



IOWA ADMINISTRATIVE BULLETIN

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Pages 241 to 328

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CITATION of Administrative Rules

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

- 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).

Schedule for Rule Making 1996

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 1 '95	Dec. 20 '95	Jan. 9	Jan. 24	Jan. 26	Feb. 14	Mar. 20	June 17
Dec. 15 '95	Jan. 3	Jan. 23	Feb. 7	Feb. 9	Feb. 28	Apr. 3	July 1
Dec. 29 '95	Jan. 17	Feb. 6	Feb. 21	Feb. 23	Mar. 13	Apr. 17	July 15
Jan. 12	Jan. 31	Feb. 20	Mar. 6	Mar. 8	Mar. 27	May 1	July 29
Jan. 26	Feb. 14	Mar. 5	Mar. 20	Mar. 22	Apr. 10	May 15	Aug. 12
Feb. 9	Feb. 28	Mar. 19	Apr. 3	Apr. 5	Apr. 24	May 29	Aug. 26
Feb. 23	Mar. 13	Apr. 2	Apr. 17	Apr. 19	May 8	June 12	Sept. 9
Mar. 8	Mar. 27	Apr. 16	May 1	May 3	May 22	June 26	Sept. 23
Mar. 22	Apr. 10	Apr. 30	May 15	May 17	June 5	July 10	Oct. 7
Apr. 5	Apr. 24	May 14	May 29	May 31	June 19	July 24	Oct. 21
Apr. 19	May 8	May 28	June 12	June 14	July 3	Aug. 7	Nov. 4
May 3	May 22	June 11	June 26	June 28	July 17	Aug. 21	Nov. 18
May 17	June 5	June 25	July 10	July 12	July 31	Sept. 4	Dec. 2
May 31	June 19	July 9	July 24	July 26	Aug. 14	Sept. 18	Dec. 16
June 14	July 3	July 23	Aug. 7	Aug. 9	Aug. 28	Oct. 2	Dec. 30
June 28	July 17	Aug. 6	Aug. 21	Aug. 23	Sept. 11	Oct. 16	Jan 13 '97
July 12	July 31	Aug. 20	Sept. 4	Sept. 6	Sept. 25	Oct. 30	Jan. 27 '97
July 26	Aug. 14	Sept. 3	Sept. 18	Sept. 20	Oct. 9	Nov. 13	Feb. 10 '97
Aug. 9	Aug. 28	Sept. 17	Oct. 2	Oct. 4	Oct. 23	Nov. 27	Feb. 24 '97
Aug. 23	Sept. 11	Oct. 1	Oct. 16	Oct. 18	Nov. 6	Dec. 11	Mar. 10 '97
Sept. 6	Sept. 25	Oct. 15	Oct. 30	Nov. 1	Nov. 20	Dec. 25	Mar. 24 '97
Sept. 20	Oct. 9	Oct. 29	Nov. 13	Nov. 15	Dec. 4	Jan. 8 '97	Apr. 7 '97
Oct. 4	Oct. 23	Nov. 12	Nov. 27	Nov. 29	Dec. 18	Jan. 22 '97	Apr. 21 '97
Oct. 18	Nov. 6	Nov. 26	Dec. 11	Dec. 13	Jan. 1 '97	Feb. 5 '97	May 5 '97
Nov. 1	Nov. 20	Dec. 10	Dec. 25	Dec. 27	Jan. 15 '97	Feb. 19 '97	May 19 '97
Nov. 15	Dec. 4	Dec. 24	Jan. 8 '97	Jan. 10 '97	Jan. 29 '97	Mar. 5 '97	June 2 '97
Nov. 29	Dec. 18	Jan. 7 '97	Jan. 22 '97	Jan. 24 '97	Feb. 12 '97	Mar. 19 '97	June 16 '97
Dec. 13	Jan. 1 '97	Jan. 21 '97	Feb. 5 '97	Feb. 7 '97	Feb. 26 '97	Apr. 2 '97	June 30 '97
Dec. 27	Jan. 15 '97	Feb. 4 '97	Feb. 19 '97	Feb. 21 '97	Mar. 12 '97	Apr. 16 '97	July 14 '97

- 20 days from the Dec. 27 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

5

SUBMISSION DEADLINE

Friday, August 9, 1996

ISSUE DATE

August 28, 1996

6

Friday, August 23, 1996

September 11, 1996

7

Friday, September 6, 1996

September 25, 1996

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 Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, August 13, 1996, at 10 a.m. and Wednesday, August 14, 1996, at 9 a.m. in Senate Committee Room 22, State Capitol. The following rules will be reviewed:

Bulletin

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

IADA loan participation program, ch 4, Notice ARC 6552A, also Filed Emergency ARC 6553A 7/17/96

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"

Factory-built buildings, examination application and registration procedures, self-study hours, 1.5, 2.1, 2.1(1), 2.4 to 2.6, 3.1(3)"g," Notice ARC 6602A 7/31/96

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]"umbrella"

General amendments to chs 1, 2, 4 to 10, 15 and 16, Notice ARC 6577A 7/17/96

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Rescind ch 4, amend and transfer chs 10, 14, 18 and 19 to workforce development department to appear as 345—chs 11 to 14 Filed Emergency ARC 6568A 7/17/96

Iowa industrial new jobs training program—supplemental withholding, 5.13, Notice ARC 6569A, also Filed Emergency ARC 6570A 7/17/96

Iowa jobs training program, ch 7, Notice ARC 6571A, also Filed Emergency ARC 6572A 7/17/96

Variance procedures for tax increment financing (TIF) housing projects, ch 26, Notice ARC 6575A, also Filed Emergency ARC 6576A 7/17/96

New jobs and income program, 58.2, 58.4(5) to 58.4(8), 58.7(1)"a," 58.7(4), 58.9(2), 58.9(13), 58.12 58.13, 58.13(4), Notice ARC 6573A, also Filed Emergency ARC 6574A 7/17/96

EDUCATION DEPARTMENT[281]

Open enrollment, 17.2, 17.3(1), 17.3(2), 17.4, 17.4(1)"a," 17.4(2), 17.4(2)"d" and "e," 17.4(5), 17.7, 17.8(3), 17.8(4), 17.8(10)"a," 17.10(1) to 17.10(3), 17.10(6), 17.11, Notice ARC 6551A 7/17/96

Extracurricular interscholastic competition—eligibility after change of residence, 36.15(3)"b"(3)"8," Notice ARC 6550A 7/17/96

Investigating incidents of abuse of students by school employees, 102.2, 102.5(4), 102.11"2," Notice ARC 6549A 7/17/96

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Protected water source, Ralston Site, Cedar Rapids, 53.7(1), Notice ARC 6579A 7/17/96

Animal feeding operations, commercial septic tank cleaners, land application of wastes, ch 65 appendix B table 1 and table 2, 68.9(2) 121.1(1), Notice ARC 6581A 7/17/96

Risk-based corrective action rules applicable to releases of regulated substances from underground storage tanks, 133.1(5), 135.1(3)"e," 135.2, 135.6(3), 135.7(3)"a"(5), 135.7(4) to 135.7(6), 135.8 to 135.18, appendices A to D, Notice ARC 6013A Terminated, Notice ARC 6556A, also Filed Emergency ARC 6555A 7/17/96

Household hazardous materials program, ch 214, Filed ARC 6582A 7/17/96

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Reporting requirements, civil penalties, executive branch lobbyists, 4.1(1) to 4.1(3), 4.1(5), 4.2, 4.5(4), 4.5(7), 4.8 to 4.10, 4.13(2)"g," 4.20, 4.21, 4.29, 4.30(1), 4.32, 4.33, 6.1, 6.4, 6.5, 13.2, Filed ARC 6614A 7/31/96

Contributions by minors, 4.7, Filed ARC 6613A 7/31/96

Contributions in the name of another person, 4.18, Filed ARC 6612A 7/31/96

HUMAN SERVICES DEPARTMENT[441]

- Contracts with residential care facility providers, 54.1, Filed ARC 6588A 7/31/96
- Home- and community-based waiver for persons with brain injury, periodic rebasing and recalibration of DRG and APG inpatient and outpatient hospital reimbursement system, risk corridor, 77.39, 78.43, 79.1(2), 79.1(5)"a," 79.1(5)"c"(1) and (2), 79.1(5)"d"(1) and (2), 79.1(5)"e"(2), 79.1(5)"n" and "s," 79.1(16)"a," 79.1(16)"d"(1), 79.1(16)"g," "i,""j," "p," and "s," 79.1(17), 83.81 to 83.91, Filed ARC 6589A 7/31/96
- Medicaid coverage for Senokot, 78.1(2)"f," Notice ARC 6587A 7/31/96
- Medical services provided to a person in a nonmedical public institution not covered by Medicaid, 79.9(5) Notice ARC 6586A 7/31/96
- License sanction process for enforcement of child support orders, 98.101 to 98.107, Filed ARC 6590A 7/31/96
- Administrative establishment of paternity, 99.21 to 99.32, Filed ARC 6591A 7/31/96
- Child day care waiting list priority groups, 130.3(1)"d"(2), 170.2(4)"d," Notice ARC 6592A, also Filed Emergency ARC 6593A 7/31/96
- Increase in annual clothing allowance for children in family foster care and rates paid to foster family homes for providing emergency care to a child in the home, 156.8(1), 156.11(2), Notice ARC 6547A 7/17/96
- Family preservation services to children placed out-of-home, 185.45, Notice ARC 6585A 7/31/96

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

- Unfair trade practices, ch 15, Notice ARC 6548A 7/17/96
- Cemeteries, ch 18, Filed ARC 6615A 7/31/96
- Prearranged funeral contracts, ch 19, Filed ARC 6617A 7/31/96
- Service company licenses, 54.20, Notice ARC 6616A 7/31/96

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

- Employer records and reports, contributions and charges, claims and benefits, 2.3(5)"d," 3.3(2)"j," 3.18(9), 3.43(14), 3.52(4), 3.53(1)"b," 3.70(13), 4.7(4)"b"(1), 4.8(2)"d"(1), 4.26(28), 4.28(4), 4.58(4), Notice ARC 6560A 7/17/96

LABOR SERVICES DIVISION[347]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

- General industry—personal protective equipment, 10.20, Notice ARC 6606A 7/31/96
- General industry—paperwork reduction, grain handling facilities, 10.20, Filed Emergency After Notice ARC 6609A 7/31/96
- Construction—technical amendments, 26.1, Notice ARC 6608A 7/31/96
- Construction—paperwork reduction, 26.1, Filed Emergency After Notice ARC 6610A 7/31/96
- Agriculture—paperwork reduction, 28.1, Filed Emergency After Notice ARC 6607A 7/31/96

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- Officers moving from agency to agency; higher standards not prohibited, 2.3, 2.4 Notice ARC 6564A 7/17/96

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

- Nursery stock sale to the public, 71.3, Notice ARC 6580A 7/17/96

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Investigations and disciplinary proceedings, 4.2, 4.2(4), 4.3, 4.4, 4.4(1), 4.4(2), 4.5, 4.5(3), 4.6, 4.7, 4.13, 4.14, 4.15, 4.15(2), 4.16(2), 4.16(3), 4.16(5), 4.18, 4.19, 4.19(1)"a" to "c," 4.19(3), 4.19(5), 4.20(2) Notice ARC 6603A 7/31/96

PERSONNEL DEPARTMENT[581]

- Reduction in force, 11.3, Filed ARC 6583A 7/17/96
- Iowa public employees retirement system, 21.4(1), 21.4(1)"c" "f," and "g," 21.4(2), 21.5(1)"a"(13), (35), and (43), 21.8(1)"g" and "h," 21.8(3), 21.9(1)"a"(4), 21.9(2) to 21.9(4), 21.10(13), 21.10(14), 21.11(1), 21.13(1), 21.13(6)"b," 21.14(2), 21.20(2), 21.21, 21.22(2), 21.24(8), 21.27, 21.28, Notice ARC 6428A Terminated ARC 6558A 7/17/96

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Dietetic examiners—impaired practitioner review committee, ch 91, <u>Filed Emergency ARC 6600A</u>	7/31/96
Massage therapists, 130.2, 130.3(2), 130.3(3), 130.4(1)"c" and "d," 130.5(1), 130.5(2), 130.6(2) to 130.6(5), 130.7, 130.8, 130.9(1), 130.10(1), 130.10(3), 130.10(6), 130.10(7), 130.10(10), 131.1(3), 131.1(5), 131.3(1), 131.3(2), 131.3(3)"b," 131.6, 131.9(4), 131.10(12), <u>Notice ARC 6597A</u>	7/31/96
Optometry examiners—impaired practitioner review committee, ch 191, <u>Filed Emergency ARC 6599A</u>	7/31/96
Physical therapy and occupational therapy examiners, 200.3(1), 200.3(2), 200.4(7), 200.7(3), 200.9(1), 200.9(9) 201.5(1), 201.6(1), 201.6(4), 201.12(11), 201.22(8)"b," 202.3(1), 202.3(2), 202.4(7), 202.8(3), 202.10(1), 202.10(9), <u>Notice ARC 6566A</u>	7/17/96
Board of social work examiners, ch 280, <u>Notice ARC 6601A</u>	7/31/96
Athletic trainer continuing education, 350.14, 350.14(2), <u>Notice ARC 6594A</u>	7/31/96

PUBLIC HEALTH DEPARTMENT[641]

Outpatient diabetes education programs, ch 9, <u>Notice ARC 6567A</u>	7/17/96
Radiation, 38.1, 38.2, 38.9(7)"a," 39.1(3), 39.2, ch 39 appendix D, 40.1(5), 40.2, 40.19(1) 40.50(4), 40.80(1), 40.95(1)"b," 40.101(2), 40.111(1), 40.111(2), 41.1(1), 41.1(2), 41.2(2), 41.2(3), 41.2(4)"b," 41.2(5), 41.2(9)"b"(2), 41.2(11)"a"(5), 41.2(11)"c" and "d," 41.2(14), 41.2(17)"a," "b," and "c," 41.2(18)"g," 41.2(19), 41.2(22)"b," 41.2(23), 41.2(27), 41.2(34)"d," 41.2(38)"a" and "b," 41.2(39), 41.2(44) to 41.2(47), 41.2(52), 41.2(55)"d," 41.2(56), 41.2(65)"a," 41.2(67)"a" and "b," 41.2(68)"a" and "b," 41.2(69)"a," 41.2(72)"a," 41.2(73)"b"(3), 41.2(74)"a," 41.2(77) to 41.2(79), 42.1(1), 45.1(1), 45.1(2), 45.1(3)"a," 45.1(10)"b"(3), 45.1(17)"b," 46.1, 46.2, 46.3(2), 46.4(1), 46.4(2)"b," 46.4(2)"c"(5), 46.4(3)"d," 46.4(7)"a" and "c" to "e," 46.5(2), 46.5(3), 46.5(6), 46.5(9)"a," "d," and "l" to "n," 46.6(3), <u>Notice ARC 6557A</u>	7/17/96
WIC program, 73.5, 73.6(1), 73.6(5), 73.8(4)"a"(3)"2," 73.8(4)"a"(6), 73.9(3)"d"(1), 73.9(3)"e"(3), 73.12(2), 73.19(2)"b," <u>Notice ARC 6596A</u>	7/31/96
Renewal of certification of EMTs and first responders, 132.4(3), 132.4(4), <u>Filed ARC 6595A</u>	7/31/96
Emergency medical services, 132.4(4), 132.11(1)"o," <u>Notice ARC 6605A</u>	7/31/96
Gambling treatment program, ch 162, <u>Filed Emergency ARC 6562A</u>	7/17/96
Impaired practitioner review committee, ch 193, <u>Filed Emergency After Notice ARC 6561A</u>	7/17/96

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

License application—disclosure of information and cooperation with commission, 13.2(1)"h," 13.2(3), 20.16, <u>Filed ARC 6554A</u>	7/17/96
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REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Business conduct, 1.1 to 1.3, 1.9, 1.27(5)"d," 1.39(6)"19," 1.40, 1.42(6)"e," 1.45(1), 1.45(4), 1.49, 1.50(1)"c," <u>Notice ARC 6563A</u>	7/17/96
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REVENUE AND FINANCE DEPARTMENT[701]

Corporate income, individual income, and withholding tax , 38.10(16), 38.10(17), 38.12, 38.18, 39.12, 39.14, 40.44, 40.44(1), 40.44(2), 41.5(5), 42.2(8), 46.1(3), 46.6, <u>Notice ARC 6565A</u>	7/17/96
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SECRETARY OF STATE[721]

MicroVote absentee voting system, 22.60, <u>Filed ARC 6578A</u>	7/17/96
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STATUS OF WOMEN DIVISION[435]

HUMAN RIGHTS DEPARTMENT[421]"umbrella"

Mentor advisory board, ch 6, transfer to workforce development department to appear as 345—ch 15, <u>Filed Emergency ARC 6546A</u>	7/17/96
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TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Description of organization, public records and fair information practices, petitions for rule making and for declaratory rulings, contested cases, purchasing, contracts for professional services, chs 1 to 6, <u>Notice ARC 6611A</u>	7/31/96
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TRANSPORTATION DEPARTMENT[761]

- Signing on primary roads—memorial highways, 131.1(2)“a” to “c,” 131.2(4), 131.3(2), 131.4(3)“a” to “e,” 131.5(1)“b,” 131.5(2)“a,” 131.6(2), 131.7(2), 131.8(2), 131.8(3)“a,” 131.9(1), 131.10(2)“b,” 131.10(5)“a,” 131.15, Notice ARC 6584A 7/31/96
- Motor vehicle and travel trailer dealers, manufacturers, distributors and wholesalers, rescind chs 420 and 422, new ch 425, Filed ARC 6545A 7/17/96

TREASURER OF STATE[781]

- Accepting credit card payments, 8.3(1), 8.3(2), 8.3(3), 8.3(3)“a,” 8.3(3)“d,” 8.3(3)“f,” 8.4(2), 8.5, Filed ARC 6598A 7/31/96

UTILITIES DIVISION[199]

- COMMERCE DEPARTMENT[181]“umbrella”
- Foreign acquisitions, 32.2(4), Filed ARC 6559A 7/17/96

VETERANS AFFAIRS COMMISSION[801]

- Iowa veterans home, 10.1, 10.2(1)“f,” 10.3(2)“a,” 10.3(4)“c” to “e,” 10.4(3), 10.4(5)“a” and “d,” 10.6(7), 10.11(1), 10.12(1), 10.12(4), 10.15(1)“a”(3), 10.15(1)“b”(3), 10.16(2)“d,” 10.17(3), 10.18, 10.19(2)“a”(5), (8), and (9), 10.19(2)“e”(4), 10.19(3)“a,” 10.19(4), 10.20(7) to 10.20(9), 10.21, 10.23(1), 10.30, 10.35, 10.35(2), 10.35(4), 10.35(7), 10.40(2)“b,” 10.50(1) to 10.50(7), 10.51(1), 10.56(1) to 10.56(3), 10.57(8), Filed ARC 6604A 7/31/96

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR’S NOTE: Terms ending April 30, 1999.

- | | |
|--|---|
| <p>Senator Berl E. Priebe, Co-chair
2106 100th Avenue
Algona, Iowa 50511</p> | <p>Representative Janet Metcalf, Co-chair
12954 NW 29th Drive
Des Moines, Iowa 50325</p> |
| <p>Senator H. Kay Hedge
R.R. 1, Box 39
Fremont, Iowa 52561</p> | <p>Representative Horace Daggett
400 N. Bureau
Creston, Iowa 50801</p> |
| <p>Senator John P. Kibbie
R.R. 1, Box 139A
Emmetsburg, Iowa 50536</p> | <p>Representative Minnette Doderer
2008 Dunlap Court
Iowa City, Iowa 52245</p> |
| <p>Senator William Palmer
1002 Lakeview Drive
Ankeny, Iowa 50021</p> | <p>Representative Roger Halvorson
P.O. Box 93, 82 North Street
Marquette, Iowa 52158</p> |
| <p>Senator Sheldon Rittmer
3539 230th Street
DeWitt, Iowa 52742</p> | <p>Representative Keith Weigel
315 W. Main, P.O. Box 189
New Hampton, Iowa 50659</p> |
| <p>Joseph A. Royce
Legal Counsel
Capitol, Room 116A
Des Moines, Iowa 50319
Telephone (515) 281-3084</p> | <p>Paula Dierenfeld
Administrative Rules Coordinator
Governor’s Ex Officio Representative
Capitol, Room 15
Des Moines, Iowa 50319
Telephone (515) 281-6331</p> |

ADMINISTRATIVE RULES REVIEW COMMITTEE—ACTIONS

AUGUST 1995 THROUGH JULY 1996

GENERAL REFERRAL TO SPEAKER OF THE HOUSE AND PRESIDENT OF THE SENATE (17A.8(7))

CORRECTIONS DEPARTMENT[201]

20.20, Telephone calls by prison inmates, ARC 5774A, IAB 8/2/95, ARRC meeting 8/15/95

DENTAL EXAMINERS BOARD[650]

27.7(8), Unnecessary dental work, IAC, ARRC meeting 12/12/95

ENVIRONMENTAL PROTECTION COMMISSION[567]

Chapter 117, Waste tires, ARC 5808A, IAB 8/16/95, ARRC meeting 9/14/95

134.2 to 134.5, Registration of groundwater professionals — certification, ARC 6189A, IAB 1/17/96, ARRC meeting 2/5/96

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

11.1(1), 11.1(3), 11.1(6), 11.1(7), 11.2, Personal financial disclosure, ARC 6127A, IAB 12/20/95, ARRC meeting 1/3/96

NATURAL RESOURCE COMMISSION[571]

54.4, Harvest of trees — state lands, ARC 5844A, IAB 8/30/95, ARRC meeting 9/13/95

REVENUE AND FINANCE DEPARTMENT[701]

18.33, 18.44(1), 18.44(4), 18.48(6), Tax on twine and the definition of publisher, IAB 10/25/95, ARRC meeting 11/13/95

TRANSPORTATION DEPARTMENT[761]

Rescind chs 420 to 422, new ch 425, Motor vehicle, mobile home and travel trailer dealers, manufacturers, distributors and wholesalers, ARC 6174A, IAB 1/17/96, ARRC meeting 2/5/96

OBJECTIONS (17A.4(4)“a”)

REVENUE AND FINANCE DEPARTMENT[701]

Chapter 107, Revision of rules in process, lifted objection, IAC, ARRC meeting 10/10/95

DELAY UNTIL ADJOURNMENT OF 1997 GENERAL ASSEMBLY (17A.8(9))

MEDICAL EXAMINERS BOARD[653]

Chapter 21, Eligibility for physician assistant supervision, ARC 6318A, IAB 3/13/96, ARRC meeting 6/11/96

70-DAY DELAY (17A.4(5))

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

1.1(3), Defining practice of engineering, ARC 6241A, IAB 2/14/96, ARRC meeting 3/11/96; delay lifted ARRC meeting 5/14/96

ENVIRONMENTAL PROTECTION COMMISSION[567]

20.2, 22.100, 22.200, 22.201(1)“a” and “b,” 22.201(2)“a,” 22.206(2)“c,” 12-month rolling period, ARC 5875A, IAB 9/13/95, ARRC meeting 10/10/95; delay lifted, ARRC meeting 12/13/95

22.300, Operating permit by rule for small sources, 70 days from 6/12/96 ARC 6407A, IAB 5/8/96, ARRC meeting 6/11/96; delay lifted ARRC meeting 6/12/96, effective 6/12/96.

Chapter 83, Laboratory certification, delay expiration 7/24/96, Item 14, ARC 6363A, IAB 4/10/96, ARRC meeting 5/14/96

HUMAN SERVICES DEPARTMENT[441]

175.25(4)“d,” Child abuse, 70 days from 1/10/96, ARC 6076A, IAB 12/6/95, ARRC meeting 1/3/96; delay lifted ARRC meeting 2/5/96

MEDICAL EXAMINERS BOARD[653]

13.2, Standards of practice—surgical care, delay expiration 8/24/96, ARC 6358A, IAB 4/10/96, ARRC meeting 5/14/96

PROFESSIONAL LICENSURE DIVISION[645]

325.7(3)“a,” 325.7(4)“a”(1), (3), Physician assistants, ARC 5771A, ARRC meeting 8/16/95; delay expired 11/15/95,

REGENTS BOARD[681]

3.14 “probationary period,” 3.39(12), 3.102(1), Merit system, ARC 5791A, IAB 8/16/95, ARRC meeting 9/13/95; delay lifted effective 11/14/95, ARRC meeting 11/13/95

ECONOMIC IMPACT STATEMENT**CORRECTIONS DEPARTMENT[201]**

Jail facilities, ARC 6360A, IAB 4/10/96, ARRC meeting 5/14/96

Temporary holding facilities, ARC 6359A, IAB 4/10/96, ARRC meeting 5/14/96

ENVIRONMENTAL PROTECTION COMMISSION[567]

Laboratory certification for analyses of public water supplies, underground storage tank program, wastewater, groundwater and sewage sludge, ARC 6363A, IAB 4/10/96, ARRC meeting 5/14/96; presented at ARRC meeting 7/9/96

HUMAN SERVICES DEPARTMENT[441]

HCBS ill and handicapped, elderly, MR and AIDS/HIV waiver programs, ARC 5751A, IAB 8/2/95, Statement published IAB 9/27/95

INSURANCE DIVISION[191]

Small group health benefit plans—lifetime maximum mental health and substance abuse treatment coverage, ARC 6374A, IAB 4/24/96, ARRC meeting 5/14/96

PHARMACY EXAMINERS BOARD[657]

Reexamination fees from \$20-\$40, ARC 5642A, IAB 6/7/95, Notice Terminated ARC 5963A, IAB 10/25/95

REQUEST FOR RULE MAKING**HUMAN SERVICES DEPARTMENT[441]**

78.35, Medicaid payments: certified nurse anesthetist, IAC, ARRC meeting 12/13/95

TRAVEL

Expenses authorized at 4/16/96 ARRC meeting for Senator Priebe to attend CSG meetings in Wisconsin and South Dakota.

MISCELLANEOUS**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Special review—Financial assurance for solid waste programs, 111.6, IAC, ARRC meeting 1/3/96

HUMAN SERVICES DEPARTMENT[441]

Special review—Medicaid payments: certified nurse anesthetist, 78.35; IAC, ARRC meeting 11/13/95, 12/13/95 and 1/3/96

Fiscal Bureau requested to investigate allegations of lack of fiscal oversight regarding DHS Home and Community-based waivers, ARRC meeting 8/16/95

INSURANCE DIVISION[191]

Special Review—Perpetual care cemeteries—House File 486; ARRC meeting 8/15/95

LABOR SERVICES DIVISION[347]

Special review—IOSHA rules, IAC, ARRC meeting 1/3/96 and ARRC meeting 5/14/96

NATURAL RESOURCE COMMISSION[571]

Special Review—Boating regulations on Lake Macbride, Chapter 45, IAC, ARRC meeting 5/14/96

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

Innocent landowner funding, Board will report to the ARRC in January, ARRC meeting 8/15/95

PUBLIC SAFETY DEPARTMENT[661]

Special Review—Handicapped parking, IAC Chapter 18, ARRC meeting 4/26/96

TRANSPORTATION DEPARTMENT[761]

Selective review—Right-of-way in drainage ditches; IAC, ARRC meeting 11/13/95

Joe Royce's salary—one step increase, effective 6/28/96; ARRC meeting 6/11/96

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
AGRICULTURAL DEVELOPMENT AUTHORITY[25]		
IADA loan participation program, ch 4 IAB 7/17/96 ARC 6552A (See also ARC 6553A)	IADA Conference Room Suite 327 505 5th Ave. Des Moines, Iowa	August 28, 1996 1 p.m.
BANKING DIVISION[187]		
State and federal banking laws, amendments to chs 1, 2, 4 to 9, 15, 16 IAB 7/17/96 ARC 6577A	Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 28, 1996 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Iowa industrial new jobs training program, 5.13 IAB 7/17/96 ARC 6569A (See also ARC 6570A)	Room 136 Workforce Development Center 150 Des Moines St. Des Moines, Iowa	August 6, 1996 10 a.m.
Iowa jobs training program, ch 7 IAB 7/17/96 ARC 6571A (See also ARC 6572A)	Room 136 Workforce Development Center 150 Des Moines St. Des Moines, Iowa	August 6, 1996 1 p.m.
Variance procedures for tax increment financing (TIF) housing projects, ch 26 IAB 7/17/96 ARC 6575A (See also ARC 6576A)	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 6, 1996 11 a.m.
New jobs and income program, 58.2, 58.4, 58.7, 58.9, 58.12, 58.13 IAB 7/17/96 ARC 6573A (See also ARC 6574A)	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 6, 1996 1:30 p.m.
EDUCATION DEPARTMENT[281]		
Open enrollment, 17.2 to 17.4, 17.7, 17.8, 17.10, 17.11 IAB 7/17/96 ARC 6551A	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	August 13, 1996 1 p.m.
Extracurricular interscholastic competition, 36.15(3)“b”(3) IAB 7/17/96 ARC 6550A	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	August 13, 1996 2:30 p.m.
Abuse of students by school employees, 102.2, 102.5(4), 102.11 IAB 7/17/96 ARC 6549A	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	August 7, 1996 11 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Protected water sources, 53.7(1) IAB 7/17/96 ARC 6579A	Conference Room Water Department 1111 Shaver Road Northeast Cedar Rapids, Iowa	August 7, 1996 2 p.m.
Animal feeding operations; commercial septic tank cleaners; land application of wastes, ch 65, appendix B, tables 1 and 2; 68.9(2), 121.1(1) IAB 7/17/96 ARC 6581A	Farmers and Merchants Savings and Trust 101 E. Main Manchester, Iowa	August 6, 1996 1 p.m.
	City Council Chambers 220 W. Monroe Mt. Pleasant, Iowa	August 7, 1996 10 a.m.
	Auditorium Wallace State Office Bldg. E. 9th and Grand Ave. Des Moines, Iowa	August 8, 1996 9 a.m.
	City Hall Meeting Room 2021 Main St. Emmetsburg, Iowa	August 9, 1996 1 p.m.
	Municipal Utilities Meeting Room 15 W. 3rd St. Atlantic, Iowa	August 12, 1996 10 a.m.
Releases of regulated substances from underground storage tanks, amendments to chs 133, 135 IAB 7/17/96 ARC 6556A (See also ARC 6555)	State Bank 100 1st St. NW Hampton, Iowa	August 6, 1996 10 a.m.
	Meeting Center 1804 E. 7th St. Atlantic, Iowa	August 7, 1996 10 a.m.
	Delaware County Comm. Center Fairgrounds, 200 E. Acres Manchester, Iowa	August 8, 1996 1 p.m.
	National Guard Armory Drill Floor Jct. Highways 1 and 92 Washington, Iowa	August 12, 1996 10 a.m.
	Auditorium, South Elementary School 310 Cayuga St. Storm Lake, Iowa	August 14, 1996 1 p.m.
	Auditorium Wallace State Office Bldg. Des Moines, Iowa	August 15, 1996 1 p.m.
INSURANCE DIVISION[191]		
Unfair trade practices, ch 15 IAB 7/17/96 ARC 6548A	Conference Room — 6th Floor Lucas State Office Bldg. Des Moines, Iowa	August 9, 1996 9 a.m.

JOB SERVICE DIVISION[345]

Employer records and reports, contributions and charges, claims and benefits, amendments to chs 2 to 4 IAB 7/17/96 ARC 6560A	Job Service Division 1000 E. Grand Ave. Des Moines, Iowa	August 6, 1996 9:30 a.m.
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LABOR SERVICES DIVISION[347]

General industry safety and health, 10.20 IAB 7/31/96 ARC 6606A	Labor Services Division 1000 E. Grand Ave. Des Moines, Iowa	August 22, 1996 9 a.m. (If requested)
Construction safety and health, 26.1 IAB 7/31/96 ARC 6608A	Labor Services Division 1000 E. Grand Ave. Des Moines, Iowa	August 22, 1996 9 a.m. (If requested)

LAW ENFORCEMENT ACADEMY[501]

Standards for officers moving from agency to agency, 2.3, 2.4 IAB 7/17/96 ARC 6564A	Conference Room Law Enforcement Academy Camp Dodge Johnston, Iowa	August 6, 1996 10:30 a.m.
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NATURAL RESOURCE COMMISSION[571]

Nursery stock sale, 71.3 IAB 7/17/96 ARC 6580A	Conference Room Fifth Floor West Wallace State Office Bldg. Des Moines, Iowa	August 6, 1996 2 p.m.
Timber buyers, 72.1, 72.2, 72.3(1) IAB 7/3/96 ARC 6534A	Conference Room Fourth Floor East Wallace State Office Bldg. Des Moines, Iowa	August 6, 1996 10 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Massage therapists, amendments to chs 130 and 131 IAB 7/31/96 ARC 6597A	Conference Room — 4th Floor Side 2 Lucas State Office Bldg. Des Moines, Iowa	August 21, 1996 9 to 11 a.m.
Board of social work examiners, ch 280 IAB 7/31/96 ARC 6601A	Conference Room — 4th Floor Side 1 Lucas State Office Bldg. Des Moines, Iowa	August 21, 1996 1 to 3 p.m.

PUBLIC HEALTH DEPARTMENT[641]

Outpatient diabetes education, ch 9 IAB 7/17/96 ARC 6567A	Fiber Optic Room, Ames High 1921 Ames High Drive Ames, Iowa	August 14, 1996 1 to 2:30 p.m.
(ICN Network)	University of Northern Iowa 130C Schindler Cedar Falls, Iowa	August 14, 1996 1 to 2:30 p.m.

PUBLIC HEALTH DEPARTMENT[641](Cont'd)

	Hills Bldg., Loess Hills AEA 13 24997 Highway 92 Council Bluffs, Iowa	August 14, 1996 1 to 2:30 p.m.
	Room 8786 JJP, 8th Floor U. of Iowa Hospitals and Clinics 200 Hawkins Dr. Mason City, Iowa	August 14, 1996 1 to 2:30 p.m.
	Activity Center, Room AC106 NIACC, 500 College Dr. Mason City, Iowa	August 14, 1996 1 to 2:30 p.m.
	National Guard Armory RR1 Parkwest Road Red Oak, Iowa	August 14, 1996 1 to 2:30 p.m.
Radiation, amendments to chs 38 to 41, 45, 46 IAB 7/17/96 ARC 6557A	Conference Room Third Floor, Side 2 Lucas State Office Bldg. Des Moines, Iowa	August 6, 1996 10 a.m.
Emergency medical services, 132.4(4), 132.11(1) IAB 7/31/96 ARC 6605A	Conference Room — 4th Floor Lucas State Office Bldg. Des Moines, Iowa	August 20, 1996 9 a.m.

