

OCT 23 1996

STATE LAW LIBRARY
State House
DES MOINES, IOWA



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XIX
October 23, 1996

NUMBER 9
Pages 713 to 788

CONTENTS IN THIS ISSUE

Pages 733 to 782 include ARC 6807A to ARC 6825A

AGENDA

| | |
|---|-----|
| Administrative rules review committee | 718 |
| Committee actions | 722 |

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

| | |
|--|-----|
| Notice, Infectious and contagious diseases, 64.1 ARC 6817A | 733 |
| Notice, Livestock importation — turkeys, 65.11(2) ARC 6824A | 733 |
| Notice, Dairy, 68.12, 68.13, 68.26 ARC 6823A ... | 734 |

ALL AGENCIES

| | |
|-------------------------------------|-----|
| Schedule for rule making | 716 |
| Publication procedures | 717 |
| Agency identification numbers | 730 |

BANKING

| | |
|--|-----|
| Agricultural credit corporation maximum loan rate | 734 |
|--|-----|

CITATION OF ADMINISTRATIVE RULES

DELAY

| | |
|--|-----|
| Racing and Gaming Commission[491] Phenylbutazone, 10.6(2)“g”(3) | 783 |
|--|-----|

ENVIRONMENTAL PROTECTION COMMISSION[567]

| | |
|--|-----|
| NATURAL RESOURCES DEPARTMENT[561]“umbrella” Objection, Manure management, Notice Terminated, ARC 6644A | 783 |
|--|-----|

EXECUTIVE DEPARTMENT

| | |
|---------------------------------|-----|
| Executive Order number 59 | 784 |
|---------------------------------|-----|

INSPECTIONS AND APPEALS DEPARTMENT[481]

| | |
|--|-----|
| Filed Emergency, Contested case hearings, 10.25 ARC 6808A | 770 |
|--|-----|

INSURANCE COMMISSION[191]

| | |
|---|-----|
| COMMERCE DEPARTMENT[181]“umbrella” Notice of proposed workers’ compensation rate filing | 735 |
|---|-----|

| | |
|--|-----|
| Filed, Life insurance illustrations model regulation, ch 14 ARC 6825A | 773 |
|--|-----|

LABOR SERVICES DIVISION[347]

| | |
|---|-----|
| EMPLOYMENT SERVICES DEPARTMENT[341]“umbrella” Notice, General industry safety and health, 10.20 ARC 6813A | 735 |
| Notice, Construction safety and health, 26.1 ARC 6812A | 735 |
| Filed Emergency After Notice, General industry, 10.20 ARC 6814A | 770 |
| Filed Emergency After Notice, Construction safety, 26.1 ARC 6815A | 770 |

MEDICAL EXAMINERS BOARD[653]

| | |
|---|-----|
| PUBLIC HEALTH DEPARTMENT[641]“umbrella” Notice, Licensure renewal, 11.6(1), 11.31, 11.32(1) ARC 6820A | 736 |
| Filed, Licensure, amendments to ch 11 ARC 6821A | 778 |
| Filed Emergency, Physician assistant supervision, ch 21 ARC 6822A | 771 |

NURSING BOARD[655]

| | |
|---|-----|
| PUBLIC HEALTH DEPARTMENT[641]“umbrella” Filed, Disciplinary proceedings, amendments to ch 4 ARC 6810A | 779 |
|---|-----|

OBJECTION

| | |
|--|-----|
| Environmental Protection Commission[567] Manure management, Notice Terminated, ARC 6644A | 783 |
|--|-----|

PERSONNEL DEPARTMENT[581]

| | |
|---|-----|
| Notice, Policy and procedures, amendments to chs 1 to 16, 18, 20, 25 ARC 6811A | 736 |
|---|-----|

PROFESSIONAL LICENSURE DIVISION[645]

| | |
|--|-----|
| PUBLIC HEALTH DEPARTMENT[641]“umbrella” Notice, Audiology assistant I and II, 302.2 to 302.4, 302.6 ARC 6809A | 759 |
| Filed Emergency After Notice, Physical and occupational therapy examiners, 200.3, 200.4(7), 200.7(3), 200.9, 201.5(1), 201.6, 201.12(11), 201.22(8), 202.3, 202.4(7), 202.8(3), 202.10 ARC 6816A | 771 |

Continued on page 715

PUBLIC FUNDS — AVAILABILITY
 Public Health Department[641]
 Childhood lead poisoning prevention 732

PUBLIC HEALTH DEPARTMENT[641]
 Notice of Public Funds Availability 732

PUBLIC HEARINGS
 Summarized list 724

RACING AND GAMING COMMISSION[491]
 INSPECTIONS AND APPEALS DEPARTMENT[481]
 Delay, Phenylbutazone, 10.6(2)“g”(3) 783

REVENUE AND FINANCE DEPARTMENT[701]
 Notice, Sales and use tax on construction,
 19.1 to 19.8, 19.10, 19.12, 19.13
 19.19 **ARC 6819A** 759

TRANSPORTATION DEPARTMENT[761]
 Filed, Signing on primary roads —
 memorial highways, amendments to ch 131
 ARC 6818A 781

VETERANS AFFAIRS COMMISSION[801]
 Notice, Policy and procedures, amendments to
 chs 1 to 4, 6, 8 **ARC 6807A** 766

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

SUBMISSION DEADLINE

ISSUE DATE

11

Friday, November 1, 1996

November 20, 1996

12

Friday, November 15, 1996

December 4, 1996

13

Friday, November 29, 1996

December 18, 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.

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
 FROM: Kathleen K. Bates, 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.

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 12, 1996, at 10 a.m. and Wednesday, November 13, 1996, at 9 a.m. in Senate Committee Room 22, State Capitol. The following rules will be reviewed:

Bulletin

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

| | |
|--|----------|
| Contested case practice and procedure, 2.2(1)"c," 2.2(5), 2.2(6), <u>Filed ARC 6777A</u> | 10/9/96 |
| Reporting of infectious and contagious diseases, 64.1, <u>Notice ARC 6817A</u> | 10/23/96 |
| Importation of turkeys and turkey eggs, 65.11(2), <u>Notice ARC 6824A</u> | 10/23/96 |
| Dairy, 68.12, 68.13, 68.26, <u>Notice ARC 6823A</u> | 10/23/96 |

ARCHITECTURAL EXAMINING BOARD[193B]

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

| | |
|---|---------|
| Examination application and registration, 1.5, 2.1, 2.1(1), 2.4 to 2.6, 3.1(3)"g," <u>Filed ARC 6799A</u> | 10/9/96 |
|---|---------|

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]"umbrella"

| | |
|---|---------|
| General amendments, chs 1 to 16, <u>Filed ARC 6763A</u> | 10/9/96 |
|---|---------|

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

| | |
|--|---------|
| Iowa industrial new jobs training program, supplemental 1½ percent withholding, 5.13, <u>Filed ARC 6792A</u> | 10/9/96 |
| Iowa jobs training program, ch 7, <u>Filed ARC 6793A</u> | 10/9/96 |
| Variance procedures for tax increment financing (TIF) housing projects, ch 26, <u>Filed ARC 6794A</u> | 10/9/96 |
| Job opportunities for persons with disabilities program, ch 30, <u>Notice ARC 6796A</u> , also <u>Filed Emergency ARC 6797A</u> | 10/9/96 |
| 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), <u>Filed ARC 6798A</u> | 10/9/96 |

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, <u>Filed ARC 6748A</u> | 10/9/96 |
| Extracurricular interscholastic competition, 36.15(3)"b"(3)"8," <u>Filed ARC 6749A</u> | 10/9/96 |
| Procedures for charging and investigating incidents of abuse of students by employees, 102.2, 102.5(4), 102.11"2," <u>Filed ARC 6750A</u> | 10/9/96 |

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

| | |
|--|---------|
| Emergency generator, potential to emit, 20.2, 22.100, <u>Notice ARC 6790A</u> | 10/9/96 |
| Open burning, 23.2(3)"b," <u>Filed ARC 6795A</u> | 10/9/96 |
| Protected water source—Ralston Site, Linn County, 53.7(1), <u>Filed ARC 6791A</u> | 10/9/96 |
| Effluent and pretreatment standards, 60.2, 62.4, 62.5, 63.1(1)"a," <u>Filed Without Notice ARC 6788A</u> | 10/9/96 |
| Water quality standards, 61.2(2)"h," <u>Notice ARC 6785A</u> | 10/9/96 |
| Navigable rivers, streams, and lakes, manure management, ch 65, appendix B, Tables 1 and 2, 68.9(2), 121.1(1), <u>Filed ARC 6786A</u> | 10/9/96 |
| Sanitary landfills, 103.2(1) "d" and "e," 103.2(11)"a"(4), 103.2(13), <u>Filed ARC 6787A</u> | 10/9/96 |
| Waste tire management county grant program, ch 215, <u>Filed Emergency ARC 6780A</u> | 10/9/96 |

