing matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the ~~facility licensee~~ *regulated entity*.
- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.
- Compliance with an express direction of management resulted in a violation unless the individual did not express concern or objection to the direction.
- Individual error directly resulting from following the technical advice of an expert unless the advice was clearly unreasonable and the ~~licensed individual~~ *regulated entity* should have recognized it as such.
- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Examples of situations which could result in enforcement actions against individuals include, but are not limited to, violations which involve:

- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.
- Inattention to duty such as sleeping, being intoxicated while on duty, or otherwise not meeting requirements for fitness for duty.
- Falsifying records required for RHS rules or by the ~~facility license~~ *regulated entity's authorization*.
- Willfully failing to take "immediate actions" of emergency procedures.
- Willfully withholding significant safety information rather than making such information known to appropriate supervisory or technical personnel.

Any proposed enforcement action against individuals must be done with the concurrence of the ~~RHS Supervisor~~ *chief,* bureau of *environmental* health ~~protection (BEH) Chief~~, and *director,* division of health protection. ~~Director.~~ The opportunity for an enforcement conference with the individual will usually be provided.

In addition, RHS may take enforcement action where the conduct of the individual places in question the RHS's reasonable assurance that ~~licensed~~ *authorized* activities will be properly conducted. The RHS may take enforcement action for reasons that would warrant refusal to issue ~~a license~~ *an authorization* on an original application. Accordingly, enforcement action may be taken regarding matters that raise issues of integrity, competence, fitness for duty, or other matters that may not necessarily be a violation of specific agency requirements.

In the case of an ~~unlicensed~~ *unauthorized* individual, an order modifying the ~~facility license~~ *regulated entity's authorization* to require the removal of the individual from all nuclear-related activities for a specified period of time or indefinitely may be appropriate.

F. Reopening closed enforcement actions.

If significant new information is received or obtained by RHS which indicates that an enforcement sanction was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the division director.

G. Exercise of discretion.

Because the RHS wants to encourage and support ~~licensee~~ *regulated entity* initiative for self-identification and correction of problems, RHS may exercise discretion as follows:

1. RHS may refrain from issuing a notice of violation for a violation described in an inspection report or official field notes that meets all of the following criteria:
   a. It was identified by the ~~licensee~~ *regulated entity*;
   b. It is normally classified at a Severity Level IV or V;
   c. It was reported, if required;
   d. It was or will be corrected, including measures to prevent recurrence, within a reasonable time; and
   e. It was not a willful violation or a violation that could reasonably be expected to have been prevented by the ~~licensee's~~ *regulated entity's* corrective action for a previous violation.
2. The RHS may refrain from issuing a notice of violation or a proposed civil penalty for violations described in an inspection report or official field notes that meet all of the following criteria:
   a. The RHS has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of a material ~~license~~ *authorization* or other regulated facility, or the ~~licensee~~ *regulated entity* is forced into an extended work stoppage related to generally poor performance over a long period; the ~~licensee~~ *regulated entity* has developed and is aggressively implementing during the shutdown a comprehensive program for problem identification and correction; and RHS concurrence is needed by the ~~licensee~~ *regulated entity* prior to resuming activities;
   b. Nonwillful violations are identified by the ~~licensee~~ *regulated entity* as the result of its comprehensive program or as a result of an employee allegation to the ~~licensee~~ *regulated entity*. If RHS identifies the violation, the RHS should determine whether enforcement action is necessary to achieve remedial action;
   c. The violations are based upon activities of the ~~licensee~~ *regulated entity* prior to the events leading to the work stoppage; and
   d. The violations would normally not be categorized as higher than Severity Level III violations under the RHS's enforcement policy.
3. The RHS may refrain from proposing a civil penalty for a Severity Level III violation not involving an overexposure or release of radioactive material that meets all of the following criteria:
   a. It was identified by the ~~licensee~~ *regulated entity* and reported;
   b. Comprehensive corrective action has been taken or is well under way within a reasonable time following identification;
   c. It was not a violation that either was reasonably preventable by the ~~licensee's~~ *regulated entity's* action in response to a previous regulatory concern identified within the past two years of the inspection or since the last two inspections, whichever is longer or reasonably should have been corrected prior to the violation because the licensee had prior notice of the problem involved; and

d. It was not a willful violation or indicative of a breakdown in management controls.

4. The RHS may refrain from proposing a civil penalty for a Severity Level III violation involving a past problem that meets the following criteria:

a. It was identified by a ~~licensee~~ *regulated entity* as a result of ~~a licensee's~~ *the regulated entity's* voluntary formal effort such as defined in the radiation safety program, internal audit procedures or other program that has a defined scope and timetable which is being aggressively implemented and reported;

b. Comprehensive corrective action has been taken or is well underway within a reasonable time following identification; and

c. It is not likely to be identified by routine ~~licensee~~ *regulated entity* efforts such as normal surveillance or QA activities.

5. If the RHS issues an enforcement action for a violation at a Severity Level III violation and as part of the corrective action for that violation, the ~~licensee~~ *regulated entity* identifies other examples of the violation with the same root cause, the RHS may refrain from issuing an additional enforcement action. In determining whether to exercise this discretion, the RHS will consider whether the ~~licensee~~ *regulated entity* acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially changes the safety significance or character of the regulatory concern arising out of the initial violation.

Notwithstanding paragraphs 2, 3, 4, and 5 above, a civil penalty may be proposed when judgment warrants it on the basis of the circumstances of the individual case. For example, civil penalties may be warranted where multiple Severity Level III violations are discovered or where the violation is willful. In addition, as provided in Section VIII, Responsibilities, the ~~RHS supervisor~~ *bureau chief* may refrain from issuing a civil penalty or a notice of violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the safety significance of the violation, the overall performance of the ~~licensee~~ *regulated entity*, and circumstances, if any, that have changed since the violation provided prior notice has been given the agency. This discretion is expected to be exercised only where application of the normal guidance in the policy is unwarranted.

H. Related administrative actions.

In addition to the formal enforcement mechanisms of notice of violation, civil penalties, and orders, RHS also uses administrative mechanisms, such as bulletins, information notices, generic letters, notices of deviation, and confirmatory action letters to supplement its enforcement program. RHS expects ~~licensees~~ *regulated entities* to adhere to any obligations and commitments resulting from these processes and will not hesitate to issue appropriate orders to ~~licensees~~ *regulated entities* to make sure that such commitments are met.

(1) Bulletins, information notices, and generic letters are written notifications to groups of ~~licensees~~ *regulated entities* identifying specific problems and recommending specific actions.

(2) Notices of deviation are written notices describing a ~~licensee's~~ *regulated entity's* failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A notice of deviation requests a ~~licensee~~ *regulated entity* to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

(3) Confirmatory action letters are letters confirming a ~~licensee's~~ *regulated entity's* agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

I. Referrals to attorney general's office.

Alleged or suspected criminal violations of Iowa's radiation machines and radioactive materials rules are referred to the state assistant attorney general's office for investigation. Referral to the attorney general's office does not preclude the RHS from taking other enforcement action under this general statement of policy. However, such actions will be coordinated with the attorney general's office to the extent practicable.

VI. Inaccurate and incomplete information.

A violation of the rules on submitting complete and accurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement will be made on a case-by-case basis and will be reserved for egregious violations. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a ~~licensee~~ *regulated entity* normally will be categorized based on the guidance herein, Section III, "Severity of Violations," and in Supplement VII.

The agency recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, the agency must be able to rely on oral communications from ~~licensee~~ *regulated entity* officials concerning significant information. A ~~licensee~~ *regulated entity* official for purposes of application of the enforcement policy means a first-line supervisor, or above, as well as ~~a licensed~~ *an authorized* individual, radiation safety officer, or a person listed on ~~a license~~ *an authorization* as an authorized user of ~~licensed material~~ *regulated material or a regulated machine*. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to such factors as (1) the degree of knowledge that the communicator should have had regarding the matter, in view of the communicator's position, training, and experience, (2) the opportunity and time available prior to the communication to ensure the accuracy or completeness of the information, (3) the degree of intent or negligence, if any, involved, (4) the formality of the communication, (5) the reasonableness of RHS reliance on the information, (6) the importance of the information which was wrong or not provided, and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a ~~licensee~~ *regulated entity* official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the RHS by a ~~licensee~~ *regulated entity* official or others on behalf of a ~~licensee~~ *regulated entity,* if a record was made of the oral information and provided to the ~~licensee~~ *regulated entity* thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary

containing the error was made available to the ~~licensee~~ *regulated entity* and was not subsequently corrected in a timely manner.

When a ~~licensee~~ *regulated entity* has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the RHS ~~of~~ *or* the ~~licensee~~ *regulated entity* identified the problem with the communication, and whether the RHS relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the ~~licensee~~ *regulated entity* prior to reliance by the RHS, or before the RHS raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the RHS relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information, which the ~~licensee~~ *regulated entity* does not identify as significant, normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the ~~licensee~~ *regulated entity* later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a ~~licensee~~ *regulated entity* as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the ~~licensee's~~ *regulated entity's* actions in not correcting or providing information raise questions about the ~~licensee's~~ *regulated entity's* commitment to safety or fundamental trustworthiness, the agency may exercise its authority to issue orders modifying, suspending, or revoking the ~~license~~ *authorization*. The agency recognizes that enforcement determination must be made on a case-by-case basis, taking into consideration the issues described above.

VII. Public disclosure of enforcement actions.

In accordance with Iowa Code chapter 22, all enforcement actions and ~~licensees'~~ *regulated entity* responses are publicly available for inspection. In addition, press releases are generally issued for civil penalties and orders. In the case of orders and civil penalties related to violations at Severity Level I, II, or III, press releases are issued at the time of the order or the proposed imposition of the civil penalty. Press releases are not normally issued for notices of violation.

VIII. Responsibilities.

The ~~RHS supervisor~~ *bureau chief*, as the principal enforcement officer of the RHS, has been delegated the authority to issue notices of violation, civil penalties, and orders. The ~~RHS supervisor~~ *bureau chief* will sign all notices of violation in concurrence with the signatures of inspectors, and inspectors will sign transmittal letters. In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, the ~~RHS supervisor~~ *bureau chief* must exercise judgment and discretion in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a notice of violation, or to propose or impose a civil penalty and the amount of such penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

The chief, BEH, and, as appropriate, the director of the division of health protection will be provided written notification of all enforcement actions involving civil penalties or orders. The chief, BEH, will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a ~~licensee's~~ *regulated entity's* operation that requires balancing the public health and safety implications of not operating with the potential radiological or other hazards associated with continued operation;

(2) Proposals to impose civil penalties in amounts greater than 100 percent of the Severity Level I values shown in Table 1A;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any enforcement action that involves a finding of a material false statement;

(5) Refraining from taking enforcement action for matters meeting the criteria of Section V.G.2.

(6) Any action the ~~RHS supervisor~~ *bureau chief* believes warrants agency involvement; or

(7) Any proposed enforcement action on which the agency asks to be consulted.

ITEM 3. Amend Appendix A - Supplements I-VII as follows:

CHAPTER 38—APPENDIX A
SUPPLEMENTS I-VII

Supplement I—Severity categories for topics addressing certain health physics matters in 641—Chapter 40(136C).

A. Severity I—Violations involving, for example:

1. Single exposure of a worker in excess of 25 rems of radiation to the whole body, 150 rems to the skin of the whole body, or 375 rems to the feet, ankles, hands, or forearms;

2. Annual whole body exposure of a member of the public in excess of 2.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of ten times the limits of 641—subrule 40.2(6);

4. Disposal of ~~licensed~~ *radioactive* material in quantities or concentrations in excess of ten times the limits of 641—subrule 40.4(3); or

5. Exposure of a worker in restricted areas of ten times the limits of 641—subrule 40.2(3).

B. Severity II—Violations involving, for example:

1. Single exposure of a worker in excess of 5 rems to the whole body, 30 rems to the skin of the whole body, or 75 rems to the feet, ankles, hands or forearms;

2. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of five times the limits of 641—subrule 40.2(6);

4. Failure to make an immediate notification as required by 641—paragraphs 40.5(3)"a" and "b";
5. Disposal of ~~licensed~~ *radioactive* material in quantities or concentrations in excess of five times the limits of 641—subrule 40.4(3); or
6. Exposure of a worker in restricted areas in excess of five times the limits of 641—subrule 40.2(3).

C. Severity III—Violations involving, for example:
1. Single exposure of a worker in excess of 3 rems of radiation to the whole body, 7.5 rems to the skin of the whole body, or 18.75 rems to the feet, ankles, hands or forearms;
2. A radiation level in an unrestricted area such that an individual could receive greater than 100 millirem in a one-hour period or 500 millirem in any seven consecutive days;
3. Failure to make a 24-hour notification as required by 641—paragraph 40.5(3)"b" or an immediate notification required by 641—paragraph 40.5(3)"a";
4. Substantial potential for an exposure or release in excess of 641—Chapter 40 whether or not such exposure or release occurs (e.g., entry into high radiation areas, such as in the vicinity of exposed radiographic sources, without having performed an adequate survey, or operation of a radiation facility with a nonfunctional interlock system);
5. Release of radioactive material to an unrestricted area in excess of the limits of 641—subrule 40.2(6);
6. Improper disposal for ~~licensed~~ *radioactive* material not covered in Severity Levels I and II;
7. Exposure of a worker in restricted areas in excess of the limits of 641—subrule 40.2(3);
8. Release for unrestricted use of contaminated or radioactive material or equipment which poses a realistic potential for significant exposure to members of the public, or which reflects a programmatic (rather than isolated) weakness in the radiation control program;
9. Cumulative worker exposure above regulatory limits when such cumulative exposure reflects a programmatic rather than an isolated weakness in radiation protection;
10. Conduct of ~~licensee~~ *authorized* activities by a technically unqualified person;
11. Significant failure to control ~~licensed~~ *radioactive* material; or
12. Breakdown in the radiation safety program involving a number of violations that are related or, if isolated, that are recurring that collectively represent *either* a potentially significant lack of attention or carelessness toward ~~licensed~~ *authorized* responsibilities.

D. Severity IV—Violations involving, for example:
1. Exposures in excess of the limits of 641—subrule 40.2(1) not constituting Severity Level I, II, or III violations;
2. A radiation level in an unrestricted area such that an individual could receive greater than 2 millirem in a one-hour period or 100 millirem in any seven consecutive days;
3. Failure to make a 30-day notification required by 641—subrule 40.5(5);
4. Failure to make a follow-up written report as required by 641—subrule 40.5(2) and 641—subrule 40.6(4); or
5. Any other matter that has more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement II—Severity categories referring to certain transportation issues.

A. Severity I—Violations of RHS transportation requirements involving, for example:
1. Annual whole body radiation exposure of a member of the public in excess of 2.5 rems of radiation;
2. Surface contamination in excess of 50 times the RHS limit; or
3. External radiation levels in excess of 10 times the RHS limit.

B. Severity II—Violations of RHS transportation requirements involving, for example:
1. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;
2. Surface contamination in excess of 10 but not more than 50 times the RHS limit;
3. External radiation levels in excess of 5, but not more than 10 times the RHS limit; or
4. Failure to make required initial notifications associated with Severity Level I or II violations.

C. Severity III—Violations of RHS transportation requirements involving, for example:
1. Surface contamination in excess of 5 but not more than 10 times the RHS limit;
2. External radiation in excess of 1 but not more than 5 times the RHS limit;
3. Any noncompliance with labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:
a. Significant failure to identify the type, quantity, or form of material;
b. Failure of the carrier or recipient to exercise adequate controls; or
c. Substantial potential for personnel exposure or contamination, or improper transfer of material;
4. Failure to make required initial notification associated with Severity Level III violations; or
5. Breakdown in the ~~licensee's~~ *regulated entity's* program for the transportation of ~~licensed~~ *radioactive* material involving a number of violations that are related or, if isolated, that are recurring violations that collectively reflect *either* a potentially significant lack of attention or carelessness toward ~~licensed~~ *authorized* responsibilities.

D. Severity IV—Violations of RHS transportation requirements involving, for example:
1. Breach of package integrity without external radiation levels exceeding the RHS limit or without contamination levels exceeding 5 times the RHS limits;
2. Surface contamination in excess of but not more than 5 times the RHS limit;
3. Failure to register as an authorized user of RHS-Certified Transport packages;
4. Noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;
5. Failure to demonstrate that packages for special form radioactive material meet applicable regulatory requirements;
6. Failure to demonstrate that packages meet DOT specifications for 7A Type A packages; or
7. Other violations that have more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement III—Severity categories relative to radioactive materials.

A. Severity I—Violations involving, for example:
1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the ~~license~~ *authorization*; or
2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function;
B. Severity II—Violations involving, for example:
1. Radiation levels, contamination levels, or releases that exceed 5 times the limits specified in the ~~license~~ *authorization*; or
2. A system designed to prevent or mitigate a serious safety event being inoperable.
C. Severity III—Violations involving, for example:
1. Failure to control access to ~~licensed~~ *radioactive* materials for radiation purposes as specified by RHS requirements;
2. Possession or use of unauthorized equipment or materials in the conduct of ~~licensee~~ *regulated entity* activities which degrades safety;
3. Use of radioactive material on humans where such use is not authorized;
4. Conduct of ~~licensed~~ *authorized* activities by a technically unqualified person;
5. Radiation levels, contamination levels, or releases that exceed the limits specified in the ~~license~~ *authorization*;
6. Medical therapeutic misadministration or the failure to report such misadministration;
7. Multiple errors of the same or similar root cause that result in diagnostic misadministrations over the inspection period or a recurrent violation from the previous inspection period that results in a diagnostic misadministration;
8. Breakdown in the control of ~~licensed~~ *authorized* activities involving a number of violations that are related or, if isolated, that are recurring violations that collectively represent *either* a potentially significant lack of attention or carelessness toward ~~licensed~~ *authorized* responsibilities; or
9. Failure, during radiographic operations, to have present or use radiographic equipment, radiation survey instruments, or personnel monitoring devices as required by 641—Chapter 40.
D. Severity IV—Violations involving, for example:
1. Failure to maintain patients hospitalized who have cobalt-60, cesium-137, radium-226, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;
2. Other violations that have more than minor safety or environmental significance; or
3. Medical diagnostic misadministration or a failure to report such a misadministration.
E. Severity V—Violations that have minor safety or environmental significance.

Supplement IV—Severity categories relative to electronic products.
A. Severity I—Violations involving, for example:
1. Maximum fluoroscopic X-ray output exceeds limitations by 200 percent; or
2. No means to shield tube housing (e.g., fish bowl tube).
B. Severity II—Violations involving, for example:
1. Maximum fluoroscopic X-ray output exceeds limitations by 100 percent; or
2. Failure to provide protected area for operator of machine(s).
C. Severity III—Violations involving, for example:
1. Conduct of regulated activities by a technically unqualified person;
2. Positive beam limitation device not operating in accordance with manufacturer's specifications or the rules;
3. Failure of primary beam intercept for fluoroscopic X-ray units;
4. Violation of beam quality (HVL) requirements;
5. No technique indication, as appropriate;
6. Source-to-skin distance not in accordance with requirements of these rules;
7. Light field not of sufficient intensity to meet standards or does not exist at all;
8. Centering device inoperative or not available;
9. Timers not operating in accordance with standards and rules;
10. Failure to control access to radiation areas;
11. Multiple errors of the same or similar root cause that result in overexposure(s) or a recurrent violation from the previous inspection period that results in overexposure(s);
12. Breakdown in the control of regulated activities involving a number of violations that collectively represent a potentially significant lack of attention or carelessness toward regulated responsibilities; or
13. Any violation based on manufacturer specifications which is not of such significance as to merit a Severity II violation.
D. Severity IV—Violations involving, for example:
1. Absence of or incomplete technique chart;
2. No plan review of facility prior to beginning regulated activities at the facility;
3. Possession of unauthorized equipment; or
4. Failure to indicate source-to-image distance (SID).
E. Severity V—Violations including, for example:
1. Failure to provide safety regulations to operators of machines; or
2. Failure to provide records of maintenance or associated information on machines.

Supplement V—Severity categories relative to radon testing and mitigation.
A. Severity I—Violations involving, for example:
1. Fan installation under a living area; or
2. Inadequate sealing that leads to backdrafting; or
3. Failure to conduct diagnostic testing; or
4. Conducting testing or mitigation without certification.
B. Severity II—Violations involving, for example:
1. Failure to follow National Electrical Code for installation of radon mitigation systems such as using outdoor wiring outside, using conduit when penetrating floors, having a dedicated line at breaker, and shutoff mechanism near fan; or
2. Using a testing device for which an individual is not listed on the RMP; or
3. Failure to report to IDPH radon levels found to be 100 pCi/L or more.
C. Severity III—Violations involving, for example:
1. Failure to provide copies of appropriate waivers; or
2. Failure to provide audible or visual alarms that indicate that the system is operating properly; or
3. Failure to ensure that postmitigation testing was performed; or
4. Improper use of testing device in conjunction with release of data.
D. Severity IV—Violations involving, for example:

1. Inadequate or absence of support for mitigation system components; or
2. No radiation labels on mitigation systems; or
3. Failure to provide ultraviolet coating to appropriate mitigation system components; or
4. Failure to brief homeowner on mitigation system operation.

E. Severity V—Violations that have minor safety or environmental significance such as:

1. Failure to brief homeowner on mitigation system operation; or
2. Failure to maintain records showing name, address, and telephone numbers of homes tested or mitigated; or
3. Failure to submit required information to IDPH in a timely manner; or
4. Failure to supply or provide a mitigation system diagram; or
5. Failure to report changes in program to IDPH.

Supplement VI—Severity categories relative to tanning facilities/operators and other forms of nonionizing radiation.

A. Severity I—Violations involving, for example:

1. Allowing the consumer to use the tanning device without requiring the use of protective eye wear;
2. Allowing the consumer to use the tanning device when no operator is present; or
3. No emergency shutoff switch on device.

B. Severity II—Violations involving, for example:

1. Failure to follow tanning device exposure schedules;
2. Using unauthorized lamps or timers or unauthorized devices;
3. Failure to provide appropriate warning statements and other representative lists of photosensitizing drugs and agents information to tanning consumers; or
4. Use of inappropriate ultraviolet filters.

C. Severity III—Violations involving, for example:

1. Conduct of tanning activities by an untrained person;
2. Multiple errors of the same or similar root cause that result in overexposure to ultraviolet radiation or a recurrent violation from the previous inspection period that results in an overexposure to ultraviolet radiation;
3. Breakdown in the control of activities involving a number of violations that are related or, if isolated, that are recurring violations that collectively represent a potentially significant lack of attention or carelessness toward responsibilities;
4. Failure to replace lamps and filters at the required frequency;
5. Failure to provide physical barriers to protect the general public from coming in contact with lamps or bulbs; or
6. Use of a device when not authorized by the agency.

D. Severity IV—Violations involving, for example:

1. Failure to post appropriate warning signs; or
2. Failure to have proper device labeling.

E. Severity V—Violations that have minor safety or environmental significance, such as:

1. Failure to use appropriate consent forms;
2. Use of inappropriate promotional material;
3. Tanning permit not posted; or
4. No procedures for cleaning devices.

Supplement VII—Severity categories relative to miscellaneous matters.

A. Severity I—Violations involving, for example:

1. Inaccurate or incomplete information that is provided to the RHS (a) deliberately with the knowledge of a ~~licensee~~ *regulated entity* official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety considerations;
2. Incomplete or inaccurate information that the RHS requires be kept by a ~~licensee~~ *regulated entity* which is (a) incomplete or inaccurate because of falsification by or with the knowledge of a ~~licensee~~ *regulated entity* official, or (b) if the information, had it been complete and accurate when reviewed by the RHS, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;
3. Information that the ~~licensee~~ *regulated entity* has identified as having significant implications for public health and safety or the common defense and security ("significant information identified by a ~~licensee~~ *regulated entity*") and is deliberately withheld from the agency;
4. Action by senior corporate management in violation of regulations against an employee;
5. A knowing and intentional failure to provide the notice required by these rules; or
6. Failure to substantially implement the required fitness-for-duty program.