REAL ESTATE COMMISSION[193E]

Business conduct, amendments to ch 1 IAB 7/17/96 ARC 6563A	Conference Room Commerce Bldg. 1918 S.E. Hulsizer Ankeny, Iowa	August 6, 1996 9 a.m.
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TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Organization and procedures, chs 1 to 6 IAB 7/31/96 ARC 6611A	Camp Dodge Theater, Bldg. 58 7th St. Camp Dodge Johnston, Iowa	August 20, 1996 1 p.m.
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TRANSPORTATION DEPARTMENT[761]

Signing on primary roads, 131.1 to 131.10, 131.15 IAB 7/31/96 ARC 6584A	Commission Room 800 Lincoln Way Ames, Iowa	August 22, 1996 10 a.m. (If requested)
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PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
 FROM: Kathleen K. Bates, Acting Iowa Administrative Code Editor
 SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Iowa Administrative Code Division is using a PC system to assist in the printing of the Iowa Administrative Bulletin. In order to most effectively transfer rules from the various agencies sending their rules on a diskette, please note the following:

1. We use a Windows environment with Interleaf 6 as our word processing system and can import directly from any of the following:

Ami Pro	Microsoft Word	SuperCalc
Ami Pro Macro	Microsoft Word for Windows 1.x, 2.0, 6.0	Symphony Document
dBase	MultiMate	Wang (IWP)
DCA/FFT	Navy DIF	Windows Write
DCA/RFT	Office Writer	Word for Windows 1.x, 2.0, 6.0
DIF	Paradox	WordPerfect 4.2, 5.x, 6.0
Display Write 4	Peach Text	WordStar
Enable 1.x, 2.x, 4.x	Professional Write	WordStar 2000 ver 1.0, 3.0
Excel 3.0, 4.0, 5.0	Rich Text Format	XyWrite III, Plus
Exec MemoMaker	Samna Word	XyWrite IV
Manuscript	SmartWare	

2. If you do not have any of the above, a file in an ASCII format is helpful.

3. Submit **only 3 1/2" High Density** (NOT Double Density) MS-DOS or compatible format diskettes. Please indicate on each diskette the agency name, file name, the format used for exporting, chapter or chapters of rules being amended.

4. **Deliver this diskette to the Administrative Code Division, 4th Floor, Lucas Building, when documents are submitted to the Governor's Administrative Rules Coordinator.**

Diskettes from agencies will be returned **unchanged** by the Administrative Code Division. Please refer to the hard-copy document which is returned to your agency by the Governor's office. This document reflects any changes in the rules—update your diskettes accordingly.

Your cooperation helps us to print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

Guide to Rule Making, June 1995 Edition, available upon request to the Iowa Administrative Code Division, Lucas State Office Building, Fourth Floor, Des Moines, Iowa 50319.

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]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

Product Development Corporation[271]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]

Industrial Services Division[343]

Job Service Division[345]

Labor Services Division[347]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361].

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HEALTH DATA COMMISSION[411]

HUMAN RIGHTS DEPARTMENT[421]
Community Action Agencies Division[427]
Criminal and Juvenile Justice Planning Division[428]
Deaf Services, Division of [429]
Persons With Disabilities Division[431]
Spanish-Speaking People Division[433]
Status of Blacks Division[434]
Status of Women Division[435]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
Employment Appeal Board[486]
Foster Care Review Board[489]
Racing and Gaming Commission[491]
State Public Defender[493]
INTERNATIONAL NETWORK ON TRADE(INTERNET)[497]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
Appeal Board, State[543]
City Finance Committee[545]
County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
Energy and Geological Resources Division[565]
Environmental Protection Commission[567]
Natural Resource Commission[571]
Preserves, State Advisory Board[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
Emergency Management Division[605]
Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Substance Abuse Commission[643]
Professional Licensure Division[645]
Dental Examiners Board[650]
Medical Examiners Board[653]
Nursing Board[655]
Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
Archaeologist[685]
REVENUE AND FINANCE DEPARTMENT[701]
Lottery Division[705]
SECRETARY OF STATE[721]
SESQUICENTENNIAL COMMISSION, IOWA STATEHOOD[731]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TRANSPORTATION DEPARTMENT[761]
Railway Finance Authority, Iowa[765]
TREASURER OF STATE[781]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Law Enforcement Education Partnership	Statewide	State, County, or local law enforcement agencies; including district attorneys	Drug Abuse and violence prevention activities	9-3-96	9-30-96 to 6-30-97

Instruction: To obtain a copy of the application in writing or by FAX contact:

Allen Vander Linden
 Contracts Administrator
 Iowa Department of Public Health
 Division of Substance Abuse and Health Promotion
 321 East 12th Street
 Lucas State Office Building
 Des Moines, Iowa 50319-0075
 (515) 281-4535 (FAX)

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Application Services</u>	<u>Application Due Date</u>	<u>Period</u>
Public Health	Substance Abuse	Statewide	Nonprofit volunteer community organizations	Community substance abuse prevention services	9-16-96	10-1-96 to 6-30-97

Application forms may be obtained by contacting:

Allen Vander Linden
Contracts Administrator
Iowa Department of Public Health
Division of Substance Abuse and Health Promotion
321 East 12th Street
Lucas State Office Building
Des Moines, Iowa 50319-0075
(515) 281-4535 (FAX)

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:

May 1, 1995 — May 31, 1995	7.45%
June 1, 1995 — June 30, 1995	7.50%
July 1, 1995 — July 31, 1995	7.45%
August 1, 1995 — August 31, 1995	7.25%
September 1, 1995 — September 30, 1995	7.20%
October 1, 1995 — October 31, 1995	7.15%
November 1, 1995 — November 30, 1995	7.10%
December 1, 1995 — December 31, 1995	7.15%
January 1, 1996 — January 31, 1996	7.10%
February 1, 1996 — February 29, 1996	6.80%
March 1, 1996 — March 31, 1996	6.70%
April 1, 1996 — April 30, 1996	6.55%
May 1, 1996 — May 31, 1996	6.70%
June 1, 1996 — June 30, 1996	6.75%
July 1, 1996 — July 31, 1996	6.75%

ARC 6602A

ARCHITECTURAL EXAMINING BOARD[193B]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or 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 544A.29, the Iowa Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 1, “Description and Organization,” Chapter 2, “Registration,” and Chapter 3, “Continuing Education,” Iowa Administrative Code.

The amendments to Chapter 1 clarify the definition of Factory-built buildings. The amendments to Chapter 2 incorporate changes in the examination application and registration procedures. The amendments to Chapter 3 increase the number of hours which can be claimed by a registrant under the self-study category.

Any interested party may make written comment on the proposed amendments on or before August 20, 1996. Comments should be addressed to Glenda Loving, Architectural Examining Board, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

These amendments are intended to implement Iowa Code chapters 272C and 544A.

The following amendments are proposed.

ITEM 1. Amend 193B—1.5(544A,17A), definition of “Factory-built buildings,” as follows:

“Factory-built buildings” means buildings which have been designed, engineered, fabricated and wholly or partly

assembled in a manufacturing facility for assembly and installation on a building site. *A preengineered building utilizing standard building components assembled on the building site is not considered a “factory-built” building.* Such factory-built buildings, in order to qualify for the exception established by Iowa Code section 544A.18, must either:

1. Not exceed limitations on size and or use established by Iowa Code section 544A.18, or

2. ~~Be certified by a professional engineer registered under Iowa Code chapter 542B when practicing professional engineering. The seal applied by a professional engineer or architect shall apply to the entire assembly, not a specific element of the assembly.~~

ITEM 2. Amend 193B—2.1(544A,17A), introductory paragraph, and subrule 2.1(1) as follows:

193B—2.1(544A,17A) Application for registration. Applicants for registration are required to make application to the National Council of Architectural Registration Boards, 1735 New York Avenue NW, Washington, D.C. 20006 for a council record. A completed state application form and a completed council *certificate* record shall be filed in the board office before an application will be considered by the board. If prerequisite to examination, the state application form and the council record shall be filed in the board office ~~not fewer than 60 days before prior~~ to the date scheduled to take for the examination.

2.1(1) The board, by approval of three of its members who are registered architects, may waive examination requirements for architects registered during the current year in another state or country where the qualifications prescribed at the time of registration were equal to those prescribed in Iowa. *For the purpose of determining substantially equivalent qualifications, applicants shall be deemed to have met the “Training Requirements for Intern-Architect Development Program (IDP)” requirement regardless of the date of completion of the required experience, provided the experience was completed prior to filing an application for Iowa registration. Such registrations in Iowa will be automatically revoked. The board shall find probable cause for disciplinary action if the registrant’s registration in any other state is revoked for statutory reasons or incompetence.*

ITEM 3. Renumber 193B—2.4(544A,17A) and 193B—2.5(252J) as 193B—2.5 (544A,17A) and 193B—2.6 (252J), respectively, and insert the following new rule 193B—2.4(544A,17A):

193B—2.4(544A,17A) Examination. Examinations for registration as an architect shall be conducted by the board or its authorized representative.

2.4(1) Content and grading of the examination. The board shall make use of the “Architect Registration Examination” (ARE) prepared and graded by NCARB under a plan of cooperation with the boards of all states and territories of the United States.

2.4(2) Testing service. The board may make use of a testing service selected by NCARB to administer the examination, provided the examination is held in at least one location within the boundaries of this state.

ITEM 4. Amend newly renumbered 193B—2.5(544A,17A) as follows:

193B—2.5(544A, 17A) Fee schedule. Under the authority provided in Iowa Code chapter 544A, the following fees are hereby adopted:

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

Examination fees:

Initial application fee paid to board \$100
Fees for examination subjects shall be paid directly to the testing service selected by NCARB.

Entire ARE examination	\$530
Division A	50
Division B (written)	50
Division B (graphic)	75
Division C	105
Division D/F	50
Division E	50
Division G	50
Division H	50
Division I	50
Seismic Structural	175
Registration Fee	30
(plus \$6 per month until renewal date)	
Reciprocal Application and Registration Fee	140
Biennial Renewal Fee	140
Biennial Renewal Fee (Inactive)	50
Reinstatement Fee	100
Duplicate Certificate Fee	20
Roster Fee (except for registered architects and governmental agencies)	50
Authorization to Practice Architecture as a Business Entity	50
Renewal for Authorization to Practice Architecture as a Business Entity	20

ITEM 5. Amend paragraph 3.1(3)“g” as follows:

g. Contact hours spent in architectural self-study courses such as those sponsored by the American Institute of Architects or similar organizations. A maximum of 8 10 hours may be applied for each separate course. A maximum of 15 20 hours for all courses may be applied from this source.

ARC 6587A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” appearing in the Iowa Administrative Code.

This amendment expands Medicaid coverage of nonprescription drugs to include Senokot, a medication for constipation, for children 20 years of age or younger. This alternative is cheaper than other prescription drugs and can be incorporated into food. The Department has been approving exceptions to policy for this product under the Early and Pe-

riodic Screening, Diagnosis, and Treatment (EPSDT) authority.

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 August 21, 1996.

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

The following amendment is proposed.

Amend subrule 78.1(2), paragraph “f,” list of nonprescription drugs, by adding the following **new** nonprescription drug in alphabetical order:

Senokot Granules, 326 mg./tsp. for children aged 20 and under.

ARC 6586A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

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

This amendment clarifies that medical services provided to a person while the person is an inmate of a public jail, prison, juvenile detention center, or other public penal institution of more than four beds are not covered by Medicaid.

Federal Medicaid law does not allow federal financial participation for medical services provided to a person while the person is an inmate of a nonmedical public institution such as a penal institution.

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 August 21, 1996.

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

The following amendment is proposed.

Amend rule 441—79.9(249A) by adding the following **new** subrule 79.9(5):

79.9(5) Coverage in public institutions. Medical services provided to a person while the person is an inmate of a public jail, prison, juvenile detention center, or other public penal institution of more than four beds are not covered by Medicaid.

ARC 6592A**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or 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 234.6 and 1996 Iowa Acts, Senate File 2442, section 6, subsection 3, and section 49, the Department of Human Services proposes to amend Chapter 130, “General Provisions,” and Chapter 170, “Child Day Care Services,” appearing in the Iowa Administrative Code.

These amendments add families with an income of more than 100 percent but not more than 110 percent of the federal poverty level whose members are employed at least 30 hours per week to the list of priority groups to receive child day care services and provide the income guidelines these families must meet to be determined eligible. In the event funds become insufficient to meet the demand for services, new applications are placed on waiting lists of the priority groups. Families are then approved from the waiting lists in descending order of prioritization.

The General Assembly in 1996 Iowa Acts, Senate File 2442, section 6, subsection 3, paragraph “c,” directed the Department to revise the child day care waiting list priority groups to include these families no later than January 2, 1997, if it is determined sufficient funding is available.

The Department has now determined funding is available for the first four priority groups as follows:

1. Families who are at or below 100 percent of the federal poverty guidelines and in which the parents are employed at least 30 hours per week or are under the age of 21 and participating in an educational program leading to a high school diploma or equivalent.
2. Parents under the age of 21 with a family income at or below 100 percent of the federal poverty guidelines who are participating, at a satisfactory level, in an approved training or education program.
3. Families with an income of more than 100 percent but not more than 110 percent of the federal poverty level whose members are employed at least 30 hours per week.
4. Families who are at or below 155 percent of the federal poverty guidelines who have a special needs child.

Funding is not yet available for the fifth priority group, families who are at or below 100 percent of the federal poverty guidelines and are employed part-time at least 20 hours per week.

The substance of these amendments is also Adopted and Filed Emergency and is published herein as **ARC 6593A**. 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 August 21, 1996.

These amendments are intended to implement Iowa Code section 234.6 and 1996 Iowa Acts, Senate File 2442, section 6, subsection 3.

ARC 6585A**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or 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 234.6, the Department of Human Services proposes to amend Chapter 185, “Rehabilitative Treatment Services,” appearing in the Iowa Administrative Code.

This amendment allows family preservation services to be provided to a family with one or more children placed out of the home when the services are initiated within 30 calendar days after the date of out-of-home placement rather than 7 or fewer days. The child or children must be able to be returned to the family within 5 calendar days of the initiation of the family preservation services.

Family preservation services are designed to meet the needs of a family in crisis with children at imminent or high risk of placement outside the home. Allowing family preservation services to be available within 30 days is more consistent with time frames of any court hearings, child protective investigations, and initial service assessment time frames and short-term out-of-home placements for evaluative reasons.

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 August 21, 1996.

This amendment is intended to implement Iowa Code section 234.6.

The following amendment is proposed.

Amend rule 441—185.45(234) as follows:

441—185.45(234) Provision of services to children placed out-of-home. Family preservation services may be provided to a family with one or more children placed out of the home when the services are initiated within ~~seven or fewer~~ 30 calendar days after the date the child has been placed out-of-home in a setting other than a psychiatric medical institution for children, group care, or family foster care with rehabilitative treatment services *and when the child can be returned home within 5 calendar days of service initiation.*

ARC 6616A**INSURANCE DIVISION[191]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or 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 523C.10, the Iowa Insurance Division hereby gives Notice of Intended Action to amend Chapter 54, "Residential Service Contracts," Iowa Administrative Code.

In response to industry request, the Division proposes to amend rule 191—54.20(523C) to allow the Division to license service companies formed as limited partnerships or limited liability corporations. Iowa Code section 523C.2 provides that a licensed service company must be a corporation or other form of organization approved by the commissioner by rule.

Interested persons may submit written comments on or before August 20, 1996, to Dennis Britson, Iowa Securities Bureau, Lucas State Office Building, Room 214, Des Moines, Iowa 50319.

The rule is intended to implement Iowa Code section 523C.2.

The following amendment is proposed.

Amend rule 191—54.20(523C) as follows:

191—54.20(523C) Service company licenses. A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation, *limited liability company, partnership or limited liability partnership* and has procured a service company license from the Iowa securities bureau.

ARC 6606A**LABOR SERVICES DIVISION[347]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or 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 personal protective equipment for general industry and a correction and consolidation of repetitive provisions, technical amendments.

If requested by August 20, 1996, a public hearing will be held on August 22, 1996, 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 con-

sidered in adoption may be submitted by interested persons no later than August 22, 1996, 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 one 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 August 21, 1996, 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:

61 Fed. Reg. 19548 (May 2, 1996)
61 Fed. Reg. 21228 (May 9, 1996)
61 Fed. Reg. 31430 (June 20, 1996)

ARC 6608A**LABOR SERVICES DIVISION[347]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or 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 consolidation of repetitive provisions; technical amendments.

If requested by August 20, 1996, a public hearing will be held on August 22, 1996, 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 August 22, 1996, 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 one political subdivision or agency or any contractor providing services to political subdivisions or agencies.

LABOR SERVICES DIVISION[347](cont'd)

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 August 21, 1996, 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: 61 Fed. Reg. 31431 (June 20, 1996)

ARC 6603A

NURSING BOARD[655]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3, 147.76, 272C.3, and 272C.5, the Iowa Board of Nursing hereby gives Notice of Intended Action to amend Chapter 4, “Disciplinary Proceedings,” Iowa Administrative Code.

These amendments revise disciplinary proceedings rules implementing Iowa Code chapter 17A, providing clarification to procedures involving investigations and disciplinary proceedings.

Any interested person may make written comments or suggestions on or before August 20, 1996. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 East Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 1223 East Court Avenue, by appointment.

These amendments are intended to implement Iowa Code sections 17A, 147.55, 152.10, 272C.3, 272C.4, 272C.5, 272C.6, and 272C.10.

The following amendments are proposed.

ITEM 1. Amend rule 655—4.2(17A,147,152,272C), introductory paragraph, to read as follows:

655—4.2(17A,147,152,272C) Complaints and investigations. A complaint is an allegation of wrongful acts or omissions related to nursing practice or continuing education in nursing licensure. A complaint may include knowledge of a judgment or settlement against a licensee. Complaints shall be filed with the board *shall be in writing*.

ITEM 2. Rescind subrule 4.2(4) and insert in lieu thereof the following **new** subrule:

4.2(4) The executive director or authorized designee shall investigate complaints to determine if a violation of applicable law or rule has occurred. The investigation shall result in

presentation of investigative conclusions to the board for action.

ITEM 3. Amend rule 655—4.3(17A,147,152,272C) to read as follows:

655—4.3 (17A,147,152,272C) Board action. The board shall review a ~~recommendation~~ *investigative conclusions* pursuant to subrule 4.2(4) and shall do one of the following:

1. Dismiss the complaint because no probable cause exists.

2. Request further investigation.

3. Appoint a peer review committee to assist in ~~with the investigative process~~ *investigation*.

4. Determine ~~existence of that~~ *probable cause exists* and order a hearing. ~~The hearing shall be a contested case as defined by pursuant to Iowa Code section 17A.2(2)17A.2(2)12.~~

~~The hearing shall be held by a hearing panel as defined in Iowa Code section 272C.6(1).~~

~~The hearing shall be held during the next regularly scheduled board meeting unless specified otherwise at the time the hearing is ordered.~~

~~The chairperson of the board shall designate the presiding officer.~~

5. Initiate proceedings to suspend, revoke, or deny issuance or renewal of a license, upon receipt of a certificate of noncompliance, in accordance with the provisions of Iowa Code Supplement chapter 252J.

Notification from proper authority that the certificate has been withdrawn shall be sufficient cause for the board to immediately reinstate, renew, or issue a license, provided that the individual is otherwise qualified for licensure.

ITEM 4. Amend rule 655—4.4(17A,147,152,272C), catchwords, to read as follows:

655—4.4(17A,147,152,272C) Procedures for a peer Peer review committee.

ITEM 5. Rescind subrule 4.4(1) and insert in lieu thereof the following **new** subrule:

4.4(1) The peer review committee shall assist with the investigative process. It shall determine if the conduct of the licensee conforms to the minimum standards of acceptable and prevailing practice of nursing and prepare a report of its findings for the board.

ITEM 6. Rescind subrule 4.4(2) and insert in lieu thereof the following **new** subrule:

4.4(2) The board shall review the committee’s findings and dismiss the complaint, request further investigation, or determine that probable cause exists and order a hearing.

ITEM 7. Amend rule 655—4.5(17A,147,152,272C), introductory paragraph, to read as follows:

655—4.5(17A,147,152,272C) Notice of hearing. The board shall issue *an order*, a notice of hearing, *and statement of charges* following its determination of probable cause ~~against a licensee pursuant to Iowa Code section 17A.12(2).~~

ITEM 8. Rescind subrule 4.5(3).

ITEM 9. Rescind rule 655—4.6(17A,147,152,272C) and insert in lieu thereof the following **new** rule:

655—4.6(17A,147,152,272C) Answer. A licensee who has been served with a statement of charges may file an answer responding to the allegations.

NURSING BOARD[655](cont'd)

ITEM 10. Amend rule 655—4.7(17A,147,152,272C) to read as follows:

655—4.7(17A,147,152,272C) Settlements. The licensee may request to explore ~~a an~~ *informal settlement conference* at any time prior to the hearing. ~~Exploration of a~~ *The informal settlement conference* shall be with the executive director or authorized designee(s) and may include legal counsel for the board. If the above persons agree to a negotiated settlement, a proposed stipulation, ~~settlement,~~ and order shall be ~~written prepared~~ and presented to the board for final approval. ~~If settlement is not reached, a hearing shall be held.~~

ITEM 11. Amend rule 655—4.13(17A,147,152,272C), introductory paragraph, to read as follows:

655—4.13(17A,147,152,272C) Authority of the presiding officer during the hearing. *The chairperson of the board shall designate the presiding officer pursuant to Iowa Code section 17A.11(1).* The presiding officer shall:

ITEM 12. Amend rule 655—4.14(17A,147,152,272C) to read as follows:

655—4.14(17A,147,152,272C) Hearing procedure. The hearing panel:

1. Shall receive opening statements from the parties.
2. Shall receive evidence, in accordance with Iowa Code section 17A.14 on behalf of the state of Iowa and on behalf of the licensee.
3. ~~Shall receive rebuttal evidence on behalf of the state of Iowa and on behalf of the licensee.~~
- 5 3. May interrogate *question* witnesses.
4. Shall receive closing statements from the parties.
- 6 5. May request that briefs be filed.
- 7 6. Shall determine the findings of fact and conclusions of law by a majority vote and report its findings in writing within a reasonable period.

ITEM 13. Amend rule 655—4.15(17A,147,152,272C), introductory paragraph, to read as follows:

655—4.15(17A,147,152,272C) Panel of specialists. The board may appoint a panel of nurses who are specialists ~~when the board determines specialists are needed~~ to ascertain the facts of a case *pursuant to Iowa Code section 272C.6(2)*. The board chairperson or designee shall appoint the presiding officer.

ITEM 14. Amend subrule 4.15(2) to read as follows:

- 4.15(2)** The panel of specialists shall:
- a. Enter into the record the names of the presiding officer, ~~the panel of specialists members of the panel, and the names of the parties, and their representatives.~~
 - b. Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, and any other pleadings, motions, and orders.
 - c. Receive opening statements from the parties.
 - d. Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the licensee.
 - e. ~~Receive rebuttal evidence on behalf of the state of Iowa and on behalf of the licensee.~~
 - g e. Interrogate *Question* the witnesses.
 - f. Receive closing statements from the parties.
 - h g. Determine the findings of fact by a majority vote and report its findings in writing within a reasonable period.

ITEM 15. Amend subrule 4.16(2) to read as follows:

4.16(2) The board may accept a settlement as specified in rule 4.7(17A,147,152,272C). A stipulation, ~~settlement,~~ and order, signed by the chairperson, ~~executive director or designee, legal counsel for the board,~~ and the respondent and legal counsel, ~~if applicable, is,~~ *will be* considered a final decision.

ITEM 16. Amend subrule 4.16(3) to read as follows:

4.16(3) The board shall review and revise, if necessary, the findings of fact written by a hearing panel of specialists. After the board adopts the final findings of fact ~~and conclusions of law,~~ it shall determine the order. The final decision shall be written and include a Findings of Fact *and* Conclusions of Law, ~~and Order.~~ ~~A decision for other than dismissal shall include sanctions as specified in rule 4.18(17A,147,152,272C).~~

ITEM 17. Amend subrule 4.16(5) to read as follows:

4.16(5) The final decision of the board shall be issued within ten working days of the board's acceptance of a written decision. A copy of the final decision shall be mailed to the licensee by certified mail, return receipt requested, ~~in accordance with Iowa Code section 17A.12(1).~~ If delivery is not accomplished in this manner, the board shall mail a copy of the decision to the licensee's last-known address by regular mail.

ITEM 18. Rescind rule 655—4.18(17A,147,152,272C) and insert in lieu thereof the following **new** rule:

655—4.18(17A,147,152,272C) Sanctions. A sanction is a disciplinary action by the board which resolves a contested case. The board may impose one or more of the following for violation of Iowa Code section 147.55 or 152.10, or rule 4.19(17A,147,152,272C).

1. Revocation.
2. Suspension.
3. Probation.
4. Civil penalty.
5. Citation and warning.

ITEM 19. Amend rule 655—4.19(17A,147,152,272C), introductory paragraph, to read as follows:

655—4.19(17A,147,152,272C) Reasons for sanction. The board may discipline a licensee for wrongful acts or omissions related to nursing practice or ~~continuing education in nursing as defined in Iowa Code chapters 147, 152, and 272C or Iowa Administrative Code, Nursing Board [655] licensure.~~

ITEM 20. Amend subrule 4.19(1), paragraphs "a," "b," and "c," to read as follows:

- a. Falsification of *the* application, credentials, or records submitted to the board for licensure as a registered nurse, licensed practical nurse, or *registration as an* advanced registered nurse practitioner.
- b. Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a registered nurse, licensed practical nurse, or *registration as an* advanced registered nurse practitioner.
- c. Impersonating any applicant in any examination for licensure as a registered nurse, ~~or licensed practical nurse, or advanced registered nurse practitioner.~~

ITEM 21. Amend subrule 4.19(3) as follows:

4.19(3) In accordance with Iowa Code sections 147.55(3) and 272C.10(3), nursing behavior (i.e., acts, knowledge, and practices) which constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the prac-

NURSING BOARD[655](cont'd)

tice of a profession may include but need not be limited to the following:

- a. ~~Performing nursing services beyond the authorized scope of the level of nursing for which the individual is licensed as defined by statute or rules of the board.~~
- b. a. Oral or written misrepresentation relating to degrees, credentials, records, and applications.
- c. b. Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.

ITEM 22. Rescind subrule 4.19(4), paragraphs "a" to "m," and insert in lieu thereof the following new paragraphs "a" to "p":

- a. Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.
- b. Allowing another person to use one's nursing license for any purpose.
- c. Improper delegation of nursing services, functions, or responsibilities.
- d. Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.
- e. Committing an act which causes physical, emotional, or financial injury to the patient or client.
- f. Engaging in sexual conduct, including inappropriate physical contact or any behavior that is seductive, demeaning, or exploitative, with regard to a patient or former patient.
- g. Failing to report to, or leaving a nursing assignment without properly notifying appropriate personnel and ensuring the safety and welfare of the patient or client.
- h. Violating the confidentiality or privacy rights of the patient or client.
- i. Discriminating against a patient or client because of age, sex, race, creed, illness, economic or social status.
- j. Failing to assess, accurately document, or report the status of a patient or client, including signs, symptoms, nursing care delivered and responses.
- k. Misappropriating medications, property, supplies, or equipment of the patient, client, or agency.
- l. Fraudulently or inappropriately using or permitting the use of prescription blanks or obtaining prescription medications under false pretenses.
- m. Practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications.
- n. Being involved in the unauthorized manufacture, possession, distribution, or sale of any controlled substance.
- o. Conviction of a misdemeanor or felony related to the practice of nursing.
- p. Failure to report to the board, within a reasonable period of time, any suspected wrongful acts or omissions committed by a licensee.

ITEM 23. Rescind subrule 4.19(5).

ITEM 24. Amend subrule 4.20(2) to read as follows:

4.20(2) The application shall allege facts and circumstances which will enable the board to determine that the basis for the sanction *or voluntary surrender* no longer exists, and that it is in the public interest to reinstate the license. The burden of proof to establish these facts shall rest with the petitioner.

ARC 6597A

PROFESSIONAL LICENSURE
DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or 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 152C.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 130, "Massage Therapists" and Chapter 131, "Continuing Education and Disciplinary Procedures," Iowa Administrative Code.

The proposed amendments rescind language for temporary licensure; rescind final school examination scores requirement for licensure; rescind oral interview requirement for licensure applicants; rescind the requirement of an applicant to sign a statement that the applicant will not engage in the practice of the profession when on the inactive status; rescind fees for temporary licensure; clarify licensure requirements; state that the National Certification Examination for Therapeutic Massage and Bodywork will be the examination required for licensure; clarify the requirements for approval of schools providing massage therapy education curriculum; add language for discipline taken against schools; clarify the continuing education requirements and compliance period; add new language which allows a complaint to be filed against a massage therapy school; and add new language making failure of a massage therapy school to submit curriculum changes to the board a reason for discipline.

A public hearing has been scheduled for August 21, 1996, from 9 a.m. to 11 a.m. in the Fourth Floor Conference Room, Side 2, Lucas State Office Building, Des Moines, Iowa. The Department requests that a written copy of all oral comments be furnished to the Department on that date.

The proposed amendments are intended to implement Iowa Code chapter 152C.

The following amendments are proposed.

ITEM 1. Rescind and reserve rule **645—130.2(152C)**.

ITEM 2. Amend subrule 130.3(2) as follows:

130.3(2) The application forms fully completed per instructions on the forms shall be filed with the Massage Therapy Office, Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Application requirements are as follows:

- a. Submit a completed application form with official supporting documents and the fee listed in rule 130.10(152C).

- b. Present ~~with the application~~ an official transcript proving graduation from a school or schools approved by the department under rule 130.5(152C). However, this requirement is waived for applicants for licensure who have already been issued a temporary license ~~under subrule 130.2(1) or 130.2(2)~~.

- c. If licensed in another state, also present with the application an official copy of license and current renewal of license to practice massage therapy issued by the other state(s) and an official statement issued by a *the* licensing board or department that no disciplinary action is pending against the

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

applicant and the applicant does not have a suspended or revoked massage therapy license in another state.

d. Show proof of passing one of the following the department-approved written examinations:

(1) The National Certification Examination for Therapeutic Massage and Bodywork administered by Psychological Corporation, 555 Academic Court, San Antonio, TX 78204-2498 the testing service contracting with the National Certification Board for Therapeutic Massage and Bodywork. Proof of passing must be sent directly from Psychological Corporation the testing service to the division of professional licensure. The passing score on the written examination shall be the passing point criterion established by the national testing authority at the time the test was administered.

(2) The final examination of a school approved by the department under rule 130.5(152C). Proof of passing score must be sent directly from the school to the professional licensure division. The passing score on the examination shall be the passing point criterion established by the school at the time the test was administered. This subparagraph shall terminate on June 1, 1995, and after that date all applicants for licensure must meet the examination requirement in subparagraph (1) above, regardless of the date the application was received.

ITEM 3. Amend subrule 130.3(3) as follows:

130.3(3) The department may consider applications which do not appear on their face to meet statutory or rule requirements on a case-by-case basis if the requirements may be alternatively satisfied by demonstrated equivalency. The burden shall be on the applicant to document that the applicant's education and experience are substantially equivalent to the requirements which may be alternatively satisfied. If approved by the department, applicants considered under this paragraph may meet the examination requirement by successfully completing a practical or an oral examination conducted by the board and approved by the department.

ITEM 4. Amend subrule **130.4(1)**, paragraph "c," as follows and rescind paragraph "d."

c. An applicant shall submit the required fee, as listed in rule 130.10(152C), in the form of a check or money order made payable to the Iowa Department of Public Health.

ITEM 5. Amend subrule 130.5(1) as follows:

130.5(1) An application for schools providing massage therapy education curriculum approval shall be made in writing to the Massage Therapy Office, Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Application forms shall be obtained from the office. A request for massage therapy education curriculum approval may be made by an applicant for a license who has graduated from the school or by the management of the school.

ITEM 6. Amend subrule 130.5(2) as follows:

130.5(2) Approval may be granted A massage therapy education curriculum may be approved by the department if it the curriculum satisfies the following:

a. It requires completion of at least 500 hours of instructor-supervised, in-classroom academic instruction. The curriculum must include 100 hours of anatomy and physiology and 400 hours of other subjects relating directly to the development of skills, knowledge and attitudes necessary to render competent professional massage therapy to the public including basic first-aid and cardiopulmonary resuscitation (CPR).

b. Student clinic hours shall be at the school site, shall be supervised by a qualified instructor and shall not exceed 20 percent of the actual curriculum hours.

c. Field experience hours, if required by the school, shall be documented, but may not be included as part of the 500 hours of instructor-supervised, in-classroom academic instruction.

d. All course instructors must be Iowa-licensed massage therapists and be listed in an attachment to the application, along with their credentials, professional training and proof of at least one year's experience in the subject they are to teach. Anatomy, physiology, and first-aid/CPR instructors are exempt from this requirement; however, they must show credentials in the subject being taught.

e. The entire school curriculum and class schedule must be submitted with the application and shall document the hours of each subject taught. The curriculum required for students who graduated prior to July 1, 1993, will require only 100 hours of anatomy and physiology and 400 hours of other subjects.

b-f. A school's curriculum shall be approved if it met the above requirements at the time that the applicant for license graduated.

g. If an approved school alters its curriculum from that submitted and approved by more than 25 percent of total course hours, it must submit those changes to the department for approval prior to implementation.

h. Course content of an approved curriculum must be accurately stated in all promotional materials.

i. Should the department find that an approved curriculum school is not providing the courses and hours it has submitted on its application, the department may revoke, suspend or put on probation approval of the school's curriculum. Revocation will be for a minimum of six consecutive months from the date of determined noncompliance. At the end of the revocation period, the school may reapply for approval of a massage therapy program according to the rules in effect at the time of the reapplication.

j. All approved schools providing massage therapy curriculum which operate within the state of Iowa must update their existing applications to be in compliance with this rule. The department will notify all approved schools providing massage therapy curriculum within four weeks after this rule is adopted. Schools will have four months from the date of notification to submit the necessary documentation to verify compliance.

ITEM 7. Amend subrules 130.6(2) to 130.6(4) as follows:

130.6(2) Licensees who have met continuing education requirements for the biennium and wish to have their licenses renewed shall complete the department-approved renewal form and the department-approved continuing education report and return them to professional licensure, department of public health, by September 30 of the odd-numbered years.

130.6(3) Late filing. Licensees who fail to submit the application for renewal and complete and appropriately document continuing education hours by their anniversary date of each renewal biennium September 30 (odd year) shall be required to pay a late filing fee and may be subject to an audit of their continuing education report.