HUMAN SERVICES DEPARTMENT[441]

| | |
|--|---------|
| Food stamp program (effective 9/21/96 and 10/1/96), 11.5, 65.1, 65.7, 65.8(10), 65.21(5), 65.27, 65.28(12), 65.28(14), 65.28(14)"h," 65.29(7), 65.29(8), 65.30(5), 65.32, 65.43, 65.46 to 65.50, 65.101, 65.107, 65.108(10), 65.121(5), 65.127, 65.128(12), 65.128(14), 65.128(14)"h," 65.129(10), 65.129(11), 65.130(7), 65.132, 65.142, 65.145 to 65.149, <u>Notice ARC 6764A</u> , also <u>Filed Emergency ARC 6765A</u> | 10/9/96 |
| FIP, Medicaid, social services block grant eligibility for aliens, 41.3(4), 41.3(5), 41.6(9)"c," 41.7(10)"h," 41.23(4), 41.23(5), 41.26(9)"c," 41.27(10)"h," 75.11(1) to 75.11(4), 153.4(3), <u>Notice ARC 6766A</u> , also <u>Filed Emergency ARC 6767A</u> | 10/9/96 |
| Food stamp program (effective 11/22/96 and 1/1/97), 65.8(11), 65.28(18), 65.108(11), 65.128(18), <u>Notice ARC 6768A</u> , also <u>Filed Without Notice ARC 6769A</u> | 10/9/96 |
| Medicaid coverage of Senokot, 78.1(2)"f," <u>Filed ARC 6757A</u> | 10/9/96 |
| Medical services provided to inmate of nonmedical public institution, 79.9(5), <u>Filed ARC 6758A</u> | 10/9/96 |

HUMAN SERVICES DEPARTMENT[441](Cont'd)

- Child day care, 130.3(1)"d"(2), 130.4(3), 170.2(4)"a," "c," and "d," **Filed ARC 6759A** 10/9/96
- Clothing allowance for children in foster care, rates for emergency care, 156.8(1), 156.11(2), **Filed ARC 6760A** 10/9/96
- Provision of services to children placed out of home, 185.45, **Filed ARC 6761A** 10/9/96

INSPECTIONS AND APPEALS DEPARTMENT[481]

- Contested case hearings, 10.25(3) to 10.25(5), **Filed Emergency ARC 6808A** 10/23/96

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

- Life insurance illustrations model regulation, ch 14, **Filed ARC 6825A** 10/23/96

LABOR SERVICES DIVISION[347]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

- General industry—exposure to asbestos, tremolite, anthophyllite and actinolite, 10.20 **Notice ARC 6813A** 10/23/96
- General industry—personal protective equipment, 10.20, **Filed Emergency After Notice ARC 6814A** 10/23/96
- Construction—exposure to asbestos, tremolite, anthophyllite and actinolite, and safety standards for scaffolds, 26.1, **Notice ARC 6812A** 10/23/96
- Construction—consolidation of repetitive provisions, 26.1, **Filed Emergency After Notice ARC 6815A** 10/23/96

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Licensure requirements, 11.2(2)"f," 11.3(1)"c"(1), 11.4(3)"d"(1) and (2), 11.5(1)"c," 11.6(2)"b"(1), 11.6(3)"c"(1), 11.7(2)"b"(1), 11.11(1) to 11.11(3), 11.32(1)"c," 11.33, **Filed ARC 6821A** 10/23/96
- Fees for license renewal, 11.6(1), 11.31(3), 11.31(7), 11.31(9), 11.31(13), 11.32(1)"b," **Notice ARC 6820A** 10/23/96
- Physician assistant supervision, ch 21, **Filed Emergency ARC 6822A** 10/23/96

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

- No-wake speed at Fogle Lake, Ringgold County, 45.4(2), **Filed ARC 6784A** 10/9/96
- Recreation trails on state lands, 67.2, 67.8(1), **Notice ARC 6781A** 10/9/96
- Timber buyers, 72.1, 72.2(1)"b," 72.2(2)"a," 72.2(2)"f," 72.2(4)"a"(1), 72.3(1), **Filed ARC 6789A** 10/9/96
- Wild turkey spring hunting, 98.3(1), 98.3(2)"a"(4), 98.5, 98.12, 98.16, **Notice ARC 6782A** 10/9/96
- Deer population management areas—Cedar Rapids/Marion and Squaw Creek County Park, 105.4(9), 105.4(10), **Filed Emergency ARC 6783A** 10/9/96

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- 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 to 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(4)"a" to "p," 4.19(5), 4.20(2), **Filed ARC 6810A** 10/23/96

PERSONNEL DEPARTMENT[581]

- General amendments to chs 1 to 16, 18, 20, 25, **Notice ARC 6811A** 10/23/96

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Mortuary science—impaired practitioner review committee, ch 114, **Filed Emergency ARC 6778A** 10/9/96
- Physical and occupational therapy examiners, 200.3(1), 2.00.3(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), **Filed Emergency After Notice ARC 6816A** 10/23/96
- Board of social work examiners, ch 280, **Filed ARC 6779A** 10/9/96
- Speech pathology and audiology, 302.2(3), 302.2(4), 302.3, 302.4(2), 302.6(1) to 302.6(6), **Notice ARC 6809A** 10/23/96

PUBLIC HEALTH DEPARTMENT[641]

| | |
|--|---------|
| Outpatient diabetes education program, ch 9, <u>Filed ARC 6774A</u> | 10/9/96 |
| 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 "e," 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 "I" to "n," 46.6(3), <u>Filed ARC 6756A</u> | 10/9/96 |
| Lead inspector certification, ch 70, <u>Notice ARC 6752A</u> , also <u>Filed Emergency ARC 6753A</u> | 10/9/96 |
| 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>Filed ARC 6755A</u> | 10/9/96 |
| Decision-making assistance program and parental notification of intent to terminate a pregnancy through abortion, ch 89, <u>Notice ARC 6770A</u> | 10/9/96 |
| Emergency medical services, 132.4(4), 132.11(1), <u>Filed ARC 6754A</u> | 10/9/96 |
| Trauma care facility categorization and verification, ch 134, <u>Notice ARC 6771A</u> | 10/9/96 |
| Trauma triage and transfer protocols, ch 135, <u>Notice ARC 6772A</u> | 10/9/96 |
| Trauma registry, ch 136, <u>Notice ARC 6773A</u> | 10/9/96 |

PUBLIC SAFETY DEPARTMENT[661]

| | |
|---|---------|
| Private investigators and employees—continuing education, 2.1, 2.4(2), 2.4(6), 2.4(8), 2.4(9), 2.6, 2.10, 2.22, <u>Notice ARC 6776A</u> | 10/9/96 |
| Ignition interlock device, 7.8(3), 7.8(15), <u>Notice ARC 6053A Terminated</u> , also <u>Notice ARC 6751A</u> | 10/9/96 |

REVENUE AND FINANCE DEPARTMENT[701]

| | |
|--|----------|
| Taxable communication service, 18.20(5), 18.20(6), <u>Notice ARC 6804A</u> | 10/9/96 |
| Sales and use tax on construction activities, 19.1 to 19.3, 19.3(3), 19.4, 19.5, 19.5(4), 19.6, 19.7, 19.8, 19.10(1)"f," 19.10(2)"c" and "e" to "o," 19.12, 19.13, 19.13(1), 19.13(2)"I" to "n," 19.13(3), 19.13(5), 19.19, <u>Notice ARC 6819A</u> | 10/23/96 |
| Individual, corporate and franchise tax, 38.2(1)"f," 39.3(4), 51.2(1)"f," 52.1(2), 52.3(4), 52.10(3), 54.1, 54.1(4), 57.2(1)"f," 58.3(3) <u>Filed ARC 6800A</u> | 10/9/96 |
| Livestock production credit refunds for corporate taxpayers and individual taxpayers, 43.8, <u>Notice ARC 6802A</u> | 10/9/96 |
| Apportionment of income for resident shareholders of S corporations, ch 50, <u>Notice ARC 6806A</u> | 10/9/96 |
| Livestock production credits, 52.13, <u>Notice ARC 6805A</u> | 10/9/96 |
| Motor fuel, confidential information, refunds, emergency fills to stranded motorists, corrective amendments, 67.1, 67.17, 68.9(2), 69.5(4), 81.14, 82.9(2), <u>Filed ARC 6801A</u> | 10/9/96 |
| Property tax, 71.1, 71.1(1), 71.1(8), 73.17, 74.4(3), 74.4(4), 79.1(5), 79.2(13), 79.2(14), 80.4, 80.4(4), 80.4(7) to 80.4(12), 80.7(1), 80.7(7), 80.7(8)"d," 80.8(2), 80.8(3), 80.8(5)"a" and "d," 80.8(8), 80.8(9), 80.11(1)"a"(3), 80.11(1)"d," <u>Notice ARC 6803A</u> | 10/9/96 |

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

| | |
|--|---------|
| Organization, public records and fair information practices, petitions for rule making and declaratory rulings, contested cases, purchasing, contracts for professional services, chs 1 to 6, <u>Filed ARC 6762A</u> | 10/9/96 |
|--|---------|

TRANSPORTATION DEPARTMENT[761]

| | |
|---|----------|
| General requirements and covenants for highway and bridge construction, ch 125, <u>Notice ARC 6746A</u> | 10/9/96 |
| Signing on primary roads, 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, <u>Filed ARC 6818A</u> | 10/23/96 |
| Abandoned vehicles, 480.3, 480.4, <u>Notice ARC 6747A</u> | 10/9/96 |

VETERANS AFFAIRS COMMISSION[801]

| | |
|---|----------|
| General corrective amendments to chs 1 to 4, 6 and 8, <u>Notice ARC 6807A</u> | 10/23/96 |
|---|----------|

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.