B. Severity II—Violations involving, for example:

1. Inaccurate or incomplete information which is provided to the RHS (a) by a ~~licensee~~ *regulated entity* official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;
2. Incomplete or inaccurate information which the RHS requires be kept by a ~~licensee~~ *regulated entity* which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a ~~licensee~~ *regulated entity* official, or (b) if the information, had it been complete and accurate when reviewed by the RHS, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;
3. "Significant information identified by a ~~licensee~~ *regulated entity*" and not provided to the agency because of careless disregard on the part of a ~~licensee~~ *regulated entity* official;
4. Action by management above first-line supervision in violation or regulations against an employee;
5. Failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or to take action for on-duty misuse of alcohol, prescription drugs, or over-the-counter drugs;
6. Failure to test for cause when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use; or
7. Deliberate failure of the ~~licensee's~~ *regulated entity's* employee assistance program to notify ~~licensee's~~ *the regulated entity's* management when the EAP's staff is aware that an individual's condition may adversely affect safety-related activities.

C. Severity III—Violations involving, for example:

1. Incomplete or inaccurate information which is provided to the RHS (a) because of inadequate actions on the part of ~~licensee~~ *regulated entity* officials but not amounting to a Severity Level I or II violation, or (b) if the in-

formation, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

2. Incomplete or inaccurate information which the RHS requires be kept by a ~~licensee~~ *regulated entity* which is (a) incomplete or inaccurate because of inadequate actions on the part of ~~licensee~~ *regulated entity* officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the RHS, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. Failure to provide "significant information identified by a ~~licensee~~ *regulated entity*" to the agency and not amounting to a Severity Level I or II violation;

4. Action by first-line supervision in violation of regulations against an employee;

5. Inadequate review or failure to review such that, if an appropriate review had been made as required, a report pursuant to 641—subrule 40.5(6) would have been made; or

6. Failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for on-site alcohol use, not amounting to a Severity Level II violation.

D. Severity IV—Violations involving, for example:

1. Incomplete or inaccurate information of more than minor significance which is provided to the RHS but not amounting to a Severity Level I, II, or III violation;

2. Information which the RHS requires be kept by a ~~licensee~~ *regulated entity* and which is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation; or

3. Inadequate review or failure to review under reporting requirements of these rules or other procedural violations associated with reporting requirements with more than minor safety significance.

E. Severity V—Violations of minor procedural requirements related to reporting requirements.

1. Incomplete or inaccurate information which is provided to the agency and the incompleteness or inaccuracy is of minor significance;

2. Information which the RHS requires be kept by a ~~licensee~~ *regulated entity* which is incomplete or inaccurate and the incompleteness or inaccuracy is of minor significance; or

3. Minor procedural requirements related to reporting.

TABLE 1A—Base Civil Penalties

		Transportation	
	Health Physics and EP	Greater than Type A Quantity[1]	Type A Quantity or less[2]
a. Industrial users of material[3]	1000	500	200
b. Waste disposal of radioactive material	1000	500	200
c. Academic and medical institutions	1000	500	200
d. Other material licensees	1000	500	200
e. Radiation machine users	1000	---	---
f. Radon testers and mitigators	250	---	---
g. 641—Chapter 42	100	---	---
h. Tanning facilities/operators and other sources of non-ionizing radiation	500	---	---

[1]Includes irradiated fuel, high level waste, unirradiated fissile material and any other quantities requiring Type B packaging.
[2]Includes low specific activity waste (LSA), low-level waste, Type A packages, and excepted quantities and articles.
[3]Includes industrial radiographers, nuclear pharmacies, and other industrial users.

TABLE 1B—Base Civil Penalties

Severity Level	Base Civil Penalty Amount (Percent of amount listed in Table 1A)
I.	100
II.	80
III.	50
IV.	15
V.	5

TABLE 2. Examples of Progression of Escalated Enforcement Actions for Similar Violations in the Same Activity Area Under the Same License, Registration, or Certificate.

Severity of Violation	Number of similar violations from the date of the last inspection or within the previous two years (whichever period is greater)		
	1st	2nd	3rd
I.	a+b	a+b+c	d
II.	a	a+b	a+b+c
III.	a	a+b	

a. Civil penalty.

b. Suspension of affected operations until the bureau chief is satisfied that there is reasonable assurance that the regulated entity can operate in compliance with the appli-

cable requirements; or modification of the ~~license or other document~~ *authorization*, as appropriate.

c. Show cause for modification or revocation of the ~~license or other document~~ *authorization*, as appropriate.

d. Further action, as appropriate.

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ARC 3307A

UTILITIES DIVISION[199]

Adopted and Filed Emergency

On August 13, 1992, the Iowa Utilities Board issued an "Order Adopting Rules on an Emergency Basis" In Re: Reorganization of Functions, Docket No. RMU-92-9. Iowa Code section 17A.3 requires each agency to adopt as a rule a description of the organization of the agency which states the general course and method of its operations, the administrative subdivisions of the agency and the programs implemented by each of them, a statement of the mission of the agency, and the methods by which and location where the public may obtain information or make submissions or requests. This information is currently contained in Chapter 1 of the Utilities Board's administrative rules. The Board proposes to reorganize the administrative subdivisions of the agency and the programs implemented for more effective utilization of agency resources. It intends to eliminate the conservation, auditing, and research bureau and combine its functions with the bureau of rate and safety evaluation and the board members' staff bureau. Chapter 1 of the administrative rules is amended to accomplish this reorganization. The proposal is necessitated by the significant reduction in state appropriations received by the Utilities Division effective July 1, 1992.

Pursuant to Iowa Code section 17A.4(2), the Board for good cause finds that notice and public participation would be unnecessary. The reorganization is the realignment of existing functions and will have no impact on the public's accessibility to the agency or duties performed by the agency.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the amendments confer a benefit and should be made effective immediately upon filing with the Administrative Rules Coordinator on August 14, 1992. It is a benefit for the public to immediately know of the reorganization. The rules will properly reflect the reorganized structure and give the public the immediate ability to direct inquiries and concerns to the appropriate bureau.

These amendments are intended to implement Iowa Code section 17A.3 and chapter 474.

ITEM 1. Amend rule 1.5(17A,474), introductory paragraph, as follows:

199—1.5(17A,474) Organization. The utilities division consists of: the three-member board, the office of the executive secretary, the office of general counsel, and the technical and administrative staff which includes:

1. The bureau of rate and safety evaluation.
2. The public information/consumer services bureau.
~~3. The conservation, auditing, and research bureau.~~
~~4~~ *3.* The board members' staff bureau.

ITEM 2. Amend subrule 1.5(4) as follows:

1.5(4) The bureau of rate and safety evaluation. This bureau is responsible for the administrative and technical work with respect to the regulation of public utilities, pipelines, and underground gas storage within the jurisdiction of the board. The bureau of rate and safety evaluation provides analysis and advises the board on matters of rates, tariffs, licensing, service quality, and safety of regulated public utilities. *The bureau is also responsible for assisting the board in the development of energy efficiency activities and demand side management, for advising the board on matters of accounting, and management performance.*

ITEM 3. Rescind subrule 1.5(6).

ITEM 4. Amend subrule 1.5(7) and renumber as follows:

1.5~~(7)~~*(6)* The board members' staff bureau. This bureau is responsible for providing technical advice and analysis to the board members with respect to rate regulation of public utilities. *The bureau conducts research on public utility matters as desired by the board and* ~~The bureau~~ provides administrative support and organization for transacting business before the board.

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ARC 3312A

BANKING DIVISION[187]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Banking Division of the Iowa Department of Commerce hereby adopts amendments to Chapter 2, "Application Procedures," Iowa Administrative Code.

Specifically, these amendments will revise the present rules relating to the ability of state-chartered banks to engage in securities activities with any company that directly engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities. The Division of Banking's original rules establishing procedures for engaging in securities activities, effective on March 6, 1988, precluded a state bank from entering into an agreement with an affiliated securities company, unless the securities company was a bona fide subsidiary of the state bank. The purpose of the revision is to allow state-chartered banks to engage in securities activities with an affiliated company other than a subsidiary of the state bank to the same extent that a national chartered bank may engage in similar activities. Numerous bank holding companies, those located in Iowa and those located outside the boundaries, now own and operate separate securities companies and would like to establish business relationships with their affiliated state banks. These amendments would allow the Division of Banking's rules to mirror the Federal Deposit Insurance Corporation's regulations pertaining to association with affiliated securities companies. These amendments will also preclude an employee of a securities company whose responsibilities involve customer contact from performing any deposit functions at the state bank.

Notice of Intended Action was published in the Iowa Administrative bulletin on May 27, 1992, as **ARC 3020A.**

The Superintendent received four letters of comment from interested parties. The commenters, in general, agreed with the proposed change to allow state banks to engage in securities activities with affiliated broker-dealers but voiced objection to the broker-dealer employee prohibition from performing banking functions. A public hearing was held on June 17, 1992. Three of the four interested parties who provided written comments were in attendance at the hearing.

Based upon the comments received, several revisions have been made to the proposed rules. The revisions include additional clarification with respect to distinguishing between bank functions and brokerage functions by dual employees, factors considered during the approval process and conditions upon which the Superintendent may revoke previously approved securities activities.

These amendments are intended to implement Iowa Code section 524.825.

These amendments will become effective October 7, 1992.

The following amendments are proposed.

ITEM 1. Amend 187—2.15(524), introductory paragraph, as follows:

187—2.15(524) Securities activities. Procedures to establish securities activities of state bank subsidiaries—state bank transactions with ~~unaffiliated~~ securities companies pursuant to ~~1987 Iowa Acts, chapter 171, section 14~~ *Iowa Code section 524.825.*

ITEM 2. Amend subrule **2.15(1)**, paragraph **"a,"** as follows:

a. A representation as to whether the securities activities to be engaged in will be conducted through a state bank subsidiary or transacted through an *affiliated or* unaffiliated securities company. (State banks may engage in securities activities directly where such activities are limited to discount brokerage or referral services.)

ITEM 3. Amend subrule **2.15(1)**, paragraphs **"g"** and **"h,"** as follows:

g. If the securities activities will be transacted through an *affiliated or* unaffiliated securities company, all of the following conditions must be met:

(1) The securities business of the ~~unaffiliated~~ securities company must be physically separate and distinct from the core functions of the state bank, but may share a common entrance with the state bank. The securities company's office location must be clearly identified as belonging to the securities company.

(2) The state bank and ~~unaffiliated~~ securities company shall share no common officers or directors.

(3) Any securities activities conducted by the ~~unaffiliated~~ securities company on the premises of the state bank that involve customer contact and provide any type of investment advice to the customer shall be performed by an employee of the securities company. The ~~unaffiliated~~ securities company shall be totally responsible for activities of that employee. This requirement shall not be construed to prohibit the state bank from providing remuneration to the employee of the ~~unaffiliated~~ securities company. Any employee of the ~~unaffiliated~~ securities company whose responsibilities involve customer contact shall be prohibited from performing any lending function at the state bank. *Any employee of the securities company, other than an employee who is registered with the state of Iowa under Iowa Code chapter 502 as an agent of a broker-dealer as such under chapter 502, whose responsibilities involve customer contact shall be prohibited from performing any deposit function at the state bank which involves customer contact.*

(4) The ~~unaffiliated~~ securities company shall conduct business pursuant to independent policies and procedures designed to adequately inform customers and prospective customers of the securities company that the securities company is a separate organization from the state bank and that the investments recommended, offered, or sold by the securities company are not state bank deposits, are not insured by the Federal Deposit Insurance Corporation, and are not obligations of or guaranteed by the state bank.

(5) A copy of the agreement between the state bank and ~~unaffiliated~~ securities company shall accompany the application.

h. A state bank which has *established and operates* a securities subsidiary or transacts business with an *affiliated or* unaffiliated securities company must comply with all of the requirements set forth in Federal Deposit Insurance Corporation Rules and Regulations 12 CFR section 337.4(e) and section 337.4(h) ~~(December 14, 1987)~~.

ITEM 4. Amend subrule **2.15(4)** by adding a new paragraph **"d"** and renumbering the existing paragraph **"d"** as paragraph **"e"** as follows:

d. *If such registration is required under Iowa Code chapter 502, the subsidiary or securities company is registered as a broker-dealer, the officers of the subsidiary or securities company are registered as agents of the subsidiary or securities company and the agent or agents engaging in securities activities for the subsidiary or securities company are registered as agents of the subsidiary or securities company.*

e. Any other relevant factors as the superintendent may prescribe.

ITEM 5. Amend subrule **2.15(6)**, introductory paragraph, add a new paragraph **"c,"** and renumber the existing paragraph **"c"** as **"d"** as follows:

2.15(6) Revocation. The superintendent may suspend or revoke the approval of the state bank or its subsidiary to engage in securities activities *and the approval of the state bank to enter into an agreement with a securities company to provide securities activities*, pursuant to the contested case provisions of Iowa Code chapter 17A, if any of the following occur:

c. *If such registration is required under Iowa Code chapter 502, the subsidiary or securities company is not currently registered as such, such registration is suspended, or the subsidiary or securities company is otherwise prevented from performing its duties under the agreement with the bank by reason of regulation under chapter 502 or the Securities Exchange Act of 1934 or by reason of a rule or order of the Iowa Securities Bureau, the Securities and Exchange Commission or the National Association of Securities Dealers, Inc.*

d. Other relevant factors occur which the superintendent may determine are grounds for a suspension or revocation of the securities activities.

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ARC 3301A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 1992 Iowa Acts, Senate File 2355, section 33, subsection 6, and section 78, and 1992 Iowa Acts, Senate File 2311, section 6, the Department of Human Services hereby amends Chapter 54, "Facility Participation," Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 81, "Nursing Facilities," Chapter 82, "Intermediate Care Facilities for the Mentally Retarded," Chapter 83, "Medicaid Waiver Services," and Chapter 86, "Medically Needy," appearing in the Iowa Administrative Code.

These amendments implement the changes in Medicaid policy and rates mandated by the General Assembly, including an immunization replacement program and a change in the Medically Needy certification period for certain individuals; add phototherapy bilirubin lights to the list of types of durable medical equipment for which Medicaid coverage is available; and provide that the Iowa Veterans Home's per diem will not be used in determining the seventieth percentile of participating facilities' per diem rates for the purpose of establishing the maximum reimbursement for nursing facilities. The changes are summarized by chapter below.

Chapter 54. These amendments reduce the residential care facility inflation rate from 6.1 percent to 3.1 percent annually as mandated by 1992 Iowa Acts, Senate File 2355, section 33, subsection 3. Language is revised to provide that the inflation factor shall not exceed the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31.

Chapter 77. These amendments establish the requirements for the Department's approval of HCBS/MR and HCBS/MR/OBRA living units serving four individuals as mandated by 1992 Iowa Acts, Senate File 2311, sections 3 and 7. In addition, these amendments establish how the Department will allocate the ten living unit limit for four-bed units which was mandated by the General Assembly.

All recipients living in these four-person units must receive on-site staff supervision during the entire time period the persons are present in the program's living unit. The need for the on-site supervision must be reflected in the person's individual program plan.

In addition to setting the 40-bed limit, the General Assembly also mandated that the Department consider the geographic location of the program to avoid an overconcentration of such programs in an area. The Department has chosen to initially allocate two living units to each of the Department's five regions; but if all living unit allocations have not been used as of October 31, 1992, the Department will redistribute the unused allocation on a statewide basis according to existing application dates and provider capability to meet application criteria.

Chapter 78. These amendments do the following:

1. Implement an immunization replacement program that will be coordinated between the Department and the Department of Public Health. The Department of Public Health will obtain vaccines through the Public Health Service Centers for Disease Control at significantly lower prices than on the open market due to the large quantities involved. The Department will pay the Department of Public Health for the vaccines. The Department of Public Health will furnish providers with replacement vaccine vials based on reports received from the Department reflecting vaccine utilization as reported on paid physician claims.

2. Amend the maximum of three consumers receiving community-supported alternative living arrangements or HCBS/MR or HCBS/MR/OBRA services in a living unit to allow service providers meeting the requirements in Chapter 77 to provide services to four consumers in a living unit as mandated by 1992 Iowa Acts, Senate File 2311, sections 3 and 7.

3. Change the reimbursement for clinics and family planning clinics from an encounter rate (rate paid per visit based on cost) to a fixed fee schedule as mandated by 1992 Iowa Acts, Senate File 2355, section 33, subsection 3.

4. Add phototherapy bilirubin lights to the list of types of durable medical equipment for which Medicaid coverage is available.

Phototherapy bilirubin lights are used to treat neonatal jaundice in infants. Neonatal jaundice is a common complication of newborn babies. Left untreated, neonatal jaundice spontaneously resolves with the increasing maturity of the liver in most infants. However, in a substantial minority, especially those with hemolytic complications, hyperbilirubinemia can reach levels toxic enough to cause permanent brain damage, which can then result in varying degrees of neurologic deficit and, in extremely severe cases, even death.

In the past, exchange transfusion was the only effective method in the treatment of severe neonatal jaundice. Phototherapy is now the preferred method of treatment for neonatal hyperbilirubinemia by virtue of its noninvasive nature and its relative freedom from major complications. It is also convenient, easy to use, and inexpensive in terms of personnel, equipment, and disposals. Long-term experience with phototherapy has demonstrated its safety as well as efficacy.

Currently, phototherapy bilirubin lights are accessed by an exception request in which medical necessity must be documented. Early and periodic screening, diagnosis and treatment (EPSDT) guidelines must be applied as the lights are used for infants. EPSDT requires that states provide all medically necessary services for children and provides federal financial participation for those services. The Department has found no exception request for phototherapy bilirubin lights that has not been medically necessary.

The only alternative to using bilirubin lights at home is to lengthen the hospital stay at an increased cost to the program.

Chapter 79. These amendments do the following as mandated by 1992 Iowa Acts, Senate File 2355, section 33, subsection 1, paragraphs "b," "c," and "e," and subsection 3:

1. Provide a 10 percent increase in reimbursement for early and periodic screening, diagnosis and treatment providers; for obstetrical services provided by physicians and nurse midwives; and for pediatric services.

2. Provide a 1 percent increase in reimbursement for inpatient hospital providers.

3. Change the reimbursement for clinics and family planning clinics from an encounter rate (rate paid per visit based on cost) to a fixed fee schedule.

4. These amendments reduce the inflation rate for nursing facilities providing skilled care from 6.1 percent to 3.1 percent annually. Language is revised to provide that the inflation factor shall not exceed the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31.

Chapter 81. These amendments do the following:

1. Set the basis for establishing the maximum reimbursement rate for nursing facilities at the seventieth percentile of facility costs as calculated from the June 30, 1992, unaudited compilation of cost and statistical data as mandated by 1992 Iowa Acts, Senate File 2355, section 33, subsection 1, paragraph "h." The maximum per diem rate increased from $49.46 to $52.31.

2. Reduce the nursing facility inflation rate from 6.1 percent to 3.1 percent annually as mandated by 1992 Iowa Acts, Senate File 2355, section 33, subsection 3. Language is revised to provide that the inflation factor shall not exceed the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31.

3. Provide that the Iowa Veterans Home's per diem will not be used in determining the seventieth percentile of participating facilities' per diem rates for the purpose of establishing the maximum reimbursement for nursing facilities.

The Iowa Veterans Home is in a separate payment class under the Medicaid state plan. The Veterans Home is not subject to maximum reimbursement as are other nursing facilities. The Department also does not include the state hospital-schools in the calculations for determining intermediate care facility for the mentally retarded rates.

The Veterans Home costs are higher than normal nursing facilities due to extra costs for supplying all residents with medical needs such as prescriptions, durable medical equipment and appliances, physician and dental services, optometrists, physical therapy, and hearing aids and because personnel costs are much higher due to their staff positions being covered under the merit system. Medicaid and Medicare participation revenues at the Veterans Home have been determined to be only 1 percent.

Chapter 82. These amendments reduce the intermediate care facility for the mentally retarded inflation rate from 6.1 percent to 3.1 percent annually. Language is revised to provide that the inflation factor shall not exceed the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31 as mandated by 1992 Iowa Acts, Senate File 2355, section 33, subsection 3.

Chapter 83. These amendments revise the information which must be included in the individual program plan of an HCBS/MR or HCBS/MR/OBRA waiver recipient to include the number of hours of supervision needed by the recipient and other information needed to assist in evaluating the program which was mandated by the General Assembly in 1992 Iowa Acts, Senate File 2311, section 5.

Chapter 86. These amendments provide that SSI-related Medically Needy recipients with a zero spenddown will have continuing eligibility for Medicaid as long as their income remains below the Medically Needy Income Level (MNIL). Under current policy, SSI-related recipients with a zero spenddown had to complete an application form at the end of a six-month certification period. Under these amendments, the recipients' cases will be reviewed for eligibility only once every 12 months. If their income exceeds the MNIL, they will be redetermined conditionally eligible and will have to complete an application every two months and have a spenddown.

With the exception of the amendments regarding the immunization replacement program and the Medically Needy certification period in Item 3, Item 8, subrule 79.1(7), and Items 12 and 13; the amendment regarding phototherapy bilirubin lights in Item 4; and the amendment regarding use of the Veterans Home's per diem in establishing the reimbursement for nursing facilities in Item 9, subrule 81.6(16), paragraph "c" and "e," these amendments were previously Adopted and Filed Emergency and published in the July 8, 1992, Iowa Administrative Bulletin as **ARC 3132A**. Notice of Intended Action to solicit comments on that submission and the immunization replacement program and the Medically Needy certification period was published in the July 8, 1992, Iowa Administrative Bulletin as **ARC 3133A**. The amendments regarding the immunization replacement

program and the Medically Needy certification period were also Adopted and Filed Emergency and published in the August 5, 1992, Iowa Administrative Bulletin as ARC 3243A. Notice of Intended Action to solicit comments on that submission was published in the August 5, 1992, Iowa Administrative Bulletin as ARC 3239A.

Notice of Intended Action regarding the phototherapy bilirubin lights was published in the Iowa Administrative Bulletin on June 24, 1992, as ARC 3114A.

Notice of Intended Action regarding removal of the Veterans Home per diem in computing nursing facility reimbursement was published in the Iowa Administrative Bulletin on July 8, 1992, as ARC 3144A.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 249A.4 and 1992 Iowa Acts, Senate File 2355, section 33, subsection 1, paragraphs "b," "c," "e," and "h," and subsection 3 and 1992 Iowa Acts, Senate File 2311, sections 3, 5, and 7.

These amendments shall become effective November 1, 1992.

The following amendments are adopted.

ITEM 1. Amend rule 441—54.3(249) as follows:

Amend subrule 54.3(15) as follows:

54.3(15) Basis for reimbursement and upper limits. The cost-related per diem rate is calculated by computing the per diem allowable costs from the financial and statistical report, adding ~~6.1 percent~~ *an inflation factor* on an annual basis to all costs except interest to adjust for inflation, and adding an incentive factor of 52 cents for nonprofit facilities and 70 cents for proprietary facilities. *The inflation factor shall not exceed the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31.*

A facility's actual allowable costs when combined with the inflation and incentive factors must not exceed the upper limit established in subrule 52.1(3).

Amend the implementation clause following rule 441—54.3(249) as follows:

This rule is intended to implement Iowa Code section 249.12 and ~~1991 Iowa Acts, House File 479, section 132, subsection 5~~ *1992 Iowa Acts, Senate File 2355, section 33, subsection 3.*

ITEM 2. Amend subrule 77.37(26) by adding the following new paragraph "d":

d. The department shall approve up to ten living units, with each living unit designed to serve four supported community living recipients meeting criteria listed below:

(1) The department shall allocate two four-person HCBS/MR and HCBS/MR/OBRA living units to each of the department's five service regions. Allocation distribution shall be according to the provider's ability to meet the criteria in rule 441—77.37(249A), use of existing residential facility structures, justification of need for the service to be provided in a four-person living unit instead of a three- or less person living unit, and the date of application as received by the department.

(2) Providers of service may seek approval to provide supported community living services to four HCBS/MR and HCBS/MR/OBRA recipients per living unit according to subrule 77.37(21) if all recipients residing in the living unit receive on-site staff supervision during the entire time period recipients are present in the living unit and if all four recipients' individual comprehensive plans identify and reflect the need for this amount of supervision.