130.6(4) Licensees who have not fulfilled the requirements for license renewal or placed the license on inactive status by 30 days after their anniversary date October 31 (odd year) of the licensure biennium will have a lapsed license and shall not engage in the practice of massage therapy.

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ITEM 8. Rescind subrule 130.6(5).

ITEM 9. Amend rule 645—130.7(152C) as follows:

~~645—130.7(152C) Inactive practitioners. A licensee who is not engaged in the active practice of the profession in the state of Iowa residing within or without outside the state of Iowa may place the license on exempt (inactive) status and be granted a certificate of an exemption upon written application notification to the department. The application shall contain a statement that the applicant will not engage in the practice of the profession in Iowa without first complying with all rules governing reinstatement after exemption in rule 130.8(152C). The application for inactive status shall be submitted upon the form provided by the department.~~

ITEM 10. Amend rule 645—130.8(152C), introductory paragraph, as follows:

~~645—130.8(152C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of exemption shall, prior to engaging in the practice of the profession in the state of Iowa, satisfy the following requirements for reinstatement:~~

ITEM 11. Amend subrule 130.9(1) as follows:

~~130.9(1) The license shall be considered lapsed if not renewed by October 31 (odd year) of the licensure biennium 30 days following the renewal date of the license.~~

ITEM 12. Rescind and reserve subrules 130.10(1) and 130.10(3).

ITEM 13. Amend subrule 130.10(6) as follows:

~~130.10(6) Penalty fee for failure to complete and return the renewal application by September 30 (odd year) is \$25.~~

ITEM 14. Amend subrule 130.10(7) as follows:

~~130.10(7) Penalty fee for failure to complete the required continuing education by June 30 of odd-numbered years is \$25. Failure to complete and return the continuing education report by September 30 (odd year) is \$25.~~

ITEM 15. Amend subrule 130.10(10) as follows:

~~130.10(10) Fee for failure to report, in writing, change of address within 30 days is \$10.~~

ITEM 16. Amend subrule 131.1(3) as follows:

~~131.1(3) The continuing education compliance period shall be each biennium beginning July 1 of the odd-numbered year to June 30 of the next odd-numbered year run concurrently with each renewal period. During the continuing education compliance period, attendance at approved continuing education programs may be used as evidence of fulfilling the continuing education requirement for subsequent biennial license renewal period beginning October 1. The biennial license renewal period shall extend from October 1 of an odd-numbered year until September 30 of the next odd-numbered year.~~

ITEM 17. Amend subrule 131.1(5) as follows:

~~131.1(5) Carryover credit of continuing education hours into the next continuing education compliance period will not be permitted.~~

ITEM 18. Amend subrule 131.3(1) as follows:

~~131.3(1) A report of continuing education activities shall be submitted on a department-approved form with the application for renewal by September 30 of the odd-numbered years. All continuing education activities submitted must be completed by June 30 of the odd-numbered years as specified~~

~~in 645—subrules 130.6(1) and 131.1(3) or a late fee will be assessed (see 645—subrule 130.10(7)).~~

ITEM 19. Amend subrule 131.3(2) as follows:

~~131.3(2) Failure to receive a renewal application shall not relieve the licensee of the responsibility of meeting continuing education requirements and submitting renewal fee by September 30 of the odd-numbered year.~~

ITEM 20. Amend subrule 131.3(3), paragraph "b" as follows:

~~b. All renewal license applications that are submitted late (after September 30 of the odd-numbered year) shall be subject to audit of continuing education reports.~~

ITEM 21. Amend rule 645—131.6(152C) as follows:

~~645—131.6(152C) Complaint. A complaint of a licensee's professional misconduct or an approved school's misconduct shall be made in writing by any person to the Massage Therapy Office, Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. A complaint may be received from any source, including law enforcement officers. The complaint shall include complainant's address and telephone number, shall be signed and dated by the complainant, shall identify the licensee or the school, and shall give the address, date of incident and any other information about the licensee or the school which the complainant may have concerning the matter.~~

ITEM 22. Amend subrule 131.9(4) as shown:

~~131.9(4) License denial. Any request for a hearing before the department concerning the denial of a license shall be submitted by the applicant or school, in writing, to the department by certified mail, return receipt requested, within 30 days of the mailing of a notice of denial of license.~~

ITEM 23. Insert new subrule 131.10(12) as follows:

131.10(12) Failure to submit curriculum changes.

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PROFESSIONAL LICENSURE
DIVISION[645]

BOARD OF SOCIAL WORK EXAMINERS

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or 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 Social Work Examiners hereby gives Notice of Intended Action to rescind Chapter 280, “Board of Social Work Examiners,” Iowa Administrative Code, and adopt a new Chapter 280, “Board of Social Work Examiners,” Iowa Administrative Code.

The proposed rules implement Iowa Code chapters 147.76 and 154C.4 by establishing requirements for mandatory licensure, continuing education, license renewal, and disciplinary action. The proposed rules establish provisions for “grandfathering” of currently practicing social workers and increase the number of board members in 1998 from five to

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seven members. License and renewal fees are established for the three levels of licensure. Continuing education requirements are increased from 24 to 27 hours, 3 of which must be in ethics.

Any interested person may make written comments on the proposed rules no later than August 21, 1996, addressed to Marge Bledsoe, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on August 21, 1996, from 1 p.m. to 3 p.m. in the Fourth Floor Conference Room, Side 1, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

These proposed rules are intended to implement Iowa Code chapters 17A, 22, 147, 154C.4, and 272C.

The following rules are proposed.

Rescind 645—Chapter 280 and adopt a **new** 645—Chapter 280 as follows:

CHAPTER 280

BOARD OF SOCIAL WORK EXAMINERS

645—280.1(154C) Definitions.

“AASSWB” means the American Association of State Social Work Boards.

“Board” means the board of social work examiners.

“Department” means the department of public health.

“Hour” of continuing education means a 50-minute clock-hour.

“License” means a license to practice social work.

“Licensee” means a person licensed to practice social work.

645—280.2(154C) Organization and proceedings.

280.2(1) The board consists of five members appointed by the governor and confirmed by the senate. Three members are licensed to practice social work and two members, who are not licensed to practice social work, shall represent the general public. A quorum shall consist of three members of the board. As of July 1, 1998, the board shall consist of a total of seven members, five who are licensed to practice social work, with at least one from each of three levels of licensure described in Iowa Code section 154C.3, subsection 1, two employed by a licensee under Iowa Code chapter 237, and two who are not licensed social workers and who shall represent the general public. A quorum shall consist of five members of the board.

280.2(2) A chairperson, vice chairperson, secretary, delegate and alternate delegate to the AASSWB shall be elected at the first meeting after April 30 of each year.

280.2(3) The board shall hold an annual meeting and at least three interim meetings and may hold additional meetings called by the chairperson or by a majority of its members. The chairperson shall designate the date, place, and time prior to each meeting of the board. The board shall follow the latest edition of Robert's Revised Rules of Order at its meeting whenever any objection is made as to the manner in which it proceeds at a meeting.

645—280.3(154C) Requirements for licensure. An applicant for a license as a bachelor social worker, master social worker, or independent social worker shall meet the following requirements.

280.3(1) Bachelor social worker. An applicant for a license as a bachelor social worker shall present evidence satisfactory to the board that the applicant:

a. Possesses a bachelor's degree in social work from a college or university accredited by the accrediting body of the Council on Social Work Education at the time of graduation. A certificate of equivalency issued by the Council on Social Work Education is required for graduates of foreign colleges and universities.

b. Has passed the basic level examination of the AASSWB.

c. Has and will conduct all professional activities as a bachelor social worker in accordance with standards for rules of conduct as described in rule 645—280.213(154C).

280.3(2) Master social worker. An applicant for a license as a master social worker shall present evidence satisfactory to the board that the applicant:

a. Possesses a master's degree in social work from a college or university accredited by the accrediting body of the Council on Social Work Education at the time of graduation or a doctoral degree from a college or university approved by the board. A certificate of equivalency issued by the Council on Social Work Education is required for graduates of foreign colleges and universities.

b. Has passed the intermediate level examination of the AASSWB.

c. Has and will conduct all professional activities as a master social worker in accordance with standards for rules of conduct as described in rule 645—280.213(154C).

280.3(3) Independent social worker. An applicant for a license as an independent social worker shall present evidence satisfactory to the board that the applicant:

a. Possesses a master's degree in social work from a college or university accredited by the accrediting body of the Council on Social Work Education at the time of graduation or a doctoral degree from a college or university approved by the board. A certificate of equivalency issued by the Council on Social Work Education is required for graduates of foreign colleges and universities.

b. Has passed the clinical level examination of the AASSWB.

c. Has and will conduct all professional activities as a social worker in accordance with standards for rules of conduct as described in rule 645—280.213(154C).

d. Has engaged in the practice of social work, under supervision, for at least two years as a full-time employee or completion, under supervision, of 4000 hours of part-time employment after the granting of the master's or doctoral degree in social work.

e. Supervision is 1 hour of face-to-face contact for every 15 hours of practice unless a waiver is granted by the board. Supervision shall be provided in either of the following manners:

(1) By a social worker licensed at least at the level of the social worker being supervised and qualified under this section to practice without supervision.

(2) By another qualified professional, if the board of social work examiners determines that supervision by a social worker as defined in subparagraph (1) is unobtainable or in other situations considered appropriate by the board.

280.3(4) Transition provisions from certain license requirements. A license shall be issued as a bachelor social worker, master social worker, or independent social worker to an applicant applying for a license prior to July 1, 1998, who meets the following requirements.

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a. Bachelor social worker. An applicant for a license as a bachelor social worker shall present evidence satisfactory of either of the following:

(1) That the applicant possesses a bachelor's degree in social work from a college or university accredited by the accrediting body of the Council on Social Work Education at the time of graduation. A certificate of equivalency issued by the Council on Social Work Education is required for graduates of foreign colleges and universities.

(2) That the applicant possesses an undergraduate degree from an accredited college or university and has 4000 hours of employment experience in the practice of social work.

b. Master social worker. An applicant for a license as a master social worker shall present evidence satisfactory of any of the following:

(1) That the applicant possesses a master's degree in social work from a college or university accredited by the accrediting body of the Council on Social Work Education at the time of graduation or a doctoral degree from a college or university approved by the board. A certificate of equivalency issued by the Council on Social Work Education is required for graduates of foreign colleges and universities.

(2) That the applicant possesses a graduate degree from an accredited college or university and has 4000 hours of employment experience in the practice of social work.

(3) That the applicant possesses a bachelor's degree and is employed performing master level social work duties as defined in Iowa Code section 154C.1, subsection 3, paragraph "b," as of July 1, 1996, and has 4000 hours of employment experience in the practice of social work as of July 1, 1998.

c. Independent social worker. An applicant for a license as an independent social worker shall present evidence satisfactory to the board of either of the following:

(1) That the applicant possesses a valid license to practice social work pursuant to Iowa Code chapter 154C issued prior to July 1, 1996.

(2) That the applicant possesses a master's or doctoral degree in social work from an accredited college or university approved by the board and has two years or 4000 hours of postgraduate degree employment experience in the practice of social work.

645—280.4(154C) Application.

280.4(1) Any person seeking a license shall complete and submit to the board a completed application form, which form is provided by the board, to the board office no later than 45 days prior to the date of the electronic examination. From July 1, 1996, to June 30, 1998, any person seeking a license shall complete and submit to the board a completed application form at any time unless the person is choosing to sit for the examination, in which case the application must be received by the board office no later than 45 days prior to the date of the electronic examination.

280.4(2) The application form shall be completed in accordance with instructions contained in the application. If the application is not completed in accordance with instructions, the application may be held until the next examination.

280.4(3) Each application shall be accompanied by a check or money order in the amount required in rule 280.7(154C) payable to the Iowa Board of Social Work Examiners.

280.4(4) No application will be considered by the board until official copies of academic transcripts have been received by the board.

280.4(5) An applicant shall submit the information as requested by the board on the application form.

280.4(6) If validation of practice by a licensed social worker, psychologist, or psychiatrist is not possible, a waiver may be issued at the board's discretion.

280.4(7) An applicant may sit for the examination if the applicant will meet the requirements stated in rule 280.3(154C) by the examination date.

280.4(8) If there has been a name change since the degree was issued, the applicant shall submit an original or certified copy of the marriage license or name change.

280.4(9) Application for license. Applications for license which do not meet the minimum criteria for licensure shall be retained by the professional licensure division for a maximum of three years from the date the application was received. Persons whose application for license is more than three years old must submit a new application and fee(s). Applicants who by March 1 of each year submit a written request to the board to keep the application current will not need to reapply.

645—280.5(154C) Examinations.

280.5(1) In order to qualify for licensing, the applicant is required to take the AASSWB level of examination required by rule 280.3(154C). The national pass score will be utilized as the Iowa passing score.

280.5(2) Examination dates will be announced by the board. The schedule for the electronic examination will establish the time, place, and the final date by which the board must receive the applicant's written intention to be examined, and other pertinent information or instructions.

280.5(3) Application for any required examination will be denied or deferred if the applicant lacks the required education or practice experience.

280.5(4) The applicant shall be notified in writing of the examination results or receive the results at the time of the examination, or both.

280.5(5) A regular examination fee shall be paid for reexamination.

645—280.6(154C) License renewal.

280.6(1) The biennial license renewal period shall extend from January 1 of each odd-numbered year to December 31 of the next even-numbered year.

280.6(2) At least two months before the renewal date, a renewal notice will be sent to each license holder at the last address in the board's file. Failure to receive the notice shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

280.6(3) Renewal fees shall be received by the board on or before the end of the last month of the renewal period. Whenever renewal fees are not received as specified, the license lapses and the practice of holding oneself out as licensed to practice social work must cease until all renewal fees are received by the board. In addition thereto a penalty fee shall be paid as outlined in rule 280.7(154C).

280.6(4) If the renewal fees are not received by the board within 60 days after the end of the last month of the renewal period, an application for reinstatement must be filed with the board with a reinstatement fee in addition to the renewal fee and the penalty fee outlined in rule 280.7(154C).

280.6(5) Definition of inactive licensure. Licensees who do not hold themselves out to the public as being active licensed social workers may be granted a waiver of compliance with continuing education requirements. The licensee shall apply to the board on a form provided by the board. The application shall contain a statement that the licensees will not hold themselves out to the public as being licensed social workers during the time the waiver is in effect. Inac-

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tive licensees shall pay the reinstatement fees as provided in subrule 280.7(5).

280.6(6) Inactive licensure reentry. Inactive practitioners who have been granted a waiver of compliance with these rules shall, prior to holding themselves out to the public as being licensed social workers in the state of Iowa, satisfy the following requirements for reinstatement:

a. Submit written application for reinstatement on a form provided by the board.

b. Furnish, in addition to the application, evidence of one of the following:

(1) The full-time practice of social work in another state of the United States or District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

(2) Completion of a total number of hours of accredited continuing education computed by multiplying 12 by the number of years a waiver of compliance shall have been in effect for such applicant. Hours need not exceed 50 if obtained within the past two years, except when there is a demonstrated deficiency for specialized education as determined by the board through a personal interview; or

(3) Successful completion of the AASSWB examination used for the applicant's level of licensure and conducted within one year immediately prior to the submission of such application for reinstatement.

c. Payment of the current biennial license renewal fee and reinstatement fee when applying for reinstatement of an inactive license.

280.6(7) Definition of lapsed license. A licensee who allows a license to lapse by failing to renew a license within 60 days after the end of the prior renewal period.

a. Requirements for the reinstatement of a lapsed license are as follows:

(1) Submit a completed application for reinstatement of a license to practice social work;

(2) Pay the renewal fee(s), reinstatement fee and lapsed license fee as listed in rule 280.7(154C);

(3) Have a personal interview with the board at the board's request;

(4) Provide evidence of completion of 12 hours of continuing education for each lapsed year. Hours need not exceed 72 if obtained within the past two years, except when there is a demonstrated deficiency for specialized education as determined by the board through a personal interview.

b. The board may grant an extension of time of up to one year to allow compliance with continuing education requirements for reinstatement.

c. The board may require a licensee applying for reinstatement to successfully complete the AASSWB examination used for the applicant's level of licensure when, through a personal interview, the board finds reason to doubt the licensee's ability to practice with reasonable skill and safety.

d. Application for reinstatement of a lapsed license may not preclude disciplinary actions by the board as provided in this chapter.

645—280.7(154C) Fees. All fees are nonrefundable.

280.7(1) Application fee for a license to practice social work is \$100.

280.7(2) Reserved.

280.7(3) Biennial renewal fee for a license to practice social work at the bachelor level is \$60; for the master level, \$100; and independent level, \$120.

280.7(4) Penalty fee for failure to submit renewal fee as required by subrule 280.7(3) is \$25.

280.7(5) Reinstatement fee as required by subrule 280.6(4) is \$50.

280.7(6) Penalty fee for failure to complete continuing education as provided in subrule 280.100(1) is \$25.

280.7(7) Fee for a duplicate license if the original is lost or stolen is \$10.

280.7(8) Fee for a certified statement that a licensee is licensed in this state is \$10.

280.7(9) Lapsed license fee is \$20 for each year license is lapsed, not to exceed \$100.

645—280.8 to 280.99 Reserved.

SOCIAL WORK CONTINUING EDUCATION

645—280.100(154C) Continuing education requirements.

280.100(1) The biennial continuing education compliance period shall extend from July 1 of each even-numbered year to June 30 of the next even-numbered year. During this period of time 27 hours of approved continuing education shall be obtained by the licensee in order to renew the license for the next biennial license period beginning January 1 of the next odd-numbered year. Three hours of the 27 must be specifically in ethics.

280.100(2) If a new license holder is licensed during the first year of the biennial continuing education period, the licensee is only required to complete 12 hours of continuing education for renewal. If a new license holder is licensed during the second year of the biennial continuing education period, the licensee is exempt from meeting continuing education requirements for the first license renewal.

280.100(3) Hours of continuing education may be obtained by attending and participating in a continuing education activity offered by a provider approved by the board. Any nonapproved provider that meets the criteria set forth in rule 280.101(154C) will be subject to review by the board at the time of the audit.

280.100(4) Hours of continuing education shall not be carried over into the next continuing education period.

280.100(5) It is the responsibility of licensees to finance their own costs of continuing education.

280.100(6) Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent license renewal period.

645—280.101(154C) Standards for approval of providers and approval of continuing education activities.

280.101(1) An organization, institution, agency or individual shall be qualified for approval as a provider of continuing education activities by application to the board demonstrating the following:

a. The provider presents organized programs of learning; and

b. The provider presents subject matter which integrally relates to the practice of social work; and

c. The provider's program activities contribute to the professional competency of the licensee; and

d. The provider's program presenters are individuals who have education, training or experience by reason of which said individuals may be considered qualified to present the subject matter of the programs.

280.101(2) A continuing education activity shall be qualified for approval if the provider-approved program meets the content areas set out by the board in subrule 280.102(1).

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645—280.102(154C) Procedures for approval of providers and continuing education activities.

280.102(1) Knowledge and content areas. The knowledge and content areas mandated by the board as relevant to continuing education endeavors are as follows:

- a. Human development and behavior.
 - (1) Theoretical approaches to understanding individuals, families, and groups.
 - (2) Community and organizational theories.
 - (3) Normal development in the life cycle of individuals, families, and groups.
 - (4) Abnormal and addictive behaviors.
 - (5) Dynamics of abuse and neglect.
- b. Effects of culture, race ethnicity, sexual orientation, and gender.
 - c. Diagnosis and assessment in social work practice.
 - (1) Psychosocial history and collateral data.
 - (2) Clinical assessment instruments.
 - (3) Indicators of abuse and neglect.
 - (4) Problem identification.
 - (5) Identification and evaluation of psychosocial and behavioral strengths and weaknesses.
 - (6) Effects of the environment on client behavior.
 - d. Diagnosis of mental and behavior disorders.
 - (1) Utilization of DSM-IV.
 - (2) Assessment of client danger to self and others.
 - e. Models of psychotherapy and clinical practice (e.g., psychodynamic, behavioral, cognitive therapies, task-centered, psychosocial, crisis intervention approaches).
 - (1) Components of the treatment process.
 - (2) Theoretical approaches and models of practice.
 - (3) Couple and family therapy.
 - (4) Group work and group psychotherapy.
 - (5) Client-centered focus.
 - (6) The clinical interview.
 - (7) Establishing treatment goals and monitoring progress.
 - (8) Techniques of clinical practice.
 - (9) Differential treatment planning.
 - f. Elements of therapeutic communication.
 - (1) Theories and principles of communication.
 - (2) Techniques of communicating.
 - g. The therapeutic relationship.
 - (1) Principles of building and maintaining a relationship.
 - (2) Use of relationship in clinical practice.
 - (3) Use of self in the therapeutic relationship.
 - h. Professional values and ethics.
 - (1) Responsibility to the client.
 - (2) Responsibility to the profession of social work.
 - (3) Responsibility to the community.
 - i. Clinical supervision and consultation—interdisciplinary consultation and collaboration.
 - j. Practice evaluation and the utilization of research.
 - (1) Research design and data analysis.
 - (2) Methods of data collection.
 - k. Policies and procedures governing service delivery.
 - (1) Client rights and entitlements.
 - (2) Implementation of organizational policies and procedures.
 - (3) Advocacy and prevention in clinical practice.
 - l. Clinical practice in the organization setting.
 - (1) Management of clinical staff and other personnel.
 - (2) Management of clinical programs.
 - (3) Social and institutional policies affecting clinical practice.

280.102(2) The provider shall keep on record a list of licensees attending the continuing education program and a content outline of that program for at least six years. These

records shall be kept in a safe and secure place and, upon the request of the board, will be submitted to the board within 30 calendar days from the date of the request.

280.102(3) The provider shall state on all continuing education literature: "(Provider's name) is an Iowa Board of Social Work Examiners approved provider # _____. This program is approved for _____ hours of continuing social work education."

645—280.103(154C) Review of providers and program.

280.103(1) The board may monitor and review any continuing education program already approved by the accredited provider. Upon evidence of significant variation in the program presented from the program approved, or a program that the board determines does not fit the content areas stated above, the board may then disapprove all or any part of the approved hours granted the program.

280.103(2) The board may at any time reevaluate an approved provider. If, after reevaluation, the board finds there is basis for consideration of revocation of the approval of an approved provider, the board shall give notice by ordinary mail to that provider of a hearing on possible revocation at least 30 days prior to the hearing.

645—280.104(154C) Hearings. In the event of denial, in whole or part, of any application for approval of continuing education program or credit for continuing education activity, the provider or licensee shall have the right to request a hearing. The request must be sent within 20 days after receipt of the notification of denial. The hearing shall be held within 60 days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified administrative law judge designated by the board. If the hearing is conducted by an administrative law judge, the administrative law judge shall submit a transcript or tape recording of the hearing including exhibits to the board after the hearing with the recommended decision of the administrative law judge. The final decision shall be rendered by the board.

645—280.105(154C) Reporting of continuing education.

280.105(1) Each licensee is required to maintain a file of certificates of attendance for all 27 continuing education hours accrued during the biennium.

280.105(2) By July 20 of each even-numbered year, each licensee will be required to submit a licensee's report of continuing education to the board. The board will select licensees whose continuing education reports will be audited by the board. Each licensee to be audited will be required to provide copies of certificates of attendance for all reported activities. Additional documentation may be required.

280.105(3) Submission of a false report of continuing education or failure to meet continuing education requirements will cause the license to lapse and may result in formal disciplinary action.

280.105(4) Providers will continue to exist and will be required to provide each licensee with a certificate of attendance to be retained by the licensee.

280.105(5) The board's definition and examples of acceptable and unacceptable subject matter for continuing education activities required by Iowa Code section 272C.2 are knowledge and content areas outlined in rule 280.102(154C).

645—280.106(154C) Request for waiver or extension. A written request for waiver or extension of time to complete continuing education requirements shall be submitted by the licensee and shall be accompanied, if appropriate, by a verifying document signed by a licensed social worker, physician or psychologist verifying the individual's disability or illness.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—280.107 to 280.199 Reserved.

DISCIPLINARY PROCEDURES FOR SOCIAL WORKERS

645—280.200(154C) Complaint. A complaint shall be made in writing, or be made upon the board's own motion, pursuant to other evidence received by the board. The complaint shall be mailed to the Board of Social Work Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The complaint shall identify the licensee and shall give the address and any other information about the licensee which the complainant may have concerning the matter.

645—280.201(154C) Report of malpractice claims or actions. Each licensee shall submit a copy of any judgment or settlement in a malpractice claim or action to the board within 30 days after the occurrence.

645—280.202(154C) Investigation of complaints or malpractice claims. The chairperson of the board of social work 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 an investigator from the department of inspections and appeals assigned to the professional licensure division to investigate the complaint or malpractice claim. The investigating board member or investigator may request information from any peer review committee which may be established to assist the board. The investigating board member or investigator may consult with the assistant attorney general concerning the investigation or evidence produced from the investigation. Investigations conducted by nonboard members may be assigned to one or more board members for supervision and consultation. The board retains ultimate control over the direction or continuation of any board investigation. A board member who has participated in any way in an investigation is not disqualified from participating in any resulting adjudication of the allegations solely by virtue of the board member's participation. However, an investigating board member may be disqualified if actual bias is shown or if the board member will be required to testify against the licensee.

645—280.203(17A,154C) Alternative procedures and settlement.

280.203(1) A disciplinary hearing before the licensing board is an alternative to the procedure provided in Iowa Code sections 147.58 to 147.71.

280.203(2) Informal settlement—parties.

a. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by the prosecuting attorney, the respondent, or the board. The board shall designate a board member with authority to negotiate on behalf of the board.

b. The board is not involved in negotiation until presentation of a final, written form to the full board for approval.

280.203(3) Informal settlement—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. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board's designee.

280.203(4) Informal settlement—board approval. All informal settlements are subject to approval of a majority of the full board. No informal settlement shall be presented to the board for approval except in final, written form executed by

the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

280.203(5) Informal settlement—disqualification of designee. A board member who is designated to act in negotiation of an informal settlement is not disqualified from participating in the adjudication of the contested case.

This rule is intended to implement Iowa Code section 17A.10.

645—280.204(154C) License denial. Any request for a hearing before the board concerning the denial of a license shall be submitted by the applicant in writing to the board by certified mail, return receipt requested, within 30 days of the mailing of a notice of denial of license.

645—280.205(154C) Notice of hearing. If there is a finding of probable cause for a disciplinary hearing by the board, the board staff shall prepare the notice of hearing and transmit the notice of hearing to the respondent by certified mail, return receipt requested, at least 30 days before the date of the hearing.

645—280.206(154C) Hearings open to the public. A hearing of a licensing board concerning licensees or an applicant shall be open to the public unless the licensee or the licensee's attorney requests in writing that the hearing be closed to the public.

645—280.207(154C) Hearings. The board adopts the rules of the Iowa department of public health found in 641—Chapter 173, Iowa Administrative Code, as the procedure for hearings before the board. The board may authorize an administrative law judge to conduct the hearings, administer oaths, issue subpoenas, and prepare written findings of fact, conclusions of law and a decision at the direction of the board. If a majority of the board does not hear the disciplinary proceeding, a recording or a transcript of the proceeding shall be made available to the members of the board who did not hear the proceeding.

645—280.208(154C) Appeal. Any appeal to the district court from disciplinary action of the board or denial of license shall be taken within 30 days from the issuance of the decision by the board. It is not necessary to request a rehearing before the board to appeal to the district court.

645—280.209(154C) Transcript. The party who appeals a decision of the board to the district court shall pay the cost of the preparation of a transcript of the administrative hearing for the district court.

645—280.210(154C) Publication of decisions. Final decisions of the board relating to disciplinary proceedings shall be transmitted to the appropriate professional association, the news media and employer.

645—280.211(272C) Methods of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revoke a license.
2. Suspend a license until further order of the board, or for a specified period.
3. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.
4. Place a license on probation.
5. Require additional education or training.
6. Require reexamination.
7. Impose civil penalties not to exceed \$1,000.
8. Issue a citation or warning.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

9. Impose other sanctions allowed by law as may be appropriate.

645—280.212(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 280.211(272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

280.212(1) Fraud in procuring a license.

280.212(2) Professional incompetency.

280.212(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

280.212(4) Habitual intoxication or addiction to the use of drugs.

280.212(5) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

280.212(6) Fraud in representations as to skill or ability.

280.212(7) Use of untruthful or improbable statements in advertisements.

280.212(8) Willful or repeated violations of the provisions of Iowa Code chapter 147.

280.212(9) Violation of rules promulgated by the board including the rules of conduct set out in rule 280.213(154C).

280.212(10) Personal disqualifications:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

280.212(11) Holding oneself out as a licensed social worker when the license has been suspended or revoked.

280.212(12) Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the Iowa board of social work examiners revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country.

280.212(13) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

280.212(14) Prohibited acts consisting of the following:

a. Permitting another person to use the license for any purpose.

b. Practice outside the scope of a license.

c. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.

d. Verbally or physically abusing clients.

e. Any sexual intimidation or sexual relationship between a social worker and a client.

280.212(15) Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying client's records.

280.212(16) Failure to report a change of name or address within 30 days after it occurs.

280.212(17) Falsification of continuing education records.

280.212(18) Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

280.212(19) Failure to comply with a subpoena issued by the board.

280.212(20) Failure to report to the board any violation by another licensee of the reasons for disciplinary action as listed in this rule.

645—280.213(154C) Rules of conduct.

280.213(1) Misrepresentation, disclosure. A licensee shall not:

a. Knowingly make a materially false statement, or fail to disclose a relevant material fact, in a letter of reference, application, referral, report or other document.

b. Knowingly allow another person to use one's license or credentials.

c. Knowingly aid or abet a person who is misrepresenting their professional credentials or competencies.

d. Impersonate another person or organizational affiliation in one's professional practice.

e. Further the application or make a recommendation for professional licensure of another person who is known by the licensee to be unqualified in respect to character, education, experience, or other relevant attributes.

f. Fail to notify the appropriate licensing authority of any human service professional who is practicing or teaching in violation of the laws or rules governing that person's professional discipline.

g. Engage in professional activities, including advertising, involving dishonesty, fraud, deceit, or misrepresentation.

h. Advertise services in a false or misleading manner or fail to indicate in the advertisement the name, the highest relevant degree and licensure status of the provider of services.

i. Fail to distinguish, or purposely mislead the reader/listener in public announcements, addresses, letters and reports, as to whether the statements are made as a private individual or whether they are made on behalf of an employer or organization.

j. Direct solicitation of potential clients/patients for pecuniary gain in a manner or in circumstances which constitute overreacting, undue influence, misrepresentation or invasion of privacy.

k. Misrepresent professional competency by performing, or offering to perform, services clearly inconsistent with training, education, and experience.

l. Fail to advise and explain to each client/patient or potential client/patient the joint rights, responsibilities and duties involved in the professional relationship.

m. Fail to provide each client/patient with a description of what the client/patient may expect in the way of tests, consultation, reports, fees, billing, therapeutic regimen, or schedule.

n. Fail to provide each client/patient with a description of possible effects of proposed treatment when there are clear and established risks to the client/patient.

o. Fail to inform each client/patient of any financial interests that might accrue to the licensee for referral to any other person or organization, or for the use of tests, books, or apparatus.

p. Fail to inform each client/patient that the client/patient may be entitled to the same services from a public agency, if

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

the licensee is employed by that public agency and also offers services privately.

q. Fail to inform each client/patient of the limits of confidentiality, the purposes for which the information is obtained, and how it may be used.

r. Make claims of professional superiority which cannot be substantiated by the licensee.

s. Guarantee that satisfaction or a cure will result from the performance of professional services.

t. Claim or use any secret or special method of treatment or techniques which the licensee refuses to divulge to professional colleagues.

u. Take credit for work not personally performed whether by giving inaccurate information or failing to give accurate information.

280.213(2) Confidentiality. A licensee shall not:

a. Reveal a confidence or a secret of any client/patient, except:

(1) As required by law;

(2) After obtaining consent of the client/patient following full disclosure of the information to be revealed and the persons to whom the information will be revealed; or

(3) If necessary, to defend the licensee or the licensee's employees or associates against an accusation of wrongful conduct made by that client/patient.

b. Use a confidence or secret of any client/patient to the client/patient's disadvantage.

c. Use a confidence or secret or any client/patient for the advantage of the licensee or a third person without obtaining the client/patient's consent, after full disclosure of the purpose.

d. Fail to obtain written, informed consent from each client/patient or the client/patient's legal representative or representatives, before electronically recording sessions with that client/patient, before permitting a third-party observation of their activities, or before releasing information to a third party concerning a client/patient.

e. When providing any client/patient with access to that client/patient's records, fail to protect the confidences of other persons that may be recorded in that record.

f. Fail to exercise due diligence in protecting the confidences and secrets of the client/patient from disclosure by fellow employees and associates, or by other persons whose services are utilized by the licensee.

g. Fail to maintain the confidences shared by colleagues in the course of professional relationships and transactions with those colleagues.

280.213(3) Integrity, propriety, objectivity. A licensee shall not:

a. Make sexual advances toward, or engage in physical intimacies or sexual activities with, any client/patient, or student of the licensee.

b. Continue in a professional relationship with a client/patient when the licensee has become emotionally involved with the client/patient to the extent that objectivity is no longer possible in providing the required professional services.

c. Practice in a professional relationship while intoxicated or under the influence of alcohol or drugs not prescribed by a licensed physician.

d. Practice in a professional relationship while experiencing a mental or physical impairment that adversely affects the ability of the licensee to perform professional duties in a competent and safe manner.

e. Perform professional services which have not been duly authorized by the client/patient or by the client/patient's legal representatives.

f. Exercise undue influence on any client/patient or student, including promotion of the sales of services, goods, appliances or drugs in a manner that will exploit the client/patient or student, for the financial gain or personal gratification of the licensee or of a third party.

g. Continue to provide services or order tests, treatment, or use of treatment facilities not warranted by the condition of the client/patient.

h. Fail to terminate the professional relationship when it is apparent that the service no longer serves the needs of the client/patient.

i. When termination or interruption of service to the client/patient is anticipated, fail to notify the client/patient promptly and fail to seek continuation of service in relation to the client/patient's needs and preferences.

j. Abandon or neglect a client/patient under and in need of immediate professional care, without making reasonable arrangements for continuation of that care.

k. Physically or verbally abuse client/patients or colleagues.

280.213(4) Research. If engaged in research, a licensee shall:

a. Consider carefully the possible consequences for human beings participating in the research.

b. Protect each participant from unwarranted physical and mental harm.

c. Ensure that the consent of the participant is voluntary and informed.

d. Treat information obtained as confidential.

e. Not knowingly report distorted, erroneous, or misleading information.