Senator Berl E. Priebe, Co-chair
2106 100th Avenue
Algona, Iowa 50511

Senator H. Kay Hedge
R.R. 1, Box 39
Fremont, Iowa 52561

Senator John P. Kibbie
R.R. 1, Box 139A
Emmetsburg, Iowa 50536

Senator William Palmer
1002 Lakeview Drive
Ankeny, Iowa 50021

Senator Sheldon Rittmer
3539 230th Street
DeWitt, Iowa 52742

Joseph A. Royce
Legal Counsel
Capitol, Room 116A
Des Moines, Iowa 50319
Telephone (515) 281-3084

Representative Janet Metcalf, Co-chair
12954 NW 29th Drive
Des Moines, Iowa 50325

Representative Horace Daggett
400 N. Bureau
Creston, Iowa 50801

Representative Minnette Doderer
2008 Dunlap Court
Iowa City, Iowa 52245

Representative Roger Halvorson
P.O. Box 93, 82 North Street
Marquette, Iowa 52158

Representative Keith Weigel
315 W. Main, P.O. Box 189
New Hampton, Iowa 50659

Paula Dierenfeld
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 15
Des Moines, Iowa 50319
Telephone (515) 281-6331

ADMINISTRATIVE RULES REVIEW COMMITTEE—ACTIONS

OCTOBER 1995 THROUGH OCTOBER 1996

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

DENTAL EXAMINERS BOARD[650]

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

ENVIRONMENTAL PROTECTION COMMISSION[567]

Chapter 117, Waste tires, ARRC meeting 10/8/96

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

HUMAN SERVICES DEPARTMENT[441]

Child abuse registry, ch 175, ARRC meeting 9/10/96

PUBLIC SAFETY DEPARTMENT[661]

21.3, State medical examiner—fees for autopsies and related services, ARRC meeting 10/8/96

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]

Signage fees, 119.6, ARRC meeting 9/10/96

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

Car dealer standards—hours of operation, ARRC meeting 10/9/96

OBJECTIONS (17A.4(4)“a”)

ENVIRONMENTAL PROTECTION COMMISSION[567]

Manure management plans, 65.18(1), ARC 6644A, IAB 8/14/96, ARRC meeting 9/10/96

REVENUE AND FINANCE DEPARTMENT[701]

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

TRANSPORTATION DEPARTMENT[761]

Tourist-oriented directional signs, 119.4, lifted objection ARRC meeting 9/10/96

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

RACING AND GAMING COMMISSION[491]

10.6(2)“g”(3), second paragraph, Phenylbutazone, ARC 6706A, IAB 9/11/96, ARRC meeting 10/8/96

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

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

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; presented at ARRC meetings 6/12/96 and 7/10/96.

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**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Special review—Meat inspection, ch 76, ARRC meeting 9/10/96

CORRECTIONS DEPARTMENT[201]

Special review—Prison industries, ARRC meeting 10/8/96

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

Special review—Child abuse registry, ARRC meeting 9/10/96

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

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 |
|---|--|-------------------------------|
| DENTAL EXAMINERS BOARD[650] | | |
| Impairment, 30.5 IAB 9/25/96 ARC 6741A | Conference Room — 2nd Floor Executive Hills West 1209 E. Court Ave. Des Moines, Iowa | October 23, 1996 1 p.m. |
| ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] | | |
| Job opportunities for persons with disabilities program, ch 30 IAB 10/9/96 ARC 6796A (See also ARC 6797A) | Conference Room 2nd Floor Northeast 200 E. Grand Ave. Des Moines, Iowa | October 30, 1996 10 a.m. |
| ENVIRONMENTAL PROTECTION COMMISSION[567] | | |
| Emergency generators — construction and Title V operating permits, 20.2, 22.100 IAB 10/9/96 ARC 6790A | Conference Room Fifth Floor East Wallace State Office Bldg. Des Moines, Iowa | November 7, 1996 1 p.m. |
| Water quality, 61.2(2)"h" IAB 10/9/96 ARC 6785A | Conference Room — 4th Floor Wallace State Office Bldg. Des Moines, Iowa | November 6, 1996 9 a.m. |
| HUMAN SERVICES DEPARTMENT[441] | | |
| Food stamp program, 11.5, amendments to ch 65 IAB 10/9/96 ARC 6764A (See also ARC 6765A) | Conference Room — 6th Floor Suite 600, Iowa Bldg. 411 Third St. S.E. Cedar Rapids, Iowa | November 1, 1996 2:30 p.m. |
| | Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa | October 30, 1996 10 a.m. |
| | Conference Room 3 — 5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa | November 1, 1996 10 a.m. |
| | Conference Room 104 City View Plaza 1200 University Des Moines, Iowa | October 31, 1996 1 p.m. |
| | Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa | October 30, 1996 9:30 a.m. |

**HUMAN SERVICES
DEPARTMENT[441]
(Cont'd)**

| | | |
|---|--|-------------------------------|
| | Conference Rooms 1 and 2 120 E. Main Ottumwa, Iowa | November 1, 1996 10 a.m. |
| | Suite 624 507 7th St. Sioux City, Iowa | October 31, 1996 1:30 p.m. |
| | Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa | October 30, 1996 9:30 a.m. |
| FIP, Medicaid, social services block grant program — aliens, 41.3, 41.6(9), 41.7(10), 41.23, 41.26(9), 41.27(10), 75.11, 153.4(3) IAB 10/9/96 ARC 6766A (See also ARC 6767A) | Conference Room — 6th Floor Suite 600, Iowa Bldg. 411 Third St. S.E. Cedar Rapids, Iowa | November 1, 1996 2:30 p.m. |
| | Lower Level 417 E. Kanessville Blvd. Council Bluffs, Iowa | October 30, 1996 10 a.m. |
| | Conference Room 3 — 5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa | November 1, 1996 10 a.m. |
| | Conference Room 104 City View Plaza 1200 University Des Moines, Iowa | October 31, 1996 1 p.m. |
| | Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa | October 30, 1996 9:30 a.m. |
| | Conference Rooms 1 and 2 120 E. Main Ottumwa, Iowa | November 1, 1996 10 a.m. |
| | Suite 624 507 7th St. Sioux City, Iowa | October 31, 1996 1:30 p.m. |
| | Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa | October 30, 1996 9:30 a.m. |
| Food stamp program, amendments to ch 65 IAB 10/9/96 ARC 6768A (See also ARC 6769A) | Conference Room — 6th Floor Suite 600, Iowa Bldg. 411 Third St. S.E. Cedar Rapids, Iowa | November 1, 1996 2:30 p.m. |
| | Lower Level 417 E. Kanessville Blvd. Council Bluffs, Iowa | October 30, 1996 10 a.m. |
| | Conference Room 3 — 5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa | November 1, 1996 10 a.m. |

**HUMAN SERVICES
DEPARTMENT[441]
(Cont'd)**

| | |
|---|-------------------------------|
| Conference Room 104 City View Plaza 1200 University Des Moines, Iowa | October 31, 1996 1 p.m. |
| Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa | October 30, 1996 9:30 a.m. |
| Conference Rooms 1 and 2 120 E. Main Ottumwa, Iowa | November 1, 1996 10 a.m. |
| Suite 624 507 7th St. Sioux City, Iowa | October 31, 1996 1:30 p.m. |
| Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa | October 30, 1996 9:30 a.m. |

LABOR SERVICES DIVISION[347]

| | | |
|--|--|---|
| General industry safety— asbestos, tremolite, anthophyllite, actinolite, 10.20 IAB 10/23/96 ARC 6813A | Division of Labor Services 1000 E. Grand Ave. Des Moines, Iowa | November 14, 1996 9 a.m. (If requested) |
| Construction safety— asbestos, tremolite, anthophyllite, actinolite; scaffolds, 26.1 IAB 10/23/96 ARC 6812A | Division of Labor Services 1000 E. Grand Ave. Des Moines, Iowa | November 14, 1996 9 a.m. (If requested) |

NATURAL RESOURCE COMMISSION[571]

| | | |
|--|---|-----------------------------|
| Recreation trails on state lands, 67.2, 67.8(1) IAB 10/9/96 ARC 6781A | Conference Room — 4th Floor Wallace State Office Bldg. Des Moines, Iowa | October 29, 1996 10 a.m. |
| Wild turkey spring hunting, 98.3, 98.5, 98.12, 98.16 IAB 10/9/96 ARC 6782A | Conference Room — 4th Floor Wallace State Office Bldg. Des Moines, Iowa | October 29, 1996 10 a.m. |

PERSONNEL DEPARTMENT[581]

| | | |
|--|--|---|
| Policy and procedures, amendments to chs 1 to 16, 18, 20, 25 IAB 10/9/96 ARC 6811A | Auditorium Wallace State Office Bldg. Des Moines, Iowa | November 13, 1996 10 a.m. to 12 noon |
|--|--|---|

PUBLIC HEALTH DEPARTMENT[641]

| | | |
|--|---|-----------------------------|
| Lead inspector certification, ch 70 IAB 10/9/96 ARC 6752A (See also ARC 6753A), | Room 7A Buena Vista University 610 W. 4th St. Storm Lake, Iowa | October 31, 1996 10 a.m. |
|--|---|-----------------------------|

**PUBLIC HEALTH
DEPARTMENT[641]
(Cont'd)**

(ICN Network)

Room 203B, Linn Hall
6301 Kirkwood Blvd. S.W.
Kirkwood Community College
Cedar Rapids, Iowa
October 31, 1996
10 a.m.

Classroom 6 — Armory
2245 W. Big Rock Rd.
Waterloo, Iowa
October 31, 1996
10 a.m.

Room 108, Advanced Technology Ctr.
525 Grandview Ave.
Indian Hills Community College
Ottumwa, Iowa
October 31, 1996
10 a.m.

ICN Room — 3rd Floor
Dept. of Public Health
Lucas State Office Bldg.
Des Moines, Iowa
October 31, 1996
10 a.m.