(3) The department shall redistribute unused living unit allocations on a statewide basis as of October 31, 1992. The distribution shall be according to existing application dates and provider capability to meet criteria.

ITEM 3. Amend rule 441—78.1(249A) as follows:

Amend subrule 78.1(2) by adding the following new paragraph "e":

e. In lieu of payment, replacement vaccine will be supplied by the department of public health to physicians enrolled in Medicaid who administer immunizations to Medicaid recipients for the following: diphtheria, tetanus toxoids vaccine (DT); diphtheria, tetanus toxoids, pertussis (DTP); oral poliovirus vaccine (OPV); measles, mumps, and rubella vaccine (MMR); tetanus and diphtheria toxoids (TD); hemophilus influenza B (HIB); and hepatitis B vaccine (HEP). Vaccine will be replaced based on adjudicated claims. Physicians shall receive reimbursement for the administration of the aforementioned vaccines to Medicaid recipients. Exceptions to this policy are: Medicaid recipients who are enrolled in an HMO which has contracted with the department of human services to provide specific Medicaid services and Medicaid recipients who are also eligible for Medicare when the vaccine is covered by Medicare.

Amend subrule 78.1(3), introductory paragraph, as follows:

78.1(3) Payment will be approved for injections provided they are reasonable, necessary, and related to the diagnosis and treatment of an illness or injury. ~~or are~~ *Payment will be approved for injections* for *the* purposes of immunization *with the following exceptions, which will have replacement vaccine supplied: diphtheria, tetanus toxoids vaccine (DT); diphtheria, tetanus toxoids, and pertussis (DTP); oral poliovirus vaccine (OPV); measles, mumps, and rubella vaccine (MMR); tetanus and diphtheria toxoids (TD); hemophilus influenza B (HIB); and hepatitis B vaccine (HEP). (Refer to 78.1(2)"e" for the immunization replacement guidelines.)* When billing for an injection, the legally qualified practitioner must specify the brand name of the drug and the manufacturer, the strength of the drug, the amount administered, and the charge for each injection. When the strength and dosage of the drug is not included, payment will be made based on the customary dosage. The following exclusions are applicable.

ITEM 4. Amend subrule 78.10(2), paragraph "b," by adding in alphabetical order to the list of types of durable medical equipment which can be covered by the Medicaid program the following:

Phototherapy bilirubin light.

ITEM 5. Amend rule 441—78.22(249A) as follows:

441—78.22(249A) Family planning clinics. Payment ~~on a cost-related rate per visit basis~~ will be ~~approved~~ *made on a fee schedule basis* for services provided by family planning clinics. Payment will be made for sterilization in accordance with 78.1(16).

ITEM 6. Amend rule 441—78.23(249A), introductory paragraph, as follows:

441—78.23(249A) Other clinic services. Payment will be made on a ~~cost-related rate per visit~~ *fee schedule* basis to facilities not part of a hospital, funded publicly or by private contributions, which provide medically necessary treatment by or under the direct supervision of a physician

or dentist to outpatients. Payment will be made for sterilization in accordance with 78.1(16).

ITEM 7. Amend subrule **78.41(1)**, paragraph **"c,"** as follows:

c. Services may be provided to a child or an adult. A maximum of three consumers receiving community-supported alternative living arrangements or HCBS/MR or HCBS/MR/OBRA services may reside in a living unit. *Service providers meeting requirements set forth in 77.37(26)"d" may provide supported community living services to four HCBS/MR and HCBS/MR/OBRA recipients residing in a living unit.*

(1) Recipients may live within the home of their family or legal guardian or within other types of typical community living units.

(2) Recipients of services living with families or guardians are not subject to the maximum of three consumers in a living unit.

ITEM 8. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(2)**, provider categories of "Clinics," "Family planning clinics," "Hospitals (Inpatient)," "Nurse-midwives," "Nursing facilities: Nursing facility care," "Physicians," and "Screening centers," as follows:

Provider category	Basis of reimbursement	Upper limit
Clinics	~~Retrospective rate per clinic visit as determined on the basis of financial and statistical data submitted annually~~ *Fee schedule*	~~Reasonable cost as determined by the department~~ *Fees as determined by the physician fee schedule*
Family planning clinics	~~Prospective rate per clinic visit determined on basis of financial and statistical data submitted annually~~ *Fee schedule*	~~Reimbursement rate for clinic in effect 6/30/90 plus 2%~~ *Fees as determined by the physician fee schedule*
Hospitals (Inpatient)	Prospective reimbursement. See 79.1(5)	Reimbursement rate in effect ~~6/30/90~~ *6/30/92* plus ~~5.7%~~ *1%*
Nurse-midwives	Fee schedule	Fee schedule in effect ~~6/30/90~~ *6/30/92* plus ~~7.44%~~ *10%*
Nursing facilities:		
Nursing facility care	Prospective reimbursement. See 81.10(1) and 441—81.6(249A)	Seventieth percentile of facility costs as calculated from June 30, ~~1991~~ *1992*, cost reports
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7)	Fee schedule in effect 6/30/90 plus 1.6% ~~plus 7.44% for~~ *with the exception of* obstetrical services as defined by the department and pediatric primary care services as defined by the department. *Obstetrical and pediatric services will receive a 10% increase over the fee schedule in effect on 6/30/92*
Screening centers	Fee schedule	Reimbursement rate for center in effect ~~6/30/90~~ *6/30/92* plus ~~7.44%~~ *10%*

Amend subrule 79.1(7) as follows:

79.1(7) Physicians. The fee schedule is based on the definitions of medical and surgical procedures given in the most recent edition of Physician's Current Procedural Terminology (CPT). ~~The fee schedule will be implemented on an incremental basis as follows:~~

~~a. During the fiscal year beginning July 1, 1987, where the provider's current allowances are below fee schedule amounts payments will equal the average of existing allowances and the prevailing amount.~~

~~b. During the fiscal year beginning July 1, 1988, the provider's payment amount will equal the fee schedule amount.~~ *Refer to 78.1(2)"e" for the guidelines for immunization replacement.*

Amend subrule **79.1(9)**, paragraph **"d,"** as follows:

d. Effective July 1, ~~1990~~ *1992*, a ceiling of allowable cost shall be established at the sixtieth percentile for each classification based on facility rates in effect on June 30, ~~1990~~ *1992, inflated by 5.0 percent*. *The inflation factor shall not exceed the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31.* The allowable cost shall be weighted by Medicaid patient days.

ITEM 9. Amend subrule **81.6(16)**, paragraphs **"a," "c,"** and **"e,"** as follows:

a. An inflation factor will be considered in determining the facility's prospective payment rate. The rate will be determined by using the change in the weighted average cost per diem of the compilation of various costs and statistical data as found in the two most recent reports of "unaudited compilation of various cost and statistical data." The percentage increase of this weighted average will be the basis for the next semiannual inflation factor. ~~This factor shall not exceed 6.1 percent on an annual basis.~~ *The inflation factor shall not exceed the amount by*

which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31, on an annual basis.

c. ~~The~~ *For nonstate-owned nursing facilities, the* reimbursement rate shall be established by determining, on a per diem basis, the allowable cost plus the established inflation factor plus the established incentive factor, subject to the maximum allowable cost ceiling.

e. Beginning July 1, ~~1991~~ *1992*, the basis for establishing the maximum reimbursement rate for *nonstate-owned* nursing facilities shall be the seventieth percentile of participating facilities' per diem rates as calculated from the June 30, ~~1991~~ *1992*, report of "unaudited compilation of various costs and statistical data."

ITEM 10. Amend rule 441—82.5(249A) as follows:

Amend subrule **82.5(11)**, paragraph **"e,"** subparagraph **(4)**, last paragraph, as follows:

On a semiannual basis, the maximum allowed compensation amounts for these administrators shall be increased or decreased by the inflation factor applied to facility rates. ~~as defined by subrule 82.5(16)"b."~~

Amend subrule **82.5(16)**, paragraphs **"c"** and **"g,"** as follows:

c. The audited per unit cost from the January 1, 1992, to June 30, 1992, cost report shall become the initial allowable base cost. A new maximum allowable base cost will be calculated each year by increasing the prior year's allowable cost by *an amount not to exceed* the annual percentage increase of the Consumer Price Index for all urban consumers, U.S. City average.

g. Total patient days for purposes of the computation shall be inpatient days as determined in subrule 82.5(7) or 80 percent of the licensed capacity of the facility, whichever is greater. The reimbursement rate shall be determined by dividing total reported patient expenses by total patient days during the reporting period. This cost per day will be ~~adjusted~~ *limited* by an inflation ~~factor~~ *increase* which shall ~~equal~~ *not exceed* the percentage change in the Consumer Price Index for all urban consumers, U.S. City average.

ITEM 11. Amend rule 441—83.67(249A) as follows:

441—83.67(249A) Individual comprehensive plan. An individual comprehensive plan shall be prepared and utilized for each HCBS/MR and HCBS/MR/OBRA waiver recipient ~~in accordance with subrule 441—24.6(5)~~. The ICP staffing shall be conducted before the current ICP expires. *The plan shall be in accordance with 441—subrule 24.6(5) and shall additionally include the following information to assist in evaluating the program:*

83.67(1) A listing of all services received by a recipient at the time of waiver program enrollment.

83.67(2) For supported community living recipients the plan shall include identification of:

a. The recipients' living environment at the time of waiver enrollment.

b. The number of hours per day of on-site staff supervision needed by the recipient.

c. The number of other waiver recipients who will live with the recipient in the living unit.

ITEM 12. Amend rule **441—86.1(249A)** by adding the following definition in alphabetical order:

"Ongoing eligibility" shall mean that eligibility continues for an SSI-related medically needy person with a zero spenddown.

ITEM 13. Amend 441—Chapter 86 by adding the following new rules:

441—86.17(249A) Reinvestigation. Reinvestigations shall be made for SSI-related medically needy recipients with a zero spenddown as often as circumstances indicate but in no instance shall the period of time between reinvestigations exceed 12 months.

The recipient shall supply, insofar as the recipient is able, additional information needed to establish eligibility within five working days from the date a written request is issued. The recipient shall give written permission for release of information when the recipient is unable to furnish information needed to establish eligibility. Failure to supply the information or refusal to authorize the county office to secure information from other sources shall serve as the basis for cancellation of Medicaid.

Persons whose eligibility for medically needy is related to supplemental security income shall complete Form PA-1107-0, Application for Medical Assistance, as part of the reinvestigation process when requested to do so by the county office.

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

441—86.18(249A) Redetermination. Whenever an SSI-related recipient with a zero spenddown who has ongoing eligibility for medically needy has income that exceeds the MNIL, a redetermination of eligibility shall be completed to change the recipient's eligibility to a two-month certification with spenddown. This redetermination shall be effective the month the income exceeds the MNIL or the first month following timely notice.

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

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ARC 3296A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 95, "Collections," Chapter 96, "Nonassistance Child Support Recovery Program," and Chapter 98, "Support Enforcement Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments August 12, 1992. Notice of Intended Action regarding these amendments was published in the July 8, 1992, Iowa Administrative Bulletin as ARC 3135A.

These amendments implement changes in administration of the child support recovery program mandated or proposed by 1992 Iowa Acts, Senate File 2316 and Senate File 2355, as follows:

1. The definition of "responsible person" is amended to clarify that this is the individual from whom support is due or being sought when applying the state's mandatory support guidelines as mandated by 1992 Iowa Acts, Senate File 2316, section 509.

2. Policies governing the administrative process are amended to clarify:

a. Under what circumstances the administrative process may be used by the child support recovery unit to establish an order for child or medical support as provided by 1992 Iowa Acts, Senate File 2316, sections 401 and 402.

b. That the notice of support debt shall advise a responsible person that the person may waive certain notice requirements with respect to establishing an administrative order for support as provided by 1992 Iowa Acts, Senate File 2316, section 205.

c. That the child support recovery unit shall follow the provisions of 1992 Iowa Acts, Senate File 2316, section 201, in determining parents' income for the purpose of applying the state's mandatory child support guidelines. These Iowa Code changes provide that when income information for a parent is not available, an income amount based on the estimated state median income for a one-person family, rather than full-time employment at the Iowa minimum wage, may be used to determine the support obligation.

d. That the child support recovery unit may request a court hearing regarding the establishment of a support obligation through the administrative process as allowed under 1992 Iowa Acts, Senate File 2316, section 204.

e. That an administrative order shall be approved by the district court before being filed with the clerk of court, and to clarify the effective date of the order as mandated by 1992 Iowa Acts, Senate File 2316, section 504.

3. Clarification is provided that the child support recovery unit provides the same enforcement services to nonpublic assistance individuals as are provided to public assistance recipients. A statement regarding the establishment of a support order is removed to provide consistency with the required use of the state's mandatory child support guidelines.

4. The application fee for child support services for persons who are not on public assistance is increased from $20 to $25 as mandated by 1992 Iowa Acts, Senate File 2316, section 101.

5. The policy requiring termination of child support enforcement services to a recipient due to failure of the recipient to cooperate by signing a written agreement and paying the $10.65 annual fee is rescinded pursuant to 1992 Iowa Acts, Senate File 2355, section 9, subsection 2. This subsection of the appropriations bill also provides for the deduction of the $10.65 fee from support paid. Details of procedures and computer system changes needed to implement this provision are under development; therefore, rules governing these procedures will be submitted at a later date.

Renumbered subrule 95.11(5), rule 441—96.13(252B), and subrule 96.15(5) were previously Adopted and Filed Emergency and published in the July 8, 1992, Iowa Administrative Bulletin as **ARC 3134A**.

Subrule 95.11(1), paragraphs "a" to "d" were revised by deleting the words "in the state of Iowa."

Original legislative intent had been to amend Iowa Code chapter 252C in such a way so as to allow the Child Support Recovery Unit to use the administrative process to establish a support obligation in the state of Iowa if an order for support had previously been entered in another state. The noticed rules were drafted based on this intent.

A closer examination of both 1992 Iowa Acts, Senate File 2316 and Iowa Code chapter 252C resulted in a determination that the changes to Iowa Code chapter 252C resulting from the adoption of 1992 Iowa Acts, Senate File 2316, did not fully accomplish this goal. Iowa Code section 252C.9 continues to provide that if an administrative order conflicts with an order of a court, the court order prevails. There is no distinction made between court orders entered in Iowa and those entered in a different state.

Paragraph "b," introductory paragraph, and subparagraph (2) were also revised by adding the words "or has reserved the issue of child support" for clarification.

Subrule 95.11(1), paragraph "e," was deleted as this paragraph also appeared to be in conflict with Iowa Code section 252C.9.

These amendments are intended to implement Iowa Code section 252B.4, Iowa Code chapter 252C, and 1992 Iowa Acts, Senate File 2316, sections 101, 201, 204, 205, 401, 402, 504, and 509, and 1992 Iowa Acts, Senate File 2355, section 9, subsection 2.

These amendments shall become effective November 1, 1992.

The following amendments are adopted.

ITEM 1. Amend rule **441—95.1(252B)**, definition of "Responsible person," as follows:

"Responsible person" shall mean a parent, relative or guardian, or any other designated person *who is or may be* declared to be legally liable for the support of a child or a child's caretaker. *For the purposes of calculating a support obligation pursuant to the mandatory child support guidelines prescribed by the Iowa Supreme Court in accordance with Iowa Code section 598.21, subsection 4, this shall mean the person from whom support is sought.*

ITEM 2. Amend rule 441—95.11(252C) as follows:

Renumber subrules **95.11(1)** to **95.11(10)** as subrules **95.11(2)** to **95.11(11)**, respectively.

Amend the introductory paragraph as follows:

441—95.11(252C) Establishment of an administrative order.

95.11(1) When order may be established. The bureau chief may establish a *child or medical* support ~~debt~~ *obligation* against a responsible person~~, when no court order has established an obligation, and bring court action to collect the support debt.~~ *through the administrative process, when one or a combination of the following conditions exists:*

a. A court or administrative order has not previously been entered to establish a child or medical support obligation.

b. A court order previously entered under a dissolution, paternity, or similar proceeding does not expressly address the issue of child support or has reserved the issue of child support.

(1) The administrative process may not be used to establish an ongoing child support obligation against a responsible person if the prior order specifically provides that the responsible person is not required to pay child support. This does not preclude the child support recovery unit from pursuing the establishment of an ongoing support obligation through other available legal proceedings.

(2) The administrative process may be used to establish an ongoing child support obligation if the prior order is silent with respect to the issue of child support or has reserved the issue of child support.

c. A court or administrative order previously entered does not require provisions for medical support pursuant to Iowa Code chapter 252E, or equivalent medical support. The administrative process may be used to establish an order for medical support.

d. Public assistance benefits were expended on behalf of, or Medicaid was received by, a dependent child or caretaker prior to the effective date of a court order entered establishing a child or medical support obligation. The administrative process may be used to establish a support obligation for the time period that the child or caretaker received public assistance benefits or Medicaid prior to the effective date of the court order.

Amend renumbered subrule 95.11(3) as follows:

95.11(~~2~~ *3*) Notice to responsible person. When the bureau chief establishes a support debt against a responsible person, a notice of child support debt shall be served in accordance with the Iowa Rules of Civil Procedure. The notice shall include all of the rights and responsibilities shown in Iowa Code section 252C.3. *The notice shall also inform the responsible person which of these rights may be waived pursuant to 1992 Iowa Acts, Senate File 2316, section 205, and the procedures for and effect of waiving these rights.* The notice shall include a statement that failure to respond within the time limits given and to provide information and verification of financial circumstances shall result in the entry of a default judgment for support.

Amend renumbered subrule 95.11(5), introductory paragraph, as follows:

95.11(~~4~~ *5*) Amount of support obligation. ~~Using the child support guidelines established by the Iowa Supreme Court, the~~ *The* child support recovery unit shall determine the amount of the child support obligation accrued and accruing ~~as follows:~~ *using the child support guidelines established by the Iowa Supreme Court, and pursuant to the provisions of 1992 Iowa Acts, Senate File 2316, section 201.*

Further amend renumbered subrule 95.11(5) by rescinding paragraph "a" and inserting the following in lieu thereof, and by rescinding and reserving paragraph "b":

a. Any deviation from the guidelines shall require a written finding by the bureau chief.

Amend renumbered subrule 95.11(7) as follows:

95.11(~~6~~ *7*) Court hearing. ~~The~~ *Either the* responsible person *or the child support recovery unit* may request a court hearing regarding the ~~child support debt established by the bureau chief~~ *establishment of a support obligation through the administrative process.*

Further amend renumbered subrule 95.11(7), paragraph "a," introductory paragraph, and paragraph "b," as follows:

a. The request for a hearing *by the responsible person* shall be in writing and sent to the office of the child support recovery unit which sent the original notice of the child support debt by the latest of the following:

b. When a request for a court hearing is received from the responsible person, within the time limits allowed, *or is made by the child support recovery unit,* the bureau chief shall schedule *or request that* the hearing *be scheduled* in the district court in the county:

(1) Where the dependent child resides if the child resides in Iowa.

(2) Where the responsible person resides if the child for whom support is sought resides in another state or the sole purpose of the administrative order is to secure ~~reimbursement of~~ *a judgment for the time period that* public assistance *was* expended by the state on behalf of the family or child.

Amend renumbered subrule 95.11(9), introductory paragraph, and paragraphs "b" and "c," as follows:

95.11(~~8~~ *9*) Entry of order. If no request for a hearing is received from the responsible person at the local office of the child support recovery unit, *or made by the unit,* the bureau chief may ~~enter~~ *prepare* an order *for support* and have it presented ex parte to the court for approval.

b. The bureau chief shall file a copy of the *approved* order with the clerk of *the* district court, as stated in 95.11(~~6~~ *7*)"b."

c. The bureau chief shall send a copy of the *filed* order by regular mail, to the responsible person's last known address or the responsible person's attorney pursuant to the provisions of Iowa Code chapter 252C.

Amend renumbered subrule 95.11(10) as follows:

95.11(~~9~~ *10*) ~~Effective date~~ *Force and effect.* Once the order has been signed by the judge~~,~~ *and filed, it shall have all the force and effect of an order or decree entered by the court, subject to the limits specified in Iowa Code section 252C.9. Unless otherwise specified,* the effective date of the support obligation shall be the date the *approved* order is filed with the clerk of the district court.

ITEM 3. Amend rule 441—96.2(252B) as follows:

441—96.2(252B) Limitation of services. The service is limited to the establishment and enforcement of child support obligations, medical support obligations, and alimony where a child support obligation is also involved. The service available is the same as that the department provides for aid to dependent children recipients. ~~The primary emphasis of the unit is on the regular and periodic payment of the current support obligation. The child support recovery unit shall determine the amount of support upon the ability of the absent parent to pay, even when an existing court order provides a higher amount of support.~~ The *child support recovery* unit shall ~~also~~ determine the appropriate enforcement procedure to be utilized in each specific case.

ITEM 4. Amend rule 441—96.13(252B) as follows:

441—96.13(252B) Application fees. An individual who is required to complete Form 470-0188, Application for Nonassistance Support Services, according to rule 441—96.4(252B) shall be charged an application fee of ~~$20~~ *$25* at the time of initial application and any subsequent application for services. The application fee shall be paid to the local child support recovery unit by the individual prior to services being provided.

This rule is intended to implement Iowa Code ~~sections~~ *section* 252B.4 ~~and 252B.11~~.

ITEM 5. Amend subrule 96.15(5) and the implementation clause following rule 441—96.15(252B) as follows:

96.15(5) ~~Effect of failure to comply~~ *Refunds.* ~~Failure of a recipient to cooperate in signing a written agreement and paying costs incurred shall result in termination of services, unless the recipient becomes eligible for public assistance before the effective date of termination.~~ Amounts paid by a recipient who later becomes eligible for public assistance shall not be refunded. ~~Procedures for termination shall be as provided in rule 441—96.3(252B).~~

This rule is intended to implement Iowa Code ~~sections~~ *section* ~~8.31 to 8.33, 8.38, 234.6,~~ 252B.4 ~~and 252B.11; Iowa Constitution, Article III, section 24, and Article VII; and Executive Order 42~~ *and 1992 Iowa Acts, Senate File 2355, section 9, subsection 2.*

ITEM 6. Amend subrule **98.3(2)**, paragraph **"a,"** as follows:

a. Seek an order for medical support through administrative process ~~when an administrative order does not provide medical support and the order has not been superseded by a district court order~~ *pursuant to rule 441—95.11(252C).*

[Filed 8/14/92, effective 11/1/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3325A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.40 as amended by 1992 Iowa Acts, Senate File 2355, section 71, the Department of Human Services hereby amends Chapter 113, "Licensing and Regulation of Foster Family Homes," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments August 12, 1992. Notice of Intended Action was published in the Iowa Administrative Bulletin on June 24, 1992, as **ARC 3113A**.

These amendments revise the Department's rules on training and discipline of foster children as mandated by 1992 Iowa Acts, Senate File 2355, section 71. Use of corporal punishment by foster parents is prohibited. However, reasonable physical force may be used to restrain a foster child in order to prevent injury to the child, injury to others, the destruction of property, or extremely disruptive behavior.

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

These amendments are intended to implement Iowa Code section 234.40 as amended by 1992 Iowa Acts, Senate File 2355, section 71.

These amendments shall become effective November 1, 1992.

The following amendments are adopted.

ITEM 1. Amend subrule 113.18(2) as follows:

113.18(2) Restrictions on training and discipline. Child training and discipline shall be handled with kindness and understanding. No child shall be deprived of food as punishment. ~~No child shall be subjected to unusual, unnecessary, severe corporal punishment inflicted in any manner upon the body.~~ No child shall be subjected to verbal abuse, threats or derogatory remarks about the child or the child's family. *Use of corporal punishment is prohibited. Reasonable physical force may be used to restrain a child in order to prevent injury to the child, injury to others, the destruction of property, or extremely disruptive behavior.*

ITEM 2. Amend the implementation clause following rule **441—113.18(237)** as follows:

This rule is intended to implement Iowa Code ~~section~~ *sections 234.40 and* 237.3.