280.213(5) Organization relationships. A licensee shall not:

a. Directly or indirectly offer, give, solicit, receive, or agree to receive any fee or other consideration to or from a third party for the referral of the client/patient or in connection with the performance of professional services.

b. Permit any person to share in the fees for professional services, other than a partner, employee, an associate in a professional firm, or a consultant to the licensee.

c. Solicit the clients/patients of colleagues or assume professional responsibility for clients/patients of another agency or colleague without appropriate communication with that agency or colleague.

d. Abandon an agency, organization, institution, or a group practice without reasonable notice or under circumstances which seriously impair the delivery of professional care to clients/patients.

e. Fail to maintain a record for each client/patient which accurately reflects the client/patient contact with the service provider.

f. Deliberately falsify client/patient records for personal advantage.

g. Fail to submit required reports and documents in a timely fashion to the extent that the well-being of the client/patient is adversely affected.

h. Fail to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee.

i. Delegate professional responsibilities to a person when the licensee knows, or has reason to know, that the person is not qualified by training, education, experience, or classification to perform the requested duties.

280.213(6) General. A licensee shall not:

a. Perform services in an incompetent manner.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

b. Practice a professional discipline without an appropriate license or after expiration of the required license.

c. Practice, condone, or facilitate any form of discrimination on the basis of sex, race, color, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or any other preference or personal characteristic, condition or status.

d. Make sexually harassing actions, comments, threats or enticements to clients/patients, colleagues or employees.

ARC 6594A

PROFESSIONAL LICENSURE
DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or 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 Department of Public Health hereby gives Notice of Intended Action to amend Chapter 350, "Athletic Trainer," Iowa Administrative Code.

The amendments clarify approved providers for continuing education.

Any interested person may make written comments on this proposed amendment on or before August 20, 1996, addressed to Marilyn 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 chapters 147 and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 645—350.14(272C), introductory paragraph, as follows:

645—350.14 (272C) Standards for approval of providers of continuing education activities. An organization, institution, agency, or individual shall be qualified for approval as a provider of continuing education activities ~~by application to the board demonstrating the following if either :~~

ITEM 2. Amend subrule 350.14(2), introductory paragraph, as follows:

350.14(2) The provider meets, by application to the board, demonstrates each of the following criteria:

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PUBLIC HEALTH
DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135.11(15), the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 73, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

The purpose of revising Chapter 73 is to bring the definition of competent professional authority into conformity with the standards established by the Iowa Board of Dietetic Examiners; to expand the criteria for approving products for inclusion in the WIC program; to bring appeal procedures into agreement with those for Family Planning (Chapter 74) and Maternal and Child Health (Chapter 76); and to clarify vendor responsibilities and sanctions. Representatives of the Iowa Grocery Industry Association have indicated approval of these amendments.

Any interested person may make written or oral suggestions or comments on these proposed amendments on or before August 20, 1996. Comments should be directed to Mary Weaver, R.N., M.S.N., Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Third Floor, Des Moines, Iowa 50319-0075; telephone (515)281-4910 or fax (515)242-6384.

These amendments are intended to implement 42 U.S.C. Section 1786 and Iowa Code sections 10A.202(1)"h" and 135.11, subsections 1 and 15.

The following amendments are proposed.

ITEM 1. Amend **641—73.5(135)** by striking the definition of "Competent professional authority" and inserting the following new definition:

"Competent professional authority" or "CPA" means an individual on the staff of the contract agency who, using standardized WIC screening tools and eligibility criteria provided by the department, determines whether an applicant for WIC services is eligible to receive those services. A CPA shall be a member of one of the following categories:

1. A dietitian licensed by the Iowa board of dietetic examiners;
2. An individual who has been issued a temporary dietetic license by the Iowa board of dietetic examiners;
3. A physician, registered nurse or licensed physician assistant.

ITEM 2. Rescind subrules **73.6(1)** and **73.6(5)**.

ITEM 3. Amend **73.8(4)"a"(3)"2"** as follows:

2. A minimum of 15 46-ounce containers of 100 percent fruit or vegetable juice and 10 12-ounce containers of frozen 100 percent fruit or vegetable juice from the current WIC approved food list. This shall include an assortment of at least three approved canned or bottled (*plastic only*) varieties of orange, pineapple, grapefruit, apple, grape, vegetable, or to-

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mato, and two frozen varieties of orange, pineapple, grapefruit, *grape* or apple.

ITEM 4. Amend 73.8(4)“a”(6) as follows:

(6) The vendor must not have had a Food Stamp Program disqualification or civil monetary penalty imposed within the 12 months preceding the date of the application *or reauthorization*.

ITEM 5. Amend 73.9(3)“d”(1) as follows:

(1) They shall be carried by ~~one of the three largest distributors or two of the six largest distributors in the state.~~ *one of the six largest distributors in the state.*

ITEM 6. Amend 73.9(3)“e”(3) as follows:

(3) The brand shall be carried by ~~one of the three largest distributors or two of the six largest distributors in the state.~~ *one of the six largest distributors in the state.*

ITEM 7. Amend 73.12(2) as follows:

73.12(2) Request for hearing. An appeal is brought by filing a written request for a hearing with the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075 ~~within 30 days of the date on which the adverse action is taken against the contract agency or vendor.~~ *ten days of receipt of notification of the adverse action.* The written request for hearing shall state the adverse action being appealed.

ITEM 8. Amend 73.19(2)“b” as follows:

b. Administrative and procedural violation points. Administrative and procedural violations are offenses to the provisions of the WIC vendor agreement that ~~are not usually representative of intentional efforts to abuse or defraud the program or its participants.~~ *do not rise to the level of fraud against the program or its participants.*

These violations are an indication of a vendor’s inattention to or disregard of the requirements of a WIC vendor agreement. It is in the department’s interest to record and consider these violations when considering whether to continue its contractual relationship with the vendor.

Vendors are assessed violation points, which are applied as demerits against the vendor’s score in the subsequent procurement for WIC vendor agreements in the vendor’s area.

In addition, the accumulation of 45 or more violation points within an agreement period is a major violation subject to a one-year suspension of the WIC agreement for that vendor.

The assignment of violation points does not limit the department’s right to effect stronger penalties and sanctions, in cases in which there is evidence of an intentional or systematic practice of abusing or defrauding the Iowa WIC program.

Violation	Points Per Event
1. Accepting five checks over 30 days old within the agreement period.	3 5
2. Redeeming five checks more than 15 days after receipt within the agreement period.	3 5
3. Accepting five checks with no date stamp within the agreement period.	3 5
4. Refusal to accept valid WIC checks from participants.	10
5. Abusive or discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification.	10

6. Insufficient number of brands or types in a single food group.	3 5
7. Insufficient quantity of a single food group.	4 5
8. No stock in a single food group.	5
9. Insufficient number of brands or types in two food groups.	6 10
10. Insufficient quantity in two food groups.	8 10
11. No stock in two or more food groups.	10
12. Insufficient number of brands or types in three or more food groups.	9 10
13. Insufficient quantity in three or more food groups.	12 15
14. No stock in three or more food groups. (For 6 to 14, food groups are as defined in 73.8(4)“a”(3).)	15
15. Failure to carry out corrective action plan developed as a result of monitoring visit.	10
16. Allowing the purchase of similar but not approved foods.	10
17. Failure to reimburse department for potentially overpaid check or provide reasonable explanation for the cost of the check.	5
18. Accepting the return of food purchased with WIC checks for cash or credit toward other purchases.	10
19. Using a WIC vendor stamp other than the one issued by the Iowa WIC program.	5
20. Providing a brand of formula other than the one specified on the face of the check.	10
21. Issuing “rain checks” or credit in exchange for WIC checks.	10
22. Stocking out-of-date, stale, or moldy WIC foods, per type.	10
23. Failure to submit vendor price assessment reports as requested.	10
24. For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package.	15
25. Failure to fill in amount of check and date at time of purchase. <i>Failure to complete check properly, including filling in correct amount and date of purchase, and verifying matching signatures.</i>	15
26. Contacting WIC participants in an attempt to recover funds not paid by WIC.	15
27. Charging prices to WIC participants that are more than 105 percent of the average prices of all other WIC vendors in the same city or metropolitan area.	15
28. Providing false information on the price assessment report.	15
29. Failure to train all employees and ensure their knowledge regarding WIC program procedures set forth in the vendor’s current agreement and in the current publication of the Iowa WIC program’s vendor instruction booklet.	10
30. Requiring WIC participant to purchase a particular brand when other WIC approved brands are available.	10

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- | | |
|---|----|
| 31. Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC check amount. | 10 |
| 32. Requiring other cash purchases to redeem WIC checks. | 15 |
| 33. Failure to allow purchase of up to the full amount of WIC foods authorized on the check if such foods are available and desired by the WIC participant. | 20 |

ARC 6605A**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or 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 147A.4, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 132, "Emergency Medical Services," Iowa Administrative Code.

The proposed amendments will clarify the process used by the Iowa Department of Public Health, Bureau of Emergency Medical Services, for auditing the continuing education requirement of EMS providers.

Item 1 sets the number of years that EMS providers should keep verification of their continuing education hours and outlines the process for selection of certificate audits. Item 2 identifies the penalty for failure to comply with the renewal audit request.

The Iowa Department of Public Health will hold a public hearing on Tuesday, August 20, 1996, in the Fourth Floor Conference Room, Lucas State Office Building, Des Moines, Iowa 50319-0075. Any oral or written comments must be received on or before August 20, 1996. Comments should be addressed to Gary Ireland, Bureau Chief, Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These amendments are intended to implement Iowa Code chapter 147A.6.

The following amendments are proposed.

ITEM 1. Amend subrule 132.4(4) as follows:

132.4(4) Renewal standards. To be eligible for renewal, the certificate holder shall:

a. to d. No change.

e. *Maintain a file containing documentation of continuing education hours accrued during each certification period and retain this file for four years from the end of each certification period.*

A group of individual certificate holders will be audited for each certification period and will be required to submit verification of continuing education compliance within 45 days of the request. If audited, the following information must be provided: date of program, program sponsor number, title of program, number of hours approved, and appropriate supervisor signatures if clinical or practical evaluator hours are claimed. Certificate holders audited will be chosen in a random manner or at the discretion of the bureau

of EMS. Falsifying reports or failure to comply with the audit request may result in formal disciplinary action.

ITEM 2. Amend subrule 132.11(1) as follows:

132.11(1) The department may deny an application for issuance or renewal of an emergency medical care provider certificate, including specialty certifications, or place on probation, or issue a citation and warning, suspend or revoke the certificate when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

a. to n. No change.

o. *Falsifying certification renewal reports or failure to comply with the renewal audit request.*

ARC 6611A**TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION,
IOWA[751]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or 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 8D.3, the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to adopt Chapter 1, "Description of Organization," Chapter 2, "Public Records and Fair Information Practices," Chapter 3, "Petitions for Rule Making and Petitions for Declaratory Rulings," Chapter 4, "Contested Cases," Chapter 5, "Purchasing," and Chapter 6, "Contracts for Professional Services," Iowa Administrative Code.

Item 1 describes the organizational structure for the Iowa Telecommunications and Technology Commission. Included in this chapter are the divisions of the Commission, the hours of operation, a description of advisory councils and committees and contact information.

Item 2 describes the Commission's compliance with Iowa Code chapter 22. This chapter identifies public records and the methods by which the public can access information available from the Commission.

Item 3 describes the rule-making and declaratory ruling procedures for the Commission.

Item 4 describes the contested case procedures for the Commission.

Item 5 describes the purchasing procedures for the Commission. This chapter also provides a procedure for vendor appeals.

Item 6 describes the professional services contracting for the Commission.

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

Any interested person may make written suggestions or comments on these proposed rules on or before August 20, 1996. Written comments or suggestions should be directed to Ron Koontz, ICN, P. O. Box 587, Johnston, Iowa 50131-0587. If written comments or suggestions are hand-delivered, the address is Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131.

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Persons who would like to convey their views orally should contact Ron Koontz at (515)323-4692 or at the address indicated above.

A public hearing will be held on August 20, 1996, at 1 p.m. in the Camp Dodge Theater, Building 58, 7th Street, Camp Dodge, Johnston, Iowa 50131. Persons may present their views at this hearing either orally or in writing.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code Supplement chapter 8D.

The following new chapters are proposed.

CHAPTER 1 DESCRIPTION OF ORGANIZATION

751—1.1(17A,8D) Purpose. The Iowa telecommunications and technology commission and the Iowa communications network were established by Iowa Code chapter 8D to coordinate communications of state government, effect maximum practical consolidation and joint use of communications services and manage, develop, operate and ensure compatibility of the fiberoptic network.

751—1.2(17A,8D) Organization. The commission's structure consists of five commissioners and the state auditor as an ex officio member of the commission. The commission has the sole authority to manage, develop, operate and ensure compatibility of the state communications network. The network is supervised by the commission and operated by the executive director of the network or the commission's designee. The commission has rule-making authority.

751—1.3(17A,8D) Advisory committees.

1. The telemedicine advisory committee performs advisory functions related to the delivery of telemedicine applications.

2. The telecommunications advisory committee provides technical expertise to the network.

3. The commission may appoint other committees and advisory groups from time to time as necessary.

751—1.4(17A,8D) Educational telecommunications council. The educational telecommunications council establishes scheduling and site usage policies for educational users of the network, coordinates the activities of the regional telecommunications councils and develops proposed rules and changes to rules for recommendations to the commission. The council also may recommend long-range plans for enhancements needed for educational applications.

The regional telecommunications councils advise the educational telecommunications council on the assessment of local educational needs and the coordination of program activities including scheduling.

751—1.5(17A,8D) Administrative divisions of the commission.

1.5(1) Executive director. The executive director or the commission's designee administers the programs and services of the commission in compliance with the Iowa Code and the rules adopted by the commission.

1.5(2) Administrative divisions. In order to carry out the functions of the commission, the following divisions have been established:

a. The administrative services division provides office support for the commission including processing payrolls, records management, forms management, mail, provision of common supplies, central office telephone service, word processing, data entry, reception services, information coordination, personnel, labor relations, contract maintenance

and supervision, parking coordination and other duties as assigned from time to time.

b. The financial division is responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims for payments of goods and services, processing cash receipts, developing and maintaining computer-based information systems used by the commission, and other duties as assigned from time to time.

c. The operations and planning division is responsible for strategic and long-range planning, purchasing, executing the implementation of Part III, (the third construction phase of the network), the federal projects, toll services, and other duties as assigned from time to time.

d. The network engineering division is responsible for the technical operation of the network. It oversees all physical aspects of the network's equipment and circuits and performs other duties as assigned from time to time.

e. The network services division is responsible for the delivery of services related to the operation of the network. This division coordinates the activities between the engineers and individual sites. It is responsible for cost estimates for a site, tracking service requests, executing installation services, maintaining a circuit data base, assisting authorized users in finding the best structure to meet the users' needs, and other duties as assigned from time to time.

f. The public affairs division provides information and education to the public about the commission and the fiberoptic network. This division maintains the commission's World Wide Web page on the Internet and publishes a newsletter every two months. This division monitors legislation and the division director is the legislative liaison for the commission. Members of this division also perform other duties as assigned from time to time.

751—1.6(17A,8D) Location of offices.

1.6(1) Main office. The main office is located in Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131. The mailing address is P. O. Box 587, Johnston, Iowa 50131-0587. The telephone number is (515)323-4692. The toll-free number is 1-800-645-8860. The fax number is (515)323-4751. The E-mail address is info@icn.state.ia.us. The home page address on the World Wide Web is <http://www.icn.state.ia.us>.

1.6(2) Network hub. The hub for the network is located at the State Area Command (STARC) Armory, 6100 N.W. 78th Avenue, Johnston, Iowa 50131.

751—1.7(8D) Business hours.

1.7(1) Normal business hours. The normal business hours of the main office are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. The Network Service Center (NSC) operates on a 24-hour, seven-day-a-week basis at the network hub in the STARC Armory in Johnston, Iowa.

1.7(2) Emergency incident reports. The 24-hour emergency telephone number for reporting cable cuts, system failures or other incidents is 1-800-572-3940, or (515) 323-4400.

These rules are intended to implement Iowa Code section 17A.3(1)"a" and Iowa Code Supplement sections 8D.1, 8D.3(3)"b," 8D.5 and 8D.6.

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CHAPTER 2

PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES**751—2.1(17A,22) Purpose and scope.**

2.1(1) This chapter implements Iowa Code section 22.11 by establishing commission policies and procedures for the maintenance of records. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate sound commission determinations with respect to the handling of records and the implementation of the fair information practices Act. This commission is committed to the policies set forth in Iowa Code chapter 22; commission staff shall cooperate with members of the public in implementing the provisions of that chapter.

2.1(2) This chapter does not:

- a. Require the commission to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
- b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
- c. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the commission which are governed by the rules of another commission.
- d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
- e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations.

751—2.2(17A,22) Definitions. As used in this chapter:

"Commission" means the Iowa telecommunications and technology commission.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the commission is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7 or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" means the commission or a person lawfully delegated authority by its executive director to act for the commission in implementing Iowa Code chapter 22.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or a part of a "public record" as defined in Iowa Code section 22.1.

"Record system" means any group of records under the control of the commission from which a record may be retrieved by a personal identifier such as the name of an indi-

vidual, number, symbol or other unique retriever assigned to an individual.

"Subject" means that person identified in a record.

751—2.3(17A,22) Requests for access to records.

2.3(1) Location of record. A request for access to a record should be directed to the executive director or the particular commission office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Executive Director, ICN, P. O. Box 587, Johnston, Iowa 50131-0587. If a request for access to a record is misdirected, commission personnel will promptly forward the request to the appropriate person within the commission.

2.3(2) Office hours. Open records shall be made available during all customary office hours which are 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

2.3(3) Request for access. Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

2.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access unfeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code section 22.8(4) or 22.10(4) or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 2.4(17A,22) and other applicable provisions of law.

2.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from commission files. Examination and copying of commission records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

2.3(6) Copying. A reasonable number of copies of an open record may be made in the commission's office. If photocopy equipment is not available in the commission office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

2.3(7) Fees.

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived in the case of small requests when the imposition of fees is inequitable or when a waiver is in the public interest. Charges may be waived for examination or copies requested in writing by a person in a capacity as representative of another governmental entity or where copies are provided under provisions of a written commission contract.

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b. Copying and postage costs. Anyone making a request for reproduction of the commission's records will prepay for services at the following rates, in addition to actual mailing costs:

(1) Photocopies (direct copies on 8½" x 11", 8½" x 14", or 11" x 17" paper)—50 cents per page.

(2) Paper copy from microfilm records—50 cents per page.

(3) Microfiche copy from microfilm records—\$1 per fiche.

(4) The actual reproduction cost will be charged for any blueprint, picture, oral tape or any other work product not subject to photocopying.

(5) Computer stored information. Tape files—\$100 per file, copied only to 9-track tape with standard IBM labels. Three UP gummed mailing labels and 4 UP Cheshire labels, 30 cents per 1000 records read, and \$10 per 1000 labels written. There will be a \$15 charge for information copied on computer diskette. A minimum charge of \$15 or actual cost will be assessed, whichever is greater. Programming time over ten minutes will be charged at the rate of \$25 per hour or any portion of an hour.

c. Supervisory fee. An hourly fee may be charged for actual commission expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in commission offices the hourly fee to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a commission clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

751—2.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 2.3(17A,22).

2.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

2.4(2) Requests. The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

2.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specified period of time during which disclosure will be delayed for that purpose.

2.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

2.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

751—2.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

2.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

2.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the commission by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

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2.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the commission does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

2.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

2.5(5) Request granted or deferred. If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

2.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8 or other applicable provision of law. However, such a record need not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reason for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

2.5(7) Processing of business confidentiality claims.

a. **Applicability/availability.** Businesses which provide information to the commission in applications, reports or otherwise in recorded form, or from or about which information is obtained and recorded by the commission, may request that information not be disclosed to others for reasons of business confidentiality. Until such time as a request for confidentiality is received by the commission, all information not within subrule 2.4(6) will be available to the public pursuant to subrule 2.3(3). If a claim is received after the information itself is received, the commission will make such efforts as are administratively practicable to associate the claim with all copies of the previously received information. However, the commission cannot ensure that such efforts will be effective, in light of the possibility of prior disclosure

or dissemination of the information beyond the commission's reasonable control.

b. **Form.** A business which submits information to the commission may assert a business confidentiality claim in the manner prescribed in the application or instruction, if any, otherwise by placing on or attaching to the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." When only a portion of the information is claimed to be confidential, only that portion shall be deleted from the application, report or other recorded submission, with appropriate reference to a separate claim for business confidentiality, which separate claim shall be submitted as specified above. If a request not to disclose information is filed with the commission, the party shall file together with the document a second copy of the document from which has been deleted the information for which such party wishes to claim confidential treatment. The business shall conspicuously indicate on the face of the original document that it is confidential information and shall file a claim for confidential status in accordance with the provisions of 2.5(7)"c."

A business which has reason to believe that the commission has received information which the business asserts to be confidential may request that such information, described with reasonable specificity, be maintained as confidential, in the same manner as specified above.

c. **Contents of claim.** All claims for confidentiality must be substantiated with the following information:

(1) A statement of all measures the business has taken to protect the confidentiality of the information, and a statement of intent to continue to take such measures;

(2) Practices and policies of other businesses, if known, regarding confidentiality of similar information;

(3) A statement that the information is not, and has not been, reasonably attainable without the consent of the business by other persons other than government bodies by use of legitimate means;

(4) A statement demonstrating that disclosure of the information is likely to cause substantial harm to the business's competitive position;

(5) A reference to any other determinations of confidential status of the information or similar information.

d. **Initial action by commission.** All claims will be reviewed within ten days of receipt for completeness and applicability of subrule 2.4(6). If the claim does not include the substantiation required by 2.5(7)"c," or if the claim relates to information within 2.4(6), the business making the claim will be so notified by certified mail. If the substantiation or comment regarding the inapplicability of 2.4(6) is not received by the commission within ten days of the date on the return receipt, the commission will place the information in the public file. Otherwise, all information claimed to be confidential will be treated as such by the commission until further notice. A timely response from the notice under this paragraph will be ruled on by the commission within ten days, based on the applicability of 2.4(6) or compliance with 2.5(7)"c" as appropriate.

e. **Initiation of official determination.** All claims not rejected under 2.5(7)"d" shall receive an official determination when a request for disclosure covering such information is received by the commission or when the commission deems it advisable to make a determination because a request for disclosure is likely to be received or because of administrative burdens in maintaining the information confidential. The procedures and criteria below shall be followed.

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f. Substantive criteria for use in confidentiality determinations. Determinations shall hold that business information is entitled to confidential treatment for the benefit of a particular person if:

(1) The business has taken and intends to continue to take reasonable measures to protect the confidentiality of the information;

(2) The information is not readily obtainable by others by legitimate means;

(3) The claim is not unreasonable in view of the nature of the information, the interests, and normal practices of the business, and the practices of other businesses;

(4) No statute or rule specifically requires disclosure of the information; and

(5) There is a substantial likelihood that disclosure of the information would cause substantial harm to the competitive position of the business.

Prior determinations by the courts, the commission or other agencies on the information or similar information shall be given due consideration and effect.

g. Preliminary determination—opportunity for comment. The commission shall transmit its preliminary determination regarding a claim for business confidentiality to the claimant by certified mail, notifying the claimant of the opportunity to provide comments within ten days, subject to reasonable extension upon written request, and that failure to comment will be construed to indicate agreement with the preliminary determination. If the determination is in response to a request for disclosure, the person requesting the disclosure shall be sent a similar notice in the same manner within ten days of the request.

h. Final determination. A final decision shall be issued within ten days after the close of the comment period to the preliminary determination. If any substantial comments are received, the final decision shall be made by the executive director or the commission's designee. If no substantial comments are received, the claimant and the person requesting disclosure, if any, shall be notified that the preliminary determination is the final decision.

i. Contested case status. All procedures within this rule shall not be considered contested case proceedings as provided in Iowa Code chapter 17A.

751—2.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any commission proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents or objections to the custodian or to the attorney general. The request to review a written statement must be dated and signed by requester and shall include the current address and telephone number of the requester or the requester's representative.

751—2.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be dis-

closed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the commission to disclose records about that person to the person's attorney.

751—2.8(17A,22) Notice to suppliers of information. When a commission form requests a person to supply information about that person, the commission shall notify the person of the use that will be made of the information, which persons outside the commission might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally or by other appropriate means. Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law or similar demands for information.

751—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 2.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the commission with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

c. To another government commission or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government commission or instrumentality has submitted a written request to the commission specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

751—2.10(17A,22) Routine use.

2.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.10(2) To the extent allowed by law, the following uses are considered routine uses of all commission records:

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a. Disclosure to those officers, employees and agents of the commission who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action or regulatory order.

c. Disclosure to the commission or officer which this office is advising or representing in the matter in question or to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the commission.

d. Transfer of information within the commission, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the commission is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

751—2.11(17A,22) Consensual disclosure of confidential records.

2.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to commission disclosure of confidential records as provided in rule 2.7(17A,22).

2.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the commission may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

751—2.12(17A,22) Release to subject.

2.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 2.6(17A,22). However, the commission need not release the following records to the subject:

a. The identity of a person providing information to the commission need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. See Iowa Code section 22.7(5).

d. As otherwise authorized by law.

2.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the commission may take reasonable steps to protect confidential information relating to another subject.

751—2.13(17A,22) Availability of records.

2.13(1) General. Commission records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids;

b. Bids that are opened and only the vendor's name is announced. The proposals will remain confidential until the proposals have been evaluated and the notice of intent to award a contract is made. See Iowa Code section 72.3.

c. Tax records made available to the commission;

d. Records which are exempt from disclosure under Iowa Code section 22.7;

e. Minutes of closed meetings of a government body;

f. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d";

g. Those portions of commission staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law;

or

(3) Give a clearly improper advantage to persons who are in an adverse position to the commission.

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

i. Trade secrets which are recognized and protected as such by law including, but not limited to, network plans from authorized users.

j. Reports to the commission and the agency which, if released, would give advantage to competitors and serve no public purpose including network redesign and engineering or other research and development working papers for improvement or enhancement of the network.

k. Any data processing software developed by the agency.

l. Any other records made confidential by law.

2.13(3) Authority to release confidential records. The commission may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 2.4(17A,22). If the commission initially determines that it will release such records, the commission may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

751—2.14(17A,22) Personally identifiable information.

This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the commission by personal identifier in record systems as defined in rule 2.2(17A,22). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable

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proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response to the motion within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.15(2) Filing and service. A motion for leave to intervene shall be filed and contemporaneously served upon all parties in the case before the prehearing conference, or in the absence of a prehearing conference, no later than 20 days prior to the date for which the contested case hearing is scheduled. Any motion filed after this time shall include a statement of good cause for failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.15(3) Grounds for intervention. The movant shall demonstrate that:

- a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b. Movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and
- c. The interests of the movant are not adequately represented by existing parties.

4.15(4) Disposition. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

751—4.16(17A,8D) Consolidation and severance.

4.16(1) Consolidation. The presiding officer may, with or without motion, consolidate any or all matters at issue in two or more cases where there exists common parties or common questions of law or fact, and where consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

4.16(2) Severance. The presiding officer may, with or without motion, for good cause shown, order any case severed with respect to any or all parties or issues.

751—4.17(17A,8D) Continuances.

4.17(1) Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.17(2) A written application for continuance shall:

- a. Be made at the earliest possible time and no less than ten days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

4.17(3) An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The commission may waive notice of such requests for a particular case or an entire class of cases.

4.17(4) In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interest of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

751—4.18(17A,8D) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with the commission's rules. Unless otherwise provided, a withdrawal shall be with prejudice.

751—4.19(17A,8D) Telephone or network proceedings.

The presiding officer may resolve preliminary procedural motions by telephone conference or on the fiberoptic network in which all parties have an opportunity to participate. Other telephone or network proceedings may be held with the parties' consent, including the hearing for the contested case proceeding. The presiding officer will determine the location of the parties and witnesses for the hearing. The convenience of the witnesses or parties, as well as the nature of the case will be considered when location is chosen. The cost of the telephone hearing or the network hearing may be assessed equally to each party.

751—4.20(17A,8D) Presiding officer.

4.20(1) Qualification and selection. In each contested case in which chapter 17A requires an evidentiary hearing, the chair of the commission will determine whether the hearing shall be held before the commission, one or more members of the commission, or an administrative law judge.

4.20(2) Disqualification. An administrative law judge or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or representative of a party;
- b. Has personally prosecuted or advocated in connection with that case, the specific controversy underlying that case or another pending factually related controversy that may culminate in a case, involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has prosecuted or advocated in connection with that case, the specific controversy underlying that case or a pending factually related case or controversy, involving the same parties;
- d. Has personally investigated the pending contested case by taking affirmative steps to interview witnesses directly or to obtain documents directly. The term "personally investigated" does not include either direction and supervision of assigned investigators or unsolicited receipt of oral information or documents which are relayed to assigned investigators;
- e. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- f. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

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g. Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, executive director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

h. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.20(3) Information regarding disqualification. In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.20(4) Affidavit asserting disqualification. If a party asserts disqualification on any appropriate grounds, including those listed in this rule, the party shall file a motion supported by an affidavit pursuant to Iowa Code subsection 17A.17(4). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

a. If during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

b. If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under 4.23(5) and seek a stay under 4.23(7).

751—4.21(17A,8D) Separation of functions and ex parte communications.

4.21(1) Separation of functions. Employees designated by the executive director of the commission or the commission's designee shall perform the investigative and prosecuting functions for the commission. No person performing these functions shall participate or advise in any decision arising out of that case except as witness or counsel in public proceedings.

All employees of the commission other than those performing the investigative and prosecuting functions in the case shall be available to advise the commission and presiding officer on any of their functions relating to the case and any appeal.

4.21(2) Communications initiated by administrative law judge or commission member.

a. Except as provided in 4.21(2)"b" and "c," after commencement the presiding officer and members of the commission having jurisdiction of the case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that case with any person or party.

b. The presiding officer having jurisdiction of the case may so communicate upon notice and opportunity for all parties to participate. Notice of the time and place of the discussion and the issues of fact or law to be discussed shall be delivered by first-class mail to the parties. The discussion shall not extend to issues of fact or law not specified in the notice unless all parties participate in the discussion. The time of the discussion shall not be sooner than ten days after receipt of the notice.

c. The presiding officer having jurisdiction of the case may communicate with members of the commission and may have the aid and advice of persons other than those with a personal interest in either the case under consideration or a pending factually related case involving the same parties.

4.21(3) Communications initiated by parties.

a. Parties, including the commission, the advisory committees established by the commission, the educational telecommunication councils or their representatives in a case, shall not communicate directly or indirectly in connection with any issue of fact or law in that case with the presiding officer having jurisdiction of the case.

b. The presiding officer should refuse to discuss issues of fact or law with the parties unless notice and opportunity for hearing is served by first-class mail and includes a copy of any written communication or summary of oral communication received from a party directly or indirectly related to any issue of fact or law in the case. The written communication or summary shall be included in the record.

c. The presiding officer may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings.

d. The presiding officer may, as sanctions for violations, make a decision against a party who violates the rules; make a recommendation that the commission censure, suspend or revoke a privilege to practice before the commission; or recommend that the executive director censure commission personnel.

751—4.22(17A,8D) Hearing procedures.

4.22(1) Conduct of proceedings. The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.22(2) Objections. All objections shall be timely made and stated on the record.

4.22(3) Representation requirements. The parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law. A hearing shall be conducted by a presiding officer who shall:

a. Open the record and receive appearances;

b. Administer oaths and issue subpoenas;

c. Enter the notice of hearing into the record;

d. Receive testimony and exhibits presented by the parties;

e. In the administrative law judge's discretion, interrogate witnesses;

f. Rule on objections and motions;

g. Close the hearing;

h. Issue an order containing findings of fact, conclusions of law.

4.22(4) Counsel. Any party may be represented by counsel or other representative at the party's own expense.

4.22(5) Attendance and participation of the public. Every hearing before the commission or an administrative law judge or appeal board shall be open to the public.

4.22(6) Recording of hearing.

a. Method of recording. Oral proceedings in connection with a hearing in a case shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs.

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b. Transcription. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Tapes. Copies of tapes of oral proceedings may be obtained from the presiding officer at the requester's expense.

d. Retention time. The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the commission for at least five years from the date of the decision.

4.22(7) Fees. Each party bears all costs and expenses, including fees, for its own witnesses.

4.22(8) Failure to appear. If a party fails to appear after proper service of notice of hearing, the presiding officer may adjourn or may proceed with the hearing, and make a proposed decision in the absence of the party. Adjournment may be granted by the presiding officer on the presiding officer's own motion in the interest of justice.

4.22(9) Evidence.

a. Admissibility in general. Evidence that is relevant and material shall be admitted unless it is unduly repetitious. Relevant and material evidence may be admitted even though inadmissible in a jury trial. Evidence not provided to a party upon request, upon issuance of a subpoena, through discovery, prehearing procedures, or during informal procedures shall not be admissible by the party who failed to provide the evidence at the hearing unless it is necessary to avoid a manifest injustice.

b. Privilege. The rules of privilege recognized by law shall be given effect.

c. Objections. If a party objects to admission or rejection of any evidence or the limitation of the scope of any examination or cross-examination, the party shall state briefly the grounds for the objections. The objection, the ruling on it, and the reasons for the ruling shall be noted in the record.

d. Offer of proof. Whenever evidence is deemed inadmissible, the party offering the evidence may make an offer of proof which shall be noted in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence excluded consists of a document or exhibits, it shall be inserted in the record. In the event that the commission decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of the evidence or, where appropriate, the commission may evaluate the evidence and proceed to a final decision.

e. Verification. When a hearing will be expedited, and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified form. With the approval of the presiding officer, a witness may insert into the record, as testimony, statements of fact or opinion prepared by the witness or written answers to interrogatories, or may submit as an exhibit the prepared statement of the witness provided that the statements or answers must not include legal arguments. Before any statement or answer is read or admitted into evidence, the witness shall deliver to the presiding officer and opposing party a copy of it. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced in the usual manner and the witness shall be subject to oral cross-examination on the contents of the statements. Approval for this procedure may be denied when it appears to the presiding officer that the memory or demeanor of the witness is of importance.

f. Documentary evidence. Documentary evidence may be received in the form of copies or excerpts if the original is

not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

g. Examination and cross-examination. Witnesses at the hearing shall be examined orally, under oath. Witnesses at the hearing, or persons whose testimony has been submitted in written form, shall be subject to cross-examination by any parties as necessary for a full and true disclosure of facts. The presiding officer may limit the examination or cross-examination or both when necessary for orderly presentation of evidence.

h. Official notice. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the commission. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed, and their source, including any staff memoranda or data. The parties may contest these facts before decision is announced.

i. Evaluation of evidence. The commission's experience, technical competence, and specialized knowledge may be utilized in evaluating the evidence.