Decision-making assistance program
and parental notification of intent
to terminate a pregnancy through
abortion, ch 89
LAB 10/9/96 ARC 6770A

Room B145, Lee DeForest Hall
Iowa Western Community College
2700 College Rd.
Council Bluffs, Iowa
October 29, 1996
1 to 3 p.m.

(ICN Network)

Meeting Room A, Lower Level
Public Library
321 Main St.
Davenport, Iowa
October 29, 1996
1 to 3 p.m.

Room 203
Meredith Hall
Drake University
2507 University
Des Moines, Iowa
October 29, 1996
1 to 3 p.m.

Portable One Room
West Delaware High School
701 New St.
Manchester, Iowa
October 29, 1996
1 to 3 p.m.

Room 108
Advanced Technology Center
Indian Hills Community College
525 Grandview Ave.
Ottumwa, Iowa
October 29, 1996
1 to 3 p.m.

Attendance Center, Fiber Optic Room
Iowa Lakes Community College
Gateway North
1950 Grand Ave.
Spencer, Iowa
October 29, 1996
1 to 3 p.m.

110 Tama Hall
Hawkeye Community College
1501 E. Orange Rd.
Waterloo, Iowa
October 29, 1996
1 to 3 p.m.

PUBLIC HEALTH**DEPARTMENT[641](Cont'd)****(ICN Network)**

| | | |
|---|---|----------------------------|
| Trauma care facility categorization and verification, ch 134 IAB 10/9/96 ARC 6771A | (Sites listed below) | |
| Trauma triage and transfer protocols, ch 135 IAB 10/9/96 ARC 6772A | (Sites listed below) | |
| Trauma registry, ch 136 IAB 10/9/96 ARC 6773A | (Sites listed below) | |
| | National Guard Armory 201 Poplar St. Atlantic, Iowa | October 30, 1996 1 p.m. |
| | Room 178 STARC Armory NW 78th Ave. Johnston, Iowa | October 30, 1996 1 p.m. |
| | National Guard Armory 1000 S. Walnut Mount Pleasant, Iowa | October 30, 1996 1 p.m. |
| | AASF 2245 W. Big Rock Rd. Waterloo, Iowa | October 30, 1996 1 p.m. |
| | National Guard Armory 1160 19th St. S.W. Mason City, Iowa | October 30, 1996 1 p.m. |
| | Air Guard, Bldg. 250 Harbor Dr. Sioux City, Iowa | October 30, 1996 1 p.m. |
| | National Guard Armory 925 S. Dubuque St. Iowa City, Iowa | October 30, 1996 1 p.m. |

PUBLIC SAFETY DEPARTMENT[661]

| | | |
|---|--|-------------------------------|
| Private investigators and employees, 2.1, 2.4, 2.6, 2.10, 2.22 IAB 10/9/96 ARC 6776A | Conference Room (West Half) Third Floor Wallace State Office Bldg. Des Moines, Iowa | October 30, 1996 10 a.m. |
| Ignition interlock devices, 7.8 IAB 10/9/96 ARC 6751A | Conference Room (West Half) Third Floor Wallace State Office Bldg. Des Moines, Iowa | October 30, 1996 9:30 a.m. |

TRANSPORTATION DEPARTMENT[761]

| | | |
|--|---|---|
| Highway and bridge construction, 125. 1 to 125.3 IAB 10/9/96 ARC 6746A | Commission Room IDOT 800 Lincoln Way Ames, Iowa | October 31, 1996 10 a.m. (If requested) |
| Abandoned vehicles, 480.3, 480.4 IAB 10/9/96 ARC 6747A | Conference Room Motor Vehicle Division Park Fair Mall, Lower Level 100 Euclid Ave. Des Moines, Iowa | October 31, 1996 10 a.m. (If requested) |

UTILITIES DIVISION[199]

| | | |
|---|--|-----------------------------|
| New structure energy conservation, 19.9(5), 20.12 IAB 9/25/96 ARC 6739A | First Floor Hearing Room Lucas State Office Bldg. Des Moines, Iowa | October 23, 1996 10 a.m. |
| Quality of service — telephone, 22.1(3), 22.3, 22.6 IAB 9/25/96 ARC 6740A | First Floor Hearing Room Lucas State Office Bldg. Des Moines, Iowa | October 24, 1996 10 a.m. |

VETERANS AFFAIRS COMMISSION[801]

| | | |
|---|---|------------------------------|
| Operating procedures, amendments to chs 1 to 4, 6, 8 IAB 10/23/96 ARC 6807A | Commission Offices Bldg. A6A, Camp Dodge 7700 N.W. Beaver Dr. Johnston, Iowa | November 12, 1996 10 a.m. |
|---|---|------------------------------|

CITATION of Administrative Rules

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

| | |
|-----------------------|----------------|
| 441 IAC 79 | (Chapter) |
| 441 IAC 79.1(249A) | (Rule) |
| 441 IAC 79.1(1) | (Subrule) |
| 441 IAC 79.1(1)“a” | (Paragraph) |
| 441 IAC 79.1(1)“a”(1) | (Subparagraph) |

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

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

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]

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]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
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]

NOTICE --- AVAILABILITY OF PUBLIC FUNDS

| <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 | Childhood Lead Poisoning Prevention Program | * | Local health departments or private non-profit agencies with current child health contracts with the Iowa Department of Public Health. | Provide environmental and medical case management of children identified as lead-poisoned. | 12-1-96 | 1-1-97 to 9-29-97 |

Request application packet from:

Rita Gergely, Director
 Lead Poisoning Prevention Programs
 Iowa Department of Public Health
 Lucas Building
 Des Moines, Iowa 50319-0075
 Telephone Number: (515) 242-6340

* The service area must have children identified as lead-poisoned or be expected to have children identified as lead-poisoned in the near future for whom Iowa Department of Public Health (IDPH) staff currently does or would be expected to provide environmental and medical case management.

** Project period is for three years (1-1-97 to 12-31-99).

PLEASE NOTE: Funding for these projects will be dependent upon receipt of funding to the Department from the Centers for Disease Control and Prevention.

ARC 6817A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 159.5(11), 163.1(1), 163.1(7), and 163.1(8), the Iowa Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The purpose of this amendment is to change the listing of those infectious and contagious diseases which, if diagnosed or suspected before confirmation, must be promptly reported to the Iowa Department of Agriculture and Land Stewardship. The poultry diseases listed will bring Iowa's reported poultry diseases into conformity with requirements as agreed upon for the Veterinary Certification for Poultry Meat Exported into the Russian Federation (FSIS Form 9450-4).

Any interested person may make written suggestions or comments on the proposed amendment prior to November 12, 1996. Such comments or written materials should be directed to Walter D. Felker, D.V.M., State Veterinarian, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

This amendment is intended to implement Iowa Code sections 163.1, 163.2, 189A.13 and 197.5.

The following amendment is proposed.

Amend rule 21—64.1(163) as follows:

21—64.1(163) Reporting disease. Whenever any person or persons who shall have knowledge of the existence of any infectious or contagious disease, such disease affecting the animals within the state or resulting in exposure thereto, which may prove detrimental to the health of the animals within the state, it shall be the duty of such person or persons to report the same in writing to the Chief, Division of Animal Industry, Henry A. Wallace Building, Des Moines, Iowa 50319, who shall then take such action as deemed necessary for the suppression and prevention of such disease. The following named diseases are infectious or contagious and the diagnosis or suspected diagnosis of any of these diseases in animals must be reported promptly to the Iowa department of agriculture and land stewardship by the veterinarian making the diagnosis or suspected diagnosis:

~~Bloody Dysentery or Swine Dysentery in Hogs~~
~~Bovine Spongiform Encephalopathy~~
~~Pseudorabies or Aujeszky's Disease - All Species~~
~~Scabies - Cattle or Sheep~~
~~Foot Rot—Sheep~~
~~Encephalomyelitis - Horses~~
~~Equine Infectious Anemia (EIA) - Horses~~
~~Transmissible Gastric Enteritis (TGE) Swine~~
~~Vesicular Stomatitis - All Species~~

Any Livestock or Poultry disease designated as a "Foreign Animal Disease" by the United States Department of Agriculture, Animal and Plant Health Inspection Services, Veterinary Services (USDA, APHIS, VS).

~~Highly Pathogenic exotic diseases of poultry or birds, such as Avian Influenza and Exotic Newcastle~~

~~The following named poultry diseases:~~

- ~~1. Psittacosis-ornithosis~~
- ~~2. Newcastle disease [Office International Des Epizooties (OIE) list A Disease, Velogenic Viserotropic Newcastle Disease VVND]~~
- ~~3. Avian Influenza [(OIE) list A Disease, Highly Pathogenic Avian Influenza (HPAI)]~~
- ~~4. Paramyxovirus infection (other than Newcastle)~~
- ~~5. Infectious encephalomyelitis~~
- ~~6. Infectious Laryngotracheitis (other than vaccine induced)~~

This rule is intended to implement Iowa Code sections 163.1, 163.2, 189A.12, 189A.13 and 197.5.

ARC 6824A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 159.5(11), 163.1(1), and 163.1(8), the Iowa Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 65, "Livestock Importation," Iowa Administrative Code.

The purpose of this amendment is to make the requirements for the importation of live turkeys, and turkey eggs for hatching, into Iowa at least equal to the importation requirements of the state of origin. This will preclude the shipping into Iowa of turkeys, or turkey eggs, which are not eligible for importation into the state of origin.

Any interested person may make written suggestions or comments on the proposed amendment prior to November 12, 1996. Such comments or written materials should be directed to Walter D. Felker, D.V.M., State Veterinarian, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319, telephone (515)281-5305.

This amendment is intended to implement Iowa Code chapter 163.

The following amendment is proposed.