[Filed 8/14/92, effective 11/1/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3326A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 217.6 and 234.6 and 1992 Iowa Acts, Senate File 2355, section 5, subsection 3, section 7, subsections 3 and 6, section 33, subsection 6, and section 78; 1992 Iowa Acts, House File 2440, section 33; and 1992 Iowa Acts, House File 2486, section 7, the Department of Human Services hereby amends Chapter 130, "General Provisions," Chapter 150, "Purchase of Service," and Chapter 153, "Social Services Block Grant," rescinds Chapter 132, "State Payment Program for Services to Adults," rescinds Chapter 157, "Purchase of Adoption Services," and adopts a new Chapter 157, "Purchase of Adoption Services," appearing in the Iowa Administrative Code.

These amendments do the following:

1. Increase the income guidelines for one- to nine-member households for child day care services. The income guidelines for ten-member households and households with more than ten members are decreased. Eligibility for state child care assistance has been limited to 155 percent of the federal poverty guidelines. These guidelines have been increased. The Department has been informed, however, that guidelines may not exceed 75 percent of the Iowa median family income. The federal poverty guidelines for ten-member households and above are greater than 75 percent of the Iowa median family income. Therefore, 75 percent of the Iowa median family income is used as guidelines for ten-member households and above.

2. Provide that moneys received by an individual under the federal Social Security Persons Achieving Self-Sufficiency (PASS) program or the Income-Related Work Expense (IRWE) program are exempt as income in determining eligibility for the federal Social Services Block Grant program as mandated by 1992 Iowa Acts, Senate File 2355, section 5, subsection 3.

3. Provide that the Department shall not include private moneys (donated funds) contributed to a person or agency in determining the reimbursement rate for services purchased by the Department from a person or agency unless the moneys are contributed for services provided to a

specific individual as mandated by 1992 Iowa Acts, House File 2480, section 23. These amendments also clarify that income which is county reimbursement to a provider to make up the difference between what the Department pays and the provider's actual and allowable costs will not be included in the Department's rate determination.

4. Maintain service provider rates at the same level as rates in effect on June 30, 1991, except for day care rates and specified exceptions as mandated by 1992 Iowa Acts, Senate File 33, subsection 5.

5. Provide for an increase in day care center rates to enhance the quality of child care centers, with any increase not to exceed actual and allowable costs as mandated by 1992 Iowa Acts, Senate File 2355, section 7, subsection 6. The funds allocated for the increase are sufficient to provide for a 7 percent increase.

6. Update the basis on which the inflation factor for service providers is determined as mandated by 1992 Iowa Acts, Senate File 2355, section 33, subsection 3. The inflation factor is based on the amount by which the Consumer Price Index for all urban consumers increased during the previous calendar year ending December 31. This year the amount decreased from 6.1 percent to 3.1 percent.

7. Revise the allocation formula for distribution of family planning dollars to provide that the funds shall be distributed among the regions at 75 percent of the funds on the basis of the poverty population and 25 percent of the funds on the basis of population of females aged 12 to 44 as reported in the 1990 census for the state of Iowa.

8. Amend the state payment program which provides 100 percent state funds to pay for services for eligible persons who have no legal settlement in Iowa to only allow payment for services to adults with mental illness, mental retardation, and developmental disabilities as mandated by 1992 Iowa Acts, Senate File 2355, section 24.

9. Establish policies and procedures for accessing funding for services to persons who are not eligible for services funded using the allocation to counties for purchase of local services for persons with mental illness, mental retardation, or developmental disabilities. The services eligible for funding are administrative support for volunteers, adult day care, adult support, community-supervised apartment living arrangements, family-centered services, adult residential services, sheltered work, supported employment, supported work training, transportation, and work activity.

The Seventy-fourth General Assembly in 1992 Iowa Acts, Senate File 2355, made major changes in funding for local purchase services previously funded under the Social Services Block Grant (SSBG) with the intent of combining funding streams to reduce administrative requirements and increase flexibility in the use of the funds.

Under Senate File 2355, the total amount available for services which had been funded under SSBG—Local Purchase is $14,486,885. The $14,486,885 is all state dollars. Federal SSBG funds which had been used for local purchase services are transferred to foster care, and an equal amount of state funds that had been appropriated to foster care are included in the $14,486,885.

Of the $14,486,885, the bill appropriates approximately 90 percent ($13,038,776) for services to persons with mental illness, mental retardation, or developmental disabilities other than mental retardation. No county match is required. (Policies and procedures governing these funds were adopted by the Mental Health, Mental Retardation, and Developmental Disabilities Commission on June 2, 1992, and were published in the Iowa Administrative Bulletin on July 8, 1992, as **ARC 3138A**.)

The remaining approximately 10 percent ($1,448,109) is to be used for services for persons who do not fall within the above population groups. No county match is required for these services.

For Fiscal Year 1993, the same menu of services as previously available for funding under SSBG—Local Purchase is available for funding with each of the above appropriations and the allocation formula and planning process are the same. Client eligibility is the same except for limitations regarding population groups as noted above and for state cases.

10. Revise the components, eligibility criteria, and contracting and payment system for purchase of adoption services. These amendments expand the Department's ability to purchase adoption services.

a. The components of adoption services are revised and defined. The components of adoption services are the adoptive home study, preparation of the child, preparation of the family, preplacement visits, placement services, and postplacement services. Recruitment services, previously purchased separately, will become a part of the time charged to the adoptive home study service. Counseling services will no longer be purchased under this program because once the child is placed in presubsidy the adoptive child is eligible for counseling through special services.

b. Eligibility criteria for families and children is stated. Individuals and families and special needs children will be eligible for adoption services without regard to income when referred by the Department. Under current policy, adoption services are only purchased for special needs children. This change will allow the Department to purchase screening services and home studies for individuals and families who wish to adopt a special needs child or sibling group. This in turn should facilitate placements of children with special needs by providing a pool of approved families who are appropriate for special needs children.

c. The purchase of adoption services is placed under the purchase of service system. Currently, the Department worker requesting the specific adoption service component negotiates the cost of service within a price range provided. Placing the purchase of adoption services under the regular purchase system will provide more consistency for the program, workers, and providers. Agencies will calculate costs of service using financial and statistical information as is done for all purchased services.

Billable units of service are described. All units are billable by providers at a per hour rate except for the adoptive home study component which is billed per study completed. Providers will bill for the services monthly using the Purchase of Service Voucher used by all provider agencies.

The Council on Human Services adopted these amendments August 12, 1992.

Item 1, subrule 130.3(1), paragraph "d," subparagraph (2), and subrule 130.3(3), paragraph "z," and Items 2 to 19 were previously Adopted and Filed Emergency and published in the July 8, 1992, Iowa Administrative Bulletin as **ARC 3131A**. Notice of Intended Action to solicit comments on that submission was published in the July 8, 1992, Iowa Administrative Bulletin as **ARC 3130A**. Notice of Intended Action regarding Item 1, subrule

130.3(1), paragraph "e," and Item 20 was published in the Iowa Administrative Bulletin on July 8, 1992, as ARC 3145A.

Subrule 153.55(1), paragraph "b," was revised in response to comments to allow state payment for a service for persons with no legal settlement if their county of residence pays for the service for persons who have legal settlement in the county regardless of whether the service is in the local purchase plan.

Subrule 157.2(1), paragraph "b," was revised to clarify who determines eligibility.

Subrules 157.3(4) and 157.3(6) were revised to clarify when the components take place.

Rule 441—157.5(600) was revised to clarify that services are purchased for special needs children only.

Rule 441—157.6(600) was revised to provide that postplacement services shall be reported in writing after the 30-day, 90-day, and final home visit at a minimum, or on a monthly basis if the family is experiencing difficulties, rather than after each provision of service.

These amendments are intended to implement Iowa Code section 234.6, Iowa Code chapter 600, and 1992 Iowa Acts, Senate File 2355, section 5, subsection 3, section 7, subsections 3 and 6, section 24, section 25, subsection 7, and section 33, subsections 3 and 5, and 1992 Iowa Acts, House File 2480, section 23.

These amendments shall become effective November 1, 1992.

The following amendments are adopted.

ITEM 1. Amend rule 441—130.3(234) as follows:

Amend subrule **130.3(1)**, paragraph **"d,"** subparagraph **(2)**, as follows:

(2) Income eligible status. The monthly gross income according to family size is no more than the following amounts:

Family Size	For Child Day Care Monthly Gross Income		All Other Services Monthly Gross Income Below
1 Member	~~$ 855~~	*$ 880*	$ 566
2 Members	~~1,147~~	*1,187*	740
3 Members	~~1,439~~	*1,494*	915
4 Members	~~1,731~~	*1,802*	1,088
5 Members	~~2,023~~	*2,109*	1,261
6 Members	~~2,315~~	*2,417*	1,435
7 Members	~~2,607~~	*2,724*	1,466
8 Members	~~2,898~~	*3,032*	1,501
9 Members	~~3,190~~	*3,339*	1,535
10 Members	~~3,482~~	*3,427*	1,565

For child day care, when a family has more than ten members, add ~~$292~~ *$71* for each additional member. For other services, for each additional person add $32.

Amend subrule **130.3(1)**, paragraph **"e,"** as follows:

e. Certain services are provided without regard to income which means family income is not considered in determining eligibility. The services provided without regard to income are information and referral, child abuse investigation, child abuse treatment, child abuse prevention services, family-centered services, dependent adult abuse evaluation, dependent adult abuse treatment, ~~and~~ dependent adult abuse prevention services, *and purchased adoption services to individuals and families referred by the department.*

Amend subrule **130.3(3)** by adding the following new paragraph **"z"**:

z. Moneys received under the federal Social Security Persons Achieving Self-Sufficiency (PASS) program or the Income-Related Work Expense (IRWE) program.

ITEM 2. Amend rule **441—150.1(234)** by rescinding the definition of "Local purchase services."

ITEM 3. Amend rule 441—150.2(234) as follows:

Rescind and reserve subrule **150.2(3)**.

Amend subrule 150.2(4) as follows:

150.2(4) Iowa donation of funds contract. The Iowa donation of funds contract establishes the conditions under which a donor ~~other than a county~~ makes funds available to the department. This is generally for the purpose of matching state or federal funds for services or administrative support. The contract shall contain specifications concerning amendment, termination, transmittal of funds, accounting, and reversion of unspent funds. The donor may specify the geographic area to be served and the specific service to be provided. The Iowa Donation of Funds Contract, Form SS-1502-0, shall be completed prior to the department's acceptance of the funds.

ITEM 4. Amend subrule **150.3(5)** as follows:

Amend paragraph **"a,"** subparagraph **(8)**, as follows:

(8) Income received from fund raising efforts or donations shall be reported as revenue on the financial and statistical report and used to offset fund raising costs. Fund raising costs remaining after the offset shall be an unallowable cost. ~~Fund raising income shall be reported as follows:~~

~~1. All contributions shall be accompanied by a schedule showing the contribution and designated usage by the agency.~~

~~2. Income may be placed in restricted or appropriated accounts for purposes such as reasonable reserve accounts (90-day operating expense reserve) and purchasing capital assets (present or future reporting periods). Restricted accounts are those in which the donor has restricted the use of funds. Appropriated accounts are those in which the agency has designated the use of funds. At the end of any reporting period, income from fund-raising or donations may be designated to supplement sliding fees for private clients, to cover deficits (total costs over income), to cover costs not allowed by purchase of service rules, or to cover costs not reimbursed by purchase of service because of ceilings or limits.~~

~~3. Income remaining undesignated shall then be applied proportionately to all service programs, including excluded programs, according to the direct service program costs. This income shall be used to reduce all program costs before determining the unit rate.~~

~~Notwithstanding the above, for the period beginning November 1, 1991, and ending June 30, 1992, all~~ *All* contributions shall be accompanied by a schedule showing the contribution and anticipated designation by the agency. No private moneys contributed to the agency shall be included by the department in its reimbursement rate determination unless these moneys are contributed for services provided to specific individuals for whom the reimbursement rate is established by the department.

If a shelter care provider's actual and allowable costs for a child's shelter care placement exceed the amount the department is authorized to pay and the provider is reimbursed by the child's county of legal settlement for the difference between actual and allowable costs and the amount reimbursed by the department, the amount paid by the county shall not be included by the department in its reimbursement rate determination.

Amend paragraph "p," introductory paragraph and subparagraph (1), as follows:

p. Rate limits. ~~Other sections of the rules notwithstanding, for services provided by social service providers reimbursed by the department during the period from July 1, 1990, to June 30, 1991, rates for providers of social services shall be established by automatically increasing the unreduced rates in effect on June 30, 1990, by 6 percent. This automatic increase is intended to be a one-time exception to policy for the fiscal year beginning July 1, 1990, and ending June 30, 1991, only, and is not intended to eliminate regular submission of cost reports.~~ Interruptions in service programs will not affect the rate. If an agency assumes the delivery of service from another agency, the rate shall remain the same as for the former agency. ~~Providers of social services shall receive the 6 percent rate increase with the following exceptions:~~

(1) ~~Rates~~ *Unless otherwise provided for in 441—Chapter 156, rates* for foster group care and shelter care shall not exceed $75.11 per day. ~~The increases for foster group care and shelter care service shall be $4.25 unless subparagraph (2) applies.~~

Further amend paragraph "p" by rescinding subparagraph (2) and inserting the following in lieu thereof:

(2) For the fiscal year beginning July 1, 1992, the maximum reimbursement rates for social service providers other than child day care providers shall be the same as the rates in effect on June 30, 1991, except under any of the following circumstances:

1. If a new service was added after June 30, 1991, the initial reimbursement rate for the service shall be based upon actual and allowable costs.

2. If a social service provider loses a source of income used to determine the reimbursement rate for the service, the provider's reimbursement rate may be adjusted to reflect the loss of income, provided that the lost income was used to support actual and allowable costs of a service purchased under the purchase of service contract.

Rescind paragraph "r" and insert the following in lieu thereof:

r. Day care increase. Other sections of the rules notwithstanding, for services provided during the period July 1, 1992, to June 30, 1993, by child day care centers reimbursed by the department, rates shall be established by automatically increasing the actual rates in effect on June 30, 1992, by 7 percent. However, any reimbursement increase provided under this paragraph shall not cause the provider's reimbursement rate to exceed the provider's actual and allowable cost plus the inflation factor, and no provider may charge departmental clients more than it receives for the same services provided to nondepartmental clients.

Amend paragraph "u," subparagraph (3), as follows:

(3) ~~Reimbursement~~ *Inflation* factor is the percentage which will be applied to develop payment rates consistent with current policy and funding of the department. The ~~current reimbursement~~ *inflation* factor ~~is 7 percent and~~ is intended to overcome the time lag between ~~costs and current period rates~~ *the time period for which costs were reported and the time period during which the rates will be in effect.* ~~The provisions of this subparagraph notwithstanding, for rates established during the year beginning July 1, 1991, and ending June 30, 1992, the reimbursement factor shall be the amount by which the consumer price index for all urban consumers increased during the calendar year ending December 1990, which is 6.1 percent.~~ *The inflation factor shall be the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31.*

ITEM 5. Rescind and reserve rule **441—150.6(234)**.

ITEM 6. Amend the title to **441—Chapter 153** to read as follows:

SOCIAL SERVICES BLOCK GRANT
AND FUNDING FOR LOCAL SERVICES

ITEM 7. Create a **Division I**, "Social Services Block Grant," with rules **441—153.1(234)** to **441—153.7(234)**.

ITEM 8. Create a **Preamble** to Division I as follows:

PREAMBLE

This division sets forth the requirements for reporting required for receipt of federal social services block grant (SSBG) funds and service availability and allocation methodology related to those funds. Also specified is information on advisory committees established by the department to assist in decision making on the use of SSBG funds.

ITEM 9. Amend rule **441—153.1(234)**, by rescinding the definitions of "District offices" and "Local purchase services" and adding the definitions of "Regional offices" and "Residence" in alphabetical order:

"Regional offices" means the department of human services' five field offices which coordinate all service delivery. The five regional offices are located in Sioux City, Waterloo, Des Moines, Council Bluffs, and Cedar Rapids.

"Residence" means where the person lives.

ITEM 10. Amend subrule 153.2(4) as follows:

153.2(4) The department shall accept comments about the preexpenditure report during the specified public review and comment period. The advisory committees, individuals or groups may submit written comments to the ~~district~~ *region* or to the ~~Program Support Unit, Bureau of Adult, Children and Family Services~~ *Bureau of Purchased Services*, Iowa Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Public hearings may be arranged by the ~~district~~ *regional* administrator at which time testimony will be accepted.

~~Comments concerning locally purchased services will be forwarded to the county boards of supervisors within the district.~~

ITEM 11. Amend subrules 153.3(1) and 153.3(3) as follows:

153.3(1) The preexpenditure report may be amended throughout the year. The department may file an amendment changing the kind, scope or duration of a service. Decisions to change a direct service~~;~~ *or* state purchase service ~~or protective day care~~ will be made by the department~~; decisions to change the kind or duration of local purchase services will be made by county boards of supervisors~~.

Prior to filing an amendment the department and the county boards of supervisors will evaluate available funds and the effect any change will have on clients.

153.3(3) The advisory committees, individuals or groups may submit written comments to the ~~district~~ *region* or to the ~~Program Support Unit, Bureau of Adult, Children and Family Services~~ *Bureau of Purchased Services*, Iowa Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. ~~Com-~~

~~ments regarding amendments to local purchase services should also be directed to the county boards of supervisors in the county in which a change is being made.~~

ITEM 12. Amend rule 441—153.4(234) as follows:

Amend subrule 153.4(2) as follows:

153.4(2) An eligible client shall receive a service for which the client is eligible, subject to the provisions of 441—Chapter 130, when the service is listed in the geographic area in which the client resides. The geographic area for ~~local purchase service is the county; the geographic area for~~ direct~~;~~ *and* state purchase ~~and protective day care~~ is the state.

Rescind and reserve subrule **153.4(3)**.

ITEM 13. Amend rule 441—153.5(234) as follows:

Amend subrule 153.5(2) as follows:

153.5(2) The amount of funding allocated to state purchase services shall be ~~based on the need for the service and on previous use of that service.~~ *allocated to each region as follows:* ~~Each district will receive state purchase funds.~~

a. ~~The available family planning dollars will be divided among the districts at fifty percent (50%) of the funds on the basis of poverty population and fifty percent (50%) of the funds on the basis of the previous year's allocation.~~ *The available family planning dollars shall be distributed among the regions at 75 percent of the funds on the basis of poverty population and 25 percent of the funds on the basis of population of females aged 12 to 44 as reported in the 1990 census for the state of Iowa.*

b. The available foster care dollars ~~are~~ *shall be* allocated among the ~~districts~~ *regions* ~~based on previous utilization~~ *according to rules set forth in 441—Chapter 156.*

c. Administrative support dollars which are used for volunteer services ~~are divided equally~~ *shall be distributed* among the ~~eight (8) districts~~ *five regions based on historical expenditures.*

d. Allocation of funds. Funds allocated for protective child day care assistance and state child care assistance shall be allocated to the department of human services' regions based on the number of children living in the region whose family income is at or below 155 percent of poverty guidelines published by the Department of Health and Human Services. The region shall allocate funds to each county based on the number of children living in the county whose family income is at or below 155 percent of the poverty guidelines. If a region determines that a specified portion of the funds provided to a county is sufficient to meet the county's current demand and projected growth, the region may transfer the excess amount for use in another region.

Any funds allocated for the purchase of child care services shall be available for purchase of services in any type of child care facility approved under 441—Chapter 170.

Rescind subrules **153.5(3)**, **153.5(4)**, and **153.5(6)** and renumber subrule **153.5(5)** as subrule **153.5(3)**.

Amend the implementation clause following rule **441—153.5(234)** as follows:

This rule is intended to implement Iowa Code section 234.6 and ~~1989 Iowa Acts, chapter 318, section 6, and 1990 Iowa Acts, chapter 1270, section 6, subsection 3~~ *1992 Iowa Acts, Senate File 2355, section 7, subsection 6, and sections 24 and 25.*

ITEM 14. Rescind and reserve rule **441—153.6(234)**.

ITEM 15. Reserve rules **441—153.8** to **441—153.10**.

ITEM 16. Create a **Division II**, "Nonmental Illness, Mental Retardation, and Developmental Disabilities—Local Services," with rules **441—153.11(234)** to **441—153.22(234)** as follows:

DIVISION II

NONMENTAL ILLNESS, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES—LOCAL SERVICES

PREAMBLE

This division sets forth rules for accessing funding for services to persons who are not eligible for services funded using the allocation to counties for purchase of local services for persons with mental illness, mental retardation or developmental disabilities.

441—153.11(234) Definitions.

"Department" means the department of human services.

"Residence" means where the person lives.

441—153.12(234) Application. Application for services shall be made pursuant to rule 441—130.2(234).

441—153.13(234) Eligibility. Eligible persons are those who meet the criteria established in rule 441—130.3(234) and who are not eligible for services funded using the allocation to counties for purchase of local services for persons with mental illness, mental retardation or developmental disabilities. An eligible client shall receive a service for which the client is eligible when the service is listed in the plan of the client's county of residence.

441—153.14(234) Eligibility determination, case plan development, and social casework. Eligibility determination, case plan development, and social casework shall be the responsibility of the departmental office serving the applicant's county of residence. The case plan shall be developed pursuant to rule 441—130.7(234). Social casework shall be provided in accordance with the provisions of rule 441—130.6(234).

441—153.15(234) Services eligible for funding. Services eligible for funding are: administrative support for volunteers, adult day care, adult support, community-supervised apartment living arrangements, family-centered services, adult residential services, sheltered work, supported employment, supported work training, transportation, and work activity.

153.15(1) Definitions and requirements. Definitions and requirements for the delivery of these services are to be found in the individual service chapters of the administrative rules for the department.

153.15(2) County plan. Only those services specified in the county plan are eligible for funding.

441—153.16(234) Eligible providers. In order to receive payment for services funded using this appropriation, providers shall have a purchase of service contract developed pursuant to 441—Chapter 150.

441—153.17(234) Rates for services. Rates for services shall be established by the department in accordance with policy established in 441—Chapter 150 and subject to any limitations currently applicable to social service providers.

441—153.18(234) Allocation formula. Funds administered pursuant to this division shall be allocated to counties as follows:

153.18(1) Regional allocation. The amount of funding available for nonmental illness, mental retardation, and developmental disabilities local services shall be divided among the regions based on the following formula: 50 percent of the available funds will be divided on the basis of poverty population and 50 percent of the funds will be divided on the basis of the previous year's allocation.

153.18(2) County allocation. Funds allocated to each region will be distributed to counties within the region by the regional administrator using the following formula: 50 percent based on the poverty population within a county and 50 percent based on the county's previous allocation.

441—153.19(234) Local planning process.

153.19(1) Identification of services. The county board of supervisors in each county shall determine which of the services identified in rule 441—153.15(234) they wish to provide with funds allocated pursuant to this division. They shall determine how much funding they wish to place in each service and for what period of time during the fiscal year beginning July 1 and ending June 30. In making decisions about which services to fund, the supervisors may consult with consumers, providers, relevant advisory committees, and other interested parties.

153.19(2) Notification to county board. The regional administrator shall notify the affected county boards of supervisors when available funding for a service has been exhausted.

153.19(3) Encumbrance record. The regional administrator shall maintain a system for recording the encumbrance of these funds. In monitoring the balance of funds in a county, the regional administrator shall consider the number of clients in a service, the number of clients expected to use a service and the cost of those services. The regional administrator shall then determine if the remaining funds for a service within a county are sufficient; if not, the regional administrator shall so notify the affected county board of supervisors.

In the event funds are depleted and the county board of supervisors does not wish to transfer funds available to the county from another service, the regional administrator shall terminate the service.

153.19(4) Transfer of funds. When, based on encumbrance records maintained by the regional administrator, a county does not appear to require all funds allocated to it, the regional administrator may transfer funds to other counties in the region. At least 30 days prior to a transfer, the regional administrator shall present to the county board of supervisors the reasons the regional administrator believes the county will have surplus funds. The county board of supervisors will have ten days after receipt of the notice to respond. The county board of supervisors may present evidence agreeing or disagreeing with the reasons provided by the regional administrator. The regional administrator shall consider the evidence before transferring funds.