4.22(10) Conduct at hearings. All persons shall conduct themselves in a courteous and dignified manner. Attorney conduct is subject to the requirements of Disciplinary Rule DR 7-106 and Ethical Considerations EC 7-19 to EC 7-39. Contemptuous conduct is grounds for removal from the hearings.

751—4.23(17A,8D) Posthearing procedures and orders.

4.23(1) Filing by parties of briefs and proposed findings. The presiding officer may ask the parties to submit proposed findings and conclusions of law and a proposed order or briefs. Copies of the submission shall be served on all parties. The submission schedule, including waiver of briefs, shall be determined at the close of the hearing.

4.23(2) Final decision or order.

a. When the commission presides at the reception of evidence, the decision of the commission is a final decision. The decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A.

b. In a contested case in which the hearing is held before an administrative law judge or a panel of commission members constituting less than a quorum of the board, the presiding officer or panel shall render a proposed decision. The proposed decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A. The proposed decision shall become the final decision of the commission 30 days after mailing of the proposed decision, unless prior to that time a party submits an appeal from, or a commission member requests a review of, the proposed decision.

4.23(3) Decisions and orders.

a. By whom prepared. The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the presiding officer at the reception of the evidence in a case unless the officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

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b. Content of decision or order. The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed findings of fact in accordance with 4.23(1), the decision or order shall include a ruling upon each proposed finding.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

c. Delivery. A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

4.23(4) The record.

a. Content of record. The record shall include:

(1) All pleadings, motions and intermediate rulings;

(2) All evidence received or considered and all other submissions;

(3) A statement of all matters officially noticed;

(4) All questions and offers of proof and objections and rulings thereon;

(5) All proposed findings and exceptions;

(6) The decision, opinion or report by the presiding officer.

b. By whom prepared. The presiding officer shall prepare the record for each case.

4.23(5) Record cost. Upon request, the commission shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporter rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

751—4.24(17A,8D) Appeals and reviews.

4.24(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the commission within 30 days after the issuance of a proposed decision.

4.24(2) Review. A commission member or the commission may initiate review of a proposed decision on the member's motion or the commission's motion at any time within 30 days following the issuance of a proposed decision.

4.24(3) Notice. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. If a commission member or the commission initiates review of a proposed decision, the executive director shall mail a notice of review to all parties. The notice of appeal or the notice of review shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

4.24(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or by a nonappealing party, within 14 days of service of the notice of appeal. The commission

may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.24(5) Scheduling. The chair of the commission shall issue a schedule for consideration of the appeal.

4.24(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of the appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The commission may shorten or extend the briefing period as appropriate.

751—4.25(17A,8D) Applications for rehearing.

4.25(1) By whom filed. Any party may file an application for rehearing.

4.25(2) Content of application. The application shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

4.25(3) Time of filing. The application shall be filed with the executive director within 20 days after the receipt of any final decision.

4.25(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

4.25(5) Disposition. Any application shall be deemed denied unless the commission grants the application within 20 days after its filing.

751—4.26(17A,8D) Stays of agency actions.

4.26(1) When available.

a. Any party appealing the issuance of an order, other than an emergency order which is governed by 4.27(17A,8D), may petition the presiding officer for a stay of the order pending its review. The petition for stay shall be filed with the notice of appeal, and shall state the reasons justifying a stay.

b. Any party adversely affected by a final decision and order may petition the commission which issued the decision for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the executive director within ten days of receipt of the final decision and order and shall state the reasons justifying a stay.

4.26(2) When granted. The presiding officer or commission, as appropriate, shall grant a stay when it concludes that substantial legal or factual questions exist as to the propriety of the commission's order, the party will suffer substantial and irreparable injury without the stay, and the interest of the public will not be significantly harmed.

4.26(3) Vacation. A stay may be vacated by the issuing authority upon application of the commission or any other party.

751—4.27(17A,8D) Special procedure for emergency orders. The procedures prescribed in this rule are available in those cases involving an emergency order issued by the commission.

4.27(1) Stay of order. A person named in an emergency order may request a stay of the order by contacting the executive director or the commission's designee by telephone or by delivery of a written request for stay to the commission.

a. Upon receipt of a request for stay, the executive director, or the commission's designee, after consultation with the commission chairperson and notification to the other commission members, shall schedule a hearing to take place within five days of receipt of the request or a longer time as

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information in one record system with personally identifiable information in another record system. The record systems maintained by the commission are:

- 2.14(1) Payroll and personnel information system.*
- 2.14(2) Vendor files.
- 2.14(3) Certificates of insurance for contractors performing work for the commission.
- 2.14(4) Referrals to the attorney general.
- 2.14(5) Contract and lease files.
- 2.14(6) Accounts receivable and accounts payable system.*
- 2.14(7) Various grant planning files, confidential trade secrets, litigation files.

All of the above-listed records are collected pursuant to the authority of Iowa Code Supplement chapter 8D. All are stored in paper form with those items noted by an asterisk (*) also stored in electronic form. Supplementary records in these categories are stored in paper form or on microfilm or microfiche. None of the information stored can be matched, collated or compared.

751—2.15(17A,22) Other groups of records. This rule describes groups of records maintained by the commission other than record systems as defined in rule 2.2(17A,22). These records are routinely available to the public. However, the commission's files of these records may contain confidential information designated as confidential by the originator of the records in conformance with Iowa Code chapter 22. In addition, some records may contain information about individuals. All storage is in paper form with those items noted by an asterisk (*) also stored in electronic form. None of the information can be matched, collated or compared.

2.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

2.15(2) Commission records. Agendas, minutes and materials presented to the commission are available from the office of the executive director, except these records concerning closed sessions which are confidential under Iowa Code section.

2.15(3) Meeting participants. Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system.

2.15(4) Publications. News releases, annual reports, project reports, and commission newsletters, for example, are available from the commission offices for public information. Commission news releases, project reports, and newsletters may contain information about individuals, including commission staff or members of the commission, the councils or committees.

2.15(5) Statistical reports. Periodic reports for various commission programs are available from the commission offices for public information.

2.15(6) Published materials. The commission uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

2.15(7) Policy manuals. The commission's policy manual, containing the policies and procedures for programs administered by the commission, is available in the office of the commission. Policy manuals do not contain information about individuals.

2.15(8) Asset files. Asset management database and inventory database contain a listing of the assets owned by the network.*

2.15(9) Mailing lists/contact lists. Names, mailing addresses, and telephone numbers of state employees, commission members, officials in government of other states, and members of the general public,* for example, may be used for distribution of informational material, such as newsletters, policy directives or educational bulletins. They are also used to provide contacts for coordination of services or as reference information sources.

2.15(10) Authorized user lists. The network maintains a list of persons authorized to use the network.

2.15(11) Bid/purchasing process. For example, specifications, proposals, bid documents, awards, contracts, agreements, leases, performance bonds, requisitions, purchase orders, supply orders, and correspondence.

2.15(12) Project files. For example, plans, specifications, contracts, studies, drawings, photos, blueprints, requests for services, lease/rental files, and 28E agreements.

2.15(13) Data processing files. For example, operations logs, data base user requests, job number maintenance/update, data entry format book, integrated data dictionary, computer output forms designations, system software, hardware/software documentation and configurations, problem determinations and resolutions records, and incident reports.

2.15(14) Administrative records.

- a. Reports: For example, weekly, monthly, annual, biennial, statistical, analysis, and activity.
- b. Correspondence: For example, public, interdepartmental, and internal.
- c. Policies and procedures.
- d. Organizational charts and table of authorized positions.
- e. Memberships: Professional/technical organizations.
- f. Planning: Disaster recovery plans, emergency operation plans.
- g. Budget and financial records.
- h. Accounting records such as accounts receivable, accounts payable, receipts, invoices, claims, vouchers, and departmental billings.
- i. Legislative files such as pending bills, enrolled bills, legislative proposals, and copies of amendments.

2.15(15) Other records. All other records that are not exempted from disclosure by law are open.

These rules are intended to implement Iowa Code sections 22.11, Iowa Code Supplement section 8D.3(3)"b," and 1996 Iowa Acts, House File 2407.

CHAPTER 3

PETITIONS FOR RULE MAKING AND PETITIONS FOR DECLARATORY RULINGS

751—3.1(17A,8D) Petitions for rule making, amendments or repeal—who may petition. Any interested person may petition the commission requesting the promulgation, amendment, or repeal of any rule.

751—3.2(17A,8D) Petitions for rule making, amendments or repeal—requisites. Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested

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amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule.

751—3.3(17A,8D) Petitions for rule making, amendments or repeal—commission must consider. All petitions shall be considered by the commission and the commission may, in its discretion, order a public hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule.

751—3.4(17A,8D) Petitions for rule making, amendments or repeal—notice of disposition. The commission shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition.

751—3.5(17A,8D) Declaratory rulings.

3.5(1) As prescribed by Iowa Code chapter 17A, any interested person may petition the commission for a declaratory ruling. The commission shall consider the petition and within a reasonable time shall:

- a. Issue a nonbinding declaratory ruling; or
- b. Notify the person that no declaratory ruling is to be issued; or
- c. Set a reasonable time and place for hearing argument upon the matter, and give reasonable notification to the person of the time and place for such hearing and of the issues involved.

3.5(2) If a hearing as provided in 3.5(1)“c” is conducted, the commission shall within a reasonable time:

- a. Issue a binding declaratory ruling; or
- b. Issue a nonbinding declaratory ruling; or
- c. Notify the person that no declaratory ruling is to be issued.

751—3.6(17A,8D) Forms.

3.6(1) Any interested person petitioning the commission for a declaratory ruling pursuant to Iowa Code chapter 17A shall generally adhere to the following form for such purpose.

3.6(2) At the top of the page shall appear the heading as follows:

BEFORE THE
IOWA TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION

In the Matter of the Petition of	:	
for a	:	
Declaratory Ruling.	:	
	:	PETITION
	:	

3.6(3) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall state the facts relied upon in the form similar to that applicable to complaints in civil actions before the district courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner proscribed for verification of complaints in the district courts of this state.

3.6(4) The original and two legible copies shall be filed with the commissioner. Fax transmissions will constitute a filing. Petitions shall be on white paper, 8½ x 11 inches in size.

3.6(5) Any interested person petitioning the commission requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose:

a. At the top of the page shall appear the heading as follows:

BEFORE THE
IOWA TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION

In the Matter of the Petition of	:	
for a	:	
Rule Making.	:	
	:	PETITION
	:	

b. The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of a new rule or rules, or amendment or repeal of an existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall be struck through. Where the petition is for repeal of an existing rule, it shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by commission rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner’s reason for the action sought.

c. Petitions shall be dated and signed by the person or entity named in the first paragraph or by the attorney for the person or entity. The original and two legible copies shall be filed with the commissioner. Fax transmissions will constitute a filing. Petitions shall be on white paper, 8½ x 11 inches in size.

These rules are intended to implement Iowa Code section 17A.9 and Iowa Code Supplement section 8D.3(3)“b.”

CHAPTER 4
CONTESTED CASES

751—4.1(17A,8D) Definitions. When used in this chapter: “Commission” means the Iowa telecommunications and technology commission, as designated in Iowa Code chapter 8D as having appellate jurisdiction over a particular matter. “Contested case” means a proceeding defined by Iowa Code subsection 17A.2(2).

“Executive director” means the director or an authorized representative of the executive director.

“Party” means a person named and admitted as a party.

“Presiding officer” means the administrative law judge or, under certain circumstances, members of the commission or the entire commission.

“Proposed decision” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case.

751—4.2(17A,8D) Scope and applicability. This chapter shall govern procedure in contested cases as defined in Iowa Code subsection 17A.2(2). Contested cases generally include, but are not limited to, appeals of administrative orders

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issued by the executive director, contract awards, and the withdrawal of an authorized user's right to use a service offered by the commission.

751—4.3(17A,8D) Waiver of procedures. The parties to a contested case may, by written stipulation representing an informed, mutual consent, waive any provision of this chapter or of the Iowa Code relating to contested case proceedings.

751—4.4(17A,8D) Informal procedure prior to hearing. Any person who desires to pursue informal settlement of any contested case may request a meeting with appropriate staff. The request should be made in writing to the executive director, setting forth a concise statement of the circumstances giving rise to the controversy, the text of or citation to any applicable law, commission rule, or decision, and a statement of the settlement proposed. A request for informal settlement should be received by the executive director not less than 15 days before the board meeting at which it is to be considered. The executive director shall schedule consideration of the request at the next regular board meeting occurring more than 15 days after the request for an informal settlement request is made. Not more than 10 days after the commission meeting at which the request is scheduled for consideration, the executive director will notify the petitioner in writing of the commission's disposition of the request. If the commission determines that a conference is appropriate, the party will be notified when, where, and with whom such a conference is to be held. The terms of any informal settlement agreed to by the parties shall be embodied in a written stipulation. Upon receipt of the request, all formal contested case procedures are stayed, except in the case of emergency orders as provided in rule 4.27(17A,8D). If informal settlement is unsuccessful, formal contested case procedures may be instituted in accordance with 751—4.5(17A,8D).

751—4.5(17A,8D) Request for contested case proceeding and the applicability of the rules of civil procedure. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding should state the name and address of the aggrieved party, identify the specific agency action which is disputed and, where the aggrieved party is represented by an attorney, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

The Iowa Rules of Civil Procedure shall govern the contested case proceedings unless the provisions are in conflict with these rules and Iowa Code Supplement chapter 8D or obviously inapplicable to the commission. In those circumstances, these rules or the appropriate Iowa Code section shall govern.

751—4.6(17A,8D) Notice of hearing. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

1. Personal service as provided in the Iowa Rules of Civil Procedure; or
2. Certified mail, return receipt requested; or
3. First-class mail; or
4. Publication, as provided in the Iowa Rules of Civil Procedure.

751—4.7(17A,8D) Time for response. A person served with a notice of hearing shall file a petition or answer as required by 4.8(17A,8D) within 20 days of service of the notice of hearing. Failure to file may, upon motion, result in the presiding officer's entering a default against the person failing to file.

751—4.8(17A,8D) Pleadings. Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer. The presiding officer may direct the aggrieved party to file a petition or answer as the circumstance requires.

751—4.9(17A,8D) Service and filing of pleadings and other papers.

4.9(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served simultaneously upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the commission. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

4.9(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

4.9(3) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the commissioner's office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.9(4) Proof of mailing. Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the ICN, P.O. Box 587, Johnston, IA 50131-0587, and to the names and addresses of the parties listed below by depositing the same in a United States post office mail box with correct postage properly affixed or state interoffice mail.

Date: _____ Signature: _____

751—4.10(8D) Defaults and orders thereon.

4.10(1) Defaults defined. A party shall be in default when it fails to timely file a pleading within the time prescribed for filing of a pleading. Any party shall be in default when it fails to comply with an order of the presiding officer.

4.10(2) How entered. If the party is in default, the presiding officer on motion of the adverse party shall enter the default against the party.

4.10(3) Order issued. Whenever a party fails to timely file a pleading, or any party fails to comply with an order of the presiding officer and default is entered, the relief requested by the party moving for default may be granted in an order.

4.10(4) Setting aside default. On motion and for good cause shown, the presiding officer may set aside a default or order thereon for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. The motion must be filed promptly after the discovery of the grounds, but in no case shall the motion be filed more than ten days after receipt of the order.

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4.10(5) Appeal of denial of motion to set aside default.

a. The exclusive remedy for an order based on default shall be a timely motion to set aside default and, if denied, followed by an appeal to the commission. The appeal is limited to the grounds for denial of the motion to set aside default. Review is limited to whether the denial of the motion was arbitrary or capricious and whether there is a showing of good cause to set aside default due to mistake, inadvertence, surprise, excusable neglect or avoidable casualty.

b. Upon a finding by the commission of good cause, the default shall be set aside. The hearing shall be completed, with proper notice, before appeal on the subject matter of the case shall be permitted.

751—4.11(17A,8D) Motions.

4.11(1) General. No technical form for motions is required. However, all motions, except those made orally on the record during a hearing, shall be in writing and shall state with particularity the grounds therefor and the relief or order sought, and shall be filed with the presiding officer and contemporaneously served upon all parties. Any motion for summary judgment shall comply with the Iowa Rules of Civil Procedure and is subject to disposition according to the requirement of those rules.

4.11(2) Response to motions. Any party may file a response to any written motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. Failure to file a response within the designated period may be deemed a waiver of objection to the granting of motion.

4.11(3) Disposition. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

751—4.12(17A,8D) Discovery.

4.12(1) In general. The discovery procedures available to parties in civil actions are available to parties.

4.12(2) Discovery motions. Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened for good cause shown. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.12(3) Use of evidence in hearing. Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

751—4.13(17A,8D) Subpoenas.

4.13(1) Issuance. Subpoenas shall be issued to a party on request after commencement of a contested case proceeding. Such requests must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party. Requests shall be made to the presiding officer.

4.13(2) Service. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.13(3) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Proce-

sure. A motion to quash or modify a subpoena shall be set for argument promptly.

751—4.14(17A,8D) Prehearing conference.

4.14(1) Matters considered. Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motions shall be filed not less than 15 days prior to the hearing date. A prehearing conference shall be scheduled not less than ten business days prior to the hearing date.

4.14(2) Notice of prehearing conference. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variance from this rule.

4.14(3) Requirements for prehearing conference. Each party shall bring to the prehearing conference:

a. A final list of witnesses whom the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names and there is no showing of prejudice to the other party.

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them and there is no showing of prejudice to the other party.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.14(4) Other prehearing matters. In addition to the requirements of subrule 4.14(3), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters which the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law;
- e. Discuss the possibility or desirability of waiving any provisions of this chapter or of Iowa Code chapter 17A by written stipulation representing an informed mutual consent;
- f. Discuss the necessity or desirability of amending pleadings;
- g. Limit the number of witnesses; and
- h. Consider any additional matters which will expedite the hearing.

4.14(5) Order or statement of agreement. Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to the matters or agree to the statement thereof made on the record by the presiding officer.

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

751—4.15(17A,8D) Intervention.

4.15(1) Petition. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the

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agreed upon by the appellant. The department of inspections and appeals will be contacted to provide an administrative law judge for the hearing. The person requesting the stay shall be notified of the time and place of the hearing.

b. The scope of the hearing on a request for stay shall be limited to, and the decision whether to grant a stay shall be based upon, the following factors:

- (1) Will the requester suffer irreparable injury if a stay is not granted,
- (2) Is the requester likely to prevail on the merits when the appeal of the order is heard,
- (3) Where lies the public interest, and
- (4) Is the rule or statute upon which the order is founded clearly invalid.

c. The decision to grant or deny a stay shall be in writing and conform with Iowa Code chapter 17A.

4.27(2) Decision on merits. When agreed to by the parties, the appeal of an emergency order may be decided based upon the evidence presented at the hearing for stay. Otherwise, a hearing on the merits shall proceed in accordance with these rules.

These rules are intended to implement Iowa Code section 17A.12 and Iowa Code Supplement section 8D.3(3)"b."

CHAPTER 5 PURCHASING

751—5.1(8D) Applicability of competitive bidding. Items, including goods or services, which are expected to cost in the aggregate in excess of \$500 will be obtained as a result of competitive bidding conducted by the commission or through the department of general services whenever appropriate and when such procurement is in the best interests of the commission. Items expected to cost less than \$500 in the aggregate may be obtained in any manner deemed appropriate by the commission.

The commission may exempt an item from competitive bidding if the item is noncompetitive, is purchased in quantities too small to be effectively purchased through competitive bidding, if there is an immediate or emergency need for the item, if the purchase of the item facilitates compliance with set-aside procurement provisions, or if the commission determines that the best interests of the commission will be served by exemption from the bidding process.

751—5.2(8D) Methods of obtaining bids or proposals used by the commission. Bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the commission shall choose the method of bidding to be utilized.

5.2(1) Formal bids may be required for any item if cost is the major criterion for selection. If cost is the major criterion for selection, formal bids shall be required for all items costing in the aggregate more than \$5000.

The commission shall prepare a written invitation-to-bid form and shall mail the form, along with a specially marked return envelope or identifying label to be used on the return envelope, to selected vendors in the business of providing the goods or services sought by the commission.

5.2(2) The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

5.2(3) Bids received prior to the time set for the bid opening on the bidding document shall be opened publicly and made available to any interested party on the date and hour designated on the bid form. As the bids are opened they will be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the

tabulations will be maintained at the commission for one year following the date on which the bids were opened. An award shall be made within 60 calendar days from the date of the bid opening unless a different time frame is stated by the commission in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

5.2(4) Informal bids may be required for any item if cost is the major criterion for selection and if the item is expected to cost in the aggregate less than \$5000. Informal bids may be obtained by the commission either through use of a written bid form or over the telephone. When requesting informal bids, the commission shall contact selected vendors supplying the goods or services sought by the commission and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid.

5.2(5) Written informal bids shall be opened as received and informal telephone bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. Following the bid due date, the commission shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the bid due date and shall be maintained by the commission for one year following the date on which the bids were due.

If an award is not made within the time frame indicated by the commission when requesting bids, all bids shall be deemed rejected.

5.2(6) Whenever a requirement exists for an item and cost may not be the sole criterion for selection, the commission shall issue a request for proposal. The purpose of a request for proposal is to provide the vendor with sufficient information about the commission's requirements and goals to allow the vendor to propose a solution to the commission's requirements.

5.2(7) The commission shall prepare a written request for proposal and shall mail the proposal, along with a specially marked envelope or label, to selected vendors in the business of supplying the goods or services sought by the commission.

5.2(8) Proposals shall be opened publicly at the time designated in the proposal and made available to any interested party on the date and hour designated in the proposal.

5.2(9) An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the commission in the request for proposal or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

5.2(10) At a minimum, a request for proposal shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process including the due date for the proposal and the date and hour of the proposal opening; administrative requirements for submitting the proposal and the format required by the commission; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the commission anticipates may affect the terms of the vendor's proposal.

751—5.3(8D) Items purchased through the department of general services. Goods and services may be obtained by the

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commission through the department of general services whenever procurement through general services is appropriate and in the best interests of the commission. Items procured through general services may be obtained by general services in any manner deemed appropriate by general services.

751—5.4(8D) Advertising solicitations. Formal bids and requests for proposals issued by the commission shall be advertised in a daily paper in Iowa. The advertisement shall indicate that it is a notice to prospective bidders, contain the bid due date and time of opening, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

751—5.5(8D) Contract purchases. The commission may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined where applicable. The commission may also purchase items from other contracts obtained by other governmental entities if the law or the contract allows.

751—5.6(8D) Blanket purchase agreements. If the commission foresees a requirement for frequent purchases of off-the-shelf items, the commission may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

751—5.7(8D) Prospective vendor selection.

5.7(1) Any firm or business legally transacting business within Iowa at the time the contract for goods or services is executed, may request placement on the approved vendor list for a particular service or commodity by filing a vendor application form with the commission. The commission may mail copies of solicitation documents to vendors on the list for a particular item or to any other vendor which the commission chooses to contact. A vendor may be refused placement on the list or suspended or permanently removed from the list for any of the following reasons:

- a. Failure to respond to three consecutive solicitations;
- b. Failure to deliver within specified delivery dates;
- c. Failure to deliver in accordance with specifications;
- d. Attempts to influence the decision of any state employee involved in the procurement process;
- e. Evidence of agreements by the vendor to restrain trade or impede competitive bidding; and
- f. Any other activities of the vendor which the commission determines would render the vendor unsuitable.

5.7(2) The executive director shall notify a vendor in writing prior to refusing placement on the list, suspending the vendor from the list, or permanently removing the vendor from the list. The vendor shall be provided a reasonable opportunity to explain and cure any misconduct identified by the executive director. If the executive director ultimately refuses placement on the list or removes the vendor from the list, the vendor may appeal the executive director's action to the commission pursuant to the criteria for vendor appeals contained in these rules.

5.7(3) The commission shall select vendors to receive solicitation documents based on the commission's knowledge of the vendors in the particular market. The initial vendor selection shall be designed to promote the competitive bidding process, the set-aside procurement programs, and the best interests of the commission. The commission shall also

provide solicitation documents to qualified vendors upon request when the request is made during the solicitation period. The vendor is solely responsible for ensuring that solicitation documents are received by the vendor.

751—5.8(8D) Bids and proposals to conform with specifications. All bids and proposals must conform to the specifications indicated by the commission. Bids and proposals which do not conform to the specifications stated may be rejected. The commission reserves the right to waive deficiencies in the bids or proposals if in the judgment of the commission the best interests of the commission would be served by the waiver.

751—5.9(8D) Time of delivery. When evaluating bids or proposals the commission may consider the time of delivery when determining the successful vendor.

751—5.10(8D) Cash discounts. When evaluating bids or proposals the commission may consider cash discounts.

751—5.11(8D) Tie bids. The commission shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses. An Iowa business is a resident of the state of Iowa. If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the commission shall document the drawing.

751—5.12(8D) Time of submission. All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the commission prior to the date and time set for the opening of the bids or proposals. All informal bids shall be submitted by the vendor in time to reach the commission prior to the time specified by the commission. Bids and proposals shall be marked by the commission with the date and time received by the commission. Bids and proposals received after the date and time set for opening or for submission shall be returned to the vendor unopened. All vendors to whom invitations to bid or proposals are sent shall be notified of any changes in the time of submission. If a formal invitation to bid or request for proposal is canceled prior to the time set for opening the bids or proposals, any responses already received shall be returned unopened. If an informal invitation to bid is canceled prior to the time set for receiving bids, any bids already received shall be destroyed.

751—5.13(8D) Modification or withdrawal of bids. Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope which properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the commission if the commission finds that an honest error was made by the vendor which will cause undue financial hardship to the vendor and which will not cause undue financial hardship or inconvenience to the commission.

751—5.14(8D) Financial security. The commission may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, cashier's check, certificate of deposit, or letter of credit made payable to the commission, or any other form specified by the commission.

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751—5.15(8D) Rejection of bids and proposals. The commission reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the commission's requirements, or for any other reason if the commission determines that the best interests of the commission will be served by rejecting any or all bids. Following the rejection of bids, new bids may be requested by the commission at any time deemed convenient by the commission.

751—5.16(8D) Background and informational statements. Bidders may be required to describe their organizational structure, to identify key personnel and to submit personnel to criminal history checks and background investigations. Any changes in key personnel during the bidding process or during the contract term must be reported to the commission before the change occurs.

751—5.17(8D) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the commission may appeal the decision by filing a written notice of appeal within ten days before the Iowa Telecommunications and Technology Commission, Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131. The mailing address is P. O. Box 587, Johnston, Iowa 50131-0587. A written notice of appeal may be filed by a fax transmission within ten days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The fax number is (515)323-4751. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the commission's award.

751—5.18(8D) Procedures for vendor appeal. The aggrieved vendor shall file a contested case and follow the procedure set out below when filing a vendor appeal.

5.18(1) Upon receipt of a notice of vendor appeal, the commission shall contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors. The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the notice of appeal was received by the commission.

5.18(2) Discovery. Any discovery requests shall be served simultaneously on the parties within 15 days of the notice of appeal.

5.18(3) Witnesses and exhibits. Within 30 days following the notice of appeal, the parties shall contact each other regarding witnesses and exhibits. There is no requirement for witness and exhibit lists. However, the parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

5.18(4) If the hearing is conducted by telephone or on the network, all exhibits must be delivered to the office of the presiding officer three days prior to the time the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least ten days prior to the hearing.

5.18(5) The administrative law judge shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform

with Iowa Code chapter 17A. The decision shall be sent to all parties by first-class mail.

5.18(6) The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). The record shall also include any request for a contested case hearing and other relevant procedural documents regardless of their form.

a. Method of recording. Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs.

b. Transcription. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Tapes. Copies of tapes of oral proceedings may be obtained from the presiding officer at the requester's expense.

d. Retention time. The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the commission for at least two years from the date of the proposed decision.

5.18(7) A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

5.18(8) Stay of agency action for vendor appeal.

a. When available.

(1) Any party appealing the issuance of a notice of intent to award a contract may petition the presiding officer for a stay of the award pending its review. The petition for stay shall be filed with the notice of appeal and shall state the reasons justifying a stay.

(2) Any party adversely affected by a final decision and order may petition the commission which issued the decision for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the executive director within ten days of receipt of the final decision and order and shall state the reasons justifying a stay.

b. When granted. The presiding officer or commission, as appropriate, shall grant a stay when it concludes that substantial legal or factual questions exist as to the propriety of the commission's award, the party will suffer substantial and irreparable injury without the stay, and the interest of the public will not be significantly harmed.

c. Vacation. A stay may be vacated by the issuing authority upon application of the commission or any other party.

751—5.19(8D) Review of proposed decision.

5.19(1) The proposed decision shall become the final decision of the commission 15 days after mailing of the proposed decision, unless prior to that time a party submits an appeal from, or a commission member requests a review of the proposed decision.

5.19(2) Notice of an appeal from or a commission member's request for review of a proposed decision shall be mailed to all parties by the executive director. Within 15 days after mailing of a notice of appeal or of a request for review, any party may submit to the commission (in an original and eight copies) exceptions to and a brief in support or opposition to the proposed decision, copies of which exceptions or brief shall be mailed by the submitting party to all other parties to the proceeding. The executive director shall notify the parties if the commission deems oral arguments by the parties to be appropriate. The executive director will schedule review of the proposed decision at the next commission

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meeting occurring not less than 30 days after mailing of the notice of appeal or request for review.

5.19(3) Notices of an appeal shall be mailed or delivered by either party to the Executive Director, Iowa Telecommunications and Technology Commission, Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131. The mailing address is P. O. Box 587, Johnston, Iowa 50131-0587. Failure to request review will preclude judicial review unless the commission reviews on its own motion. Notice of the review will be sent to all parties participating in the appeal.

5.19(4) Review of a proposed decision shall be based on the record and limited to issues raised in the hearing. The issues shall be specified in the party's request for review. The party seeking review shall be responsible for transcribing any tape of the proceeding before the presiding officer and file the transcript as part of the record for review. The party seeking review shall bear the cost of the transcription regardless of the method used to transcribe the tape.

5.19(5) Each party shall have opportunity to file exceptions and present briefs. The commission may set a deadline for submission of briefs. When the commission consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. All parties shall be notified in advance of the scheduled time and place.

5.19(6) The commission shall not take any further evidence with respect to issues of fact heard in the hearing except as set forth below. Application may be filed for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the commission that the additional evidence is material and that there were good reasons for failure to present it in the hearing, the commission may order the additional evidence taken upon conditions determined by the commission.

5.19(7) A final decision shall be issued by the commission. The decision shall be in writing and shall conform with the requirements of Iowa Code chapter 17A.

5.19(8) Requests for rehearing shall be made to the commission within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision fails to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

5.19(9) Judicial review of the commission's final decisions may be sought in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code Supplement sections 8D.3(3)"b" and 8D.11.

CHAPTER 6

CONTRACTS FOR PROFESSIONAL SERVICES

751—6.1(17A,8D) Contract policy.

6.1(1) All professional services contracts with the commission shall be awarded on a competitive basis to the maximum practical extent. All contracts shall be in written form and receive approval of the executive director or the commission's designee or the commission where required by statute or rule of commission.

6.1(2) Exceptions for compliance with federal rules and guidelines. Whenever adherence to these contracting procedures would result in the loss of federal aid for any public improvement project or professional services project, the applicable rules or guidelines shall be followed to the extent necessary to qualify for the federal funds.

751—6.2(17A,8D) Contracts for professional services.

6.2(1) Professional services defined. The term "professional services" shall include planning, design, architectural, engineering, land surveying, land appraising, consulting, legal in conformance with Iowa Code section 13.7, auditing, information systems implementation, telecommunications services, rates and tariffs services management review services or other professional services as needed.

6.2(2) Notification of professional firms or individuals. The commission shall keep a record of professional firms and individuals desirous of providing services and shall encourage from time to time the submission of letters detailing a firm's or individual's capabilities.

6.2(3) If a contract is estimated to cost more than \$25,000, firms or individuals shall be invited to notify the commission of their interest in and capabilities for providing the service. Such firms or individuals shall be informed by an advertisement in at least one newspaper of statewide circulation, one newspaper published in the county seat of the county in which the work is to be done, and such other means as may be appropriate. Where work is to be done under the contract in more than three counties, the requirement of publication in the county seat shall not be required as long as other means of notice to bidders is given, as in trade journals or other such means. At least one of said advertisements shall be not less than 15 days prior to the date set by the commission for the preliminary review of said documents. Based upon this information, the commission may select a group of at least five firms or individuals, unless fewer than that number have indicated interest, who shall be invited to submit proposals for the performance of the desired service.

In explaining their capabilities, firms or individuals are encouraged to provide information relative to the number, qualifications, and experience of their professional and technical staff; their performance records for timeliness, quality, and project management; their geographical location; and any specialized expertise which may be appropriate.

751—6.3(17A,8D) Selection of firm or individual.

6.3(1) For any contract for professional services estimated to cost less than \$5,000, the commission may select a firm or individual and negotiate a professional services contract. The division director(s) shall prepare a memorandum for the project file stating the reasons why that particular firm or individual was selected. However, quotations may be solicited if it is in the best interest of the state.

6.3(2) For contracts estimated to cost from \$5,000 to \$25,000 at least three firms or individuals who appear to be qualified shall be invited to submit proposals for the performance of the desired service unless fewer than that number have indicated the availability, capability or willingness to perform the desired service.

6.3(3) When a project requiring professional services is divided into several phases, the selection of a professional firm or individual for the first project phase may be accomplished in the manner prescribed for the cost estimate relating to the entire project. The contract cost for subsequent phases may be established by negotiation. The proposals shall also contain an hourly estimate of professional services. These fees and associated costs shall be submitted as directed by the commission.

6.3(4) Upon the acceptance of a proposal by the executive director or the commission's designee or the commission, if required by statute, the total estimated cost shall become the maximum contract cost which shall not be increased, except to the extent that a contract amendment increases the objectives and scope of services or projects that are unrelated but

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identical in nature. The proposals submitted for those contracts over \$10,000 shall be reviewed, and members of the firms or individuals may be interviewed by a selection committee established by the executive director or the commission's designee. This committee shall evaluate each proposal relative to the following criteria listed here in no particular order of importance:

- a. Sufficiency of professional and technical staff to meet the project schedule and work requirements.
- b. Performance records for timeliness, quality and project management.
- c. Geographical location.
- d. Specialized expertise.
- e. Proposed method of accomplishing the desired service.
- f. Total estimated cost.
- g. Total estimated life cycle costs, if appropriate.