Amend subrule 65.11(2) as follows:

65.11(2) Turkeys. ~~No live turkeys, or turkey hatching eggs, shall be imported for breeding purposes and no turkey eggs shall be imported for hatching purposes~~ unless they originate from a flock that has been tested annually and can be classified as U. S. ~~mycoplasma~~ *Mycoplasma* gallisepticum clean as provided by the National Poultry Improvement Plan or other official state agency. *In addition, live turkeys and turkey eggs for hatching imported into Iowa must also meet the import requirements of their state of origin and be qualified for free sale in that state.*

Turkeys sold, or moved, to slaughter are not affected by this subrule.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

This rule is intended to implement Iowa Code sections 163.1, 163.7, 163.11, 164.4, and 164.13.

ARC 6823A**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****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 159.5(11) and 192.102, the Iowa Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 68, "Dairy," Iowa Administrative Code.

These proposed amendments are intended to update references in the rules relating to documents adopted by reference to include the most recent versions of those documents and keep the dairy program in conformance with the requirements of the National Conference of Interstate Milk Shippers. These updates include adoption of the most recent edition of the Pasteurized Milk Ordinance. In addition, the proposed amendments lower the permissible level of somatic cells allowed in Grade B milk to conform with recent changes adopted by the United States Department of Agriculture.

Any interested person may make written suggestions or comments on the amendments prior to 4:30 p.m. on November 12, 1996. Such written material should be directed to Jake Wakefield, Bureau Chief, Dairy Products Control, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code chapter 192.

The following amendments are proposed.

ITEM 1. Amend rule 21—68.12(192), introductory paragraph, as follows:

21—68.12(192) Milk standards. Standards for the production, processing, distribution, transportation, handling, sampling, examination, grading, labeling, sale and standards of identity of Grade A pasteurized milk, Grade A milk products and Grade A raw milk, the inspection of Grade A dairy herds, dairy farms, milk plants, milk receiving stations and milk transfer stations, the issuing, suspension and revocation of permits and licenses to milk producers, milk haulers, and milk distributors shall be regulated in accordance with the provisions of the Grade A Pasteurized Milk Ordinance, 1993 1995 Recommendations of the United States Public Health Service/Food and Drug Administration, a copy of which is on file with the department and is incorporated into this rule by reference and made a part of this rule.

ITEM 2. Amend rule 21—68.13(192,194) as follows:

21—68.13(192,194) Public health service requirements.

68.13(1) Certification. A rating of 90 percent or more calculated according to the rating system as contained in Public Health Service "Methods of Making Sanitation Ratings of Milk Supplies, 1993 1995 Revision," shall be necessary to receive or retain a Grade A certification under Iowa

Code chapter 192. That publication is hereby incorporated into this rule by this reference and made a part thereof insofar as applicable, a copy of which is on file with the department.

68.13(2) Documents. The following publications of the Public Health Service of the Food and Drug Administration are hereby adopted. A copy of each is on file with the department:

1. "Procedures Governing the Cooperative State—Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers, 1993 Edition 1995 Revision.

2. "Fabrication of Single Service Containers and Closures for Milk and Milk Products, 1993 Revision."

3. "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey, Supplement I to the Grade A Pasteurized Milk Ordinance, 1978 1995 Ordinance."

4. "Evaluation of Milk Laboratories, 1995 Revision."

ITEM 3. Amend rule 21—68.26 (190,192,194) as follows:

21—68.26(190,192,194) Tests for abnormal milk.

68.26(1) At least once every 30 days, all creameries, cheese factories, or milk processing plants, hereafter referred to as purchasers, shall test a herd milk sample from every producer in a certified or officially designated laboratory, to determine the existence of abnormal milk.

68.26(2) A herd milk sample shall be deemed to be abnormal or adulterated if a test by direct microscopic examination, electronic somatic cell count, or equivalent technique, reveals a count greater than ~~1,000,000~~ 750,000 somatic cells/ml.

68.26(3) Whenever two of the last four consecutive somatic cell counts exceed ~~1,000,000~~ 750,000 cells/ml, the purchaser or regulatory authority shall send a written notice thereof to the person concerned. An additional sample shall be taken within 21 days of the sending of such notice, but not before the lapse of three days. Immediate suspension of permit shall be instituted whenever the standard is violated by three of the last five somatic cell counts.

68.26(4) Within one week following receipt of a written application from the producer, an inspection shall be made by the regulatory authority or the purchaser, and a herd milk sample taken. If the test indicates a count of ~~1,000,000~~ 750,000 or less somatic cells/ml, the producer's milk may be purchased for human consumption provided additional samples of herd milk are tested at a rate of not more than two per week. The producer shall be reinstated under the normal testing program when three out of four consecutive tests have counts of ~~1,000,000~~ 750,000 or less somatic cells/ml.

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:

| | |
|--|-------|
| 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% |

NOTICE—AGRICULTURAL CREDIT CORPORATION MAXIMUM LOAN RATE(cont'd)

| | |
|--|-------|
| 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% |
| August 1, 1996 — August 31, 1996 | 6.85% |
| September 1, 1996 — September 30, 1996 | 6.90% |
| October 1, 1996 — October 31, 1996 | 6.80% |

ceeding \$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 November 13, 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. 43456 (August 23, 1996)

ARC 6812A**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 incorporation of general industry health and safety standards applicable to construction work, corrections, occupational exposure to asbestos, tremolite, anthophyllite and actinolite, corrections and safety standards for scaffolds used in the construction industry.

If requested by November 12, 1996, a public hearing will be held on November 14, 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 November 14, 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 November 13, 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 polit-

INSURANCE DIVISION**Notice of Proposed Workers' Compensation Rate Filing**

Pursuant to Iowa Code section 515A.6(7), notice is hereby given that the National Council on Compensation Insurance has made a rate filing which affects premium rates for workers' compensation insurance.

The rate filing proposes an overall decrease in premium level of 9.8 percent. The rate filing has a proposed effective date of January 1, 1997.

A workers' compensation policyholder or an established organization with one or more workers' compensation policyholders among its members may request a hearing before the Commissioner of Insurance regarding this rate filing. Such a request must be filed within 15 days of the date of this publication, that is, by November 7, 1996, and shall be made to the Commissioner of Insurance at the Insurance Division of the State of Iowa, Lucas State Office Building, Sixth Floor, Des Moines, Iowa 50319. Absent such a request, the Commissioner will issue an order concerning the rates within another 10 days, that is, by November 17, 1996.

ARC 6813A**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 occupational exposure to asbestos, tremolite, anthophyllite and actinolite, corrections.

If requested by November 12, 1996, a public hearing will be held on November 14, 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 November 14, 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 ex-

LABOR SERVICES DIVISION[347](cont'd)

ical 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. 41738 (August 12, 1996)
61 Fed. Reg. 43458 (August 23, 1996)
61 Fed. Reg. 46104 (August 30, 1996)

ARC 6820A

MEDICAL EXAMINERS BOARD[653]

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 Iowa Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 11, “Licensure Requirements,” Iowa Administrative Code.

Chapter 11 is being amended to increase fees for licensure renewal.

Any interested party may submit comments on the proposed amendments in written form on or before November 12, 1996. Such written materials should be directed to Ann M. Martino, Executive Director, Iowa Board of Medical Examiners, 1209 East Court Avenue, Des Moines, Iowa 50309-0180, telephone (515)281-5171.

These amendments are intended to implement Iowa Code chapters 147, 148, 148C, 150, 150A, and 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 11.6(1) as follows:

11.6(1) The license shall be designated “Resident Physician License” and shall authorize the licensee to ~~serve as a resident physician only,~~ *practice as a resident physician, while* under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery, in an institution *or program* approved for this purpose by the board. A resident physician license shall expire one year following the date of issuance and may be annually renewed at the discretion of the medical examiners at a fee of ~~ten dollars~~ \$25.

ITEM 2. Amend subrule 11.31(3) as follows:

11.31(3) For a renewal of a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, ~~\$150~~ \$200 per biennial period or a prorated portion thereof for a period of less than two years as determined by the board to facilitate biennial renewal according to month and year of birth.

ITEM 3. Amend subrule 11.31(7) as follows:

11.31(7) For the renewal of a license to practice as a resident physician, ~~\$10~~ \$25.

ITEM 4. Amend subrule 11.31(9) as follows:

11.31(9) For the renewal of a temporary license, ~~\$150~~ \$175.

ITEM 5. Amend subrule 11.31(13) as follows:

11.31(13) For a special license to practice medicine and surgery or osteopathic medicine and surgery, an annual fee of ~~\$150~~ \$175.

ITEM 6. Amend subrule 11.32(1), paragraph “b,” as follows:

b. Payment of the renewal fees due provided that such fees shall not exceed ~~\$600~~ \$650 as computed by the board.

ARC 6811A

PERSONNEL DEPARTMENT[581]

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 19A.9, the Iowa Department of Personnel hereby gives Notice of Intended Action to amend Chapters 1 to 16, 18, 20 and 25, Iowa Administrative Code.

The proposed rule revisions include the following:

1. Various changes are made to definitions including “Confidential employee,” “Fee-for-services contractor,” “Reassignment,” and “Transfer.”
2. Personnel services contracting requests will no longer be submitted to the Department.
3. Numerous changes are made to the chapter on job classification including reducing the number of days within which the Department must respond to a request, reducing the standard of proof for a classification appeal to be sustained, and removing the requirement that an appellant must first petition the commission for a review of the record prior to going on to judicial review.
4. Persons reinstated will have their adjusted review date restored for the purpose of vacation accrual.
5. Various amendments are made concerning merit pay increase eligibility to accommodate the recently implemented performance evaluation system for noncontract employees.
6. As a condition of receiving recruitment or retention pay, an agreement to remain with the agency for a specified period of time will be required.
7. Overtime compensation will not be allowed for any employee exempt from the provisions of the federal Fair Labor Standards Act.
8. The waiting period for retaking an employment examination is extended from 30 to 60 days.
9. Applicants may be required to maintain contact with the Department as to current availability or face removal from the eligible list.
10. The rule providing for “project appointment” is rescinded.
11. Appointment to an intermittent position will be administered the same as emergency appointment.