The regional administrator shall have the authority to transfer funds.

153.19(5) Plan amendments. Amendments to the plan shall be in accordance with the provisions of subrules 153.3(2) to 153.3(4).

441—153.20(234) Payment for services. Payment to providers for services delivered pursuant to this division shall be made by the department upon receipt of a valid invoice. Billing procedures shall be in accordance with 441—subrule 150.3(8). Reimbursement shall be made from the amount allocated to the county of residence.

441—153.21(234) Adverse service actions. The provisions of rule 441—130.5(234) apply.

441—153.22(234) Appeals. Decisions made by the department adversely affecting clients may be appealed pursuant to 441—Chapter 7. Decisions made by the department adversely affecting service providers may be reviewed pursuant to 441—subrule 150.3(9).

These rules are intended to implement Iowa Code section 234.6 and 1992 Iowa Acts, Senate File 2355, sections 24 and 25.

ITEM 17. Reserve rules **441—153.23** to **441—153.30**.

ITEM 18. Create a **Division IV**, "State Payment Program for Services to Adults with Mental Illness, Mental Retardation, and Developmental Disabilities," with rules **441—153.51(234)** to **441—153.59(234)** as follows:

DIVISION IV

STATE PAYMENT PROGRAM FOR SERVICES TO ADULTS WITH MENTAL ILLNESS, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES

PREAMBLE

The state payment program for services to adults provides 100 percent state funds to pay for mental illness, mental retardation and developmental disabilities local services for eligible persons who have no legal settlement in Iowa. This ensures that each of the mental illness, mental retardation and developmental disabilities local services provided by an Iowa county to residents who have legal settlement is also available to residents of that county who do not have legal settlement.

Three basic principles underlie the state payment program for services to adults. First, duration of residency, including legal settlement, is not an eligibility factor for mental illness, mental retardation and developmental disabilities local service programs. The state payment program has been developed to enable all eligible residents to receive these services, regardless of their legal settlement status. Second, each state is responsible to provide care and services for its own residents. Iowa provides for residents of Iowa but is not responsible to provide for persons who move to Iowa primarily to receive institutional placement. Third, one's own family is of primary importance to one's well-being. Thus, the state payment program emphasizes that care and services for a person be provided near the person's own family, unless this is contraindicated or impossible to provide.

441—153.51(234) Definitions.

"Applicant" means a person for whom payment is requested from the state payment program.

"Client" means a recipient of benefits from the state payment program.

"Department" means the Iowa department of human services.

"Institutional placement" means receiving residential services from a state institution, residential care facility, county care facility, or community-supervised apartment living arrangement.

"Legal representative" means a person recognized by law as standing in the place or representing the interests of another, for example, a guardian, conservator, custodian, parent of a minor, or the executor, administrator or next of kin of a deceased person.

"Legal settlement" is a legal status as defined in Iowa Code sections 252.16 and 252.17.

"Personal representative" means a person designated in writing by another as standing in the other's place of representing the other's interest.

"Resident," for purposes of this division, means a person who is present in the state and who has the intent to remain in Iowa indefinitely.

"State case" means a person who is a recipient of the state payment program for services to adults.

441—153.52(234) Eligibility. To be eligible for the state payment program, a person must be an adult and meet all of the following conditions. The department may, on a case-by-case basis, attempt collection from a legally responsible entity.

153.52(1) Meet the eligibility criteria established in rule 441—153.33(234).

153.52(2) Have no other political entity, organization or other source responsible for provision of or payment for the needed services.

153.52(3) Be a resident of Iowa without legal settlement in an Iowa county. Residency cannot be obtained in an institutional placement.

153.52(4) Not have been in Iowa for purposes of visitation or vacation nor traveling through the state to another destination at the time of application for services.

153.52(5) Not have moved to or been brought to or placed in Iowa primarily for the purpose of obtaining institutional placement.

441—153.53(234) Application procedure.

153.53(1) Application by service worker. It shall be the responsibility of the department's county office service workers to make application for the state payment program for any person they serve who may be eligible. Applications shall be made only with the knowledge and consent of the person or the person's legal or personal representative.

153.53(2) Eligible for services. Applicants for the state payment program must first be determined eligible for services following the application procedure in rule 441—130.2(234).

153.53(3) Application requirements. Applications shall be made on Form SS-1106-0, State Payment Program Eligibility Determination, and shall include a copy of the applicant's case plan, as required by rule 441—130.7(234), and additional narrative as follows:

a. A statement explaining why it is believed the applicant does not have legal settlement in Iowa and the place where it is thought the applicant does or may have it.

b. A history of the custody or guardianship of the applicant, if custody or guardianship has ever been with someone other than the natural parents.

c. A description of the applicant's family and the applicant's relationships with family members and significant others and the attempts made to seek services for the applicant near these people or the reason for not doing so.

d. An explanation of the applicant's financial status, including veteran and social security status and other entitlements.

441—153.54(234) Eligible services. Services eligible for reimbursement pursuant to this division are the following mental illness, mental retardation, and developmental disabilities local services: adult day care, adult support, community-supervised apartment living arrangements, adult residential services, sheltered work, supported employment, supported work training, transportation, and work activity.

441—153.55(234) Service provision.

153.55(1) Purchased services. The state payment program provides payment for mental illness, mental retardation and developmental disabilities local services to eligible persons as follows. Social casework services will be provided by the department during the period for which services are paid.

a. For persons with mental retardation, payment will be provided for services as long as the person is eligible and the following criteria are met:

(1) The provider and the department have a valid purchase of service agreement for the service pursuant to 441—Chapter 150.

(2) The service is in the plan for mental illness, mental retardation, and developmental disabilities local purchase services for the person's county of residence.

(3) The service is provided or paid for by the person's county of residence to persons who have legal settlement there.

b. For persons with mental illness or a developmental disability, payment will be provided as long as the service meets the following criteria:

(1) The provider and the department have a valid purchase of service agreement for the service pursuant to 441—Chapter 150.

(2) The service is in the plan for mental illness, mental retardation, and developmental disabilities local purchase services for the person's county of residence or the service is provided or paid for by the person's county of residence for persons who have legal settlement in the county.

c. Other services may be provided for persons with mental retardation for a period not to exceed six months upon approval of the director or the director's designee, if all of the following conditions are met:

(1) The service is provided or paid for by the county to persons who have legal settlement in the county.

(2) The service meets the definition of a specific mental illness, mental retardation and developmental disabilities local service, even though it may be called by a different name than that service.

(3) The provider is willing to enter into a purchase of service agreement with the department for the service.

153.55(2) Excluded costs. The costs for a person's maintenance, medical services and other needs are not paid by the state payment program, except as these may be included in the mental illness, mental retardation, and developmental disabilities local service received by the client.

441—153.56(234) Eligibility determination.

153.56(1) Certification by central office. Following receipt of Form SS-1106-0 and accompanying documentation from the county office, central office staff of the department shall complete the determination of eligibility as follows:

a. Iowa counties, other states and counties, agencies, institutions, professional persons and other sources shall be contacted, and court records and other documents shall be reviewed as necessary to determine the applicant's eligibility for benefits.

b. The applicant's legal settlement status shall be ascertained in accordance with Iowa Code sections 252.16 and 252.17 and with other applicable laws, rulings of courts and opinions of the Iowa attorney general.

c. The applicant's eligibility for the state payment program shall be certified to the county office on Form SS-1106-0 within 30 days from the date Form SS-1106-0 is submitted to central office.

153.56(2) Notification of applicant. Following certification by central office, the county office shall notify the applicant of the decision in accordance with department requirements and procedures.

153.56(3) Effective date. An applicant's eligibility for the state payment program shall be effective from the date of the approval of that person's application by central office.

153.56(4) Redetermination. Redeterminations of eligibility for the state payment program shall be done when the client's eligibility for services is redetermined and also at the time a change in the client's legal settlement status has been calculated to occur or does occur.

441—153.57(234) Program administration.

153.57(1) Provider responsibilities. In providing services to a client, the provider shall follow the department's case plan, shall submit reports to the department as required by 441—Chapters 130 and 150 and shall furnish services in accordance with the department rules governing the mental illness, mental retardation and developmental disabilities local services being provided.

153.57(2) Department responsibilities. The department as sponsoring agency shall be responsible for all contacts with governmental units, with in-state and out-of-state agencies, with the applicant or client's family and others in matters concerning the applicant or client's legal settlement and residency, entitlements from other sources and eligibility for the state payment program.

153.57(3) The following policies shall govern payment to providers for services furnished to clients:

a. Payment for service shall be made in accordance with 441—Chapter 150 and departmental procedures. Form AA-2241-0, Purchase of Service Provider Invoice, shall be used to bill for services covered by a purchase of service contract. Form 625-5297, Claim Order/Claim Voucher, shall be used for all other services.

b. Payment to a provider for services shall be computed at the lesser of the following rates:

(1) The rate established for that service by the provider's purchase of service agreement with the department.

(2) The rate established for that service by any contract in effect between the provider and any other source.

c. Client fees and other client participation in the payment for services and maintenance shall be governed by the rules of the programs provided and where appropriate by rule 441—130.4(234).

d. Payment for outdated warrants and for invoices for services and claims over which there is dispute with the department shall be submitted to the State Appeals Board, in accordance with Iowa Code chapter 25.

441—153.58(234) Reduction, denial or termination of benefits. A person's state payment program benefits may be denied, terminated or reduced according to rule 441—130.5(234) or under other applicable conditions as stated in the rules which apply to the services requested or received.

A client's state payment program benefits shall be terminated on the date the client acquires legal settlement.

441—153.59(234) Appeals. Decisions made by the department adversely affecting clients may be appealed pursuant to 441—Chapter 7. Decisions made by the department adversely affecting service providers may be reviewed pursuant to subrule 150.3(9).

These rules are intended to implement Iowa Code section 234.6(6) and 1992 Iowa Acts, Senate File 2355, section 24.

ITEM 19. Rescind and reserve 441—Chapter 132.

ITEM 20. Rescind 441—Chapter 157 and adopt the following new chapter in lieu thereof:

CHAPTER 157

PURCHASE OF ADOPTION SERVICES

PREAMBLE

These rules define the children, individuals, and families who are eligible for purchase of adoption services; service components which may be purchased; minimum service requirements; contracting requirements; and management and payment provisions.

441—157.1(600) Definitions.

"Adoptive home study" includes an assessment of the family's parental attributes and a written report stating approval or nonapproval of the family for adoptive placement of a child or children.

"Contract" refers to a purchase of service contract between a provider agency and the department.

"Department" means the department of human services.

"Placement services" includes the activities and travel necessary to place the child in the adoptive family.

"Postplacement services" includes the supervision, support and intervention necessary to assist the adoptive placement.

"Preparation of child" includes activities necessary to ready the child for placement into an adoptive family.

"Preparation of family" includes activities necessary to assist the family in adding a child as a new member of their family.

"Preplacement visits" means contacts, activities, and visits between the child and adoptive family prior to permanent adoptive placement.

"Provider" means a licensed child-placing agency which has a purchase of service contract with the department.

"Recruitment" includes activities designed to identify individuals or families who may be prospective adoptive families for a special needs child or children.

"Screening" includes an initial contact and interview with an individual or family to determine if the individual or family wishes to adopt a special needs child or children and whether or not to proceed with a preplacement assessment and adoptive home study.

441—157.2(600) Eligibility. Individuals and families and special needs children are eligible for purchased adoption services as follows:

157.2(1) Individuals and families. Individuals and families are eligible without regard to income when referred by the department and one of the following exists:

a. An individual or family has applied to the department to adopt a special needs child or children and the department worker is unable to begin the preplacement assessment and adoptive study process within 90 days of the application date.

b. An individual or family applies to a provider to adopt a special needs child or children and department staff determines the family eligible and makes the referral for purchased adoption services.

c. An individual or family who has a current approved adoptive home study applies to adopt a special needs child or children and the department wishes to purchase some components of adoption services in order to facilitate an adoptive placement of a special needs child or children in the family.

157.2(2) Special needs children. Special needs children as defined in 441—subrule 201.3(1), who are legally available for adoption and who are under the guardianship of the department, are eligible for purchased adoption services.

441—157.3(600) Components of adoption service. Any or all of the following components of adoption service may be purchased: adoptive home study, preparation of child, preparation of family, preplacement visits, placement services and postplacement services. The decision as to whether to purchase adoption services is based on the availability of funding, the availability of department staff to provide adoption services to individuals and families, and the needs of the special needs child or children.

157.3(1) Adoptive home study. This component includes the following activities:

a. Family assessment. The family assessment shall include a minimum of two face-to-face interviews with the applicant(s) and at least one face-to-face interview with each member of the household. At least one of the interviews shall take place at the applicant(s) home. The assessment of the prospective adoptive family shall include an evaluation of the family's ability to parent a special needs child or children including the following:

(1) Motivation for adoption and whether the family has biological, adopted or foster children.

(2) Family and extended family's attitude toward accepting an adopted child and plans for discussing adoption with the child.

(3) The attitude toward adoption of the significant other people involved with the family.

(4) Emotional stability, marital history, family relationships and compatibility of the adoptive parents.

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

(6) Medical, mental and emotional conditions that may affect the applicant's ability to parent a child, treatment history, and current status of treatment.

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

(8) Adjustment of any children in the home, including their attitudes toward adoption, relationships with others, and school performance.

(9) Disciplinary practices that will be used.

(10) Capacity to give and receive affection.

(11) Statements from three references provided by the family and a minimum of three additional references selected by the adoption worker.

(12) Financial information, ability to provide for a child and whether there is a need for adoption subsidy for a special needs child or children.

(13) Attitudes of the adoptive applicants toward the birth parents and the reasons the child is available for adoption.

(14) Commitment to and capacity to maintain significant relationships.

(15) Substance use or abuse, if any, by family members or members of the household, treatment history and current status of treatment.

(16) History of abuse, if any, by family members or members of the household, treatment history, current status of treatment and the provider agency's evaluation of the abuse.

(17) Criminal convictions, if any, by family members or members of the household, and the provider agency's evaluation of the criminal record.

(18) Recommendations for number, age, sex, characteristics, and special needs of a child or children the family can best parent.

b. Record checks. The evaluation of the adoptive family shall include a child abuse registry check using Form SS-1606-0, Request for Child Abuse Information, and a criminal records check by the department of public safety using Form 13CA, Request for Non-Law Enforcement Records Check. These record checks shall indicate whether or not a founded abuse or a conviction of a crime exists under a law in Iowa.

An adoptive applicant with a record of founded child abuse or a criminal conviction shall not be approved for an adoptive placement unless evaluation of the founded abuse or crime indicates that the placement should be approved. Form 470-2310, Record Check Evaluation, completed by the applicant, may be used to assist the provider in the evaluation.

The provider shall evaluate the nature and seriousness of the founded abuse or crimes, the time elapsed since the commission of the founded abuse or crimes, the circumstances under which the founded abuse or crimes were committed, the number of founded abuses or crimes committed by the person and the degree of rehabilitation.

c. Written report. The provider shall prepare a written report of the family assessment, known as the adoptive home study, which shall be used to approve or deny a prospective family as an appropriate placement for a special needs child or children. The family shall be notified by the provider agency in writing of the decision, and if denied, reasons for denial shall be stated. The adoptive home study shall be dated and signed by the provider adoption worker. A copy of the adoptive home study shall be provided to the family and to the department with the notification of approval or denial.

157.3(2) Preparation of child. This component includes specific activities designed to enable a child to make the transition to an adoptive placement. The activities shall include, but are not limited to:

a. Counseling regarding issues of separation, loss, grief, guilt, anger and adjustment to an adoptive family.

b. Preparation or update of a life book.

c. Provision of age-appropriate information regarding community resources available, such as children's support groups, to assist the child in the transition and integration into the adoptive family.

157.3(3) Preparation of family. This component includes activities designed to assist the adoptive family in expanding its knowledge and understanding of the child or children. This component should enhance the family's readiness to accept the child or children into their family and encourage their commitment. The activities shall include, but are not limited to:

a. Counseling with the family members.
b. Providing background information on the child.
c. Providing information regarding the child's special needs.
d. Providing information regarding the child's anticipated behavior.
e. Discussing the impact that adding a new member or members to the family may have on all current family members.
f. Informing the family of the community resources that are available to assist the family, such as parent support groups.

157.3(4) Preplacement visits. This component includes activities necessary to plan, conduct and assess the transitional visits between the adoptive family and the special needs child or children prior to the adoptive placement of the child in the home.

157.3(5) Placement services. Placement services include activities necessary to plan and carry out the placement of a child or children into the adoptive home.

157.3(6) *Postplacement services.* Postplacement services include supervision, support, crisis intervention and required reports. Postplacement services are provided from the time a child is placed with an adoptive family until finalization of the adoption occurs.

a. Postplacement supervision should focus on the following areas:
(1) Integration and interaction of the child or children with the family.
(2) Changes in the family functioning which may be due to the placement.
(3) Social, emotional and school adjustment of the child or children.
(4) Changes that have occurred in the family since the placement.
(5) Family's method of dealing with testing behaviors and discipline.
(6) Behavioral evidence of the degree of bonding that is taking place and the degree to which the child is becoming a permanent member of the adoptive family.

b. A minimum of three adoptive home visits are required or, if the family is experiencing problems, as many as are necessary to assess and support the placement. The number shall be determined by mutual agreement between the provider and the department.

Home visits shall be completed at a minimum as follows: one no later than 30 days after placement; one between 60 and 90 days after placement; and a final visit prior to requesting a consent to adopt.

c. A written report based on the postplacement visits with recommendations regarding the finalization of the adoption shall be submitted to the department. Other reporting requirements are addressed in 441—157.6(600).

441—157.4(600) Contract requirements and management. The department of human services and the provider agency shall enter into a purchase of adoption services contract using Form SS-1501-0, Iowa Purchase of Social Services Contract—Agency Provider. The development and management of the contract including contract amendments, contract renewal and contract termination shall comply with 441—150.2(1)"a" and 441—150.3(234).

157.4(1) Units of service and unit rates.

a. A single child or all members of a sibling group or any or all members of an adoptive family shall be considered one recipient of any unit of purchased adoption service.

b. The unit rate for group services shall represent a total per hour cost of providing the group session. For billing purposes, it shall be prorated to the recipient families in attendance. The need for and use of cofacilitators must be addressed in the contract.

c. One hour of service to a single child, a sibling group or family members shall be considered a unit of service for the following components: preparation of family, preparation of child, preplacement visits, placement services, and postplacement services. Billings shall be based on any quarter or half portion of one hour of service. Monthly cumulative units shall be rounded up if a half hour or over or down if a quarter hour to the nearest whole unit for billing purposes. Service billings for purchase of adoption service shall be based on direct face-to-face contacts between the provider agency and the family members, child, or children. Recruitment and screening, travel, administrative activities, update of adoptive home studies and preparation time shall be considered indirect costs and shall be included in the unit costs, but not counted as billable units.

d. The unit for the adoptive home study component shall be the completion of the home study and shall be billed as one unit.

e. Unit rates shall be established according to 441—150.3(234).

157.4(2) Referral for purchased adoption service. To receive purchased adoption services, the child or children or the individual or family must be determined eligible and referred by the department. The department shall not make payment for purchased adoption service until eligibility is determined, and a referral is made authorizing services on Form SS-1701-0, Referral of Client for Purchased Social Services.

157.4(3) Billing procedures. Billings shall be prepared and submitted at the end of the month to the department by the provider agency on Form AA-2241-0, Purchase of Service Provider Invoice, for contractual services provided by the agency during the month, according to 441—subrule 150.3(8).

441—157.5(600) Case permanency plan requirements. The department worker shall submit to the provider a copy of the department case permanency plan when adoption services are purchased for a specific special needs child. The case plan shall include, but not be limited to, specific components to be purchased and the maximum number of units, the costs determined for each component, and the goals and objectives of the service components. The department worker shall update the plan as necessary to reflect current needs and services, according to case permanency plan guidelines.

441—157.6(600) Progress reports. The provider shall complete written monthly progress reports whenever any of the following components are purchased: preplacement visits, preparation of a child, preparation of a family, or placement services. Postplacement services shall be reported in writing after the 30-day, 90-day, and final home visit at a minimum, or on a monthly basis if the family is experiencing difficulties. The progress reports shall include a brief description of the services provided and the progress with respect to the goals and objectives identified in the case permanency plan. The first report

shall be submitted to the department worker no later than one month after service is initiated. The final report shall be submitted within one week after the purchased services are terminated.

These rules are intended to implement Iowa Code chapter 600.

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ARC 3306A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 217.6 and 234.6, and 1992 Iowa Acts, Senate File 2355, section 12, subsections 1 and 13, section 33, subsection 4, paragraph "b," and section 78, and 1992 Iowa Acts, House File 2480, section 33, the Department of Human Services hereby amends Chapter 156, "Payments for Foster Care and Foster Parent Training," and Chapter 202, "Foster Care Services," appearing in the Iowa Administrative Code.

These amendments implement changes in foster care mandated by the General Assembly and a change in requirements for foster care visitation. The changes are summarized below.

1. The General Assembly established a statewide target for the average number of children in group care placements on any day of 1405 children. Targets for each of the Department's five regions are established based on a formula of 40 percent of the region's portion of children aged 5 through 17 and 60 percent of the region's portion of the average monthly group care population for the last five complete fiscal years.

Regional planning groups are established appointed by the Department and the juvenile court to develop a plan to contain the number of children placed in group care within the target figure allocated to that region. The Department shall not pay for group care placement of a child if the placement is not in accordance with the regional plan.

2. Eligibility for foster care services for youth aged 18 and over is limited. No youth aged 18 and over will be eligible for foster group or shelter care unless they meet certain exceptions. No youth aged 20 and over will be eligible for any type of foster care. Payment for continued foster care services provided to a child who is 18 years of age or older shall be limited to the following:

a. For a child who is 18 years of age, family foster care or independent living arrangements.

b. For a child who is 19 years of age, independent living arrangements.

c. For a child who is at imminent risk of becoming homeless or failing to graduate from high school or to obtain a graduate equivalency diploma, if the services are in the child's best interests, funding is available for the services, and an appropriate alternative service is unavailable.

3. The General Assembly appropriated up to $1,000,000 for payment of continued foster care services for youth who are aged 18 and over and who meet the conditions set forth above. These amendments provide that these moneys shall be allocated to the regions based on each region's proportion of the total number of children placed in foster care on March 31, 1992, who, during the fiscal year beginning July 1, 1992, would no longer be eligible for foster care due to age.

4. Voluntary placement agreements for children under the age of 18 shall terminate after 30 days. For voluntary placements initiated before July 1, 1992, the Department shall file a petition with the court on or before September 1, 1992, to approve placement.

5. Placement in out-of-state group care facilities is limited. No payment will be made for an out-of-state group care placement which is more than 125 miles from the child's home after June 30, 1992, unless the placement is approved by a regional out-of-state placement committee established by the Department and the judicial department. Effective January 1, 1993, out-of-state group care facilities shall not be reimbursed in excess of the in-state rate unless the reimbursement is for a child placed prior to January 1, 1993.

6. An increase is provided for foster parents to 65 percent of the United States Department of Agriculture's estimate of the cost to raise a child in 1991, and an increase in the monthly allowance paid to children in independent living from $300 to $400.

7. These amendments remove the requirement that departmental service workers make a two-week follow-up visit after a child is initially placed in a foster care group facility where service is purchased by the Department. A two-week follow-up visit will continue to be made for children placed in foster family homes supervised directly by the Department.

These amendments reduce visitation requirements for departmental workers in order to allow them to provide services more effectively by enabling the workers to better allocate their time and by reducing travel time and expense. Workers will be able to allocate their time to address the permanency goals of individual children and prioritize direct service delivery.

8. These amendments correct organizational references.

The amendments described in paragraphs "1" to "6" above were previously Adopted and Filed Emergency and published in the July 8, 1992, Iowa Administrative Bulletin as **ARC 3136A**. Notice of Intended Action to solicit comments on that submission was published in the July 8, 1992, Iowa Administrative Bulletin as **ARC 3137A**. A Notice of Intended Action regarding the amendments described in paragraphs "7" and "8" above was published in the Iowa Administrative Bulletin on May 27, 1992, as **ARC 3040A**.