After evaluating the proposals, the committee shall submit a written recommendation to the executive director or the commission's designee.

6.3(5) The executive director or the commission's designee may authorize the negotiation of a contract without solicitation of quotations or advertising for proposals if the service is to be provided by another governmental entity or educational institution or nonprofit corporation, or if the service is of a specialized nature where only one firm or individual can reasonably provide the service, or where delay for solicitation of quotations or advertising for proposals might reasonably be expected to result in serious loss or injury to the state.

751—6.4(17A,8D) Approval and award of contracts.

6.4(1) Contract approval. All contracts for professional services in excess of \$25,000 shall be approved by the executive director or the commission if required by statute. Contracts less than \$25,000 shall be approved by the executive director.

6.4(2) Contract award. The contract shall be awarded to the firm or individual whose bid or proposal is believed to be the most advantageous to the state. Bids or proposals may be rejected if they do not appear to be reasonable or if there is reason to believe that the firm or individual is not sufficiently qualified to accomplish the desired work or service. An appeal of an award of a professional services contract shall be governed by the rules contained in 751—Chapter 5.

6.4(3) Change orders and extra work orders. All change orders and extra work orders shall be approved by the executive director before the work or service is performed, except in emergency situations, or where such approval would result in unreasonable delay. In addition, any order or accumulation of orders which increases the amount of the original contract by more than \$25,000 or 10 percent of the original contract, whichever is greater, shall also be approved by the commission, if required by statute.

751—6.5(8D) Emergency response. The executive director shall have the authority to contract with firms and individuals without advertising for bids or solicitation of quotations to repair and restore the network to an operable condition where time is insufficient to allow for advertising for bids or solicitation of quotations in order to prevent further injury to the network.

751—6.6(8D) Vendor appeals. Any appeal from a contract awarded pursuant to this chapter shall be governed by the vendor appeal rules contained in 751—Chapter 5.

These rules are intended to implement Iowa Code Supplement sections 8D.3(3)"b" and 8D.11.

ARC 6584A**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 131, "Signing on Primary Roads," Iowa Administrative Code.

This chapter is being amended to ease the restriction that a memorial highway encompass the entire length of a primary route within the state. Names of offices and field positions within the Department are also being updated.

These amendments are intended to implement Iowa Code chapter 321.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639.
5. Be received by the Director's Staff no later than August 20, 1996.

A meeting to hear requested oral presentations is scheduled for Thursday, August 22, 1996, at 10 a.m. in the Commission Room of the Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

Proposed rule-making actions:

ITEM 1. Amend subrule 131.1(2), paragraphs "a," "b" and "c," as follows:

a. To request placement of destination signs at the intersection of a primary highway and a secondary road, the county engineer shall obtain Form 740023, "Proposed Directional Signing," from the ~~district office~~ *area maintenance engineer*, complete it and submit it to the ~~district area maintenance engineer~~ *area maintenance engineer*. The county engineer may request signs for destinations on the secondary road that meet the criteria in paragraph 131.1(1)"d" and destinations on the primary highway.

b. If destination signs are already in place at the intersection, any person may request listing additional destinations by submitting a *written request in writing* to the ~~district engineer~~ *office of traffic engineering*.

c. ~~The district engineer shall forward the request, with recommendations, to the department and~~ *The office of traffic engineering shall determine if a request is to be approved or*

TRANSPORTATION DEPARTMENT[761](cont'd)

denied and notify the requester of the department's *its* action on the request.

ITEM 2. Amend subrule 131.2(4) as follows:
131.2(4) Procedures.

a. ~~Requests~~ *A request* for the designation of a business route shall be submitted by a city to the appropriate ~~district engineer of the department of transportation area maintenance engineer.~~

b. The ~~district engineer~~ *office of traffic engineering* shall determine if the request is to be approved or denied.

c. The office of ~~maintenance traffic engineering~~ shall designate the signing requirements for establishment of the business route.

ITEM 3. Amend subrule 131.3(2) as follows:
131.3(2) Procedures.

a. ~~Requests~~ *A request* for school signing ~~are to shall be directed submitted~~ to the ~~Office of Maintenance, Division of Highways, Department of Transportation, Ames, Iowa 50010~~ *area maintenance engineer.*

b. ~~The office of traffic engineering shall determine if the request is to be approved or denied.~~

b. c. Signs shall be furnished, erected and maintained by the department of transportation upon determination that the requirements of subrule 131.3(1) have been satisfied.

ITEM 4. Amend subrule **131.4(3)**, paragraphs "a" to "e," as follows:

a. ~~Requests~~ *A request* for camping service signs should be made to the ~~resident area maintenance engineer in charge of maintenance operations for that area.~~

b. The ~~resident area maintenance engineer (or the engineer's designated representative)~~ shall forward Form 810013, "Application and Agreement for Installation of Camping Service Signs on Interstate Highways," to the requesting camp owner.

c. The camp owner shall complete Form 810013, sign it, and return it to the ~~resident area maintenance engineer.~~

d. The ~~resident area maintenance engineer~~ shall review Form 810013 and verify by inspection that the requirements established in subrule 131.4(2) have been met.

e. When the ~~resident area maintenance engineer~~ has verified through inspection that the requirements are satisfied, ~~the engineer shall complete and sign~~ Form 810013, ~~shall be completed and signed~~ signifying approval of the application. A copy of the approved application shall be promptly forwarded to the applicant.

ITEM 5. Amend subrule **131.5(1)**, paragraph "b," as follows:

b. If the access to the sanitary landfill is connected to a secondary ~~highway road~~, the county must make a request on Form 740023, "Proposed Directional Signing," to the ~~appropriate resident area maintenance engineer;~~ and

ITEM 6. Amend subrule **131.5(2)**, paragraph "a," as follows:

a. ~~All requests~~ *A request for sanitary landfill signing* shall be submitted to the ~~resident area maintenance engineer responsible for the section of road on which the signs may be erected.~~

ITEM 7. Amend subrule 131.6(2) as follows:
131.6(2) Procedures.

a. ~~All requests are to~~ *A request for special event signing shall* be submitted to the ~~appropriate district area maintenance engineer.~~

b. The ~~district engineer~~ *office of traffic engineering* shall determine if the request is to be approved or denied.

c. The office of ~~maintenance traffic engineering~~ shall designate the signing requirements and locations for the signs.

ITEM 8. Amend subrule 131.7(2) as follows:
131.7(2) Procedures.

a. ~~All requests~~ *A request for signing* shall be made to the ~~Office of Maintenance, Division of Highways, Department of Transportation, Ames, Iowa 50010~~ *submitted to the area maintenance engineer.*

b. The office of ~~maintenance will traffic engineering shall~~ determine if the request is to be approved or denied.

ITEM 9. Amend subrule 131.8(2) as follows:
131.8(2) Procedures.

a. ~~The~~ *A request for the erection of county conservation signs park signing* shall be submitted to the ~~Office of Maintenance, Department of Transportation, Ames, Iowa 50010~~ on Form 740023, "Proposed Directional Signing," ~~supplied by the appropriate district office to the area maintenance engineer.~~

b. The office of ~~maintenance will traffic engineering shall~~ review and make the final determination on the request and promptly inform the county of the determination.

ITEM 10. Amend subrule **131.8(3)**, paragraph "a," as follows:

a. If the request is approved, the office of ~~maintenance will traffic engineering shall~~ design the signs and furnish the applicant a scaled drawing of the required signs.

ITEM 11. Amend subrule 131.9(1) as follows:

131.9(1) Procedures. ~~The request~~ *Requests* for the erection of no parking signs on rural primary highways shall be made by the Iowa highway safety patrol to the ~~office of maintenance area maintenance engineer.~~

ITEM 12. Amend subrule **131.10(2)**, paragraph "b," as follows:

b. A memorial highway ~~shall should normally~~ encompass the entire length of a primary route within the state. *However, it is permissible to name a section of a primary route if the section is unique or independent by virtue of its design characteristics, such as a freeway, or its geographic location, such as a segment between two junctions. No more than one name shall be used for the same section of a route.*

ITEM 13. Amend subrule **131.10(5)**, paragraph "a," as follows:

a. To request placement of signs designating a primary highway as a named route, the applicant shall submit a formal written request to the ~~Director of the Highway Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010~~ *area maintenance engineer.*

ITEM 14. Adopt new rule 761—131.15(321) as follows:

761—131.15(321) Information and address. Information regarding the signing addressed in this chapter is available from: Office of Traffic Engineering, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. Submissions to the office of traffic engineering shall also be sent or delivered to this address.

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:

July 1, 1995 — July 31, 1995	8.75%
August 1, 1995 — August 31, 1995	8.25%
September 1, 1995 — September 30, 1995	8.25%
October 1, 1995 — October 31, 1995	8.50%

November 1, 1995 — November 30, 1995	8.25%
December 1, 1995 — December 31, 1995	8.00%
January 1, 1996 — January 31, 1996	8.00%
February 1, 1996 — February 29, 1996	7.75%
March 1, 1996 — March 31, 1996	7.75%
April 1, 1996 — April 30, 1996	7.75%
May 1, 1996 — May 31, 1996	8.25%
June 1, 1996 — June 30, 1996	8.50%
July 1, 1996 — July 31, 1996	8.75%
August 1, 1996 — August 31, 1996	9.00%

ARC 6593A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 1996 Iowa Acts, Senate File 2442, section 6, subsection 3, and section 49, the Department of Human Services hereby amends Chapter 130, "General Provisions," and Chapter 170, "Child Day Care Services," appearing in the Iowa Administrative Code.

These amendments add families with an income of more than 100 percent but not more than 110 percent of the federal poverty level whose members are employed at least 30 hours per week to the list of priority groups to receive child day care services and provide the income guidelines these families must meet to be determined eligible. In the event funds become insufficient to meet the demand for services, new applications are placed on waiting lists of the priority groups. Families are then approved from the waiting lists in descending order of prioritization.

The General Assembly in 1996 Iowa Acts, Senate File 2442, section 6, subsection 3, paragraph "c," directed the Department to revise the child day care waiting list priority groups to include these families no later than January 2, 1997, if it is determined sufficient funding is available.

The Department has now determined funding is available for the first four priority groups as follows:

1. Families who are at or below 100 percent of the federal poverty guidelines and in which the parents are employed at least 30 hours per week or are under the age of 21 and participating in an educational program leading to a high school diploma or equivalent.

2. Parents under the age of 21 with a family income at or below 100 percent of the federal poverty guidelines who are participating, at a satisfactory level, in an approved training or education program.

3. Families with an income of more than 100 percent but not more than 110 percent of the federal poverty level whose members are employed at least 30 hours per week.

4. Families who are at or below 155 percent of the federal poverty guidelines who have a special needs child.

Funding is not yet available for the fifth priority group, families who are at or below 100 percent of the federal poverty guidelines and are employed part-time at least 20 hours per week.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because these amendments implement 1996 Iowa Acts, Senate File 2442, section 6, subsection 3, and section 49, which authorize the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective August 1, 1996, as authorized by 1996 Iowa Acts, Senate File 2442, section 6, subsection 3, and section 49.

These amendments are also published herein under Notice of Intended Action as ARC 6592A to allow for public comment.

The Council on Human Services adopted these amendments July 10, 1996.

These amendments are intended to implement Iowa Code section 234.6 and 1996 Iowa Acts, Senate File 2442, section 6, subsection 3.

These amendments shall become effective August 1, 1996.

The following amendments are adopted.

ITEM 1. 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
	A	B	B C	
	1 Member	\$ 645	\$ 710	
2 Members	863	949	1,338	762
3 Members	1,082	1,190	1,677	942
4 Members	1,300	1,430	2,015	1,121
5 Members	1,518	1,670	2,354	1,299
6 Members	1,737	1,911	2,692	1,478
7 Members	1,955	2,151	3,030	1,510
8 Members	2,173	2,390	3,369	1,546
9 Members	2,392	2,631	3,707	1,581
10 Members	2,610	2,871	3,925	1,612

For child day care, ~~Column~~ Columns A and B, add \$218 for each additional person over 10 members. For child day care, Column B C, add \$83 for each additional person over 10 members. For other services, add \$33 for each additional person over 10 members.

Column A is used to determine income eligibility for (1) families applying for child day care services, with the exception of families with children with special needs, who shall use Column B who are at or below 100 percent of the federal poverty guidelines and in which the parents are employed at least 30 hours per week or are under the age of 21 and participating in an educational program leading to a high school diploma or equivalent, for (2) parents under the age of 21 with a family income at or below 100 percent of the federal poverty guidelines who are participating, at a satisfactory level, in an approved training or education program, and for (3) families who are at or below 100 percent of the federal poverty guidelines and are employed part-time at least 20 hours per week. (See 441—paragraphs 170.2(4) "a," "c," and "g.")

Column B is used to determine income eligibility for families with an income of more than 100 percent but not more than 110 percent of the federal poverty level whose members are employed at least 30 hours per week. (See 441—paragraph 170.2(4) "d.")

Column B C is used to determine ongoing income eligibility for families receiving child day care services as of June 30, 1993, and to determine income eligibility for families with children with special needs applying for child day care services. (See 441—paragraph 170.2(4) "e.")

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule 170.2(4) by adding the following **new** paragraph "d."

d. Families who are above 100 percent but at or below 110 percent of the federal poverty guidelines and in which the parents are employed at least 30 hours per week.

[Filed Emergency 7/10/96, effective 8/1/96]
[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6609A

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.

The amendment relates to Office of Management and Budget control numbers under the Paperwork Reduction Act, miscellaneous minor and technical amendments, and grain handling facilities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 22, 1996, as **ARC 6431A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for June 13, 1996. No comments were received. This amendment is identical to the Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), this amendment shall become effective upon publication on July 31, 1996. 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 amendment will become effective July 31, 1996.
The following amendment is adopted.

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

61 Fed. Reg. 5508 (February 13, 1996)
61 Fed. Reg. 9230 (March 7, 1996)
61 Fed. Reg. 9583 (March 8, 1996)

[Filed Emergency After Notice 7/12/96, effective 7/31/96]
[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6610A

LABOR SERVICES DIVISION[347]

Adopted and Filed Emergency After Notice

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

The amendment relates to Office of Management and Budget control numbers under the Paperwork Reduction Act, and miscellaneous minor and technical amendments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 22, 1996, as **ARC 6432A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for June 13, 1996. No comments were received. This amendment is identical to the one published under Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), this amendment shall become effective upon publication on July 31, 1996. 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 amendment will become effective July 31, 1996.

The following amendment is adopted.

Amend rule **347—26.1(88)** by inserting at the end thereof:
61 Fed. Reg. 5509 (February 13, 1996)
61 Fed. Reg. 9248 (March 7, 1996)

[Filed Emergency After Notice 7/12/96, effective 7/31/96]
[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6607A

LABOR SERVICES DIVISION[347]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts an amendment to Chapter 28, "Occupational Safety and Health Standards for Agriculture," Iowa Administrative Code.

The amendment relates to Office of Management and Budget control numbers under the Paperwork Reduction Act, and miscellaneous minor and technical amendments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 22, 1996, as **ARC 6433A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for June 13, 1996. No comments were received.

The amendment is identical to the one published under Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), this amendment shall become effective upon publication on July 31, 1996. 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 amendment will become effective July 31, 1996.

The following amendment is adopted.

LABOR SERVICES DIVISION[347](cont'd)

Amend rule **347—28.1(88)** by inserting at the end thereof:
61 Fed. Reg. 5510 (February 13, 1996)
61 Fed. Reg. 9255 (March 7, 1996)

[Filed Emergency After Notice 7/12/96, effective 7/31/96]
[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

Amend subrule **91.1(1)** by adding the following **new** definition:

"Board" means the board of dietetic examiners.

[Filed Emergency 7/11/96, effective 7/11/96]
[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6599A**PROFESSIONAL LICENSURE
DIVISION[645]****BOARD OF OPTOMETRY EXAMINERS****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code Supplement section 272C.3, the Board of Optometry Examiners hereby adopts Chapter 191, "Impaired Practitioner Review Committee," Iowa Administrative Code.

This chapter implements Iowa Code Supplement chapter 272C by establishing an impaired practitioner review committee for the Board of Optometry Examiners to allow practitioners the opportunity to self-report impairments. The impaired practitioner review committee evaluates, assists, monitors and, as necessary, makes reports to the Department on the recovery or rehabilitation of practitioners who self-report.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because 641—Chapter 193 is being adopted by reference.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules, 35 days after publication, should be waived and the rules be made effective upon filing on July 11, 1996. These rules confer a benefit on the public by providing a means for impaired practitioners to self-report impairments.

These rules are intended to implement Iowa Code Supplement section 272C.3.

These rules became effective July 11, 1996.

The following **new** chapter is adopted.

Adopt **641—Chapter 193** to appear as **645—Chapter 191** with the following amendment:

Amend subrule **191.1(1)** by adding the following **new** definition:

"Board" means the board of optometry examiners.

[Filed Emergency 7/11/96, effective 7/11/96]
[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6600A**PROFESSIONAL LICENSURE
DIVISION[645]****BOARD OF DIETETIC EXAMINERS****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code Supplement section 272C.3, the Board of Dietetic Examiners hereby adopts Chapter 91, "Impaired Practitioner Review Committee," Iowa Administrative Code.

This chapter implements Iowa Code Supplement chapter 272C by establishing an impaired practitioner review committee for the Board of Dietetic Examiners to allow practitioners the opportunity to self-report impairments. The impaired practitioner review committee evaluates, assists, monitors and, as necessary, makes reports to the Department on the recovery or rehabilitation of practitioners who self-report.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because 641—Chapter 193 is being adopted by reference.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules, 35 days after publication, should be waived and the rules be made effective upon filing on July 11, 1996. These rules confer a benefit on the public by providing a means for impaired practitioners to self-report impairments.

These rules are intended to implement Iowa Code Supplement section 272C.3.

These rules became effective July 11, 1996.

The following **new** chapter is adopted.

Adopt **641—Chapter 193** to appear as **645—Chapter 91** with the following amendment:

ARC 6614A**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 68B.32A, the Iowa Ethics and Campaign Disclosure Board amends Chapter 4, "Reporting Requirements," Chapter 6, "Civil Penalties," and Chapter 13, "Executive Branch Lobbyists," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 24, 1996, as **ARC 6385A**. The Ethics and Campaign Disclosure Board adopted these amendments on July 11, 1996.

These amendments are intended to be primarily editorial and nonsubstantive. Items 1 and 2 contain revisions consistent with the uniform forms now being used by both candidate and political committees. Item 1 also expressly sets out the requirement that a final bank statement must be submitted for verification when a final report and notice of dissolution is filed.

Item 3 updates the language regarding acceptable advertising "disclaimer statements," including proper disclaimers for material with donated labor or materials. The reference to the acceptable postmark for disclosure reports is updated to be the same as the filing date, consistent with amendments previously made in Iowa Code chapter 56.

Items 4 and 5 merge two rules into one regarding amendments to filings. Item 6 clarifies the status of reports filed which are not required by law and clarifies that committees which file voluntarily might become subject to mandatory reporting in the future. Item 7 specifies that the verified statement of registration (VSR) filed by an out-of-state committee for a contribution must include the address of the Iowa committee receiving the contribution, as well as the committee name.

Item 8 rescinds rules regarding the distribution of blank forms which are not consistent with current practices and economic considerations. Currently, a packet of forms is provided to each person that files an affidavit of candidacy for state office, to the county auditors for distribution to county, local and school candidates, and upon request. No charge is assessed for forms.

Items 9 and 11 revise references to the threshold of financial activity, updating from \$250 to \$500, consistent with amendments previously made to Iowa Code chapter 56. Item 10 amends the rule regarding the notice of dissolution by including the statutory requirement that all campaign property must be disposed of prior to dissolution.

Item 12 transfers the rule regarding the timely filing of executive branch lobbyist reports from Chapter 4 to Chapter 13, which deals exclusively with executive branch lobbyists and clients.

Item 13 reflects the amendment in the campaign disclosure due date, allowing the postmark on the due date. Item 14 specifies that a receipt for payment of a fine will be returned to the committee if it has provided a self-addressed, stamped envelope. Item 15 corrects a figure of "20" days after notification before late penalties increase, to be "30" days, consistent with the formula which is already set out in the rules.

No public comments were received, and these amendments are identical to the ones published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 56.6, 56.14, 56.43, and 68B.32A.

The amendments will become effective September 4, 1996.

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 amendments [amendments to Chs 4, 6, 13] is being omitted. These amendments are identical to those published under Notice as **ARC 6385A**, IAB 4/24/96.

[Filed 7/12/96, effective 9/4/96]

[Published 7/31/96]

[For replacement pages for IAC, see IAC Supplement 7/31/96.]

ARC 6613A**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 68B.32A, the Iowa Ethics and Campaign Disclosure Board adopts an amendment to Chapter 4, "Reporting Requirements," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 24, 1996, as **ARC 6384A**. The Ethics and Campaign Disclosure Board adopted this amendment on July 11, 1996.

This rule sets out the criteria used by the Board in determining whether a contribution from a person under the age of 18 is permitted, or whether it would be prohibited as a contribution in the name of another. It is modeled closely after similar criteria followed by the Federal Election Commission and is in essence a test to determine who has actual control over the money.

No public comments were received, and this rule is identical to the one published under Notice of Intended Action.

This rule is intended to implement Iowa Code section 56.13.

The new rule will become effective September 4, 1996.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [4.7] is being omitted. This rule is identical to the one published under Notice as **ARC 6384A**, IAB 4/24/96.

[Filed 7/12/96, effective 9/4/96]

[Published 7/31/96]

[For replacement pages for IAC, see IAC Supplement 7/31/96.]

ARC 6612A**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 68B.32A, the Iowa Ethics and Campaign Disclosure Board adopts an amendment to Chapter 4, "Reporting Requirements," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 24, 1996, as **ARC 6383A**. The Ethics and Campaign Disclosure Board adopted this amendment on July 11, 1996.

The amendment is intended to clarify the manner in which contributions from trusts may be accepted, without potential violation of Iowa Code section 56.13, prohibiting contributions in the name of another. In order to assist committees, it is considered consistent with the public interest to eliminate extensive inquiry into the purpose and funding of a trust if it is a revocable trust, which is considered to be where the trustor, trustee, and beneficiary are all the same individual.

No public comments were received, and this amendment is identical to the one published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 56.13.

The amendment will become effective September 4, 1996.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [4.18] is being omitted. This amendment is identical to the one published under Notice as **ARC 6383A**, IAB 4/24/96.

[Filed 7/12/96, effective 9/4/96]

[Published 7/31/96]

[For replacement pages for IAC, see IAC Supplement 7/31/96.]

ARC 6588A**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 54, "Facility Participation," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment on July 10, 1996. Notice of Intended Action was published in the Iowa Administrative Bulletin on June 5, 1996, as **ARC 6439A**.

This amendment provides that contracts with residential care facility providers will no longer have to be renewed annually in the State Supplementary Assistance program. The contracts will remain in effect until the Department ceases to participate in the program, until the Department or the provider gives 60 days' notice of termination in writing to the other party, or until there is a change in ownership. Providers are required to notify the Department within 30 days

of a change in ownership, a change in the number of beds, or a change in administrator.

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

This amendment is intended to implement Iowa Code section 249.12.

This amendment shall become effective October 1, 1996.

The following amendment is adopted.

Amend rule 441—54.1(249) as follows:

441—54.1(249) Application and contract agreement. Each facility desiring to participate in the state supplementary assistance program must enter into a contract with the department of human services and agree to the provisions as enumerated in Form PA-1108-6, Application and Contract Agreement for Residential Care Facilities. The effective date of the contract shall be the first of the month that the Application and Contract Agreement for Residential Care Facilities, signed by the administrator of the facility, is received by the department. No payment shall be made for care provided before the effective date of the contract. The contract shall be ~~for a term of 12 months, subject to renewal; or in effect until the department ceases to participate in the program, or until either party gives 60 days' notice of termination in writing to the other party, or until there is a change in ownership.~~ *The facility shall notify the department within 30 days of a change in ownership, a change in the number of beds or a change in administrator.*

This rule is intended to implement Iowa Code section 249.12.

[Filed 7/10/96, effective 10/1/96]

[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6589A**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends 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," and Chapter 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments on July 10, 1996. These amendments combine two Notices of Intended Action. Notices of Intended Action regarding these amendments were published in the Iowa Administrative Bulletin on April 24, 1996, as **ARC 6370A**, and on June 5, 1996, as **ARC 6460A**.

1. The amendments noticed as **ARC 6370A** implement a Home- and Community-Based Services waiver for persons with a brain injury. The waiver request has been approved by the Health Care Financing Administration (HCFA) for approval.

The Seventy-sixth General Assembly in 1995 Iowa Acts, chapter 205, section 3, subsection 8, directed the Department to develop and implement an HCBS waiver for persons with

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brain injury who currently reside in a medical institution and who have been residents of a medical institution for a minimum of 30 days. There are approximately 350 persons with a primary diagnosis of brain injury currently in a medical facility in Iowa, 10 percent of whom are children.

To be eligible for this waiver the applicant must have a brain injury within a list of specific medical diagnoses set forth in these rules. The brain injury can be the result of a traumatic event, such as an accident, or due to a disease process. The applicant must be eligible for Medicaid under the FIP, FIP-related, SSI, SSI-related, 300 percent group, or Medically Needy and be one month to 64 years of age.

Services available on this waiver include adult day care, behavioral programming, case management, family counseling and training, home and vehicle modification, personal assistance, personal emergency response, prevocational services, respite, specialized medical equipment, supported community living, supported employment, and transportation.

All of the applicant's medically necessary needs must be able to be met in the community between use of the waiver services and regular Medicaid services. For example, nursing service is not a covered waiver service and is only available four times per week under the regular Medicaid program. Therefore, an adult needing daily nursing care could not be served by this waiver.

These rules provide for the participation of counties in the nonfederal costs for the waiver for adults requiring the ICF/MR level of care and allow counties to limit the number of slots available for persons requiring this level of care. Persons not approved will be placed on a waiting list.

2. The amendments noticed as **ARC 6460A** implement the periodic rebasing and recalibration of the diagnosis-related group (DRG) and ambulatory patient group (APG) inpatient and outpatient hospital reimbursement system and add a risk corridor for hospitals for Fiscal Year 1997 as instructed in 1996 Iowa Acts, Senate File 2442.

The following changes are made to the DRG system:

- The claim and cost report dates that coincide with the rebasing and recalibration are updated.
- The claims filing procedures for preauthorization are changed.
- The appeal process is changed if a cost report undergoes revision by Medicare.

The following changes are made to the APG system:

- The claim and cost report dates are updated to use information for the hospitals' fiscal year 1995.
- A risk corridor has been established for state Fiscal Year 1997 to ensure hospital payment will not be less than 90 percent or greater than 110 percent of Medicaid allowable costs.
- The use of the 3M Version 2 Grouper is adopted and definitions and APG assignments from the Version 1 Grouper are changed to reflect the Version 2 Grouper.
- The statewide visit expected payment (SVEP) calculation is clarified.
- The data set used to compute weights and case-mix indices is stated.
- The calculation of the APG weighting procedure is clarified.
- The methodology for computing outliers is changed.
- The services covered under APGs and the effect of the Mental Health Access Plan and Managed Substance Abuse Care Plan on the APG payment system are clarified.
- Cost report error procedures are clarified.

The following revisions were made to the amendments noticed as **ARC 6370A**:

Subrule 77.39(27), paragraph "b," subparagraph (2) was deleted and the following subparagraphs were renumbered. Standards of the Commission on Accreditation of Health Care Organizations do not apply to adult day care providers. Subrule 77.39(27) now reads as follows:

77.39(27) Adult day care providers. Adult day care providers shall meet one of the following conditions:

a. The provider shall have a contract with the veterans administration to provide adult day health care.

b. The provider shall meet one of the following sets of standards individually or as an integral service provided by an organization:

(1) Standards of the Joint Commission on Accreditation of Health Care Organizations.

(2) Standards set forth in rule 441—171.5(234).

(3) Standards set forth in department of elder affairs rules 321—24.1(231) to 321—24.8(231).

Subrule 83.82(3) was revised to clarify that access to HCBS BI waiver services for adult persons meeting the ICF/MR level of care shall be limited to persons who are residing in an ICF/MR and who have resided there for at least 30 days immediately preceding waiver application. Counties shall establish the payment slots for these persons served under the HCBS BI waiver and may choose to establish no payment slots. Counties are required to inform the Department by April 1 and October 1 of each year how many payment slots they wish to establish for the waiver. Subrule 83.82(3) now reads as follows:

83.82(3) HCBS brain injury (BI) waiver program limit for persons requiring the ICF/MR level of care. Access to HCBS BI waiver services for adult persons meeting the ICF/MR level of care shall be limited to persons who are residing in an ICF/MR and who have resided there for at least 30 days immediately preceding waiver application. In addition, waiver slots for these persons shall be identified in the county management plan submitted to the department pursuant to 441—Chapter 25. Each county shall inform the department regarding the number of payment slots desired by April 1 and October 1 of each year. A county may choose to establish no payment slots under the HCBS BI waiver.

a. The payment slots shall be on a county basis for adults with legal settlement in a county and on a statewide basis for children and adults without a county of legal settlement.

b. When services are denied because the limit is reached, a notice of decision denying service based on the limit and stating that the person's name shall be put on a waiting list shall be sent to the person by the department.

Subrule 83.82(4), paragraph "b," subparagraph (2), second paragraph, second sentence was revised by changing a "the" to "these" to make the reference to consumers more clear.

Rule 441—83.90(249A) was revised by adding additional wording in response to concerns expressed by the counties to clarify the intent of the rule. Rule 441—83.90(249A) now reads as follows:

441—83.90(249A) County reimbursement. The county board of supervisors of the consumer's county of legal settlement shall reimburse the department for all the nonfederal share of the cost of brain injury waiver services to persons at the ICF/MR level of care with legal settlement in the county who are coming onto the waiver from a minimum 30-day residence in an ICF/MR facility for which the county has been fi-

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nancially responsible. The county shall enter into a Medicaid Home and Community Based Payment Agreement, Form MA-2171, with the department for reimbursement of the non-federal share of the cost of services provided to HCBS brain injury waiver adults at the ICF/MR level of care who meet the criteria stated above.

The county shall enter into the agreement using the criteria in subrule 83.82(2).

No revisions were made to the amendments noticed as **ARC 6460A**.

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

These amendments shall become effective October 1, 1996.

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 amendments [amendments to Chs 77, 78, 79, 83] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 6370A**, IAB 4/24/96 and **ARC 6460A**, IAB 6/5/96.

[Filed 7/10/96, effective 10/1/96]

[Published 7/31/96]

[For replacement pages for IAC, see IAC Supplement 7/31/96.]

ARC 6590A**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement subsection 252J.2(2), the Department of Human Services hereby amends Chapter 98, "Support Enforcement Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments on July 10, 1996. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on May 8, 1996, as **ARC 6394A**.

These amendments implement the license sanction process for the enforcement of child support orders as mandated by the Seventy-sixth General Assembly in Iowa Code Supplement chapter 252J. The child support recovery unit (CSRU) may refer an obligor to a licensing agency for the suspension, revocation, nonissuance, or nonrenewal of a variety of licenses including, but not limited to, motor vehicle registrations, driver's licenses, business and professional licenses. In order to be referred to a licensing agency for license sanction, an obligor's support payments must be delinquent in an amount equal to the support payment for 90 days.

CSRU may first refer for license sanction those obligors having the greatest number of months of support delinquency. CSRU shall not refer obligors whose support payments are being made under an income withholding order.

These amendments establish certain conditions which shall be considered valid reasons for exemption from the license sanction process. Valid reasons for exemption and acceptable verification are:

- Receipt of social security, supplemental security income (SSI), or the family investment program by the obligor.
- Temporary illness or disability of the obligor or the illness or disability of another household member which requires the obligor's presence in the home as a caretaker.
- Incarceration of the obligor.
- Participation in job training through the Department of Employment Services as a result of receiving food stamps.
- Participation in a chemical dependency treatment program.
- Involvement in a contempt action dealing with support issues.

When an obligor's support payments are delinquent in an amount equal to the support payment for 90 days, CSRU may issue a notice to the obligor informing the obligor that the obligor may make immediate payment of all current and past due support, schedule a conference to review CSRU's action, or enter into a payment agreement with the unit. If the obligor fails to respond to the notice within 20 days, or requests a conference and fails to appear, CSRU shall issue a Certificate of Noncompliance to the applicable licensing authority. The licensing authority is required to notify the obligor 30 days before the suspension, revocation, or denial of the obligor's license. The obligor may seek review of the decision before the District Court. Provisions governing issuance of the notice, the conference, and notice by the licensing authority are set forth in Iowa Code Supplement chapter 252J.

During the conference CSRU will determine if the obligor's ability to pay varies from the current support order. A payment agreement shall be completed which shall require the obligor to pay the lower of the amount calculated or the maximum amount payable under an income withholding order. Failure of the obligor to comply with the terms of the payment agreement shall also result in the issuance of a Certificate of Noncompliance.

The Certificate of Noncompliance remains in effect until the obligor pays all support owed, both arrears and current; or enters into a payment agreement; or begins receiving social security, SSI, or FIP; or becomes ill or disabled; or begins participating in job training.

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

These amendments are intended to implement Iowa Code Supplement chapter 252J.

These amendments shall become effective October 1, 1996.

The following amendments are adopted.

ITEM 1. Amend 441—Chapter 98 by reserving rules **441—98.98** to **441—98.100** as part of Division VII.

ITEM 2. Further amend 441—Chapter 98 by adding the following new Division VIII:

DIVISION VIII
LICENSE SANCTION

441—98.101(252J) Referral for license sanction. In the process referred to as license sanction, the child support recovery unit (CSRU) may refer an obligor to a licensing agency for the suspension, revocation, nonissuance, or nonrenewal of a variety of licenses including, but not limited to, motor vehicle registrations, driver's licenses, business and professional licenses. In order to be referred to a licensing agency for license sanction, an obligor's support payments must be delinquent in an amount equal to the support payment for 90 days. CSRU may first refer for license sanction those obligors having the greatest number of months of support de-

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linquency. CSRU shall not refer obligors whose support payments are being made under an income withholding order.