PERSONNEL DEPARTMENT[581](cont'd)

12. Phased retirement is clarified concerning the participant's agreement to retire at the end of the "phase-in" period.

13. The rule on disciplinary suspension is revised to accommodate recent decisions concerning compatibility with the federal Fair Labor Standards Act.

14. Chapter 13 is modified to accommodate recent changes to the performance evaluation system used with noncontract employees.

15. Numerous changes are made to the rule on military leave to bring it into conformance with federal laws on the same subject.

16. Various changes are made to the rules governing health benefits including one that requires health maintenance organizations and organized delivery systems, beginning with the 1988 plan year, be accredited by the National Committee for Quality Assurance or the Joint Commission on Accreditation of Health Care Organizations. A new rule is also added that outlines how an employee may appeal the decision of a health benefits carrier.

17. The deferred compensation rule is updated to include mutual funds as an investment alternative, changes that accommodate IRS Code revisions, and processing modifications.

18. A repayment condition is added to the rule on payment of moving expenses. Employees whose moving expenses are paid must agree to remain employed for a period of time or repay a portion of the expenses paid.

19. Education financial assistance is broadened by removing the restriction that assistance can only be for course-work related to the current job.

20. The rule concerning the administration of the tax-sheltered annuities program is updated.

21. The chapter on conduct of employees is modified to include changes in the Iowa Code regarding conflict of interest and its relationship to outside employment.

22. The rule on discrimination complaints is expanded to include complaints related to disability discrimination. Agency responsibilities regarding record keeping and complaint investigation are also revised.

23. The rules governing the combined charitable campaign are modified to expand the types of charitable organizations that may participate. Also, as a condition of participation in the state employees' annual campaign, a limit is established as to the percent of funds raised that may be kept by charitable organizations to pay for its administrative, salary and fund-raising expenses.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 29, 1996. Such written materials should be directed to the Assistant to the Director, Iowa Department of Personnel, Grimes State Office Building, Des Moines, Iowa 50319-0150; fax (515)242-6450. Persons who wish to convey their views orally should contact the Iowa Department of Personnel at (515)281-4213.

There will be a public hearing on November 13, 1996, from 10 a.m. to 12 noon in the Auditorium at the Wallace State Office Building at East 9th Street and Grand Avenue, 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 rules.

These amendments are intended to implement Iowa Code chapter 19A.

The following amendments are proposed.

ITEM 1. Amend certain definitions in rule 581—1.1(19A) as follows:

581—1.1(19A) Definitions.

~~"Career executive program" means that program which provides for permanent employees in positions covered by merit system provisions to apply for and to be used as a source of candidates for executive level positions not covered by merit system provisions.~~

"Confidential employee" means for purposes of merit system coverage the personal secretary of: an elected official of the executive branch or a person appointed to fill a vacancy in an elective office, the chair of a full-time board or commission, or the director of a state agency; as well as the *nonprofessional* staff in the office of the auditor of the state, and the *nonprofessional* staff in the department of justice except those reporting to the administrator of the consumer advocate division.

"Confidential employee" means for purposes of collective bargaining *a representative of the employer who, as a major function of the job, determines and effectuates employment relations policy for the appointing authority, exercises independent discretion in establishing such policies, or is so closely related to or aligned with management as to place the employee in a position of conflict of interest between the employer and coworkers. It also means any employee who works for the department, or who has access to information subject to use in collective bargaining negotiations, or who works in a close continuing relationship with representatives associated with negotiating collective bargaining agreements on behalf of the state, as well as the personal secretary of: an elected official of the executive branch or a person appointed to fill a vacancy in an elective office, the chair of a full-time board or commission, or the director, deputy director, or division administrator of a state agency.*

"Fee-for-services contractor" means a person or entity that provides services on a contracted basis and who is paid a predetermined amount under that contract for rendering those services. A person or entity that is a fee-for-services contractor is not an employee of the state for any purpose.

"Reassignment" means the movement of an employee and the position the employee occupies within the same organizational unit or to another organizational unit, at the ~~direction~~ discretion of the appointing authority. A reassignment may include a change in duties, work location, *days of work* or hours of work, and may be temporary or permanent. *A reassignment may result in a change from the employee's previous job classification.*

"Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, or examination to determine the fitness of a person to perform such duty.

"Transfer" means the movement of an employee from a position in a job class to another a vacant position for which the employee qualifies in the same or different job class in the same pay grade. A transfer may include a change in duties, work location, days of work or hours of work. A ~~Transfer~~ transfer may be voluntary, at the request of the employee, or involuntary, at the ~~direction~~ discretion of the appointing authority. ~~Involuntary transfer may be to a different class in the same pay grade.~~

"Uniformed services" means the United States armed forces (army, navy, air force or marines), the army national guard and the air national guard when engaged in active duty for training, inactive duty training, or full-time national guard duty, the commissioned corps of the public health ser-

PERSONNEL DEPARTMENT[581](cont'd)

vice, coast guard, and any other category of persons designated by the President in time of war or emergency.

ITEM 2. Adopt a **new** subrule 2.2(3) as follows:

2.2(3) For further information regarding exclusions from merit system coverage, refer to Iowa Code section 19A.3.

ITEM 3. Rescind subrule 2.2(4).

ITEM 4. Amend rule 581—2.4(19A) as follows:

581—2.4(19A) Services Personnel services contracts. Individuals ~~rendering~~ *providing* services to the state ~~under~~ *pursuant to* an authorized *fee-for-services* contract, including persons supplied by a temporary employment service, ~~shall not be considered~~ *are not* employees of the state ~~for any purpose and are not subject to the other provisions of these rules.~~ Prior to signing a service contract, not including one that provides for staff from a temporary employment service, the appointing authority shall submit a request for approval to the director on forms prescribed by the director. Agencies that use staff provided by a temporary employment service must obtain approval from the department of management according to procedures established by the department of personnel.

ITEM 5. Amend 581—Chapter 3 as follows:

CHAPTER 3

JOB CLASSIFICATION

581—3.1(19A) Overall administration.

3.1(1) The director shall prepare, maintain, and revise a job classification plan for the executive branch of state government such that positions that are determined by the director to be similar with respect to kind and level, as well as skill, effort, and responsibility of duties assigned, may be included in the same job classification.

3.1(2) The director may add, delete, modify, or subdivide job classifications to suit the needs of the executive branch of state government. When doing so results in new job classifications being added to the classification plan, they shall be approved by the commission.

581—3.2(19A) Classification descriptions and guidelines.

3.2(1) ~~When new job classifications are added, classification~~ *Classification* descriptions are developed and published by the department as needed. *Classification descriptions are a public record.* They contain information about the job classification which may include examples of duties and responsibilities assigned, knowledges, abilities and skills required, and qualifications. ~~They may be used to give applicants a general idea about the nature of the work and the qualifications required.~~ They may also be used by department staff as one of several resources ~~in~~ *for* arriving at position classification decisions.

Classification descriptions are not intended to be all-inclusive. That some duties performed by an incumbent are or are not ~~on the~~ *included in* a classification description is in no way to be construed as an indication that a position is or is not assigned to the ~~proper~~ *correct or incorrect* job classification. Position classification decisions shall be based upon the preponderance of duties assigned to the position.

3.2(2) Position classification guidelines are developed and published by the department as needed. *Position classification guidelines are a public record.* Their purpose is to document information about the duties and responsibilities that may be typically associated with a job classification or a series of job classifications. They may describe the kind and

level of duties assigned, as well as the skill, effort, *responsibilities* and working conditions associated with job performance. Where the job classification being described is one in a series, the position classification guideline may compare and contrast the similarities and differences among levels in the series.

Position classification guidelines are intended for use by department staff as one of several resources *that may be used* in arriving at position classification decisions.

3.2(3) Nothing in a classification description or a position classification guideline shall limit an appointing authority's ability to assign, *add to*, delete or *otherwise* alter the duties of a position.

3.2(4) Changes to *the* minimum qualifications in a classification description shall have no effect on the status of employees in positions in that class, except where licensure, registration, or certification is required.

581—3.3(19A) Position description questionnaires. Position description questionnaires shall be submitted to the director and kept current *by the appointing authority* on forms prescribed by the director for each position under an appointing authority's jurisdiction. The appointing authority shall assign duties to ~~a position~~ *positions* and may add to, delete or alter the duties of ~~a position~~ *positions*. An updated position description questionnaire shall be submitted *to the department by the appointing authority whenever requested by the director* or whenever changes in responsibilities occur that may impact a position's job classification. Position description questionnaires are a public record.

581—3.4(19A) Position classification reviews.

3.4(1) The director shall decide the job classification of all positions in the executive branch of state government except those specifically *determined and* provided for by law. *Position classification Decisions decisions* shall be based solely on duties permanently assigned *and performed*.

3.4(2) Position classification decisions shall be based on documented evidence of the performance of a specific kind and level of work that is permanently assigned *and performed* over 50 percent of the time *and* that is *attributed* ~~attributable~~ to a particular job classification.