Subrule 202.6(3) was revised due to concerns expressed by the Council on Human Services. The amendments placed under Notice would have removed the requirement for all two-week follow-up visits. The revision requires workers to continue making the two-week follow-up visits to children placed in foster family homes who are supervised directly by the Department. In placements where the Department purchases services, the facility service worker is available to consult with the foster parents and deal with any problems the child might be encountering.

The Council on Human Services adopted these amendments August 12, 1992.

These amendments are intended to implement Iowa Code sections 234.6, 234.35 and 234.38, 1992 Iowa Acts, Senate File 2355, section 12, subsection 1, paragraphs "a" and "d," and subsection 13, and section 33, subsection 4, paragraph "b," and 1992 Iowa Acts, House File 2480, sections 10, 11, 12, 17, 25, and 26.

These amendments shall become effective November 1, 1992.

The following amendments are adopted.

ITEM 1. Amend rule **441—156.6(234)** as follows:

Amend subrule 156.6(1) as follows:

156.6(1) Basic rate. A monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule:

Age of child	Monthly rate
0 through 5	~~$198~~ *$258*
6 through 11	~~243~~ *289*
12 through 15	~~289~~ *328*
16 and over	~~300~~ *356*

Amend the implementation clause to read as follows:

This rule is intended to implement Iowa Code section 234.38 and ~~1990 Iowa Acts, Senate File 2435, section 31~~ *1992 Iowa Acts, Senate File 2355, section 33, subsection 4, paragraph "b."*

ITEM 2. Amend rule **441—156.9(234)** as follows:

Rescind subrule 156.9(2) and insert the following in lieu thereof:

156.9(2) Out-of-state group care payment rate. The payment rate for public or private agency group care licensed or approved in another state shall be established using the rate-setting methodology established by the other state or the department's accounting and reporting procedure for purchase of service contracts. Effective January 1, 1993, out-of-state group care facilities shall not be reimbursed in excess of $75.11 per child per day, except that the rate of reimbursement for children placed prior to January 1, 1993, shall remain the same as that in effect on December 31, 1992.

Amend the implementation clause to read as follows:

This rule is intended to implement Iowa Code sections 234.6 and 234.38 and ~~1990 Iowa Acts, Senate File 2435, section 31~~ *1992 Iowa Acts, Senate File 2355, section 12, subsection 1, paragraph "d."*

ITEM 3. Amend rule **441—156.12(234)** as follows:

Amend subrule 156.12(1) as follows:

156.12(1) Maintenance. When a child, at least aged 16 1/2 but under *the* age *of* ~~21~~ *20* is living in an independent living situation, an amount not to exceed ~~the basic rate which would be paid for the child in a foster family home,~~ *$400* may be paid to the child or another payee, other than a department employee, for the child's care.

Add the following implementation clause following rule 441—156.12(234) as follows:

This rule is intended to implement Iowa Code section 234.35 and 1992 Iowa Acts, Senate File 2355, section 12, subsection 4, paragraph "b."

ITEM 4. Amend 441—Chapter 156 by adding the following new rule:

441—156.20(234) Eligibility for foster care payment.

156.20(1) Client eligibility. Foster care payment shall be limited to the following populations.

a. Youth under the age of 18 shall be eligible based on legal status, subject to certain limitations.

(1) Legal status. The youth's placement shall be based on one of the following legal statuses:

1. The court has ordered foster care placement pursuant to Iowa Code section 232.52, subsection 2, paragraph "d," Iowa Code section 232.102, subsection 1, Iowa Code section 232.117, or Iowa Code section 232.182, subsection 5.

2. The child is placed in shelter care pursuant to Iowa Code section 232.20, subsection 1, or Iowa Code section 232.21.

3. The department has agreed to provide foster care pursuant to rule 441—202.3(234).

(2) Limitations. Department payment for group care, excluding placements of unaccompanied refugee minors, shall be limited to placements which conform to the regional group care plan developed pursuant to rule 441—202.17(232). Payment for an out-of-state group care placement located more than 125 miles from the child's home and initiated after July 31, 1992, shall be limited to placements approved pursuant to 441—subrule 202.8(2).

b. Youth aged 18 and older who meet the definition of child in rule 441—202.1(234) shall be eligible based on age, a voluntary placement agreement pursuant to 441—subrule 202.3(3), and type of placement.

(1) Except as provided in subparagraph 156.20(1)"b"(3), payment for a child who is 18 years of age shall be limited to family foster care or independent living.

(2) Except as provided in subparagraph 156.20(1)"b"(3), payment for a child who is 19 years of age shall be limited to independent living.

(3) Exceptions. An exception to subparagraphs (1) and (2) shall be granted for all unaccompanied refugee minors for the time period July 1, 1992, through June 30, 1993, and for all other children for the time period July 1, 1992, through July 31, 1992. Subsequent to July 31, 1992, the regional administrator or designee shall grant an exception when the child meets all of the following criteria. The child's eligibility for the exception shall be documented in the case record.

1. The child does not have mental retardation. Funding for services for persons with mental retardation is the responsibility of the county or state pursuant to Iowa Code section 222.60.

2. The child is at imminent risk of becoming homeless or of failing to graduate from high school or obtain a general equivalency diploma. "At imminent risk of becoming homeless" shall mean that a less restrictive living arrangement is not available.

3. The placement is in the child's best interests.

4. Funds are available in the region's allocation. When the regional administrator has approved payment for foster care pursuant to this subparagraph, funds which may be necessary to provide payment for the time period of the exception, not to exceed the current fiscal year, shall be considered encumbered and no longer available. Each region's funding allocation shall be based on the region's portion of the total number of children in foster care on March 31, 1992, who would no longer be eligible for foster care during the fiscal year beginning July 1, 1992, due to age, excluding unaccompanied refugee minors.

156.20(2) Provider eligibility for payment. Except for payments to foster parents or youth in independent living, foster care payment shall be limited to providers with a

purchase of service contract in force. If a child was placed prior to July 1, 1992, in a facility reimbursed through a mechanism other than purchase of services, payment may continue through September 30, 1992. Subsequent to that date, payment shall be made only through a purchase of service agreement.

This rule is intended to implement Iowa Code section 234.35, 1992 Iowa Acts, Senate File 2355, section 12, subsection 13, and 1992 Iowa Acts, House File 2480, sections 10, 25, and 26.

ITEM 5. Amend rule **441—202.1(234)**, definitions of "Department," "District administrator," and "Eligible child" as follows:

"Department" shall mean the Iowa department of human services and includes the ~~local,~~ county~~,~~ and ~~district~~ *regional* offices of the department.

"~~District~~ *Regional* administrator" shall mean the department employee responsible for managing department offices and personnel within the ~~district~~ *region* and for implementing policies and procedures of the department.

"Eligible child" shall mean a child for whom the court has given guardianship to the department or has transferred legal custody to the department or for whom the department has agreed to provide foster care services on the basis of a signed placement agreement or who has been placed in emergency care for a period of not more than 30 days upon the approval of the ~~commissioner~~ *director* or the ~~commissioner's~~ *director's* designee.

ITEM 6. Amend subrule **202.2(5)**, first paragraph and paragraph **"a,"** as follows:

202.2(5) The need for foster care and the efforts to prevent placement shall be evaluated by a review committee prior to placement, or, for emergency placements only, within 30 days after the date of placement. For children who are mentally retarded or developmentally disabled and receive case management services, this requirement may be met by the interdisciplinary staffing described in 441—Chapter 24, as long as the ~~district~~ *regional* administrator approves, the department worker attends the staffing, and the staffing meets the requirements of paragraphs "b" to "g" below.

a. Department staff on the review committee shall be the child's service worker, a supervisor knowledgeable in child welfare, and one or more additional persons appointed by the ~~district~~ *regional* administrator. At least one of these persons shall not be responsible for the case management or the delivery of services to either the child or the parents or guardian who are the subject of the review.

ITEM 7. Amend rule **441—202.3(234)** as follows:

Rescind subrule 202.3(1) and insert the following in lieu thereof:

202.3(1) All voluntary placement agreements initiated after June 30, 1992, for children under the age of 18 shall terminate after 30 days. For all voluntary placements initiated before July 1, 1992, the department shall file a petition with the court for approval on or before September 1, 1992.

Amend subrule 202.3(2) as follows:

202.3(2) When the voluntary placement is of a child who is under the age of 18 a Voluntary Foster Care Placement Agreement, Form SS-2604, shall be completed and signed by the parent(s) or guardian and the ~~local~~ *county* office where the parent or guardian resides. Voluntary Foster Care Placement Agreements shall not be used to place children outside Iowa and shall not be signed with parents or guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's parent or guardian moves outside Iowa after the placement.

Amend subrule **202.3(3)**, introductory paragraph, and paragraphs **"a"** and **"b,"** as follows:

202.3(3) Voluntary placement of a child aged 18 or older may be ~~extended~~ *granted* for six months at a time only when the child meets the definition of "child" in subrule 202.1(3), was in foster care or a state institution immediately prior to reaching *the* age *of* 18, has continued in foster care or a state institution since reaching *the* age *of* 18, and has demonstrated a willingness to participate in case planning and to fulfill responsibilities as defined in the case plan. *Payment shall be limited pursuant to 441—paragraph 156.20(1)"b."*

a. When the voluntary placement is of a child who is aged 18 or older and who has a court-ordered guardian, the Voluntary Foster Care Placement Agreement, Form SS-2604, shall be completed and signed by the guardian and the ~~local~~ *county* office where the guardian resides. Voluntary Foster Care Placement Agreements shall not be used to place children outside Iowa and shall not be signed with guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's guardian moves outside Iowa after the placement.

b. When the voluntary placement is of a child who is aged 18 or older and who does not have a court-appointed guardian, the Voluntary Foster Care Placement Agreement, Form SS-2604, shall be completed and signed by the child and the ~~local~~ *county* office where the child resides.

Amend subrule 202.3(4) as follows:

202.3(4) All voluntary placements shall be approved by the ~~district~~ *regional* administrator or designee.

Amend the implementation clause to read as follows:

This rule is intended to implement Iowa Code section 234.6(6)"~~b.~~" *and 1992 Iowa Acts, House File 2480, sections 11 and 12.*

ITEM 8. Amend rule 441—202.6(234) as follows:

202.6(3) A follow-up visit ~~to the facility~~ shall be made *to the child at the foster family home* within two weeks of the initial placement *for placements supervised directly by the department.*

Amend subrule 202.6(5), first paragraph, as follows:

202.6(5) In conjunction with the case plan review, the case shall be presented every six months to a review committee which conforms to the requirements in subrule 202.2(5) except those cases being reviewed by a local foster care review board in the sixth judicial district as authorized in Iowa Code section 237.19 shall not be subject to a review by the department's review committee. When the court, interdisciplinary team established according to 441—Chapter 24, or a local foster care review board reviews the placement, the ~~district~~ *regional* administrator may approve that review as meeting this requirement as long as the review meets the requirements of subrule 202.2(5), paragraphs "b" to "g," and of subrule 202.6(5), paragraphs "a" to "e." The review committee shall:

ITEM 9. Amend rule 441—202.7(234) as follows:

441—202.7(234) Out-of-~~district~~ *region* placements.

202.7(1) When the department makes a placement of a child in the foster care system out of the ~~district~~ *region* in

which the child resides, ~~such~~ *this* placement shall occur only when there is no appropriate placement within the ~~district~~ *region*, when the placement is necessary to facilitate reunification of the child with the parents, or when an out-of-~~district~~ *region* agency is closer to the community where the child resides than an in-~~district~~ *region* agency offering the same services.

202.7(2) The authority for approving out-of-~~district~~ *region* placements rests with both the placing and receiving ~~district~~ *regional* administrators.

202.7(3) Transfer of responsibility for supervision, planning, and visitation shall be approved by the placing and receiving ~~district~~ *regional* administrators and, when appropriate, by the court.

This rule is intended to implement Iowa Code section 234.6(6)"b."

ITEM 10. Amend rule **441—202.8(234)** as follows:

Amend subrule 202.8(1), first paragraph, as follows:

202.8(1) The department shall make an out-of-state foster family care placement only with the approval of the ~~district~~ *regional* administrator. Approval shall be granted only when the placement will not interfere with the goals of the child's case plan and when one of the following conditions exists:

Rescind subrule 202.8(2) and insert the following in lieu thereof:

202.8(2) The department shall make placements in out-of-state group care facilities as follows:

a. Placement shall be made in an out-of-state group care facility located less than 125 miles from the child's home only with the approval of the regional administrator or designee.

b. Placement shall be made in an out-of-state group care facility located more than 125 miles from the child's home only with the approval of the regional out-of-state placement committee established pursuant to subrule 202.8(5).

Add the following new subrule 202.8(5).

202.8(5) Regional out-of-state placement committees.

a. The department, jointly with the judicial department, shall establish one or more out-of-state placement committees in each of the department's regions to review cases of children placed in an out-of-state group care facility located more than 125 miles from the child's home.

b. The membership of each of the regional out-of-state placement committees shall consist of:

(1) Representatives of the department appointed by the regional administrator.

(2) Representatives of the juvenile court appointed by the chief juvenile court officer of each judicial district within the departmental region.

(3) At least one additional representative with expertise in each of the areas of child welfare, education, juvenile justice, and mental health, mental retardation or other developmental disabilities appointed jointly by the regional administrator and the chief juvenile court officer in each department region.

c. The duties of the regional out-of-state placement committees shall be in accord with those set forth in 1992 Iowa Acts, House File 2480, section 17.

Amend the implementation clause to read as follows:

This rule is intended to implement Iowa Code section 234.6(6)"b." *and 1992 Iowa Acts, House File 2480, section 17.*

ITEM 11. Amend rule 441—202.9(234) as follows:

Amend subrule **202.9(1)**, paragraph **"a,"** subparagraph (9), and paragraph **"b,"** as follows:

(9) Have the approval of the ~~district~~ *regional* administrator of the ~~district~~ *region* where the child resides.

b. Exceptions to the work (or work training) requirement may be allowed with the prior approval of the ~~director, division of community services~~ *chief, office of field services*, if the child can demonstrate involvement in some alternative daily activity and the exception is in the child's best interest.

Amend subrule **202.9(2)**, paragraph **"b,"** as follows:

b. Optional services. The following may be provided to a child under the age of 18 depending on the needs, objectives and services described in the child's individual case plan. An exception to allow the provision of optional services to a child aged 18 or older may be allowed with the prior approval of the ~~director, division of community services~~ *chief, office of field services*, if the exception is necessary for the child to complete high school or a GED.

Amend subrule 202.9(3) as follows:

202.9(3) Time limit. A child shall be eligible for independent living services for a maximum time period of 18 months. In unusual circumstances, services may be extended beyond this time limit with the approval of the ~~district~~ *regional* administrator and the ~~director, division of community services~~ *chief, office of field services*, when both determine that an extension is necessary for the child to obtain a high school diploma or GED. Each extension shall be for a specified period of time not to exceed six months.

ITEM 12. Amend subrule 202.13(3) as follows:

202.13(3) If a foster family objects in writing within seven days from the date that the information of plans to remove the child is mailed, the ~~district~~ *regional* administrator shall grant a conference to the foster family to determine that the removal is in the child's best interest.

This conference shall not be construed to be a contested case under the Iowa administrative procedure Act, Iowa Code chapter 17A.

The conference shall be provided before the child is removed except in instances listed in 202.13(1)"a" to "c." The ~~district~~ *regional* administrator shall review the propriety of the removal and explain the decision to the foster family.

The ~~district~~ *regional* administrator, on finding that the removal is not in the child's best interests, may overrule the removal decision unless a court order or parental decision prevents the department from doing so.

ITEM 13. Amend subrule **202.16(1)**, paragraph **"f,"** as follows:

f. References from the ~~district~~ *regional* administrator for the department ~~district~~ *region* in which the proposed psychiatric medical institution for children would be located, the chief juvenile court officer of the judicial district in which the proposed psychiatric medical institution for children would be located and the applicant's licensor from the department of inspections and appeals or department of public health.

ITEM 14. Amend 441—Chapter 202 by adding the following new rule:

441—202.17(232) Regional group care targets.

202.17(1) Regional target figure. A group care target figure shall be established for each departmental region

which shall be based on a portion of the annual statewide group care target established by the general assembly to reduce the number or length of group care placements. The fiscal year 1993 state target shall be 1405 children, excluding unaccompanied refugee minors. Each region's portion of the group care target shall be based on the following formula: 40 percent of the regional target shall be based on the region's portion of children aged 5 through 17, according to the 1990 census; and 60 percent shall be based on the region's portion of the average monthly group care population, excluding unaccompanied refugee minors, for fiscal years 1987 to 1991.

202.17(2) Regional plan for achieving target. For each of the departmental regions, representatives appointed by the department and the juvenile court shall establish a plan for containing the number of children placed in group care within the target figure allocated to that region. The plan shall include monthly targets and strategies for developing alternatives to group care placements. Each regional plan shall be established in advance of the fiscal year to which the regional plan applies, except that the first plan shall be established by August 15, 1992. To the extent possible, the department and the juvenile court shall coordinate the planning required under this subrule with planning for services paid under Iowa Code section 232.141, subsection 4. The department's regional administrator shall communicate regularly, as specified in the regional plan, with the juvenile courts within the region concerning the current status of the regional plan's implementation.

This rule is intended to implement 1992 Iowa Acts, Senate File 2355, section 12, subsection 1, paragraph "a," and 1992 Iowa Acts, House File 2480, section 10.

[Filed 8/14/92, effective 11/1/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3298A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6 and 1992 Iowa Acts, Senate File 2355, section 8, subsection 4, paragraph "b," and section 78, the Department of Human Services hereby amends Chapter 165, "Family Development and Self-Sufficiency Program," appearing in the Iowa Administrative Code.

These amendments direct federal match accessed by Family Development and Self-Sufficiency (FaDSS) grantee-generated funds to be used for program expansion as mandated by 1992 Iowa Acts, Senate File 2355, section 8, subsection 4, paragraph "b." Under current policy there is no access to federal match through the generation of local funds.

By allowing grantees to generate funds to be used to access federal match and directing that the funds be used to expand the program, it will be possible to increase the amount of federal funds brought into Iowa, increase the number of long-term Aid to Dependent Children (ADC) clients who will be able to successfully access the PROMISE JOBS program, and increase the number of ADC recipients served by the FaDSS program.

These amendments were previously Adopted and Filed Emergency and published in the July 8, 1992, Iowa Administrative Bulletin as **ARC 3128A**. Notice of Intended Action to solicit comments on that submission was published in the Iowa Administrative Bulletin on July 8, 1992, as **ARC 3129A**.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments August 12, 1992.

These amendments are intended to implement 1992 Iowa Acts, Senate File 2355, section 8, subsection 4, paragraph "b."

These amendments shall become effective November 1, 1992, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 165.3(3) as follows:

165.3(3) Funding allocations. The allocation of funds shall be in compliance with legislation and contingent on available funds. The council shall endeavor to allocate funds in a manner which allows participation of a variety of projects across Iowa. *Federal funds generated through grantee match shall be used for program expansion.*

ITEM 2. Amend rule 441—165.3(72GA,SF2225) by adding the following new subrule.

165.3(4) Matching funds. Grantees may generate funds to be used by the department (Title IV-F of the Social Security Act agency) to access federal matching funds.

ITEM 3. Amend **441—Chapter 165** by changing all parenthetical implementations from (72GA,SF2225) to (217).

ITEM 4. Amend the implementation sentence following **441—Chapter 165** to read as follows:

These rules are intended to implement Iowa Code sections 217.11 and 217.12 and ~~1988 Iowa Acts, chapter 1276, section 1, subsection 6.~~ *1992 Iowa Acts, Senate File 2355, section 8, subsection 4, paragraph "b."*

[Filed 8/14/92, effective 11/1/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3297A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 201, "Subsidized Adoptions," appearing in the Iowa Administrative Code.

This amendment lists the monthly rates for subsidized adoptions. Under current policy the maintenance amount

for a child in a subsidized adoption is based on the basic foster family home amount according to the child's age and special needs and the subsidized adoption rules merely reference the foster care rules for the actual amount of the monthly payment rate.

1992 Iowa Acts, Senate File 2355, the Department's appropriation bill for fiscal year 1993, raised the amount that foster families will receive to an amount based on 65 percent of the United States Department of Agriculture standard needed to raise a child. However, the appropriation bill did not provide funds for children in subsidized adoption to receive an increase.

This amendment was previously Adopted and Filed Emergency and published in the July 8, 1992, Iowa Administrative Bulletin as **ARC 3119A**. Notice of Intended Action to solicit comments on that submission was published in the July 8, 1992, Iowa Administrative Bulletin as **ARC 3120A**.

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

The Council on Human Services adopted this amendment August 12, 1992.

This amendment is intended to implement Iowa Code sections 8.31 to 8.33, 8.38, 600.17 to 600.21 and 600.23; Iowa Constitution, Article III, section 24, and Article VII.

This amendment shall become effective October 7, 1992, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend subrule 201.5(9) as follows:

201.5(9) The maximum monthly maintenance payment for a child is based on ~~the foster family care maintenance according to~~ the age and special needs of the child ~~as found in subrules 156.6(1) and 156.6(4).~~ *according to the following schedule:*

Age of child	*Maximum basic monthly rate*	*Maintenance plus special care allowance*	*Maintenance plus sibling allowance*
0 through 5 years	*$198*	*$307*	*$225.25*
6 through 11	*243*	*352*	*270.25*
12 through 15	*289*	*398*	*316.25*
16 through 20	*300*	*409*	*327.25*

The special care allowance may be authorized for adoptive families who must provide extra care to the child due to the child's special needs.

The sibling allowance is authorized for adoptive families who have adopted a sibling group of three or more children. The additional payment may be authorized for each child in the sibling group who has no other special needs.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3295A

INDUSTRIAL SERVICES DIVISION[343]

Adopted and Filed

Pursuant to the authority of Iowa Code section 86.8, the Industrial Commissioner adopts amendments to Chapter 4, "Contested Cases," and Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

Item 1 provides that no filing fee is due for filing a contested case in an expedited proceeding.

Item 2 provides the procedures for expedited contested case proceedings.

Item 3 provides current year payroll tax table information for purposes of calculating weekly benefits.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 24, 1992, as **ARC 3110A**, and the amendments were simultaneously Adopted and Filed Emergency as **ARC 3109A**.

Written comments were solicited until July 14, 1992. A public hearing was held on July 29, 1992. No written comments were received during the comment period. No one offered comments at the public hearing.

Some changes to the proposed amendments were made in response to oral comments received. Other changes make the appropriate cross-references to other rules.

These amendments are identical to those published under Notice of Intended Action as **ARC 3110A** except for the following: Paragraphs 4.44(1)"a," 4.44(1)"b," and 4.44(1)"k" were changed somewhat to indicate what cases would be eligible for the expedited proceedings. Subrule 4.44(4) was revised to specify when responses to discovery should be served. Subrule 4.44(12) was revised to provide that payments of benefits will not be required subsequent to the date of the hearing. Subrule 4.44(13)"a" was revised to provide that under appropriate circumstances a decision pursuant to the expedited proceedings may not be final. Subrule 4.44(13)"b" was revised to specify that failure to conduct a hearing within the time specified does not invalidate the proceedings. Subrules 4.44(1)"b," 4.44(1)"g," and 4.44(13) were modified to cite exceptions contained in other rules.

Rule 4.44(17A,85,85A,85B,86,87) is intended to implement Iowa Code sections 17A.12, 17A.14, 17A.15, 17A.16, 85.21, 85.22, 85.27, 86.8, 86.13, 86.14, 86.17, 86.18, 86.19, 86.24, and 87.10.

Rule 8.8(85,17A) is intended to implement Iowa Code section 85.61(6).

These amendments will become effective October 7, 1992, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

ITEM 1. Amend subrule **4.8(2)** by adding new paragraph **"i"** as follows:

i. No filing fee is due for filing a proceeding pursuant to rule 4.44(17A,85,85A,85B,86,87).