441—98.102(252J) Reasons for exemption. Certain conditions shall be considered valid reasons for exemption from the license sanction process. Upon verification of these conditions, CSRU shall bypass, exempt, or withdraw the obligor's name from referral to licensing agencies for the purpose of applying a license sanction. When the information to verify the exemption is not available to CSRU through on-line sources, CSRU shall request, and the obligor shall provide, verification of the reason for exemption. Valid reasons for exemption and acceptable verification are:

98.102(1) Receipt of social security, supplemental security income (SSI), or the family investment program (FIP). Receipt of social security, SSI, FIP, or county assistance (general relief, general assistance, community services, veteran's assistance), based upon the eligibility of the obligor, is considered a valid reason for exemption when verified by information contained in on-line sources available to CSRU or written verification from the agency providing the benefits.

98.102(2) Temporary illness or disability. Temporary illness or disability of the obligor or illness or disability of another household member which requires the presence of the obligor in the home as caretaker is considered a valid reason for exemption upon receipt of a completed Form 470-3158, Physician's Statement, verifying the obligor's inability to work.

98.102(3) Incarceration. Incarceration is considered a valid reason for exemption when verified through on-line information available to CSRU or upon receipt of verification from the institution.

98.102(4) Job training. Participation in a job-training or job-seeking program through the department of employment services as a result of receiving food stamps is considered a valid reason for exemption upon receipt of verification from the department of employment services or verification through on-line information available to CSRU or upon receipt of a written statement from an income maintenance worker.

98.102(5) Chemical dependency treatment. Participation in a chemical dependency treatment program that is licensed by the department of public health or the joint commission on the accreditation of hospitals (JCAH) is considered a valid reason for exemption upon receipt of written verification from the professional staff of the program that participation in the program precludes the obligor from working.

98.102(6) Contempt process. Involvement in a contempt action dealing with support issues is considered a valid reason for exemption from the license sanction process during the pendency of the contempt action.

441—98.103(252J) Notice of potential sanction of license. When an obligor meets the criteria for selection, CSRU may issue a notice to the obligor of the potential sanction of any license held by the obligor, using Form 470-3278, Official Notice of Potential License Sanction. CSRU shall inform the obligor that the obligor may make immediate payment of all current and past due child support, schedule a conference to review the action of CSRU, or request to enter into a payment agreement with the unit. CSRU shall follow the procedures and requirements of Iowa Code Supplement chapter 252J regarding the issuance of the notice and the holding of a conference.

If an obligor fails to respond in writing to the notice within 20 days, or if the obligor requests a conference and fails to appear, the unit shall issue a Certificate of Noncompliance,

Form 470-3274, to applicable licensing authorities in accordance with Iowa Code Supplement section 252J.3.

441—98.104(252J) Conference.

98.104(1) Scheduling of conference. Upon receipt from an obligor of a written request for a conference, CSRU shall schedule a conference not more than 30 days in the future. At the request of either CSRU or the obligor, the conference may be rescheduled one time. When setting the date and time of the conference, CSRU shall request the completion of Form 470-0204, Financial Statement, and other financial information from both the obligor and the obligee as may be necessary to determine the obligor's ability to comply with the support obligation.

98.104(2) Payment calculation. During the conference held in compliance with the provisions of Iowa Code Supplement section 252J.4, CSRU shall determine if the obligor's ability to pay varies from the current support order by applying the mandatory supreme court guidelines as contained in 441—Chapter 99, Division I, with the exception of subrules 99.4(3) and 99.5(5). If further information from the obligor is necessary for the calculation, CSRU may schedule an additional conference no less than ten days in the future in order to allow the obligor to present additional information as may be necessary to calculate the amount of the payment. If, at that time, the obligor fails to provide the required information, CSRU shall issue a Certificate of Noncompliance, Form 470-3274, to applicable licensing authorities. If the obligee fails to provide the necessary information to complete the calculation, CSRU shall use whatever information is available. If no income information is available for the obligee, CSRU shall use the state median income as the obligee's income. This calculation is for determining the amount of payment for the license sanction process only, and does not modify the amount of support obligation contained in the underlying court order.

98.104(3) Referral for review and adjustment. If the amount calculated in subrule 98.104(2) meets the criteria for review and adjustment as specified in rule 441—99.62(252B,252H), CSRU shall refer the case for review and adjustment of the support obligation. The payment agreement remains in effect during the review and adjustment process.

441—98.105(252J) Payment agreement. The License Sanction Payment Agreement, Form 470-3273, shall require the obligor to pay the lower of the amount calculated in subrule 98.104(2) or the maximum amount payable under an income withholding order as specified in rule 98.24(252D).

98.105(1) Duration of payment agreement. The License Sanction Payment Agreement signed under this division shall remain in effect for at least one year from the date of issuance unless CSRU determines the obligor has a valid reason for exemption as specified in rule 98.102(252J). Except in those cases in which review and adjustment are in process, CSRU may, at the end of the year, begin the process of reviewing the case to ensure that the payment amount continues to accurately reflect the obligor's ability to pay as calculated in subrule 98.104(1).

98.105(2) Failure to comply. If at any time following the signing of a payment agreement the obligor fails to comply with all the terms of the agreement, CSRU shall issue a Certificate of Noncompliance, Form 470-3274, to applicable licensing authorities in accordance with the provisions of Iowa Code Supplement chapter 252J.

441—98.106(252J) Staying the process due to full payment of support. If the obligor, at any time, pays the total

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support owed, both current and past due, CSRU shall stay the process, and any Certificate of Noncompliance, Form 470-3274, which has been issued shall be withdrawn by CSRU.

441—98.107(252J) Duration of license sanction. The Certificate of Noncompliance, Form 470-3274, shall remain in effect until the obligor pays all support owed, both arrears and current; or the obligor enters into a payment agreement with CSRU; or the obligor meets one of the criteria for exemption specified at subrules 98.102(1), 98.102(2), and 98.102(4).

These rules are intended to implement Iowa Code Supplement chapter 252J.

[Filed 7/10/96, effective 10/1/96]

[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6591A

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 99, "Support Establishment and Adjustment Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on July 10, 1996. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on June 5, 1996, as **ARC 6461A**.

These rules clarify how the Department of Human Services will implement the process for administratively establishing paternity established in Iowa Code chapter 252F. This process provides a more expedient process for establishing paternity while allowing the alleged father to request and receive a court hearing if desired.

After the mother of the child has signed the Mother's Written Statement Alleging Paternity, Form 470-3293, or a similar document, the administrative paternity establishment process begins when the Child Support Recovery Unit (CSRU) of the Department serves the alleged father with a notice of intent to establish paternity and set support obligation. The notice informs the alleged father of the mother's paternity allegation and CSRU's intention to establish paternity and support obligations, and provides the alleged father with a list of his rights and options for responding to the notice.

As soon as the alleged father is served with the notice, CSRU files the legal documents with the district court. Depending on how the alleged father and mother respond to the notice, there are a variety of steps that may occur from the time the alleged father is served with the notice until an order is entered. Both the mother of the child and the alleged father have a right to contest paternity establishment. If paternity is contested, CSRU orders the alleged father, mother and child to submit to genetic testing. The alleged father also has an

opportunity to request a conference with CSRU to discuss paternity establishment and the support obligation. If the alleged father requests a court hearing on the issue of paternity or support, CSRU schedules a court hearing.

CSRU may issue an administrative order establishing paternity or establishing paternity and support if the alleged father does not request a court hearing. The Unit submits the administrative order to the district court for approval and a judge's signature. After the judge has signed the order, CSRU files it with the clerk of the district court. Once filed, the administrative order carries the same weight and consequence as a district court order.

The following revisions were made to the Notice of Intended Action:

Rules 441—99.22(252F) and 441—99.23(252F) were revised to allow a similar document which substantially meets the requirements of Iowa Code section 622.1 to be used in lieu of Form 470-3293, Mother's Written Statement Alleging Paternity. Rule 441—99.29(252F) was revised to correct the title of a form.

These rules are intended to implement Iowa Code chapter 252F.

These rules shall become effective October 1, 1996.

The following amendments are adopted.

ITEM 1. Amend 441—Chapter 99 by reserving rules **441—99.10** to **441—99.20** as part of Division II, Part A.

ITEM 2. Further amend 441—Chapter 99 by adding the following new Division II, Part B:

PART B

ADMINISTRATIVE PATERNITY ESTABLISHMENT

441—99.21(252F) When paternity may be established administratively. The child support recovery unit may seek to administratively establish paternity and accrued or accruing child support and medical support obligations against an alleged father when the conditions specified in Iowa Code chapter 252F are met.

441—99.22(252F) Mother's certified statement. Before initiating an action under Iowa Code chapter 252F, the unit may obtain a signed Paternity Questionnaire, Form 470-0172, or a similar document from the child's caretaker. The unit shall obtain the Mother's Written Statement Alleging Paternity, Form 470-3293, from the child's mother certifying, in accordance with Iowa Code section 622.1, that the man named is or may be the child's biological father. A similar document which substantially meets the requirements of Iowa Code section 622.1 may also be used. In signing Form 470-3293 or similar document, the mother acknowledges that the unit may initiate a paternity action against the alleged father, and she agrees to accept service of all notices and other documents related to that action by first-class mail. The mother shall sign and return Form 470-3293 or a similar document to the unit within ten days of the date of the unit's request.

441—99.23(252F) Notice of alleged paternity and support debt. Following receipt of the Mother's Written Statement Alleging Paternity, Form 470-3293, or a similar document which substantially meets the requirements of Iowa Code section 622.1, the unit shall serve a notice of alleged paternity and support debt as provided in Iowa Code section 252F.3.

441—99.24(252F) Conference to discuss paternity and support issues. The alleged father may request a conference

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as provided in Iowa Code chapter 252F with the office that issued the notice to discuss paternity establishment and the amount of support he may be required to pay.

441—99.25(252F) Amount of support obligation. The unit shall determine the amount of the child support obligation accrued and accruing using the child support guidelines established by the Iowa Supreme Court, and pursuant to the provisions of Iowa Code section 252B.7A.

441—99.26(252F) Court hearing. If the alleged father requests a court hearing within the time frames specified in Iowa Code section 252F.3, or as extended by the unit, and paternity testing has not been conducted, the unit shall issue ex parte administrative orders requiring the alleged father, the mother and the child to submit to paternity testing.

441—99.27(252F) Paternity contested. The alleged father may contest the paternity establishment by submitting, within 20 calendar days after service of the notice upon him, as provided in rule 441—99.23(252F), a written statement contesting paternity to the unit that issued the notice. The mother may contest paternity establishment by submitting, within 20 calendar days after the unit mailed her notice of the action or within 20 calendar days after the alleged father is served with the original notice, whichever is later, a written statement contesting paternity to the unit that issued the notice. When paternity is contested, or at the unit's initiative, the unit shall issue ex parte administrative orders requiring the alleged father, the mother and the child to submit to paternity testing.

441—99.28(252F) Paternity test results challenge. Either party or the unit may challenge the results of the paternity test by filing a written notice with the district court within 20 calendar days after the unit issues the paternity test results to the parties, or if a court hearing was already scheduled, no later than 30 days before the scheduled hearing date. When a party challenges the paternity test results, the unit shall order an additional blood or genetic test.

441—99.29(252F) Agreement to entry of paternity and support order. If the alleged father admits paternity and reaches agreement with the unit on the entry of an order for support, the father shall acknowledge his consent on the Administrative Paternity Order, Form 470-3294. If the mother does not contest paternity within the allowed time period, the unit shall file the Administrative Paternity Order with the court in accordance with Iowa Code section 252F.6.

441—99.30(252F) Entry of order establishing paternity only. If the alleged father requests a court hearing on support issues and paternity is not contested, or if paternity was contested but neither party filed a timely challenge of the paternity test results, the unit shall prepare an order establishing paternity and reserving the support issues for determination by the court. The unit shall present the order and other documents supporting the entry of the ex parte paternity-only order to the court for review and approval prior to the hearing on the support issues.

441—99.31(252F) Exception to time limit. The unit may accept and respond to written requests for court hearings beyond the time limits allowed in this part.

441—99.32(252F) Genetic test costs assessed. If genetic testing of an alleged father is conducted and that person is established as the child's father, the unit shall assess the costs of the genetic testing to the father and enter an order for repayment of these costs.

These rules are intended to implement Iowa Code chapter 252F.

[Filed 7/10/96, effective 10/1/96]
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ARC 6615A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 566A.14, the Iowa Insurance Division hereby adopts Chapter 18, "Cemeteries," Iowa Administrative Code.

These rules help to clarify what cemeteries are required to do in order to continue to operate as perpetual care cemeteries.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 28, 1996, as **ARC 6270A**.

Subrule 18.1(3) has been changed from the Notice to add religious organizations to the exception. Rule 18.6(523I,566A) has been amended to exempt the first ten deeds from the filing fee, in response to concerns about the financial impact on relatively inactive cemeteries. Also, rule 18.4 has been reserved at this time in response to comments received. The Division intends to renotice that proposed rule, perhaps with amendments.

These rules are intended to implement Iowa Code Supplement chapters 523I and 566A.

This chapter will become effective September 4, 1996.

The following new chapter is adopted.

CHAPTER 18
CEMETERIES**191—18.1(523I,566A) Perpetual care cemeteries.**

18.1(1) Cemeteries commencing business after July 1, 1995. Cemeteries organized on or after July 1, 1995, or which commence business in this state on or after July 1, 1995, shall operate as a perpetual care cemetery and shall not sell or offer interment rights to the public without a perpetual care cemetery permit from the administrator.

18.1(2) Cemeteries commencing business before July 1, 1995. A cemetery organized before July 1, 1995, and commencing business before July 1, 1995, may operate as a non-perpetual care cemetery or as a perpetual care cemetery. A perpetual care cemetery shall not sell or offer interment rights to the public without a perpetual care cemetery permit from the administrator. To continue to operate as a perpetual care cemetery, the cemetery must establish a fund as an irrevocable trust to provide for the care and maintenance of the cemetery for which it was established and shall provide for the appointment of a trustee, with perpetual succession, and set aside and deposit in the perpetual care fund not less than the amount required by Iowa Code Supplement section 566A.3.

18.1(3) A minimum perpetual care and maintenance guarantee fund of \$25,000 is required for any cemetery commencing business on or after July 1, 1995, which is not owned or operated by a religious organization or a political subdivision of the state.

18.1(4) A minimum perpetual care and maintenance guarantee fund of \$25,000 is required for any cemetery com-

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mencing business on or after July 1, 1953, and before July 1, 1995, which is not owned or operated by a religious organization or a political subdivision of the state.

191—18.2(523I,566A) Administration.

18.2(1) Iowa Code Supplement chapters 523I and 566A shall be administered by the commissioner of insurance of the state of Iowa. As deputy administrator, the Iowa superintendent of securities shall be the principal operations officer responsible to the commissioner for the routine administration of the Acts and management of the administrative staff of the administrator.

18.2(2) In the absence of the commissioner, whether because of the vacancy in the office, by reason of absence, physical disability or other cause, the superintendent of securities shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the superintendent of securities any or all of the functions assigned to the commissioner in Iowa Code Supplement chapters 523I and 566A.

18.2(3) The administrator shall employ officers, attorneys, accountants, investigators, and other employees as shall be needed for administration of Iowa Code Supplement chapters 523I and 566A.

18.2(4) Upon request, the commissioner may honor requests from interested persons for interpretative opinions.

191—18.3(523I,566A) Public access to hearings. Every hearing in an administrative proceeding shall be open to the public.

191—18.4 Reserved.

191—18.5(523I,566A) Forms—content. Copies of all necessary forms and instructions may be obtained from the Iowa Securities Bureau, Lucas State Office Building, Room 214, Des Moines, Iowa 50319. The list which follows describes the forms which members of the public shall use when dealing with the bureau, unless waived by the commissioner, and computer-generated information may be accepted. Each direction shall be complied with and each question shall be answered in the same manner as if the forms and instructions were embodied in these rules.

FORM

NUMBER

DESCRIPTION

C-1	Annual Report by Nonperpetual Care Cemeteries. Used by cemeteries required to report under Iowa Code Supplement section 566A.2D.
C-2	Annual Report by Perpetual Care Cemeteries. Used by cemeteries required to report under Iowa Code Supplement section 566A.2E.
C-3	Perpetual Care Cemetery Permit Application. Used by applicants when filing for a perpetual care cemetery permit.
C-4	Perpetual Care Cemetery Permit.

191—18.6(523I,566A) Annual report by perpetual care cemeteries. The annual report filed pursuant to Iowa Code Supplement section 566A.2E shall include an audit fee of \$3 for each deed issued during the period of the report, provided,

however, that an audit fee shall not be required for the first ten deeds issued each year.

191—18.7(523I,566A) Annual reports and perpetual care cemetery permits. For purposes of assisting cemeteries in filing annual reports and permit applications, the administrator may generate computer-generated forms with information filled in, as contained in the administrator's records, to the extent possible. However, the cemetery must correct any incorrect information before filing the report or application with the administrator.

These rules are intended to implement Iowa Code Supplement chapters 523I and 566A.

[Filed 7/12/96, effective 9/4/96]

[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6617A**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 523A.16 and 523E.16, the Iowa Insurance Division hereby rescinds Chapter 19, "Prearranged Funeral Contracts," and adopts a new Chapter 19, "Prearranged Funeral Contracts," Iowa Administrative Code.

These rules delete outdated provisions and address amendments to Iowa Code chapters 523A and 523E.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 28, 1996, as **ARC 6271A**.

A definition of credit sale has been added in conformity with Iowa Code chapter 537.

The definition of "Interest or income" has been deleted in response to comments, but may be renoticed.

Existing language of rule 19.13(523A,523E) has been reinstated as it relates to identifying confidential information. The language had been deleted from the noticed rule, because it was duplicative of language in Iowa Code chapters 22, 523A and 523E. The language was reinstated in response to comments suggesting that the proposed rule was ambiguous about which information would be deemed confidential by the Bureau. The primary concern was about information provided in response to a request by the Bureau for proprietary information not required by law, rule or procedure.

Subrule 19.31(5) has been amended to clarify that accounts, books and records pertaining to a purchaser's prearranged funeral contract merely need to be made available to purchasers at the establishment and may be maintained or stored at another location. The Insurance Division has the authority to examine accounts, books and records at any location. Although these records do not need to be located in Iowa, sellers should know that it is the policy of the Division to charge audit expenses on out-of-state audits.

Rule 19.32(523A,523E) has been amended to clarify that the filing fee does not apply to an additional agreement purchased by a purchaser already reported to the Insurance Division. This has been the Division's policy.

Proposed subrule 19.41(1) has been deleted in response to a comment that the Division may be without statutory authority. The intent of the language was not to add authority and

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was merely intended to provide guidance to the industry that a standard trust agreement may be inadequate.

Rule 19.43(523A,523E) has been amended to clarify that it is possible to use a blanket form of authorization and a blanket form of delivery agreement covering more than one burial account.

Rule 19.45 has been deleted in response to comments, but may be renoticed.

Proposed rule 19.47(523A,523E) has been deleted. Chapters 523A and 523E have been amended and the rule is no longer needed.

Subrules 19.60(2) and 19.60(3) have been deleted in response to comments, but may be renoticed.

Rule 19.71(523E) has been amended to delete the annual report and the filing fee, which have been replaced with authority for the Division to audit statutory compliance and bill the facility for the Division's transportation and lodging expenses.

These rules are intended to implement Iowa Code Supplement chapters 252J, 523A and 523E.

This chapter will become effective September 4, 1996.

The following new chapter is adopted.

CHAPTER 19
PREARRANGED FUNERAL CONTRACTS
RULES OF GENERAL APPLICABILITY

191—19.1(523A,523E) Purpose. The following chapter is promulgated for the purpose of administering the provisions of Iowa Code Supplement chapter 523A, the Iowa sales of funeral services and merchandise Act, relating to sales of funeral services, funeral merchandise, or a combination of funeral services and merchandise, pursuant to a prearranged funeral contract, and Iowa Code Supplement chapter 523E, the Iowa sales of cemetery merchandise Act, relating to the sale of cemetery merchandise.

191—19.2(523A,523E) Definitions. As used in the Acts and this chapter, unless the context otherwise requires:

"Acts" means Iowa Code Supplement chapter 523A, the Iowa sales of funeral services and merchandise Act and Iowa Code Supplement chapter 523E, the Iowa sales of cemetery merchandise Act.

"Beneficiary" means any natural person specified or included in a prearranged funeral contract, upon whose death funeral services, funeral merchandise, cemetery merchandise or a combination of funeral services and merchandise shall be performed, provided, or delivered.

"Burial account" means an account established at a financial institution for the purpose of funding the future purchase of funeral services, funeral merchandise, cemetery merchandise, or combination of funeral services and merchandise.

"Cemetery merchandise" means grave markers, tombstones, ornamental merchandise, and monuments if the agreement does not require installation within 12 months of the purchase.

"Commissioner" means the commissioner of insurance for the state of Iowa or the deputy appointed under Iowa Code section 502.601.

"Credit sale" means a sale of goods, services, or an interest in land in which all of the following are applicable:

1. Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.

2. The buyer is a person other than an organization.

3. The goods, services or interest in land are purchased primarily for a personal, family or household purpose.

4. Either the debt is payable in installments or a finance charge is made.

5. With respect to a sale of goods or services, the amount financed does not exceed \$25,000.

"Establishment" means each business facility located in or doing business in the state of Iowa (which includes issuing or performing wholly or in part in the state of Iowa any incident of a prearranged funeral contract) that sells, promotes or offers funeral services, funeral merchandise, cemetery merchandise, or a combination of funeral services and merchandise on a preneed basis or which provides funeral services or funeral merchandise pursuant to a prearranged funeral contract.

"Financial institution" means a state or federally insured bank, savings and loan association, or credit union, trust department thereof, or a trust company authorized to do business in the state of Iowa.

"Funds" means money paid pursuant to a prearranged funeral contract.

"Funeral merchandise" means one or more types of personal property to be used at the time of the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, and interment receptacles, but does not include real property, grave markers, tombstones, ornamental merchandise or monuments.

"Funeral services" means one or more services to be provided at the time of the final disposition of a dead human body, including but not limited to services necessarily or customarily provided in connection with a funeral, or services necessarily or customarily provided in connection with the interment, entombment, or cremation of a dead human body, or a combination of services, but does not include perpetual care or maintenance.

"Insolvent" means the inability to pay debts, as they become due, in the usual course of business.

"Memorial" means a grave marker, tombstone, item of ornamental merchandise or monument.

"Person" means an individual, corporation, trust, partnership or association, or any other legal entity.

"Prearranged funeral contract" means an oral or written agreement to furnish, upon the future death of a person named or implied in the agreement, funeral services, funeral merchandise, cemetery merchandise, or a combination of funeral services and merchandise.

"Purchaser" means any person (the person may or may not be a beneficiary) who purchases funeral services, funeral merchandise, cemetery merchandise, or a combination of funeral services and merchandise, on a preneed basis.

"Seller" means any person located in or doing business in the state of Iowa (which includes issuing or performing wholly or in part in the state of Iowa any incident of a prearranged funeral contract), that sells, promotes or offers funeral services, funeral merchandise, or a combination of funeral services and merchandise on a preneed basis and includes any establishment identified under a burial account as the establishment which will provide funeral services, funeral merchandise, cemetery merchandise, or a combination of funeral services and merchandise.

"Storage facility" means any person other than the seller, such as a warehouse keeper, manufacturer, or supplier who stores cemetery merchandise.

"Trustee" means any state or federally insured bank, savings and loan, credit union, or trust department thereof, or trust company authorized to conduct business in this state, to the extent that the financial institution has been granted trust powers under the laws of this state or the United States, who

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holds funds pursuant to a trust agreement. The term "trustee" shall not include:

1. A seller; or
2. Anyone employed by or directly involved with the seller in the seller's business of selling prearranged funeral plans.

"Trust instrument" means the document(s) pursuant to which a trustee receives, holds, invests, and disburses trust funds.

191—19.3(523A,523E) Titles. The Acts may be cited as the "Iowa sales of funeral services and merchandise Act" and the "Iowa sales of cemetery merchandise Act."

191—19.4(523A,523E) Scope.

19.4(1) This chapter shall apply to any agreement, oral or written, made by any person to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise, cemetery merchandise or a combination of funeral services and merchandise sold on a preneed basis, which shall include burial accounts if the account records or related agreements identify the establishment which will provide the funeral services, funeral merchandise or cemetery merchandise.

19.4(2) This chapter shall apply when an agreement is made in this state or an offer to sell a prearranged funeral contract is made or accepted in this state. An offer to sell is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state.

191—19.5 to 19.9 Reserved.

191—19.10(523A,523E) Administration.

19.10(1) The Acts shall be administered by the commissioner of insurance of the state of Iowa. As deputy administrator, the Iowa superintendent of securities shall be the principal operations officer responsible to the commissioner for the routine administration of the Acts and management of the administrative staff.

19.10(2) In the absence of the commissioner, whether because of the vacancy in the office, by reason of absence, physical disability or other cause, the superintendent of securities shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the superintendent of securities any or all of the functions assigned to the commissioner in the Acts.

19.10(3) The administrator shall employ officers, attorneys, accountants, investigators, and other employees as shall be needed for the administration of the Acts.

19.10(4) Upon request the commissioner may honor requests from interested persons for interpretative opinions.

191—19.11(523A,523E) Misrepresentations of government approval. It is unlawful for any seller under the Acts to represent or imply in any manner that the seller has been sponsored, recommended, or approved or that the seller's abilities or qualifications have in any respect been passed upon by the administrator or the state of Iowa.

191—19.12(523A,523E) Public access to hearings. Every hearing in an administrative proceeding shall be open to the public.

191—19.13(523A,523E) Public access to records.

19.13(1) The administrator shall keep a register of all applications for permits which are or have been effective under

the Acts and all denial, suspension, or revocation orders which have been entered under the Acts. The register shall be open for public inspection.

19.13(2) Upon request and for reasonable charges the administrator shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document which is a matter of public record and not deemed confidential at any time from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. In any administrative proceeding or prosecution under the Acts, any copy so certified is prima facie evidence of the contents of the entry or document certified.

19.13(3) All records maintained by the administrator pursuant to Iowa Code subsection 523A.2(1) shall be confidential and shall not be made available for inspection or copying except upon approval of the administrator or the attorney general.

19.13(4) The administrator and the attorney general may keep confidential certain information obtained in the course of an investigation or audit pursuant to Iowa Code chapter 22 as follows:

a. Information consisting of records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body;

b. Information consisting of a peace officer's investigative report; provided, however, that the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual;

c. Information consisting of a report to a governmental agency, which, if released, would give advantage to competitors and serve no public purpose; or

d. Information consisting of communications not required by law, rule, or procedure that are made to the insurance division or to any of its employees by identified persons outside of government, to the extent that the division could reasonably believe that those persons would be discouraged from making them if they were available for general public examination. Notwithstanding this provision:

(1) The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

(2) Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

(3) Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the insurance division to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the insurance division to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

19.13(5) If the administrator or the attorney general determines that it is necessary or appropriate, in the public interest, the administrator or the attorney general may share information with other administrators, regulatory authorities, or

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governmental agencies or may publish information concerning a violation of the Acts, this chapter, or an order issued pursuant to the Acts or this chapter.

191—19.14(523A,523E) Compliance with other laws.

19.14(1) All contracts subject to regulation under Iowa Code Supplement chapters 523A and 523E must conform to Iowa Code chapter 555A, the door-to-door sales Act, as follows:

a. Contract. Every seller shall furnish the buyer with a fully completed receipt or copy of any contract pertaining to the sale of funeral merchandise, cemetery merchandise or services at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer and in boldface type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

b. Cancellation. Every seller shall furnish each buyer, at the time the buyer signs the contract or otherwise agrees to buy services or merchandise from the seller, a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten-point boldface type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

(Enter date of transaction)
(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to

(Name of seller)

at (Address of seller's place of business) not later than midnight of (Date)

I hereby cancel this transaction.

(Date)

(Buyer's signature)

c. Duties of seller. A seller shall:

(1) Furnish two copies of the notice of cancellation to the buyer and complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(2) Not include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically the right to cancel the sale in accordance with the provisions of this chapter.

(3) Inform each buyer orally, at the time the buyer signs the contract or purchases the services or merchandise, of the buyer's right to cancel.

(4) Not misrepresent in any manner the buyer's right to cancel.

(5) Honor any valid notice of cancellation by a buyer and within ten business days after the receipt of notice refund all payments made under the contract or sale, return any goods or property traded in, in substantially as good condition as when received by the seller, and cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(6) Not negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the seventh business day following the day the contract was signed or the goods or services were purchased.

(7) Within ten business days of receipt of the buyer's notice of cancellation notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

d. Effect on indebtedness. Rescission of any contract pursuant to this chapter or the failure to provide a copy of the contract to the buyer as required by this chapter shall void any contract, note, instrument, or other evidence of indebtedness executed or entered into in connection with the contract and shall constitute a complete defense in any action based on the contract, note, instrument, or other evidence of indebtedness brought by the seller, the successors or assigns unless a successor or assignee of the seller after the seventh business day following the day the contract was signed has detrimentally relied upon a representation of the buyer that the contract has not been rescinded. This rule shall not affect the rights of the holders in due course of checks made by the buyer.

19.14(2) In the event of a credit sale, a contract must conform to Iowa Code chapter 537, the Iowa consumer credit code.

191—19.15(523A,523E) Fees. The following fees are hereby established by the commissioner:

- 1. Certification \$ 5.00
2. Replacement permit fee . . . \$ 5.00
3. Establishment permit fee . . \$50.00
4. Filing fee (Establishment's annual report) \$10.00 per contract
5. 1995 and 1996 Regulatory fund assessment (Payable in 1996 and 1997) \$ 2.00 per contract
6. Name change \$10.00
7. Photocopies of records . . . \$ 0.50 per page
8. Printout of sellers \$10.00
9. Initial sales permit fee \$ 5.00

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10. Sales permit renewal fee . . \$20.00

All fees are nonrefundable.

191—19.16(523A,523E) Forms—content. Copies of all necessary forms and instructions may be obtained from the Iowa Securities Bureau, Lucas State Office Building, Room 214, Des Moines, Iowa 50319. The list which follows describes the forms which members of the public shall use when dealing with the bureau, unless waived by the administrator, and computer-generated information may be accepted. Each direction shall be complied with and each question in the forms shall be answered in the same manner as if the forms and instructions were embodied in these rules.

FORM NUMBER

DESCRIPTION

- | | |
|-----|--|
| P-1 | Application For Establishment Permit. Used by applicants when filing for an establishment permit under the Acts. |
| P-2 | Application For Sales Permit. Used by applicants when filing for a sales permit under the Acts. |
| P-3 | Establishment's Annual Report. Used by establishments when filing their annual report under the Acts. |
| P-4 | Financial Institutions Annual Report. Used by financial institutions when filing their annual report under the Acts. |
| P-5 | Surety Bond. Required form of surety bond that a seller may file with the administrator in lieu of the trust fund required by Iowa Code Supplement sections 523A.1, 523A.2, 523E.1 and 523E.2. |
| P-6 | Establishment Permit. |
| P-7 | Sales Permit. |
| P-8 | Storage Facility's Application for Approval. |
| P-9 | Establishment's Annual Report – Short Form. |

191—19.17 to 19.19 Reserved.

191—19.20(523A,523E) Sales permits. An individual (including anyone selling insurance) shall not offer, advertise, sell, promote, or otherwise engage in the solicitation of an agreement to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise without a sales permit from the administrator. If the individual is an employee or agent of more than one establishment, an additional sales permit must be acquired for each establishment unless the establishments are affiliated by direct or indirect common control.

191—19.21(523A,523E) Permits not transferable.

1. Establishment and sales permits shall not be transferable.
2. An establishment permit holder selling a business shall cancel the permit and the purchaser of the business shall apply for a new permit in the purchaser's name within 30 days of the sale.

191—19.22(523A,523E) Denial, suspension or revocation of permits.

19.22(1) Denial of establishment permit. The administrator may refuse to issue an establishment permit if the administrator finds that the applicant:

- a. Has been convicted of a criminal offense involving dishonesty or false statement, or
- b. Cannot provide the funeral services, or funeral merchandise, or cemetery merchandise that the applicant purports to sell.

19.22(2) Revocation of sales permit. The administrator may revoke a sales permit if the administrator finds:

- a. That the seller is not an employee or agent of an establishment which holds a permit pursuant to the Acts,
- b. That the seller has been convicted of a criminal offense involving dishonesty or false statement, or
- c. That the establishment of which the seller is an employee or agent cannot provide the funeral services, or funeral merchandise, or cemetery merchandise the establishment purports to sell.

19.22(3) Suspension or revocation of permit. The administrator may, pursuant to Iowa Code chapter 17A, the Iowa administrative procedure Act, suspend or revoke any permit issued pursuant to the Acts if the administrator finds any of the following:

- a. The seller has violated any provisions of the Acts or this chapter or any other state or federal law applicable to the conduct of the seller's business.
- b. Any fact or condition exists which, if it had existed at the time of the original application for the permit, would have warranted the administrator's refusing originally to issue the permit.
- c. The seller is found upon investigation to be insolvent, in which case the permit shall be revoked immediately.

d. The seller, for the purpose of avoiding the trusting requirement under Iowa Code Supplement section 523A.1 or 523E.1 attributes amounts paid pursuant to the agreement to funeral merchandise or cemetery merchandise that is delivered under section 523A.1 or 523E.1 rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of funeral merchandise or cemetery merchandise to be delivered pursuant to section 523A.1 or 523E.1 than the services are regularly and customarily sold for when not sold in conjunction with funeral or cemetery merchandise is evidence that the seller is acting with the purpose of avoiding the trusting requirement for funeral services under section 523A.1 or 523E.

19.22(4) Temporary suspension. The administrator may, on good cause shown, suspend any permit for a period not exceeding 30 days, pending investigation.

19.22(5) Procedure. Chapter 3 of the Iowa insurance division's administrative rules printed in the Iowa Administrative Code and entitled "Administrative Hearings of Contested Cases," shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, reviews and licensing.

191—19.23(523A,523E) Certificates of authority.

19.23(1) The administrator may issue certificates of authority to confirm the existence of an effective establishment permit. The administrator may set renewal dates of not less than two years from the effective date for the initial certificates of authority, after which certificates of authority shall be renewable biennially on or before January 1.

19.23(2) An applicant for a certificate of authority shall submit to the administrator an application on a form provided by the administrator. The application shall include at a minimum the following information:

- a. The name and location of the applicant's business.

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b. The name and location of the establishment that will provide the funeral services, funeral merchandise or cemetery merchandise.

c. The name and address of each owner, officer or other official of the applicant's business or, in the event the applicant is a corporation, the names and addresses of the chief executive officer and the members of the board of directors.

d. The types of professional services, funeral merchandise or cemetery merchandise to be sold.

e. A copy of each form of sales agreement the seller will use for sales of funeral merchandise or cemetery merchandise under Iowa Code Supplement sections 523A.1 and 523E.1.