3.4(3) The director may initiate specific or general position classification reviews. An appointing authority *or an incumbent* may also submit a request to the director to review a specific position's classification. *When initiated by other than the director, position classification review decisions* Reviews shall be completed ~~and a tentative decision~~ issued within ~~90~~ *60* calendar days after the request is received *by the department*. If additional information is required by the department, it shall be submitted within 30 calendar days following the date ~~of the written request~~ *it is requested*. Until the requested information is received by the department, the ~~90~~ *60*-calendar-day review *decision* period may be suspended by the department. ~~Upon receipt of the additional information, the review period shall resume.~~

3.4(4) Notice of ~~the~~ *a* position classification review decision shall be given *by the department* to the incumbent and to the appointing authority. The decision shall become final unless the appointing authority or the incumbent submits a request for reconsideration. The request for reconsideration shall be in writing, state the reasons for the request, including the specific job classification requested, and must be received in the department within 30 calendar days following the date the decision was issued. The final position classification decision in response to a request for reconsideration

PERSONNEL DEPARTMENT[581](cont'd)

shall be issued within 30 calendar days following receipt of the request.

3.4(5) The maximum time periods at any step in the position classification review process may be extended when mutually agreed to in writing and signed by both the parties.

3.4(6) Following a final position classification review decision, any subsequent request for review of the same position must be accompanied by a showing of substantive changes from the position description questionnaire upon which the previous decision was based. A new position description questionnaire must be prepared and all new and substantively changed duties must be identified as such on the new questionnaire. *The absence of a showing of substantive changes in duties shall result in the request being returned without further review.*

3.4(7) The position classification review process is not a contested case.

581—3.5(19A) Classification appeal appeals hearings.

3.5(1) If, following a position classification review request, a decision notice is not issued within the time limits limit provided for in these rules, or the appointing authority or the incumbent does not agree with the department's final position classification review decision, the appointing authority or the incumbent may request a classification appeal committee hearing. The request shall be in writing and shall be mailed to: Chair, Classification Appeal Committee, Iowa Department of Personnel, Grimes State Office Building, East 14th Street at Grand Avenue, Des Moines, Iowa 50319-0150. The classification appeal hearing process is a contested case as defined by Iowa Code chapter 17A.

3.5(2) The A classification appeal committee panel shall be appointed by the director commission. The committee shall consist of three persons whose professional background is in human resources management or an area of technical expertise peculiar to the subject matter of the appeal.

3.5(3) A request for a classification appeal committee hearing must be in writing, state the reasons for the request and the job specific classification requested. The request must be received in the department within 14 calendar days following the date the final position classification review decision notice was issued or should have been issued by the department.

3.5(4) The classification appeal committee hearing shall be scheduled within 30 calendar days following receipt of the request for a hearing unless otherwise mutually agreed to in writing and signed by the parties. *All exhibits to be entered into evidence at the hearing shall be exchanged between the parties prior to the hearing and three copies shall be available to be offered into evidence at the hearing.* The hearing shall be held at the Grimes State Office Building during the regular business hours of the department. The appellant shall carry the burden of proof to show by clear and convincing a preponderance of evidence that the duties of the requested job classification are assigned and carried out on a permanent basis and are performed over 50 percent of the time. The committee shall affirm or deny the job classification requested, or remand the request to the director for further review as provided for in rule 581—3.4(19A). The committee's written decision shall be issued within 30 calendar days following the close of the hearing and the receipt of any post-hearing submissions. *Further appeal shall be in accordance with this rule. The written decision of the committee shall constitute final agency action.*

3.5(5) Decisions of the committee shall be final unless the appellant petitions the commission to review the hearing record. The petition must be in writing, submitted by registered

mail to: Iowa Personnel Commission, Iowa Department of Personnel, Grimes State Office Building, East 14th Street at Grand Avenue, Des Moines, Iowa 50319-0150, and post-marked within 30 calendar days following the date the classification appeal committee's written decision was issued. The commission shall have the discretion to grant or deny the petition. A written decision on whether to grant or deny the petition shall be sent to the appellant within 30 calendar days following receipt of the petition by the commission.

If the appellant's petition is granted, the commission's review shall be solely on the hearing record. The hearing record shall consist of a transcript of the classification appeal hearing proceeding and information prescribed by Iowa Code section 17A.12(6). The commission's decision authority shall be to sustain the classification appeal committee's decision or remand it to the director for further review as provided for in rule 581—3.4(19A). The commission's decision shall be made at its next regularly scheduled meeting following the commission's notification to the appellant to grant the petition.

If remanded, copies of the director's decision shall be sent to the commissioners, as well as to the appointing authority and the incumbent. Further appeal shall be in accordance with rule 581—3.4(19A).

3.5(65) *Judicial Requests for rehearing and judicial review of final commission classification appeal committee decisions shall be in accordance with Iowa Code section 17A.19.*

3.5(76) Following a final decision by the director, the classification appeal committee decision, or the commission, any subsequent request for review of the same position must be accompanied by a showing of substantive changes from the position description questionnaire upon which the previous decision was based. A new position description questionnaire must be prepared, and all new and substantively changed duties must be identified as such on the new questionnaire. *The absence of such a showing of substantive changes in duties shall result in the request being returned without further review.*

581—3.6(19A) Implementation of position classification decisions.

3.6(1) Position classification changes shall not be retroactive and shall become effective only after approval by the director. *Position classification changes approved by the director that are not made effective by the appointing authority within 90 calendar days following the date approved shall be void.* Position classification changes that will have a budgetary impact shall first be not become effective until approved by the department of management before being submitted to the department. If the appointing authority decides not to implement the change or the department of management determines that funds are not available for the change does not approve funding for the change, duties commensurate with the previous current job classification shall be restored by the appointing authority within three pay periods following the date of that decision. *Position classification changes approved by the director that are not made effective by the appointing authority within 90 days following the date approved shall be void.*

3.6(2) *An Except where licensure, registration or certification is required, an employee shall not be required to meet the minimum qualifications for the new job classification when a reclassification is the result of the correction of a position classification error, a class or series revision, the gradual evolution of changes in the position, legislative ac-*

PERSONNEL DEPARTMENT[581](cont'd)

tion, or other external forces clearly outside the control of the appointing authority.

3.6(3) No change.

3.6(4) In all instances of reclassification where licensure, certification, or *obtaining a passing score on a keyboard test* is required, that requirement shall be met by the employee within the time limits set forth by the director. If this requirement is not met, the provisions of rule 581—11.3(19A) shall apply.

3.6(5) to 3.6(7) No change.

ITEM 6. Amend subrule 4.5(1), paragraph "b," subparagraph (2), as follows:

(2) An appointing authority may, for promoted employees, grant up to ~~two~~ *three* steps or up to 15 percent in excess of *addition to* the amount granted on promotion, *or up to the midpoint of the new range, if higher*, based upon the same criteria set forth in subparagraph (1) of this paragraph. ~~Offers~~ *Promotional pay increases* that exceed these limits shall first be requested in writing ~~for and approval~~ *approved* by the director.

ITEM 7. Amend subrule 4.5(1), paragraph "c," as follows:

c. Pay upon reinstatement. A former permanent employee who is reinstated shall be either: (1) paid a rate of pay within the pay grade for the class that does not exceed the rate of pay at separation; (2) paid a rate of pay within the pay grade nearest to the rate at separation if reinstated to a class covered by a different pay plan with steps; or (3) paid in accordance with subrule 4.5(1), paragraph "b." The reinstatement rate of pay shall include any class series, pay grade, or other pay adjustments made during the period of separation. If the employee's rate of pay was red-circled at the time of separation, the maximum rate of pay in the pay grade to which reinstated shall be controlling. A new pay increase eligibility date *and a new seniority date* shall be established upon reinstatement, ~~and a new adjusted employment date for vacation accrual purposes shall be established~~, except as otherwise provided for in these rules.

When an employee is reinstated, the previous adjusted employment date will be restored minus the period of separation. The vacation accrual rate shall be set in accordance with the provisions of rule 581—8.6(19A). This paragraph shall be effective retroactive to January 1, 1995.

ITEM 8. Amend subrule 4.5(1), paragraph "e," introductory paragraph, as follows:

e. Pay upon recall. A permanent employee who has been laid off or who was terminated due to a long-term disability or job-related illness or injury and who is subsequently recalled shall be either: (1) paid the same rate of pay the employee was paid at the time of separation including any class series, pay grade, or other pay adjustments for which the employee would have been eligible while on the recall list; (2) paid the entrance rate of pay for the class if the rate of pay at the time of separation was less than that of the class to which recalled; ~~or~~ (3) paid the maximum rate of pay for the class if the employee's rate of pay at the time of separation exceeded the maximum rate of pay for the class to which recalled; *or* (4) *if recalled to a class in a different pay plan with step amounts, the pay shall be adjusted to the nearest step amount that does not result in a reduction in pay.*

ITEM 9. Amend subrule 4.5(2), paragraph "b," as follows:

b. Pay increase eligibility.

(1) Employees in classes or positions covered by a pay plan provided for in subrule 4.1(2), paragraph "b" or "c," may be given a pay increase that is any amount within the pay range for the employee's class at the beginning of the pay period following the completion of the prescribed minimum periods of service. However, the employee's current performance evaluation rating must be at least competent (3.00) *or meet job expectations to receive an average (5.0%) or greater a pay increase.*

~~Employees in classes or positions covered by a pay plan provided for in subrule 4.1(2), paragraph "c," may be given a pay increase that is any amount within the pay range for the employee's class at the beginning of the pay period following the completion of the prescribed minimum periods of service. However, the employee's current performance evaluation rating must be at least competent (3.00) to receive an average (5.0%) or greater pay increase.~~

Minimum periods of service for pay increase eligibility for employees paid from a pay plan provided for in subrule 4.1(2), paragraphs "b" and "c," shall be 52 weeks, except that new employees, including persons who are reinstated, regardless of their salary at the time of appointment, as well as employees who receive an increase in pay of at least 5 percent as a result of a promotion, reclassification, or a class or pay plan change are eligible for their first pay increase after 26 weeks, unless provided otherwise in these rules.