ITEM 2. Amend 343—Chapter 4 by adding the following new rule:

343—4.44(17A,85,85A,85B,86,87) Expedited proceeding—criteria. An expedited proceeding is available in any type of contested case described in subrule 4.44(1), or any combination thereof, if a final agency decision will adjudicate all currently pending disputes between the parties in that case.

The expedited proceeding is also available to provide an accelerated determination of issues described in subrule 4.44(1), paragraph "k," "l" or "m," in order to facilitate progress of the case or reduce unnecessary hardship experienced by either party, even though other issues will remain to be litigated in this or another proceeding.

The expedited proceeding controls any hearing required in a case commenced on Form 9, Form 9A, Form

100A or Form 100B if a contested case is not pending under regular procedures.

4.44(1) Litigation without the consent of all parties. The claims, cases or issues which may be litigated using the expedited proceeding without the consent of all parties are as follows:

a. A claim for weekly compensation for temporary total, temporary partial, healing period, scheduled member permanent partial disability under Iowa Code section 85.34(2)"a" to "s" or 85B.6 and any associated expenses under Iowa Code section 85.27.

b. A claim for services, supplies, expenses and devices under Iowa Code section 85.27 where the total amount in controversy is $10,000 or less except those cases filed pursuant to rules 343—4.46(17A,85,86) and 343—10.3(17A,85,86) (health service disputes).

c. Determination of the correct rate of weekly compensation under Iowa Code section 85.36.

d. Determination of dependency under Iowa Code sections 85.42 and 85.44.

e. Equitable apportionment under Iowa Code section 85.43.

f. Applications for full or partial commutation under Iowa Code sections 85.45 to 85.48.

g. An application for alternate care under Iowa Code section 85.27 except those filed pursuant to rule 343—4.48(17A,85,86) (applications for alternate care).

h. An application to be reimbursed for the fees and expenses of an examination conducted by a physician of the employee's choice under Iowa Code section 85.39 or any other issue arising under Iowa Code section 85.39.

i. An application for vocational rehabilitation benefits under Iowa Code section 85.70.

j. Any other claim where the entire amount in controversy between the parties is $10,000 or less, exclusive of interest and costs.

k. A claim to commence weekly compensation benefits under Iowa Code section 85.33 or 85.34(1) where the employee has been totally disabled for not less than 30 days and is not receiving wages or wage replacement benefits attributable to the employer which equal or exceed 50 percent of the gross weekly earnings of the employee at the time of the injury.

l. An action under Iowa Code section 85.21 to require a potentially liable employer or insurance carrier to pay benefits pending determination of liability.

m. An action under Iowa Code section 85.22(3) seeking approval of a settlement with a third party.

n. A claim for benefits for occupational hearing loss arising under Iowa Code chapter 85B.

o. An action to determine interest under Iowa Code section 85.30, credit under 85.38(2), costs under 86.40, and witness fees under 86.41.

Notwithstanding the foregoing criteria for application of the expedited proceeding, it may be used for any purpose, in any case, on order of the industrial commissioner or to adjudicate all currently pending disputes between the parties if all parties are represented by legal counsel and stipulate to its use.

4.44(2) Procedures. An expedited proceeding is commenced by filing and serving an original notice and petition on forms provided by the industrial commissioner. If a contested case is pending under regular procedures, the industrial commissioner may order the case to be processed as an expedited proceeding on motion from either party. Before an expedited proceeding can be commenced, there must have been a good faith effort to resolve the dispute.

4.44(3) Resistance. No resistance to use of the expedited process may be filed except for the purpose of contesting whether the case meets the criteria for the expedited process as set forth in subrule 4.44(1). Any such resistance must be made in the answer in accordance with rule 4.9(17A) and must be supported by affidavit.

4.44(4) Discovery. At the time of filing or serving its initial pleading, each party shall serve its responses to the standing discovery requests published on forms provided by the industrial commissioner. The responses may be served on the opposing party with the initial pleading or in accordance with 343—4.13(86) but shall not be filed with the industrial commissioner. Each party may serve additional discovery requests within 20 days following receipt of the responses to the standing discovery requests from the opposing party. All parties shall respond to the additional discovery requests within 30 days but in no event later than 15 days prior to the hearing. A motion to compel discovery may be made only in response to a timely objection. All other rulings on discovery disputes are deferred until the time of hearing. Parties shall be prepared to produce all requested materials at the hearing. On application or the commissioner's own motion, the periods provided for discovery may be modified by order of the commissioner.

4.44(5) Hearing assignment. The parties shall be notified by mail of the time and place of hearing. Any party with a conflict shall, within seven calendar days of receipt of the notice, convene a telephone conference call with all opposing parties and the industrial commissioner in order to reschedule the hearing.

4.44(6) Date of hearing. The hearing shall be conducted on a date which is not less than 75 nor more than 150 days following the filing of the petition unless a different date is agreed to by the parties or ordered by the industrial commissioner.

4.44(7) Removal.

a. Any case which is not heard within 180 days following filing of the petition may be removed from the expedited proceeding docket and entered into the regular docket without prior notice to either party. A case so removed may be reinstated to the expedited docket only upon a motion for rehearing, supported by affidavit, showing mistake, inadvertence, irregularity, surprise, excusable neglect, unavoidable casualty or similar good cause.

b. The commissioner may, for purposes of adjudicatory efficiency or fundamental fairness, after notice to the parties or on request from any or all parties, remove any case from the expedited docket and place it in the regular docket. In doing so, the commissioner shall consider whether any resulting delay shall create a substantial hardship for either party.

4.44(8) Record of hearing. The hearing shall be conducted by telephone conference and electronically recorded unless an in-person hearing is requested by a party in its initial pleading. A party may elect to have the hearing recorded by a certified shorthand reporter by providing the reporter at the hearing, at that party's initial expense.

4.44(9) Hearing.

a. The hearing may be summary and informal. The presiding deputy commissioner may question witnesses, discuss issues with counsel or otherwise direct the prog-

ress of the hearing. With the consent of both parties, the possibility of settlement may be discussed on or off the record. There is no requirement for witness or exhibit lists, but the parties shall meet prior to the hearing in order to avoid duplication or the submission of extraneous materials.

b. If the hearing is conducted by telephone, all exhibits must be delivered to the office of the industrial commissioner prior to the time that the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least 15 days prior to the hearing.

c. Upon conclusion of the hearing, the presiding deputy commissioner may state the decision into the record or take the case under advisement and issue a written decision within 30 days. If the decision is stated on the record, the deputy will file a Memorandum of Decision in lieu of a written decision to document the substance of the decision.

4.44(10) Evidence.

a. Each party may introduce no more than 50 pages of written evidence without showing that the evidence is nonduplicative, relevant, material and likely to assist in deciding the disputed issues in the case.

b. Evidence which was not timely disclosed to the opposing party in response to a discovery request or rule 4.17(85,86,17A) may be excluded, but the presiding deputy has discretion to receive any material evidence if its receipt promotes a full disclosure of the facts and will not be unfairly prejudicial to the party opposing its offer. Testimony from witnesses or other evidence of which the opponent had knowledge more than 15 days prior to the hearing is rebuttably presumed to be nonprejudicial except for information regarding experts pursuant to Iowa rule of civil procedure 125"c" where 30 days is applicable.

c. Selecting a course of treatment is an expression of the professional opinion of a treating physician or practitioner that the treatment selected is reasonable and raises an inference that the treatment selected is reasonable.

d. The amount charged for services, supplies and devices provided as part of a course of treatment selected by a treating physician or practitioner is an expression of the provider's opinion that the amount charged is reasonable and raises an inference that the charge made is reasonable.

4.44(11) Review.

a. Appeals from decisions entered through the expedited process may be determined summarily by adopting the proposed decision as the final agency decision, remanding to the deputy who presided at the hearing or modifying the proposed decision.

b. The commissioner may, without prior notice, on the commissioner's own motion or the motion of any party, enter an order providing an accelerated briefing schedule.

c. If the hearing was electronically recorded, copies of the tape will be provided to the parties. A transcript shall be provided by the appealing party pursuant to Iowa Code section 86.24(4) and a copy thereof shall be served on the opposing party at the time the transcript is filed with the industrial commissioner unless the parties submit an agreed transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the industrial commissioner for resolution. Any transcription charges incurred by the industrial commissioner in resolving the dispute shall be initially paid pursuant to Iowa Code section 86.19(1) by the party who disputes the accuracy of the transcript prepared by the appellant.

4.44(12) Accelerated determinations. In a proceeding to commence weekly compensation pursuant to 4.44(1)"k" or proceedings under 4.44(1)"l" or "m," the hearing will be conducted within 75 days following filing of the petition. Any additional discovery requests dealing with the accelerated determination must be served with each party's initial pleading. An order entered under this subrule may require weekly compensation to be commenced and award unpaid past due benefits but shall not require payment of benefits subsequent to the date of the hearing. If an order to commence payments has been entered, a person who subsequently receives a notice of termination pursuant to Iowa Code section 86.13 may move to avoid the termination. After notice to all parties and opportunity for hearing, the industrial commissioner may ratify, modify or prohibit termination of benefits. Any appeal of a decision entered under this subrule shall be given priority.

4.44(13) Miscellaneous.

a. This rule is to be construed and applied in conformity with Iowa Code chapters 17A, 85, 85A, 85B, 86 and 87 and the other rules of the industrial services division [343]. If any irreconcilable conflict exists, the statutes shall govern over the administrative rules and the rules concerning expedited proceedings shall govern over other rules of the division except rule 343—4.47(17A,85,86) (second injury fund benefits).

b. Unless otherwise ordered by the industrial commissioner or stipulated by the parties, any final agency decision entered through the expedited process shall be final and enforceable with regard to whatever benefit or entitlement was awarded or denied, but the decision shall not have a preclusive effect or otherwise finally determine any underlying issue of law or fact and if different or additional benefits are sought in the same or any other case, a de novo determination of the employer's liability and causation will be made.

c. Failure to conduct a hearing or issue a decision within the time specified by this rule does not invalidate the proceeding or decision and is not a basis for relief on appeal.

d. A filing fee is not payable when an action is properly commenced as an expedited proceeding. If removed pursuant to subrule 4.44(7) and placed in the regular docket, subrule 4.8(2) shall govern whether a filing fee is then required.

e. In cases with an amount in controversy of $2,000 or less, exclusive of interest and costs, or in cases under 4.44(1)"h," "i," "l," or "m," a party may be represented as provided in Iowa Code section 631.14. The presiding deputy may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and its insurance carrier shall be treated as one party unless their interests appear to be in conflict and a representative of either the employer or its insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

f. The parties are authorized to waive timeliness requirements imposed by these rules, but any party asserting the existence of a waiver has the burden of proving the

existence and terms of the waiver. A waiver shall not delay the hearing, decision or any part of the appeal process.

g. The commissioner may, with or without notice, at any time, on application or on the commissioner's motion, enter such orders as the commissioner deems appropriate to move a case to a prompt, fair resolution or promote the interests of justice.

ITEM 3. Amend 343—8.8(85,17A) to read as follows:

***343—8.8(85,17A) Payroll tax tables.** Tables for determining payroll taxes to be used for the period July 1, ~~1991~~ *1992*, through June 30, ~~1992~~ *1993*, are the tables in effect on July 1, ~~1991~~ *1992*, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E Publication 15 [Rev. ~~January 1991~~ *February 1992*].)

2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue and Finance Publication 44-001 for wages paid after January 1, ~~1989~~ *1992*.)

3. Social security and Medicare withholding (FICA) at the rate of 7.65% (Internal Revenue Service, Circular E Publication 15 [Rev. ~~January 1991~~ *February 1992*].)

This rule is intended to implement Iowa Code section 85.61*(6)*.

[Filed 8/13/92, effective 10/7/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3294A

INDUSTRIAL SERVICES DIVISION[343]

Adopted and Filed

Pursuant to the authority of Iowa Code section 86.8, the Division of Industrial Services adopts amendments to Chapter 4, "Contested Cases," Chapter 8, "Substantive and Interpretive Rules," and Chapter 10, "Informal Dispute Resolution Procedures," Iowa Administrative Code.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on July 8, 1992, as ARC 3159A.

Written comments were solicited until July 28, 1992. A public hearing was held on July 29, 1992.

Input from the public was requested prior to submitting the rules under Notice of Intended Action. Drafts of the rules were revised to accommodate some of the suggestions received at that time.

No written comments were received during the comment period. There are no changes as a result of the public hearing. These rules are identical to those published under Notice of Intended Action as ARC 3159A except for the following: The last two sentences of rule 343—4.45(17A,86) (Item 4) have been added as new language and the effective date of the rules has been given in rules 343—4.47(17A,85,86) (Item 4) and 343—10.3(1) (Item 8).

Subrule 4.28(5) and rule 4.45(17A,86) are intended to implement Iowa Code sections 17A.12, 17A.15, 86.8, 86.18 and 86.24.

Rule 4.33(86) is intended to implement Iowa Code section 86.40 and 1988 Iowa Acts, chapter 1274.

Rules 4.40(73GA,ch1261) and 4.47(17A,85,86) and subrules 10.1(3), 10.1(4), 10.1(5), 10.1(6), 10.1(7), and 10.1(8) are intended to implement Iowa Code sections 86.8 and 86.40 and 1990 Iowa Acts, chapter 1261, section 3, and 1992 Iowa Acts, House File 2395, section 3.

Rules 4.46(17A,85,86) and 10.3(17A,85,86) are intended to implement Iowa Code sections 17A.10, 17A.12, 17A.14, 85.27, 86.8 and 86.39 and 1992 Iowa Acts, House File 2165.

Rule 8.2(85) is intended to implement Iowa Code sections 85.36 and 85.61.

These rules will become effective October 7, 1992.

ITEM 1. Amend rule 343—4.28(17A,86) by adding the following new subrule:

4.28(5) Length of briefs. See rule 4.45(17A,86).

ITEM 2. Amend rule 343—4.33(86) to read as follows:

343—4.33(86) Costs. Costs taxed by the industrial commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, *(8) costs of persons reviewing health service disputes*. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the industrial commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or industrial commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery.

This rule is intended to implement Iowa Code section 86.40 and 1988 Iowa Acts, ~~House File 2444~~ *chapter 1274*.

ITEM 3. Amend rule 343—4.40(73GA,ch1261) by adding the following new subrules and an implementation clause:

4.40(3) The parties must comply with the good faith requirements of rule 343—10.1(17A,85,86) before requesting a voluntary proceeding pursuant to subrule 4.40(2).

*Brackets supplied by agency

4.40(4) See 343—subrule 10.1(5) regarding informal dispute resolution.

4.40(5) See rule 4.47(17A,85,86) and 343—subrule 10.1(6) regarding dispute resolution for second injury fund benefits.

This rule is intended to implement 1990 Iowa Acts, chapter 1261, section 3, and 1992 Iowa Acts, House File 2395, section 3.

ITEM 4. Amend 343—Chapter 4 by adding the following new rules:

343—4.45(17A,86) Length of briefs. Except by permission of the presiding deputy industrial commissioner or by permission of the industrial commissioner when an appeal pursuant to rule 4.27(17A,86) has been filed, principal briefs shall not exceed 50 Arabic-numbered pages. Reply briefs shall not exceed 25 Arabic-numbered pages. Permission may be granted ex parte. In the event of a cross-appeal, appellant's (cross-appellee's) responsive reply brief shall be considered a principal brief. The type used shall not be smaller than pica type and each line shall contain an average of no more than 60 characters. If a brief is submitted in excess of the length allowed in this rule, the portion exceeding the allowable length will not be considered. This rule does not prohibit a presiding deputy industrial commissioner or the industrial commissioner from limiting the length of a brief. An exception to this rule is the length of briefs (three pages) in an application for alternate care. See subrule 343—4.48(11).

This rule is intended to implement Iowa Code sections 17A.12, 17A.15, 86.8, 86.18 and 86.24.

343—4.46(17A,85,86) Contested case proceedings—health service disputes.

4.46(1) See rule 343—10.3(17A,85,86) for informal resolution procedures and definitions. The following definition also applies to this rule:

"Petitioning party" means the person who requests or initiates a contested case proceeding.

4.46(2) If utilization of the procedures given in rule 343—10.3(17A,85,86) does not resolve the dispute and the parties have complied with the good faith requirements of rule 343—10.1(17A,85,86), a contested case may be initiated. The procedures given in rule 343—10.3(17A,85,86) must be used prior to initiation of a contested case. The provider or the responsible party that is unwilling to accept the determination of the person making a determination after reviewing the dispute as provided in rule 343—10.3(17A,85,86) shall initiate the contested case proceeding. The proceeding shall be initiated as provided in this chapter and Iowa Code chapter 17A and shall follow the provisions of this rule. The proceeding must be initiated within 30 days of the date of the determination made pursuant to rule 343—10.3 (17A, 85,86). If a contested case proceeding is not initiated or is not initiated within the time provided in this rule, the allowed amount of the charge by the provider shall be the amount determined pursuant to rule 343—10.3(17A, 85,86).

4.46(3) The evidence submitted in the contested case proceeding shall be limited to the evidence submitted pursuant to rule 343—10.3(17A,85,86) and a copy of the determination made pursuant to rule 343—10.3(17A,85,86). This evidence shall be filed by the party requesting the contested case proceeding at the time the contested case proceeding is initiated. However, the industrial commissioner may request that additional evidence be submitted or may grant submission of additional evidence if the commissioner is satisfied that there exists additional material evidence, newly discovered, which could not with reasonable diligence be discovered and produced pursuant to rule 343—10.3(17A,85,86). The issues of the contested case proceeding shall be limited to the dispute considered in rule 343—10.3(17A,85,86).

4.46(4) The petitioning party has the burden of proof.

4.46(5) If the petitioning party wishes to file a brief, it must be filed with the request for contested case proceeding.

4.46(6) The opposing party must file a response within 30 days of the date of service of the request for contested case proceeding.

4.46(7) If the opposing party wishes to file a brief, it must be filed with the response.

4.46(8) Sixty days after the request for contested case is filed with the industrial commissioner, the industrial commissioner will review the matter. The notice of the review to the parties shall be the provisions of this rule and no other notice will be given.

4.46(9) The industrial commissioner shall review the matter and make a decision as soon as practicable after the review. The decision shall be as provided in this chapter and Iowa Code chapter 17A.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12, 17A.14, 85.27, 86.8 and 86.39.

343—4.47(17A,85,86) Second injury fund benefits contested cases. Notwithstanding the provisions of any other rule in this chapter, no contested case may be initiated after October 7, 1992, unless the procedures of 343—subrule 10.1(6) have been used. The statute of limitations of Iowa Code section 85.26(1) shall be tolled for the duration of the procedure of 343—subrule 10.1(6). For purposes of this rule, amending an original notice and petition to include the second injury fund as a party shall not be considered initiation of a contested case proceeding.

This rule is intended to implement Iowa Code section 86.8 and 1992 Iowa Acts, House File 2395, section 3.

Item 5. Amend rule 343—8.2(85) to read as follows:

343—8.2(85) Overtime. The word "overtime" as used in *Iowa Code* section 85.61~~(12) of the Code~~ means amounts due in excess of the straight time rate for overtime hours worked. Such excess amounts shall not be considered in determining gross weekly wages within *Iowa Code* section 85.36 ~~of the Code~~. Overtime hours at the straight time rate are included in determining gross weekly earnings.

ITEM 6: Amend subrules 10.1(3) and 10.1(4) to read as follows:

10.1(3) Notification of election, statute of limitations. Within the time a claimant may file an original proceeding with the industrial commissioner, either party to a disputed claim may notify the industrial commissioner of the desire to engage in an informal proceeding to resolve the dispute. If the dispute cannot be resolved informally, claimant will have the right to file an original notice and petition to commence a contested case proceeding as provided by 343—Chapter 4. An election to engage in informal dispute resolution procedures will not toll the statute of limitations for filing an original notice and petition *except as provided in rule 343—4.47(17A,85,86) regarding second injury fund benefits described in subrule 10.1(6).*

10.1(4) Good faith effort to resolve disputes. Before the parties will be allowed to elect any alternative dispute resolution procedures including those identified in rules 4.40(73GA,ch1261), 4.42(17A,86), ~~and~~ 4.43(17A,85,86) *and 4.46(17A,85,86)* ~~on or after April 10, 1991~~, they must make a good faith effort to resolve their dispute. *The parties may file a* ~~A~~ professional statement signed by all parties and their representatives or an affidavit by an unrepresented party filed with the industrial commissioner attesting to the good faith attempts to settle the dispute prior to utilizing the procedures described in these rules. *The professional statement* will be deemed sufficient to meet the requirements of *this rule* ~~these rules~~. Notwithstanding the foregoing, a claimant who files a contested case proceeding in order to toll the statute of limitations included in Iowa Code chapters 85, 85A, 85B, and 86 may elect alternative dispute resolution procedures including the informal procedures described in this chapter even though claimant or claimant's representative did not engage in settlement negotiations prior to the time the contested case proceeding was filed.

ITEM 7. Amend rule 343—10.1(17A,85,86) by adding the following new subrules and amending the implementation clause as follows:

10.1(5) Informal dispute resolution procedures include the dispute resolution procedures described in rule 343—4.40(73GA,ch1261). The industrial commissioner has the power to impose sanctions in informal dispute resolution procedures.

10.1(6) Second injury fund benefits. Before a contested case involving second injury fund benefits can be initiated, the procedures of this rule must be followed. See 781 IAC Chapter 10 (Treasurer's administrative rules) for procedures for filing informal claims for second injury fund. The informal dispute resolution may be requested by any party or may be ordered by the industrial commissioner. The parties must make a good faith effort to resolve their dispute before requesting informal dispute resolution. The parties to the informal dispute resolution shall include the employer unless the employer's liability is not an issue.

a. The parties shall exchange all medical records and reports including claim documentation required pursuant to 781 IAC 10.1(4) prior to requesting an informal dispute resolution, or if not then in possession of a party, within ten days of receipt. Otherwise, the provisions of rules 343—4.17(85,86,17A) and 4.18(85,86,17A) shall apply.

b. The second injury fund shall have the authority to settle the issue of entitlement to second injury fund benefits prior to initiation of a contested case proceeding. See 781 IAC Chapter 10.

c. The industrial commissioner shall enter an order indicating completion of informal dispute resolution. The industrial commissioner, when applicable, may approve a settlement of a claim for second injury fund benefits. The date the order is entered or the date when the settlement is approved shall terminate the tolling of the statute of limitations. See rule 343—4.47(17A,85,86).

d. The industrial commissioner may exercise discretion in refusing to allow informal dispute resolution and enter an order indicating completion of informal dispute resolution.

10.1(7) An employee of the division of industrial services who has been involved in informal dispute resolution pursuant to subrules 10.1(5) and 10.1(6) shall not be a witness in any contested case proceeding under 343—Chapter 4.

10.1(8) Nothing in this rule is intended to prevent settlement prior to using the dispute resolution procedures.

This rule is intended to implement Iowa Code section 86.8, ~~and~~ 1990 Iowa Acts, chapter 1261, section 3, *and 1992 Iowa Acts, House File 2395, section 3.*

ITEM 8. Amend 343—Chapter 10 by adding the following new rule:

343—10.3(17A,85,86) Health service dispute resolution.

10.3(1) The purpose of this rule and rule 343—4.46(17A,85,86) is to establish the procedures for resolving a dispute under Iowa Code section 85.27 between a provider and a responsible party over the treatment rendered by a provider to an injured worker. Utilization of these procedures by a responsible party is not an admission of liability for any other proceeding. This rule is effective October 7, 1992.

10.3(2) Definitions. The following definitions apply to this rule and rule 343—4.46(17A,85,86).

"Dispute" means a disagreement between a provider and responsible party over the necessity of service or reasonableness of charges or both; a disagreement between a provider and a responsible party over the necessity for or the reasonableness of charges for crutches, artificial members and appliances; and includes only those situations where liability or extent of liability is not an issue.

"Industrial commissioner" means the industrial commissioner or the industrial commissioner's designee.

"Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Provider" means any person furnishing surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, crutches, artificial members and appliances.

"Responsible party" means the person who is liable for payment of medical services provided pursuant to the Iowa workers' compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer workers' compensation insurance.