19.23(3) Upon a determination by the insurance division that the seller continues to meet the requirements of Iowa Code Supplement chapters 523A and 523E, the division shall issue a renewal certificate. The administrator may, pursuant to Iowa Code chapter 17A, suspend any permit if the seller does not file for renewal of the certificate of authority with the insurance division within 30 days of the certificate of authority's expiration date.

191—19.24 Reserved.

191—19.25(252J) Denial, suspension or revocation of sales permit for failure to pay child support.

19.25(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the salesperson that the salesperson's pending application, pending request for renewal, or current sales permit will be denied, suspended or revoked 30 days after the date of the notice. Notice shall be sent to the salesperson's last-known address by certified mail.

19.25(2) The notice shall contain the following items:

a. A statement that the commissioner intends to deny, suspend or revoke the salesperson's sales permit in 30 days;

b. A statement that the salesperson must contact the CSRU to request a withdrawal of the certificate of noncompliance;

c. A statement that the salesperson's application, request for renewal or current sales permit will be denied, suspended or revoked if the certificate of noncompliance is not withdrawn;

d. A statement that the salesperson does not have a right to a hearing before the division, but the salesperson may file an application for a hearing in district court pursuant to Iowa Code Supplement section 252J.9 within 30 days of the provision of the notice;

e. A statement that the filing of an application with the district court will stay the proceedings of the division;

f. A copy of the certificate of noncompliance.

19.25(3) The filing of an application for hearing with the district court will stay all proceedings until the commissioner is notified of the resolution of the application.

19.25(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice that an application for hearing has been filed, the commissioner shall deny, suspend or revoke the current sales permit 30 days after the notice is issued.

19.25(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, pending proceedings shall halt and the named salesperson shall be notified that the proceedings have been halted. If the salesperson's permit has already been suspended or revoked, the salesperson shall reapply for a permit and the application shall be granted if the applicant is otherwise in compliance with the division's rules.

19.25(6) All application fees must be paid by the applicant before a sales permit will be issued, renewed or reinstated after the commissioner has denied, suspended or revoked a sales permit pursuant to Iowa Code Supplement chapter 252J.

This rule is intended to implement Iowa Code Supplement section 252J.8.

191—19.26 to 19.29 Reserved.

191—19.30(523A,523E) Termination of business—records. An establishment permit holder discontinuing business shall maintain records for a period of five years from the date of discontinuing the business, unless a release from this provision is given by the administrator.

191—19.31(523A,523E) Records.

19.31(1) All establishments and trustees shall keep accurate accounts, books, and records concerning transactions regulated under the Acts.

19.31(2) An establishment's accounts, books, and records shall include:

a. Copies of all contracts;

b. The name and address of each purchaser;

c. The name of the contract beneficiary of each preneed contract;

d. The name and address of the trustee holding the trust funds received under each contract;

e. The dates and amounts of all receipts (including interest or earnings received or reported to the establishment) and expenditures for each purchaser; and

f. The dates and amounts of any disbursements relating to funds held in trust.

19.31(3) A financial institution's accounts, books, and records shall include:

a. The name of the establishment;

b. The names of the contract beneficiaries;

c. The amount and date of receipt of all funds received from the establishment; and

d. A record of the amount and date of interest or income deposited in trust and all disbursements.

19.31(4) An establishment shall retain all required accounts, books, and records pertaining to each prearranged funeral contract for at least two years after the date of performance or termination, unless a release from this provision is given by the administrator.

19.31(5) Inspection.

a. The accounts, books, and records pertaining to a purchaser's prearranged funeral contract shall be available for inspection by purchasers during normal business hours at the establishment's place of business upon request. If the accounts, books and records are not maintained at the establishment, the information shall be made available at the establishment within not less than ten business days.

b. All establishments and trustees shall make all accounts, books, and records concerning transactions regulated under the Acts available to the administrator or the attorney general upon request for the purpose of examination.

191—19.32(523A,523E) Annual reports.

19.32(1) All holders of an establishment permit, trustees, and financial institutions shall, no later than March 1 of each year, file an annual report with the administrator on the forms prescribed by the administrator. Any person holding more than one establishment permit, as the result of multiple locations, may elect to file only one annual report.

19.32(2) Every establishment filing an annual report shall pay a filing fee of \$10 per prearranged funeral contract sold

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during the year covered by the report. The fee does not apply:

- a. For an agreement where the beneficiary dies in the same year the agreement was sold;
- b. To any modifications or additions, such as payments, involving an existing agreement sold in a previous year;
- c. To an additional agreement purchased by a purchaser already reported to the insurance division; or
- d. To any agreement canceled or revoked in the same year the agreement was sold. However, all these changes must be reported.

19.32(3) During 1996 and 1997, every establishment filing an annual report shall also pay a special assessment for the insurance division's regulatory fund of \$2 per prearranged funeral contract sold during the year covered by the report. The assessment does not apply:

- a. For an agreement where the beneficiary dies in the same year the agreement was sold;
- b. To any modifications or additions, such as payments, involving an existing agreement sold in a previous year;
- c. To an additional agreement purchased by a purchaser already reported to the insurance division; or
- d. To any agreement canceled or revoked in the same year the agreement was sold. However, all these changes must be reported.

19.32(4) Establishments shall make a good faith effort to complete the annual report in the form requested by the administrator. To the extent that information requested by the form is not reasonably available to the establishment, the exception shall be noted or noted as a variance. Account balances within 12 months of the date on the form will be accepted if the actual date is noted.

19.32(5) The administrator may adopt a short form for the establishment's annual report which incorporates by reference information readily available at the establishment. The administrator may certify and decertify establishments authorized to file the short form report based upon the establishment's record-keeping system, the number of agreements subject to regulation under Iowa Code Supplement chapters 523A and 523E, the availability and accessibility of information at the establishment regarding agreements subject to regulation, whether the establishment places 100 percent of funds received in trust, and the findings of the administrator resulting from audits and consumer complaints.

191—19.33 to 19.39 Reserved.

191—19.40(523A,523E) Trust funds. Any seller that does not have insurance coverage protecting against the loss of consumer payments that are not placed in trust within the time period required by Iowa Code Supplement sections 523A.1 and 523E.1 shall not commingle trust funds with other funds of the seller. Sellers may use one or more of the following methods:

1. Depositing consumer funds in an escrow account until the trustable amount has been deposited in a trust account at a financial institution;
2. Prior delivery or warehousing of merchandise;
3. Prior filing of a surety bond in lieu of the trust fund; or
4. Simultaneous, same day, deposits of the purchaser's payments in the seller's bank account and the trustable amount by the seller in the trust account.

191—19.41(523A,523E) Trust instruments. The administrator may require alterations or additions to a trust agreement if it is not in accord with the provisions of this chapter.

191—19.42(523A,523E) Investment of trust funds.

19.42(1) A financial institution acting as a trustee of trust funds under this chapter shall invest the funds in accordance with applicable law. In so investing, the trustee shall exercise the judgment and care under the circumstances then prevailing, which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to the speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

19.42(2) Subject to contractual agreement between the parties, the trustee may receive a reasonable fee for services rendered as a trustee from the trust funds.

191—19.43(523A,523E) Burial accounts. If a burial account identifies, either in the account records or in related agreements, the establishment which will provide the funeral services, funeral merchandise or cemetery merchandise, the account records or the related agreement must contain a statement signed by an authorized representative of the establishment agreeing to furnish the funeral merchandise and services or cemetery merchandise upon the death of a person named in the burial account's records or the related agreement. The burial account shall not identify a specific establishment as payee unless the account records or the related agreement, if any, contains the signature of an authorized representative of the establishment and, if the agreement is for funeral services as defined in Iowa Code chapter 156, a funeral director licensed to deliver those services. An establishment may enter into agreements authorizing more than one burial account and agreeing to furnish the applicable merchandise and service.

191—19.44(523A,523E) Delivered or warehoused merchandise.

19.44(1) For purposes of Iowa Code Supplement sections 523A.1 and 523E.1, funeral and cemetery merchandise shall not be deemed to be delivered to the purchaser or warehoused if the merchandise is subject to a lien or security interest by any party other than the seller. Lawn crypts may be delivered in lieu of trusting. For this purpose, delivery shall mean burial in a grave owned by the purchaser. The seller shall notify the administrator before the lawn crypts are buried, identify the intended location(s) of the lawn crypts within the cemetery and provide documentation adequately demonstrating delivery has occurred, such as photographs and third-party certifications.

19.44(2) For purposes of Iowa Code Supplement section 523A.1, caskets and other types of inner burial containers or concrete burial vaults sold after July 1, 1995, may not be warehoused in lieu of the trust fund required by Iowa Code Supplement sections 523A.1 and 523A.2.

191—19.45 Reserved.

191—19.46(523A,523E) Insurance funding. For purposes of Iowa Code Supplement sections 523A.2(7) and 523E.2(6), a prearranged funeral agreement executed on or after July 1, 1995, shall be deemed to be funded by insurance if one or more of the following are satisfied:

1. All payments under the agreement are paid directly to the insurance company issuing the policy.
2. An existing policy or policies are assigned to the seller or the seller is designated as the beneficiary.

191—19.47 to 19.49 Reserved.

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191—19.50(523A,523E) Orders. The administrator may, by order, take actions which are necessary or appropriate for the protection of purchasers and to implement the purposes of the Acts.

191—19.51(523A,523E) Investigations and subpoenas.

19.51(1) The administrator or the attorney general may:

a. Make private and public investigations within or outside of this state as the administrator or the attorney general deems necessary to determine whether a person has violated any provision of the Acts or any rule or order hereunder or to aid in the enforcement of the Acts;

b. Require or permit any person to file a statement under oath or otherwise as the administrator or the attorney general determines as to all the facts and circumstances concerning the matter to be investigated; and

c. Publish information concerning any violation of the Acts or any rule or order hereunder.

19.51(2) For the purpose of any investigation or proceeding under the Acts, the administrator, the attorney general, or any officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator deems relevant or material to the inquiry.

191—19.52(523A,523E) Audits.

19.52(1) The administrator shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a seller, trustee or financial institution for the purpose of verifying compliance with the Acts and this chapter. When a seller fails or refuses to produce the records for examination when requested by the administrator, the administrator shall have the authority to require, by a subpoena, the attendance of the seller, or its representatives, and any other witness(es) whom the administrator deems necessary or expedient to examine and compel the seller and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to compliance with the Acts or this chapter.

19.52(2) Unless waived by the administrator, the audit shall be paid for by the seller(s), and a copy of the report of audit shall be delivered to the administrator and to the seller(s). In the event of an audit involving more than one seller the cost shall be prorated among the sellers on any reasonable basis determined by the administrator.

191—19.53 to 19.59 Reserved.

RULES THAT APPLY ONLY TO IOWA CODE SUPPLEMENT CHAPTER 523A

191—19.60(523A) Consumer price index adjustment. Pursuant to Iowa Code Supplement section 523A.1, the administrator sets the following amounts for the purpose of calculating the amount of interest or income earned on amounts deposited in trust that must remain trust funds as an adjustment for inflation:

1995	2.5%
1994	2.7%
1993	2.7%
1992	2.9%
1991	3.1%
1990	6.1%
1989	4.6%
1988	4.4%
1987	4.4%

191—19.61 to 19.69 Reserved.

RULES THAT APPLY ONLY TO IOWA CODE SUPPLEMENT CHAPTER 523E

191—19.70(523E) Funds deposited at financial institutions. If an establishment deposits additional funds in order to comply with the requirements of Iowa Code Supplement section 523E.1(2), those additional funds may be withdrawn at a later time if the withdrawal will not result in a violation of the requirements of Iowa Code Supplement section 523E.1 at the time of the withdrawal. All withdrawals must be reported to the administrator on the annual report.

191—19.71(523E) Warehoused cemetery merchandise.

19.71(1) Application.

a. The standards contained in these guidelines pertain to the offer and sale of cemetery merchandise pursuant to an agreement where the merchandise will be manufactured or purchased and stored until some future date or upon occurrence of the death of the person for whose benefit the merchandise was purchased. The primary focus of these guidelines is on merchandise identification, storage methods, merchandise title, insurance and protection against damage, final or near-final completion of the merchandise and regulatory audits, which are intended to provide reasonable assurance of performance at the time of need.

b. The administrator may modify or waive any provision of these guidelines if the object sought to be achieved thereby is accomplished by other means. Where the individual characteristics of specific storage programs warrant modification from these standards, they will be accommodated, insofar as possible, while still being consistent with the spirit of these guidelines.

c. Products that deteriorate should not be purchased and stored. At the current time, these guidelines apply only to the storage of bronze memorials.

19.71(2) Definitions. As used in this rule:

“Cemetery merchandise” means bronze grave markers, tombstones, ornamental merchandise, and monuments sold pursuant to an agreement that does not require installation within 12 months.

“Memorial” means a grave marker, tombstone, item of ornamental merchandise, or monument.

“Purchaser” means any person who purchases cemetery merchandise at retail and not for the purpose of resale.

“Seller” means any person located or doing business in this jurisdiction who sells, promotes, or offers cemetery merchandise to one or more purchasers.

“Storage facility” means any person other than the seller, such as a warehouse keeper, manufacturer, or supplier, who stores cemetery merchandise.

“Substantially complete” means, for a bronze memorial, a marker that has been tooled, edged, chased and is ready for color and finish.

19.71(3) Application for approval.

a. Forms. Applications for approval of a storage facility warehousing cemetery merchandise shall be made on forms provided by the administrator and shall be delivered through the mails or otherwise to the administrator’s office.

b. Complete answers and certifications. Applications shall not be processed until all questions appearing on the application are fully completed, certified as accurate, and sworn to before a notary public, and all required documents are received by the administrator.

c. Determination of approval and standards for review. The administrator shall provide the applicant with its determination within 60 days after receipt of the completed ap-

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plication and required documents. The administrator shall approve a storage facility's application upon satisfaction of the following conditions:

(1) Insurance coverage and financial condition. As a condition of approval, the applicant must demonstrate that adequate insurance against loss and damage has been purchased and that the applicant's financial condition is commensurate with any financial obligations assumed in the operation of the storage facility. Proof of the applicant's financial condition shall include submission of audited financial statements completed in accordance with generally accepted accounting principles, which shall include a balance sheet prepared as of a date within 120 days prior to the application and a profit and loss statement and changes in financial position for each of the three fiscal years preceding the date of the balance sheet, or for the period of their existence, if less than three years.

(2) Record-keeping system. As a condition of approval, the applicant must demonstrate that the applicant has an adequate record-keeping system that allows identification and a description of each item in storage, the ownership of each item in storage, the seller's name and address, an order number, the order date, the storage date, and aggregate listing and numerical totals for the entire storage facility and for each jurisdiction.

(3) Title. As a condition of approval, the storage facility must undertake to deliver a minimum of two copies of some form of title certificate to the seller, with at least one copy marked as the seller's copy and at least one copy marked as the purchaser's copy. Each seller shall be required to deliver at least one copy to the purchaser and to retain one copy in the seller's records. Certificates of ownership should not be issued until the merchandise is physically stored in substantially complete condition.

(4) Delivery requirements.

1. As a condition of approval, the applicant must undertake to require the purchaser's signature, or the signature of the purchaser's legal representative, prior to the delivery of the cemetery merchandise.

2. As a condition of approval, the storage facility must undertake not to accept prepayment of delivery expenses or charges. Unless an adequate surety bond has been filed with the administrator for that purpose, each seller shall be required to hold funds in trust equal to the estimated delivery costs at the time of sale, which funds and any accrued interest or income shall be and remain trust funds until the cemetery merchandise has been delivered to the purchaser. Appropriate written disclosure shall be provided to the seller that delivery costs will be billed to the seller at the time of delivery.

(5) Storage requirements. As a condition of approval, the storage facility must demonstrate that the applicant has an adequate storage system that provides both accessibility and protection against damage. The storage facility must undertake that all cemetery merchandise will be substantially complete prior to storage.

(6) Consent to audits and inspections. As a condition of approval, the applicant must file a written consent authorizing audits and inspections by the administrator, its personnel, and its representatives.

(7) Statutory compliance with other state or provincial laws. As a condition of approval, the applicant shall be in compliance with all applicable laws regulating the applicant's activities as a warehouse keeper, manufacturer, supplier, or seller of cemetery merchandise.

(8) Identification or personalization of merchandise. All cemetery merchandise must be appropriately marked, identified, and described in a manner that it can be distinguished from other similar items of merchandise, unless waived by

the administrator by order upon a showing of just cause for the waiver. A waiver application must demonstrate that the storage facility has filed a surety bond with the administrator (in a form and amount deemed sufficient by the administrator) or that the storage facility is in compliance with the following conditions:

1. The storage facility's storage system allows visual inspection and counting.

2. The merchandise is stored by type or style.

3. The record-keeping system identifies the location of the item by a bin system or reasonable alternative.

4. The record-keeping system keeps totals for each type of merchandise in storage.

(9) Payment of accounts receivable. As a condition of approval, the applicant shall undertake to require payment of all applicable accounts receivable within 90 days of the purchase of the cemetery merchandise.

(10) Audits and reports. The administrator shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a storage facility for the purpose of verifying compliance with Iowa Code Supplement chapter 523E and this chapter. For purposes of an audit, the division may request a report containing the following information:

1. A description of the storage facility, including the name, address of the principal business office, state or province of organization, date of organization, type of entity (e.g., corporation or partnership), and the location of all storage facilities.

2. A description of the storage program.

3. A detailed description of all merchandise currently in storage, which shall include all of the following:

- The date the merchandise was first placed in storage.

- The surname of the purchaser or the person on whose behalf the merchandise was purchased.

- The location of the merchandise, which shall include the location within the facility utilizing a numbering system that provides the exact location of each item of merchandise, for example, by row, shelf, bin, or box.

- The name and address of the seller.

- The total number of items, by category, in storage at the facility for sellers located in this state.

- The total number of items, by category, in storage at the facility.

Unless waived by the administrator, the transportation and lodging expenses of the audit shall be reimbursed by the storage facility.

These rules are intended to implement Iowa Code Supplement chapters 252J, 523A and 523E.

[Filed 7/12/96, effective 9/4/96]

[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6595A**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147A.4, the Iowa Department of Public Health hereby amends Chapter 132, "Emergency Medical Services," Iowa Administrative Code.

The Iowa Department of Public Health, Bureau of Emergency Medical Services, will use the National Registry of Emergency Medical Technicians' written examinations to certify Iowa's EMTs and first responders. The proposed amendments will facilitate the use of new expiration dates.

Item 1 requires submission of a renewal of certification application within 90 days of the certificate's expiration date. Item 2 clarifies the time frame for submission of a renewal application.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 5, 1996, as **ARC 6465A**. The Iowa Department of Public Health held a public hearing on Tuesday, June 25, 1996, at 1 p.m. in the Fifth Floor Conference Room, Side Two, Lucas State Office Building, Des Moines, Iowa 50319-0075. The proposed amendments were given to the Iowa EMS Advisory Council and the 22 EMS training programs for comment on May 24, 1996. No comments were received prior to or during the hearing. The amendments remain the same as published under Notice of Intended Action. The Iowa State Board of Health adopted these amendments on July 10, 1996.

These amendments are intended to implement Iowa Code chapter 147A.6.

These amendments will become effective September 4, 1996.

The following amendments are adopted.

ITEM 1. Amend subrule 132.4(3) as follows:

132.4(3) Renewal of certification.

a. No change.

b. All continuing education requirements shall be completed during the certification period prior to the certificate's expiration date. Failure to complete the continuing education requirements prior to the expiration date shall result in *lapsed an expired* certification.

~~c. No more than 90 days after the expiration date shall be allowed for the submission (based upon the postmark date) of the "Application for Renewal of Certification." After 90 days, the certification shall be considered lapsed and the individual shall not function as an emergency medical care provider. Only those providers who have completed the renewal requirements may function as an emergency medical care provider during the 90 days allowed for renewal submission.~~

c. The "Application for Renewal of Certification" shall be submitted to the department within the 90 days prior to the expiration date. Failure to submit a renewal application to the department within the 90 days prior to the expiration date (based upon the postmark date) shall cause the current certification to expire. Emergency medical care providers shall not function on an expired certification.

An individual who completes the required continuing education during the certification period, but fails to submit the "Application for Renewal of Certification" within the 90 days after prior to the expiration date, shall be required to

submit a late fee of \$30 (in addition to the renewal fee) to obtain renewal of certification.

d. An individual who has not completed the required continuing education during the certification period and is seeking to reinstate a ~~lapsed~~ *an expired* certificate shall:

(1) to (4) No change.

TABLE 1

CERTIFICATION LAPSED EXPIRED FOR	REQUIRED CONTINUING EDUCATION HOURS FOR REINSTATEMENT (including required topics)			
	FR-D FR	EMT-D EMT-A EMT-B	EMT-I	EMT-P
Less than 2 years	14	24	48	60
2-4 years	28	48	96	120
4-6 years	42	72	144	180

e. and f. No change.

ITEM 2. Amend subrule 132.4(4) as follows:

132.4(4) Renewal standards. To be eligible for renewal, the certificate holder shall:

a. Have signed and submitted an "Application for Renewal of Certification," provided by the department, and the applicable fee within the 90 days ~~after~~ *prior to* the certificate's expiration date.

b. to d. No change.

[Filed 7/10/96, effective 9/4/96]

[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6598A**TREASURER OF STATE[781]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 12.21, the Treasurer of State hereby amends Chapter 8, "Accepting Credit Card Payments," Iowa Administrative Code.

These amendments are made to clarify the procedures governing credit card receipt processing for state departments.

Notice of Intended Action was published in the June 5, 1996, Iowa Administrative Bulletin as **ARC 6446A**. The adopted amendments are identical to those published under Notice.

The amendments were approved by the Treasurer on July 11, 1996.

These amendments are intended to implement Iowa Code section 12.21.

These amendments will become effective September 4, 1996.

The following amendments are adopted.

ITEM 1. Amend subrule 8.3(1) as follows:

8.3(1) A state department shall ~~have legislative authorization~~ *be authorized by the treasurer of state* in order to accept credit card payments.

TREASURER OF STATE[781](cont'd)

ITEM 2. Amend subrule 8.3(2) as follows:

8.3(2) A state department shall notify the treasurer of its intent to accept credit card payments *and advise the treasurer as to:*

- a. *The number, amount and total dollar volume of transactions conducted by the department each year; and*
- b. *The number and location of departmental sites that may accept credit card payments.*

ITEM 3. Amend subrule 8.3(3), introductory paragraph, as follows:

8.3(3) ~~The treasurer shall meet with a state department's staff to discuss the following matters provide the following information to the state department:~~

ITEM 4. Rescind subrule **8.3(3)**, paragraph "a," and adopt the following new paragraph "a" in lieu thereof:

- a. Fees charged to the state departments by the financial institution to process credit card payments.

ITEM 5. Amend subrule **8.3(3)**, paragraph "d," as follows:

- d. Adjustments on fees paid with a credit card, *if allowed in the contract for credit card processing.*

ITEM 6. Amend subrule **8.3(3)** by adding the following new paragraph "f":

- f. Equipment needed to accept credit card payments.

ITEM 7. Amend subrule 8.4(2) as follows:

8.4(2) State departments shall follow the financial institution's procedures for accepting payments by credit card as described in the agreement between the treasurer and the financial institution and as specified in the operation and procedures manuals provided to the departments. The departments shall also use the equipment and supplies outlined in the agreement. If an agency fails to follow the procedures, the treasurer's office may revoke ~~their access to the credit card acceptance system~~ *its authorization to accept credit card payments.*

ITEM 8. Rescind rule 781—8.5(12) and insert in lieu thereof the following new rule:

781—8.5(12) Rate adjustments. If rate adjustments are allowed under the credit card processing contract, then the following shall apply:

1. The treasurer shall determine the rate by which a state department's fees may be adjusted to reflect costs of credit card processing.
2. A state department shall charge the adjusted fee only to those consumers making payment with a credit card.
3. A state department which accepts credit card payments shall disclose to the public the amount of the fee adjustment.

4. The treasurer shall notify state departments, in writing, of any changes in the fee adjustment.

[Filed 7/11/96, effective 9/4/96]

[Published 7/31/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/31/96.

ARC 6604A

**VETERANS AFFAIRS
COMMISSION[801]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 35A.3, the Commission of Veterans Affairs amends Chapter 10, "Iowa Veterans Home," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 8, 1996, as **ARC 6388A**. No public comment was received on these amendments. These amendments are identical to the amendments published under Notice of Intended Action.

These amendments better define and update 801—Chapter 10 regarding regulatory compliance in the operation of the Iowa Veterans Home as an entity under the direction of the Commission of Veterans Affairs.

These amendments were adopted by the Commission of Veterans Affairs on July 10, 1996.

These amendments shall become effective September 4, 1996.

These amendments are intended to implement Iowa Code chapter 35D.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to Ch 10] is being omitted. These rules are identical to those published under Notice as **ARC 6388A**, IAB 5/8/96.

[Filed 7/12/96, effective 9/4/96]

[Published 7/31/96]

[For replacement pages for IAC, see IAC Supplement 7/31/96.]



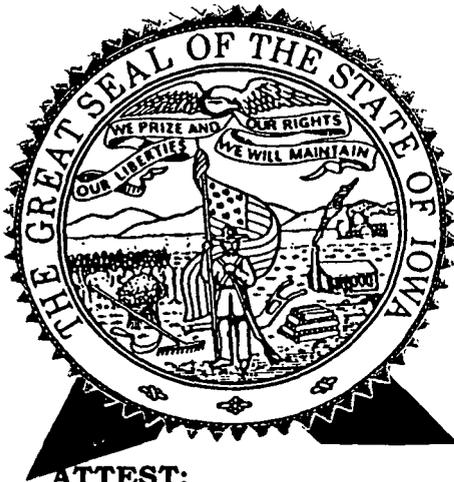
IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 58

- WHEREAS,** on October 13, 1982, President Reagan signed into law the "Job Training Partnership Act" (JTPA), Public Law 97-300; and
- WHEREAS,** the Governor and the Secretary of Labor signed an agreement assuring the State would comply with the JTPA, applicable rules and regulations and the Wagner-Peyser Act, as amended, and specifying the Secretary would accept guidelines, interpretations and definitions of the Governor if they are consistent with JTPA and applicable rules and regulations; and
- WHEREAS,** the Governor by Executive Order Number 24 (June 30, 1986) designated the Department of Economic Development (DED) as his administrative agency for JTPA and established within the executive offices of the State the State Job Training Coordinating Council (SJTCC); and
- WHEREAS,** Senate File 2409, signed into law on May 2, 1996, transferred the administrative responsibilities for the JTPA to the Workforce Development Department (WDD); and
- WHEREAS,** administrative continuity is necessary to ensure all mandated activities and plans continue in operation during and after the transition of responsibilities to the WDD.
- NOW, THEREFORE,** I, Terry E. Branstad, Governor of the State of Iowa, by the virtue of the authority vested in me by the Laws and Constitution of the State of Iowa and JTPA, do hereby delegate to the Workforce Development Department, the authority and responsibility vested in the Governor under JTPA for administering and carrying out employment and training policies, programs and activities under JTPA.

- I. The Workforce Development Department acts on the Governor's behalf as the JTPA state administrative agency. The Governor shall:

- a. appoint policy makers as required by federal legislation; and
 - b. approve any reorganization plans for a JTPA service delivery area (SDA); and
 - c. approve final designation and redesignation of a JTPA SDA; and
 - d. oversee the agency's programs, policies and activities.
- II. This transfer of responsibility shall be effective July 1, 1996.
- III. This order replaces Executive Order Number 24.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 1st day of July in the year of our Lord one thousand nine hundred and ninety-six.

Terry E. Branstad

GOVERNOR

Paul D. Pate

SECRETARY OF STATE



State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

WHEREAS, On May 8th, 9th and again on June 16th, 1996, storms moved across Iowa producing strong winds, hail, heavy rainfall and flash flooding, causing extensive damage; and

WHEREAS, the effect of these storm systems was severe flooding of roads, bridges, homes, businesses., farmland, streets, flood control facilities and other infrastructure; and

WHEREAS, assistance may be needed from State and Federal agencies for services and resources beyond local capability in damage assessment, emergency protective measures, clean-up activities and permanent restoration;

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Allamakee, Cherokee, Clarke, Decatur, and Wayne Counties, for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 3rd day of July in the year of our Lord one thousand nine hundred and ninety-six.

Terry E. Branstad
GOVERNOR

ATTEST:
Paul H. Peto
SECRETARY OF STATE


State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

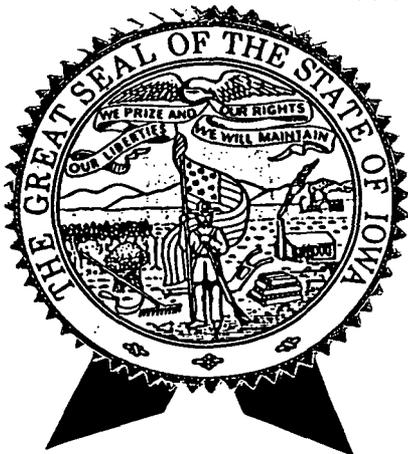
PROCLAMATION OF DISASTER EMERGENCY

WHEREAS, Beginning May 8th and continuing through May 28, 1996, storms moved across Iowa producing strong winds, hail, heavy rainfall and flash flooding, causing extensive damage; and

WHEREAS, the effect of these storm systems was severe flooding of roads, bridges, homes, businesses, farmland, streets, flood control facilities and other infrastructure; and

WHEREAS, assistance may be needed from State and Federal agencies for services and resources beyond local capability in damage assessment, emergency protective measures, clean-up activities and permanent restoration;

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Adams, Ringgold, Taylor and Union Counties, for the aforementioned reasons, in a State of Disaster Emergency. This proclamation of Disaster Emergency authorizes local and State government to render good and sufficient aid to assist this area in its time of need.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 9th day of July in the year of our Lord one thousand nine hundred and ninety-six.


 GOVERNOR

ATTEST:


 SECRETARY OF STATE

*** SUMMARY OF THE OPINIONS OF THE ATTORNEY GENERAL**

THOMAS J. MILLER

April through June, 1996

AREA EDUCATION AGENCIES; SCHOOLS

Gifts. Iowa Code §§ 68B.2, 68B.21, 68B.22, 256.9, 273.7A, 273.9, 279.32 (1995). An Area Education Agency (AEA) probably could not pay the costs for food and beverages of school district employees and school board members attending an AEA business meeting or the costs for lodging, food, and beverages of such persons attending an AEA-sponsored educational conference, seminar, or workshop to the extent these costs exceed three dollars per person per day. An AEA could not waive the registration fees of school district employees or school board members attending an AEA-sponsored educational conference, seminar, or workshop absent an exception to the prohibition against gifts from restricted donors. The agenda of the conference, seminar, or workshop and the existence of contractual relations between the AEA and a school district are factors that may affect these conclusions. (Kempkes to Tinsman, State Senator, 4-16-96) #96-4-4

COUNTIES; HOSPITALS

Sales or leases of property; voter approval. Iowa Code §§ 347.7, 347.13, 347.14, 347.24, 347.28, 347A.1 (1995). County hospitals governed either by chapter 347 or by chapter 347A may, under certain circumstances, sell or lease buildings and operations to a privately operated nonprofit corporation for use in providing health-care services to the public. County hospitals governed by chapter 347 have such authority to sell or lease regardless of outstanding bonded indebtedness; however, county hospitals governed by chapter 347A have no authority to transfer their legal responsibility for payment of outstanding revenue bonds to a buyer, lessee, or other party. Voters need to approve those sales or leases of property acquired by condemnation or purchase, but not property acquired by gift, devise, or bequest. (Kempkes to Drake, State Representative, 5-3-96) #96-5-1(L)

COUNTIES; PROPERTY TAX FREEZE

Aviation Authority. Iowa Code §§ 330A.15, 330A.16, 331.422, 331.424, 444.25A (1995). A county may not increase its aviation authority levy absent an unusual need for the additional funds. (Kempkes to Andersen, Audubon County Attorney; 5-23-96) #96-5-3(L)

COUNTY OFFICERS

Leave of absence for deputy sheriffs running for partisan elective office paying remuneration. Iowa Code § 341A.18 (1995). Section 341A.18 does not preclude deputy sheriffs on leave from responding to subpoenas to testify as material witnesses in a criminal case in which they have performed official duties relating to investigation or law enforcement. Section 341A.18 does not require deputy sheriffs to take a leave of absence before a primary election if they will have no opponents in the primary election, but will have opponents in the general election. (Kempkes to Anstey, Mills County Attorney, 4-3-96) #96-4-1(L)

COURTS

Judicial nominating commission vacancy. Iowa Code § 46.5 (1995). A vacancy on a district judicial nominating commission caused by a commissioner-elect's rejection of a seat on the commission should be filled by appointment by a majority of the authorized number of elective members of the district commission, as provided for in the third unnumbered paragraph of section 46.5. (Scase to Richardson, Clerk of the Supreme Court, 4-16-96) #96-4-3

HUMAN SERVICES, DEPT. OF; CHILD SUPPORT LAW

Establishment of current and accrued support. Iowa Code § 234.39(1) (1995). A dispositional order of the juvenile court or an administrative order entered pursuant to chapter 252C shall establish, after legal notice and a reasonable opportunity to be heard is provided to a parent or guardian, the amount of the support obligation which may be retroactive to the date the child first entered foster care. (Hansen to Wise, State Representative, 4-10-96) #96-4-2

STATE OFFICERS AND DEPARTMENTS; PROFESSIONAL LICENSING BOARDS

Discipline of physicians and surgeons. Iowa Code §§ 7E.2, 135.11, 147.87, 147.88, 272C.1, 272C.3, 272C.4, 272C.5 (Iowa 1995). The Department of Public Health has no authority under Iowa Code section 147.87 (1995) either to review the process used by the Board of Medical Examiners and its staff to investigate and prosecute a licensee disciplinary case or to review compliance with that process in particular cases. (Kempkes to Atchison, Director, Department of Public Health, 5-22-96) #96-5-2(L)

1995 IOWA CODE

OPINION

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68B.2	96-4-4
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135.11	96-5-2(L)
147.87	96-5-2(L)
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272C.1	96-5-2(L)
272C.3	96-5-2(L)
272C.4	96-5-2(L)
272C.5	96-5-2(L)
273.7A	96-4-4
273.9	96-4-4
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347.7	96-5-1(L)
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347.14	96-5-1(L)
347.24	96-5-1(L)
347.28	96-5-1(L)
347A.1	96-5-1(L)
444.25A	96-5-3(L)

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