10.3(3) Informal resolution of disputes.

a. The charges not in controversy shall be paid to the provider prior to utilization of the procedures outlined in this rule.

b. A responsible party who refuses to pay the amount in controversy of a dispute shall give the provider written notice of the dispute within 60 days of receiving a bill with proper supporting documentation. The written notice shall specify:

(1) The name of the patient-employee;

(2) The name of the employer on the date of injury;

(3) The date of the treatment in dispute;

(4) The amount charged for the treatment, the amount of the charge the responsible party agrees to pay, and the amount in dispute;

(5) The reason for belief that the bill is excessive or unnecessary and documentation relied upon to formulate the belief;

(6) The address to use in directing correspondence to the responsible party regarding the dispute;

(7) The provider's right to utilize the procedures specified in this rule and rule 343—4.46(17A,85,86);

(8) The provisions of 10.3(3)"c," 10.3(3)"d," and 343—subrule 4.46(2);

(9) The provider or the responsible party is prohibited by Iowa Code section 85.27 from seeking payment from the injured worker when there is a dispute regarding reasonableness of a fee.

c. If the provider agrees to accept the amount of the charge the responsible party has paid, the provider shall notify the responsible party.

d. If the provider does not agree to accept the amount of the charge the responsible party agrees to pay, the provider shall notify the responsible party in writing. The provider and the responsible party shall submit the dispute to a mutually agreed upon person for review. The person reviewing the dispute under this rule will not be the industrial commissioner. If the provider and the responsible party cannot agree upon the person to make the review, they shall, within 90 days of time the provider notified the responsible party of the disagreement, each recommend to the industrial commissioner one person to do the review. The industrial commissioner may choose the person or persons recommended to make the review. A person other than the persons recommended may be chosen in the discretion of the industrial commissioner. The selected person or persons shall review information submitted by the provider and the responsible party and make a determination.

e. The person making the review shall make a determination of the amount that is reasonable and necessary. The determination shall be made as soon as practicable and shall be dated. It shall be in writing and specify the facts relied upon. The person making the review may choose any amount to set the reasonableness of a charge. If the person chosen to make the review does not make a determination within a reasonable time, that person may be discharged without being paid.

f. Costs. The costs of the person making the review shall be paid as mutually agreed by the provider and the responsible party. In the event of no agreement the costs shall be paid by whoever chose an amount further from the determination of the person reviewing the matter. If the amount is equally close to both parties, the costs shall be shared equally. However, if the industrial commissioner selects the person or persons to do the review, the costs shall be shared equally.

g. Nothing in this rule is intended to prevent providers and responsible parties from developing other procedures to informally resolve their disputes.

10.3(4) See rule 343—4.46(17A,85,86) for contested case procedures.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12, 85.27 and 86.8.

[Filed 8/13/92, effective 10/7/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3310A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 455A.5(6), the Natural Resource Commission adopts the following amendments to Chapter 27, "Lands and Waters Conservation Fund Program," Iowa Administrative Code.

These amendments are necessary to update the rules and bring them into conformance with project selection processes approved by the National Park Service which administers the federal cost-sharing program.

Notice of Intended Action was published in the May 27, 1992, Iowa Administrative Bulletin as ARC 3047A. A public hearing was held June 23, 1992. No comments were received.

There were no changes made in the final amendments from those that were published as a Notice of Intended Action.

These amendments are intended to implement Iowa Code section 107.30.

These amendments were adopted August 6, 1992. They will become effective October 7, 1992.

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 [27.2(1), 27.5(6), 27.6(3), 27.7, 27.10] is being omitted. These rules are identical to those published under Notice as ARC 3047A, IAB 5/27/92.

[Filed 8/14/92, effective 10/7/92]
[Published 9/2/92]

[For replacement pages for IAC, see IAC Supplement 9/2/92.]

ARC 3323A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 109.39 and Iowa Code Supplement section 455A.5(6), the Natural Resource Commission adopts the following amendments to Chapter 52, "Wildlife Refuges," Iowa Administrative Code.

Chapter 52 implements the establishment of wildlife refuges or sanctuaries on state-owned lands and waters under the jurisdiction of the Department of Natural Resources for the purpose of preserving the biological balance and for the protection of public parks, public health, safety and welfare, and to effect sound wildlife management. The purpose of the amendments is to bring 571—Chapter 52 into compliance with the rules of man-

agement for Fallen Rock State Preserve; to correct the listing of Turkey River Mounds State Preserve; and to delete the Pool Slough Wildlife Area as a refuge because the area is no longer used as a nesting site for the bald eagle.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 27, 1992, as ARC **3048A**. A public hearing was held June 17, 1992. No comments were received.

There were no changes made in the final amendments from those that were published as a Notice of Intended Action.

These amendments are intended to implement Iowa Code section 109.39.

These amendments were adopted August 6, 1992. They will become effective October 7, 1992.

ITEM 1. Amend subrule **52.1(1)** by deleting the entry for Fallen Rock in Hardin County and by amending the entry for Turkey River as follows:

Turkey River *Mounds* . . . ~~Guthrie~~ Clayton.

ITEM 2. Amend subrule **52.1(2)** by rescinding and reserving paragraph **"b."**

[Filed 8/14/92, effective 10/7/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3311A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 455A.5(6) and Iowa Code section 109.65, the Natural Resource Commission adopts the following amendments to Chapter 111, "Scientific Collecting and Wildlife Rehabilitation," Iowa Administrative Code.

These amendments clarify the definition of educational project permit, requirements for the educational project permit and allow for the establishment of a committee to evaluate facilities and standards for educational project permits and wildlife rehabilitation permits.

Notice of Intended Action was published in the May 27, 1992, Iowa Administrative Bulletin as **ARC 3042A**. A public hearing was held June 17, 1992.

Several of the comments concerned the word "take" in the definition of educational project permit. No suggestions were made for a word which could be substituted and have the same meaning. No change to the wording of the definition for educational project permit was made for this reason.

Pursuant to comments received, the term "veterinary medicine" will be used rather than "veterinary science" in 571—111.7(109).

These amendments are intended to implement Iowa Code section 109.65.

These amendments were adopted August 6, 1992. They will become effective October 7, 1992.

ITEM 1. Amend rule **571—111.1(109)**, definition of "Educational project permit," as follows:

"Educational project permit" means a permit which ~~authorizes~~ *may authorize* the holder to *take and* possess live state-protected birds, mammals, amphibians, reptiles, fish or invertebrates for educational or zoological displays.

ITEM 2. Amend rule **571—111.4(109)** by adding the following new paragraph at the end of the rule:

Any animals which are obtained from legal sources outside of Iowa are exempt from these permit requirements. Proof of origin of each animal is the responsibility of the owner.

ITEM 3. Add the following new rule 571—111.7(109) and renumber the rules **111.7(109)** and **111.8(109)** as **111.8(109)** and **111.9(109)**:

571—111.7(109) Evaluation committee. For the purpose of evaluating facilities and standards of care employed by holders of educational project permits and wildlife rehabilitation permits, the director may establish an ad hoc committee of persons with expertise in wildlife care, rehabilitation, veterinary medicine and wildlife education. Upon request by the director the committee shall inspect facilities, care procedures and educational programs and provide the department with appropriate recommendations. The recommendations may be used as a basis for placing certain conditions on a permit or modifying or terminating a permit.

[Filed 8/14/92, effective 10/7/92]
[Published 9/2/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/2/92.

ARC 3328A

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

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 455G.4, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby adopts amendments to Chapter 10, "Eligibility For Insurance," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 19, 1992, as **ARC 2785A**, and these amendments are identical to those published under Notice.

The amendments clarify financial responsibility coverage and are designed to assist owner/operator in meeting federal and state requirements.

The amendments were approved by the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board at their meeting held August 10, 1992.

The amendments will become effective October 7, 1992.

The amendments are intended to implement Iowa Code Supplement section 455G.11.

ITEM 1. Amend **Chapter 10** title to read as follows:

ELIGIBILITY *FOR INSURANCE*

ITEM 2. Amend subrule **10.1(1)** by adding paragraph **"d"** to read as follows:

d. Contaminated sites which are not eligible for remedial benefits may be insured providing the owner/operator signs a financial responsibility affidavit certifying:

(1) Owner/operator will investigate the site contamination and pay for any required remediation or monitoring costs.

(2) Owner/operator will bring the tanks into compliance with new or upgrade standards set forth in IAC 567—Chapter 135, and as specified by Iowa Code section 455G.11.

(3) Owner/operator has the financial resources available to finance the requirements of this paragraph, subparagraphs (1) and (2).

ITEM 3. Amend subrule **10.1(2)**, paragraph **"e,"** to read as follows:

e. Coverage shall be issued per location. The policy will be issued showing the applicant as the named insured. Additional ~~insurers~~ *insureds* may be named based on insurable interest.

ITEM 4. Amend subrule 10.2(4) to read as follows:

10.2(4) Deductibles may be reduced ~~by 50 percent~~ *from $10,000 to $5,000 for sites with more than three tanks* for an additional premium payment of 50 percent of policy totals with administrative approval. *There is no provision to buy down deductibles on sites with $5,000 or $25,000 deductibles.*

ITEM 5. Amend rule 591—10.3(455G) as follows:

Rescind subrule 10.3(1) and insert the following in lieu thereof:

10.3(1) Premiums for a site shall be the sum of rates specified in Iowa Code subsection 455G.11(4) times the number of upgraded tanks, plus two times those rates for each nonupgraded tank on the site.

Amend subrule 10.3(3) to read as follows:

10.3(3) All premiums shall be 100 percent earned ~~on the binding of coverage~~ *upon issuance of insurance coverage*. No refunds will be made *for any reason* after ~~binding of coverage~~ *a policy has been issued.*

Amend subrule 10.3(5) to read as follows:

10.3(5) Renewal premiums shall be due ~~10 days from receipt of billing~~ *prior to the policy's expiration date.* Mailing *of the premium notice* shall be conclusive proof that a billing was received. *A ten-day expiration notice will be mailed on any policy for which renewal premiums are not timely received.*

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ARC 3329A

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

Adopted and Filed

Pursuant to the authority of Iowa Code section 455G.4, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby adopts amendments to Chapter 12, "Guaranteed Loan Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 19, 1992, as **ARC 2784A**.

The amendment sets Board policy on payment assistance to owner/operators for the loan repayment time period as mandated by Iowa Code Supplement subsection 455G.10(6).

The amendment was approved by the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board at their meeting held August 10, 1992.

The amendment will become effective October 7, 1992.

The amendment is intended to implement Iowa Code Supplement subsection 455G.10(6).

The following amendment is adopted.

Amend subrule 12.1(2) to read as follows:

12.1(2) Loan maturities. Loan maturities shall be the shortest feasible term commensurate with the repayment ability of the borrower. However, the maturity date of the loan shall not exceed ~~ten~~ *20* years. The loan guaranty shall automatically terminate at loan maturity, unless the loan is in default or bankruptcy at that time, or on the date that the loan is paid in full, whichever occurs first.

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ARC 3327A

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

Adopted and Filed

Pursuant to the authority of Iowa Code section 455G.4, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby adopts Chapter 13, "Community Remediation," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 19, 1992, as **ARC 2786A**.

This chapter sets Board policy on payment and procedures to administer community remediation as mandated by statute. In 1991 Iowa Acts, Senate File 362, the Legislature provided the Board with authority to contract for

large projects covering communitywide areas when potential contamination exists. The Legislature also recognized that many small owners would be unable to afford the site cleanup without program assistance. As such, the Legislature provided the Board with the ability, but not the requirement, to perform a community remediation process.

These rules are identical to those published under Notice with the exception of subrule 13.2(6) which was modified to require the contractor to supply evidence of insurance in effect.

These rules were approved by the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board at their meeting held August 10, 1992.

These rules will become effective October 7, 1992.

These rules are intended to implement Iowa Code Supplement subsections 455G.2(4) and 455G.2(5).

The following new chapter is adopted:

CHAPTER 13
COMMUNITY REMEDIATION

591—13.1(455G) Definitions. As used herein:

"Community remediation" means a program of coordinated testing, planning or remediation involving two or more tank sites potentially connected with a continuous contaminated area.

"DNR" means the Iowa department of natural resources.

"Site cleanup report (SCR)" means a report that addresses the overall size and scope of contamination involving an underground storage tank site. The report is designed to advise DNR and the UST board of pertinent information concerning the release reported at that site. The report must address all pertinent requirements of Iowa Code section 455B.474, subsection 1, paragraphs "d" and "f."

"UST board" means the Iowa comprehensive petroleum underground storage tank fund board or its representatives.

591—13.2(455G) General requirements.

13.2(1) Qualification for remedial account benefits related to a community remediation project is subject to board approval based on the recommendations made to the board by interested parties.

13.2(2) A community remediation project must include at least two sites that have qualified for remedial account benefits under Iowa Code Supplement section 455G.9.

13.2(3) Sites within a community remediation project which have not qualified for remedial account benefits may be reviewed for possible inclusion by the board. The board may approve the payment of all or part of the expenses of such sites in community remediation projects based on the impact that the specific site, that otherwise had not qualified, has on the expense and success of the project as a whole. Benefits for such sites may include, but are not limited to, the cost of removing tanks found during the site cleanup report investigation process. DNR may participate in the project as Federal Lust Trust Fund rules allow. Nothing herein shall be deemed to limit the ability to receive additional federal financial assistance for UST releases. Other owners who have not qualified for remedial account benefits may participate in the community remediation project at their own expense.

13.2(4) Except as specified in these rules, all program requirements apply to sites in community remediation projects, including, but not limited to, those requirements related to cost control.

13.2(5) Corrective action costs incurred prior to a community remediation project contract being awarded are subject to requirements under Iowa Code chapter 455G. The board will pay 100 percent of the cost of the site cleanup report only after the project has been approved. Expenses incurred on sites by owner/operators prior to approval of community remediation projects will not be included in the community remediation reimbursement, but will count toward overall copayment requirements on an individual claim. If the work occurred prior to the community remediation and is payable at 100 percent as part of the site cleanup report, the board may pay 100 percent of the cost incurred above the $20,000 SCR limit for the cost of the SCR at a site included in the project. The payments above $20,000 for SCR costs will reduce the next level of remediation expense paid by the amount of the payment in excess of $20,000.

13.2(6) All reports and correspondence covering any assessment activity, testing, cleanup, remediation or other work completed on the site shall be sent to the board by each owner or consultant participating in the community remediation project. Failure to supply or disclose such information and materials may be cause for the denial of remedial account benefits and other program benefits for the individual site involved. The consultant selected shall be required to provide the board with evidence of insurance and may, at board direction, be required to supply performance and payment bonds.

13.2(7) Any site receiving program benefits within a community remediation project area shall participate in the project if it is determined by the program administrator that the participation is necessary for the successful completion of the community remediation project. An owner or operator or the representative of the owner or operator failing to respond to the administrator's requests may be denied remedial account and other program benefits for that failure to participate. A determination by the administrator that an owner failed to cooperate may be appealed.

591—13.3(455G) Contractor requirements.

13.3(1) Any site which is included in the community remediation project may be subject to a bidding process on the work to be done. Any contractor who is or has worked on a site included in the community remediation project but who is not chosen for that ongoing work is required to supply any and all records of any work performed on that site. Failure to supply documentation requested will terminate any future payments to that contractor on any other work until the information requested has been received. After a community remediation contract award to a contractor, no further work can be done by the prior contractor on any site within a community remediation project without prior written authorization from the administrator.

13.3(2) Contracts for community remediation work are not required to be subject to a bidding process. However, contracts for community remediation may be bid among the contractors expressing an interest to the UST board or administrator when it is deemed by the board to be in the best interest of the community remediation project. The board may charge a fee to anyone requesting a copy of the request for proposal to cover the expense of providing the request for proposal.

13.3(3) The board is not required to select a contractor based solely on the low cost bid. The board may accept or reject any bid or waive any technical difficulty when the board determines it to be in the best interest of the community remediation project. Bids shall be subject to contract negotiation after a contractor has been selected.

13.3(4) A contractor which contracts with the board for work on a community remediation project must obtain prior budget approval from the administrator prior to undertaking work on the project. The administrator or designee will review and approve expenses associated with the project. Work performed which exceeds the scope of the work approved will not be paid unless the contractor can justify the reasons for the additional work.

13.3(5) The site cleanup report for a community remediation project must detail the overall finding of the community remediation project investigation including recommendations of whether the sites within a community remediation project should be classified as "high," "low," or "no action required" site as specified in Iowa Code Supplement section 455B.474, subsection 1, paragraphs "d" and "f." There may be different sites within the community remediation project that are classified differently based on the contractor's recommendation and DNR approval.

13.3(6) The selected contractor may be required to provide the board with evidence of professional liability insurance and may be required to supply performance and payment bonds.

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ARC 3304A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF SPEECH PATHOLOGY AND AUDIOLOGY EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners adopts amendments to Chapter 301, "Speech Pathology and Audiology Continuing Education and Disciplinary Procedures," Iowa Administrative Code.

The amendments clarify investigative and informal settlement procedures.

The amendments were published as a Notice of Intended Action in the April 15, 1992, Iowa Administrative Bulletin as ARC 2936A and were adopted by the Board of Speech Pathology and Audiology Examiners on July 31, 1992. There are no changes from the Notice.

These amendments are intended to implement Iowa Code sections 17A.17 and 258A.2.

These amendments will become effective October 7, 1992.

The following amendments are adopted.

ITEM 1. Amend rule 645—301.103(258A) as follows:

~~645—301.103(258A) Investigation of complaints or malpractice claims.~~ *Investigations.*

301.103(1) Investigation of complaints or malpractice claims. The board of speech pathology and audiology examiners shall assign an investigation of a complaint or malpractice claim to a member of the board who will be known as the investigating board member or may request the special investigator from the department of inspections and appeals assigned to professional licensure to do the investigation. The investigating board member or special investigator may request information from any peer review committee which may be established to assist the board. The investigating board member or special investigator may consult with an ~~administrative hearing officer or~~ assistant attorney general concerning the investigation or evidence produced from the investigation. The investigating board member or the special investigator shall report to the board. The board shall make a written determination whether there is probable cause for a disciplinary hearing. If an investigating board member is appointed, this member shall not take part in the decision of the board, but may appear as a witness.

301.103(2) Investigative interviews.

a. In the course of conducting or directing an investigation, the board may request the licensee to attend an informal investigatory interview before the board. The licensee is not required to attend the investigatory interview.

b. Because an investigatory interview constitutes a part of the board's investigation of a potential disciplinary case, statements that are made and facts which are discussed at the investigatory interview may be considered by the board in the event the matter proceeds to a contested case hearing and those statements and facts are independently introduced into evidence.

c. The licensee may be, but is not required to be, represented by an attorney at the informal discussion. The attorney may advise the licensee and may participate in general discussion and may, upon leave of the board, make statements on behalf of the licensee, but is not entitled to make procedural motions or objections or engage in argumentative advocacy on behalf of the licensee.

d. The investigative interview shall be held in closed session pursuant to Iowa Code section 21.5(1).

e. The licensee or the board may seek an informal stipulation or settlement of the case at any time during the investigation, including during or after an investigative interview. The chairperson or the chairperson's designee may negotiate on behalf of the board. All informal settlements are subject to approval of a majority of the full board. If approved, the informal settlement becomes the final disposition of the matter and is a public record. No board member is disqualified from participating in the adjudication of any resulting contested case by virtue of reviewing the investigative material or having participated in negotiation discussions. If the parties agree to an informal settlement during the investigative process, a statement of charges shall be filed simultaneously with the settlement document. In the event a settlement is not reached under this rule, the poststatement of charges settlement procedures set forth in rule 301.110(258A) may still be utilized.

ITEM 2. Rescind rule 645—301.110(258A) and insert in lieu thereof the following:

645—301.110(258A) Informal settlement.

301.110(1) Parties.

a. A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case proceeding. Neither party is obligated to utilize this procedure to settle the case. Negotiation of an informal settlement may be initiated by the board, the assistant attorney general representing the public interest, or the respondent. Initiation by the respondent shall be directly with the assistant attorney general representing the public interest.

b. The chairperson or the chairperson's designee has authority to negotiate on behalf of the board.

301.110(2) Waiver of notice and opportunity to be heard. Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation, and the assistant attorney general is thereafter authorized to discuss informal settlement with the board's designee until that consent is affirmatively withdrawn.

301.110(3) Negotiation deadline. Negotiations for a proposed settlement shall be completed at least seven days prior to the hearing date. However, in instances where additional time will clearly lead to a satisfactory settlement prior to the hearing date, the board chairperson may grant additional time.

301.110(4) Board approval. The full board shall not be involved in negotiation until a final, written settlement executed by the respondent is submitted to the full board for approval. All informal settlements are subject to approval of a majority of the full board. If approved, the informal settlement becomes the final disposition of the matter and is a public record. If the board fails to approve an informal settlement, it shall be of no force or effect to either party.

301.110(5) Participation of board member. The chairperson or a board member who is designated to act in negotiation of an informal settlement may review investigative material in the course of conducting the negotiation. The negotiating board member is not disqualified from participating in the adjudication of the contested case by virtue of reviewing the investigative material or having participated in negotiation discussions.

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EFFECTIVE DATE DELAY

AGENCY	RULE	DELAY
Human Services Department[441]	81.13(7)"c"(1) (IAB 6/10/92 ARC 3069A)	Effective date of July 15, 1992, delayed 70 days by the Administrative Rules Review Committee at its meeting held July 14, 1992. [Pursuant to §17A.4(5)] Delay lifted by the Administrative Rules Review Committee at its meeting held August 11, 1992, to be effective August 12, 1992.

HUMAN SERVICES DEPARTMENT[441]

At its meeting held August 11, 1992, the Administrative Rules Review Committee voted to object to the amendments published in **ARC 3069A** on the grounds the amendments are unreasonable. This filing is published in IAB Vol. XIV No. 253 (06-10-92). It is codified as an amendment to paragraph 441 IAC 81.13(7)"c"(1).

In brief, this filing provides that care facilities shall not employ persons who have been found guilty in a court of law of abusing, neglecting or mistreating facility residents, or who have had a "finding" entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property. Additionally, the filing eliminates a previous provision which allowed the Department of Inspections and Appeals some discretion in deciding whether the lifetime ban on employment should be applied.

This language originated in the federal government which mandated that the department adopt these provisions or possibly face sanctions. The Committee does not believe these amendments are an improvement to Iowa's system and has the following objection. The Committee believes that the amendments published in **ARC 3069A** are unreasonable because of the inconsistency in the burdens of proof and the levels of procedural safeguards in the two proceedings. A facility employee may either be found guilty in a court of law or have an administrative finding entered into the registry. In either case the result is the same, the employee is permanently banned from further employment in a care facility; however, the two paths to the result are significantly different. The first proceeding is a criminal tribunal in which the burden of proof is "beyond a reasonable doubt." The second proceeding is a simple administrative hearing in which the burden is "preponderance of the evidence." The two proceedings also differ in the level of many other due process protections accorded to the individual. A criminal proceeding provides the accused with the opportunity for a trial by jury, competent legal counsel, strict rules of evidence and many procedural protections not present in administrative hearings. It should also be noted that the penalty in this situation—a lifetime ban on employment—is more serious than is usually imposed in contested cases. In licensee discipline cases, a license can be revoked, but the possibility of reinstatement exists; under this new rule no reinstatement is allowed, the facility employee is banned from employment no matter how serious or minor the offense or how far in the past it occurred. Because of the magnitude of this penalty, the Committee believes that the accused should be provided with greater procedural protections than are generally found in administrative hearings.

The Committee also believes this filing is unreasonable because it eliminates the discretion accorded to the Department of Inspections and Appeals to not apply the lifetime ban on employment. Under the previous rule, the department's discretion in applying the employment ban acted as a safeguard against unjust results. It recognized that a person would make amends for past offenses and earn a second chance. The provision was a genuine improvement in the process; it recognized that flexibility was needed in government decision making and that some decisions should be made on a case-by-case basis. There does not appear to be any rational basis to justify the elimination of this safeguard and, therefore, the Committee believes this action to be unreasonable.

IOWA ADMINISTRATIVE BULLETIN
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