(2) Employees in classes or positions covered by a pay plan provided for in subrule 4.1(2), paragraph "a," shall be given pay increases in accordance with time intervals published in their pay plan.

(3) The minimum periods of service for pay increase eligibility shall be exclusive of time spent on educational leave (except that required by the appointing authority), or other types of leave without pay (except military leave) which exceed 30 calendar days or as otherwise provided in these rules. Periods of service during educational leave required by the appointing authority or military leave shall be considered competent (3.00) *or meets job expectations* for pay increase eligibility.

ITEM 10. Amend subrule 4.5(3) as follows:

4.5(3) Pay for exceptional job performance. Extra pay, ~~not to exceed 5 percent of the employee's current annual base pay~~, may be given to ~~an a nontemporary~~ employee for exceptional job performance ~~with the approval of the director~~. ~~Written justification~~ *explanation* setting forth the nature of the exceptional job performance shall be submitted in advance to the director.

ITEM 11. Amend subrule 4.5(4), paragraph "b," as follows:

b. An employee promoted to a class covered by a pay plan provided for in subrule 4.1(2), paragraph "a" or "b," may be given a one-step *or 5 percent increase for in pay* or brought to the entrance rate of pay in the new pay grade, whichever is greater. Promotional pay for employees receiving leadworker pay shall be in accordance with subrule 4.5(5), paragraph "d."

ITEM 12. Amend subrule 4.5(4), paragraph "c," by striking the two unnumbered paragraphs.

ITEM 13. Amend subrule 4.5(17), introductory paragraph, as follows:

4.5(17) Pay upon red-circling. When a *noncontract employee is promoted, demoted or transferred, promotion, demotion, transfer, or some other action occurs and that would cause the employee's pay to exceeds exceed* the maxi-

PERSONNEL DEPARTMENT[581](cont'd)

imum rate of pay for the class to which the employee is assigned, the appointing authority may request that the employee maintain the current rate of pay of the employee (red-circle it) for up to one year with prior approval of the director. In exceptional instances, the director may approve a period of time in excess of one year. Any subsequent change to the red-circled pay or the period of red-circling prior to the end of the previously approved red-circling period must be approved preapproved by the director.

ITEM 14. Amend subrule 4.5(19) as follows:

4.5(19) Pay for recruitment and retention. A lump sum of extra pay may be given for recruitment of applicants or retention of current employees with prior approval of by the director. As a condition of receiving recruitment or retention pay, the recipient must sign an agreement to continue employment with the appointing authority for a period of no less than 24 months following the date of receipt. In the event that the recipient voluntarily leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority one twenty-fourth of the amount received for each month remaining in the 24-month period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government employment, then the repayment will be recouped out of the final paycheck.

ITEM 15. Amend subrule 4.6(2) as follows:

4.6(2) Employees in overtime exempt classes may shall not be compensated in any way for overtime when prior approval of the director has been granted. Compensation shall be at an amount no greater than the premium rate for each hour of overtime hours worked in excess of 40 in a workweek.

ITEM 16. Amend subrule 4.9(2) as follows:

4.9(2) Errors resulting in the overpayment of wages, except for FICA, state or federal income taxes, or IPERS contributions, shall be collected in the following manner:

a. If an error is discovered that resulted in the overpayment of wages, the employee may choose to repay the overpayment in the following manner unless otherwise approved by the director. :

(1) Repay the overpayment in a lump sum as a deduction from wages in the pay period following discovery of the error; or

(2) Have the overpayment deducted from succeeding pay periods not to exceed the number of pay periods during which the overpayment occurred or 13 pay periods, whichever is less. ; or

(3) The employee or appointing authority may submit an alternate repayment plan to the director. The director may approve, deny, or authorize a different repayment plan. The director's decision shall constitute final agency action and shall be communicated to the appointing authority for implementation.

b. The repayment schedule shall be submitted by the appointing authority on forms prescribed by the director with the first corrective pay document.

c. Upon termination of employment or notice of termination of employment, any overpayment still outstanding and for which a repayment schedule was implemented, shall be deducted from the wages, vacation payout, and wage correction payback from IPERS due the employee for the final pay period of employment.

ITEM 17. Amend rules 581—5.1(19A), 581—5.2(19A) and 581—5.4(19A), as follows:

581—5.1(19A) Recruitment. Classes are closed to application from persons not employed by the state unless specifically opened by the director for recruitment or as otherwise designated in subrule 5.2(4).

5.1(1) Open recruitment announcements. The director shall give public notice of classes opened for the recruitment of persons who are not employed by the state. Classes will remain open for a minimum of 15 calendar days following the announcement date. Recruitment may be limited to a specific geographic area or a specific selective background area or both. Recruitment announcements shall may be posted in designated state offices and in job service division offices. Copies may also be sent to newspapers, radio stations, educational institutions, professional and vocational associations, and other recruitment sources.

5.1(2) Promotional recruitment Job opportunity announcements. A list of job opportunities Announcements of promotional opportunities shall be posted on bulletin boards and in other conspicuous places throughout the agency involved, and reasonable steps shall be taken by the appointing authority to bring these announcements to the attention of all agency employees.

5.1(3) Content of announcements. Announcements shall specify the class title, salary range, location, method for making application, closing date for receiving applications, and peculiar availability requirements or selective background requirements if necessary minimum qualifications, any special requirements, and any selective certification requirements. All announcements must include a statement indicating that the state of Iowa is an affirmative action and equal employment opportunity employer. Announcements for continuous recruitment shall include a statement indicating that applications will be accepted until further notice.

5.1(4) Coordinated announcements and advertising Advertising. The appointing authority shall send to the director copies of all advertisements announcing employment opportunities that are to be placed in any publication, and any additional information required by the director. The appointing authority shall also comply with any policies established by the director regarding coordinated advertising. to reduce state advertising costs.

581—5.2(19A) Applications.

5.2(1) Applicant information. Applicant information shall be on forms prescribed by the director unless an alternate method has been authorized in a recruitment announcement. Applicants must supply at least their name, current mailing address, signature and social security number; however, if an applicant requests, a nine-digit number will be assigned by the department to be used in lieu of a the social security number. If other than the social security number is requested, it shall be the applicant's responsibility to ensure that all future correspondence directed to the department regarding the applicant's records must contain contains the assigned nine-digit number. All other information requested on the application, although not required by law or these rules, will assist the department in accurately and completely processing and evaluating the application. Applications that are not complete may not be used or regarded as an official application. The director may require an applicant to submit documented proof of the possession of any license, certificate, degree or other evidence of eligibility or qualification to include mental or physical capability to satisfactorily perform the essential duties of the job classification with or without a reasonable accommodation.

5.2(2) Verifying applicant information. The director may at any time verify statements contained in an application and

PERSONNEL DEPARTMENT[581](cont'd)

seek further information concerning an applicant's qualifications. If information is obtained which affects or would have affected an applicant's *qualifications*, standing on an eligible list, or status if already employed, the director shall make the necessary adjustment or take other appropriate action, including termination.

5.2(3) Applicant files. Applications accepted for processing and necessary related materials will be placed in the applicant files in the department and retained for no less than one year. Applications for classes which result in the hire of the applicant will be placed in the employee files in the department and retained for no less than the period of employment.

5.2(4) Application for eligible lists. ~~Applicants~~ *Persons* may apply to be on eligible lists as follows:

a. Promotional lists. *Promotional applicants shall meet the minimum qualifications, but may be exempt from the initial examinations used for the purposes of ranking on eligible lists. Promotional applicants may be subject to keyboard tests, background checks, psychological tests, and other tests used for further screening. The following persons may apply to be on promotional eligible lists at any time: Permanent employees, including permanent employees of the board of regents and community-based corrections, as well as persons enrolled in work experience or internship programs by the director, may make application to be on promotional lists. Such permanent employees may apply at any time. Persons enrolled in the work experience program may apply following a qualifying period of service with the state. Interns may apply in accordance with the provisions of subrule 8.10(3). All applicants shall meet the minimum qualifications but may be exempt from examinations used for the purpose of ranking on eligible lists. Applicants may also be subject to keyboard tests to determine if they meet the minimum qualifications for specific job classes.*

(1) *Permanent employees, including permanent employees of the board of regents and community-based corrections;*

(2) *Persons enrolled in work experience programs who have successfully completed at least 90 calendar days in the program; and*

(3) *Persons who have been formally enrolled in the department's intern development program for a period of at least 90 calendar days.*

b. Nonpromotional lists. ~~Persons other than permanent employees may make application to be on nonpromotional lists.~~ The following *persons* may apply to be on nonpromotional lists at any time:

(1) *Persons laid off and eligible for recall;*

(2) *Judicial branch employees;*

(3) *Legislative branch employees;*

(4) *Probationary or provisional probationary employees;*

(5) *Intermittent or provisional intermittent employees;*

(6) *Seasonal, emergency, trainee, or intern or other temporary employees not on the promotional list, or volunteers (including persons enrolled in work experience programs who are not on the promotional list), following a qualifying period 60 calendar days of service with the state as determined by the director;*

(7) *Nonpermanent employees of the board of regents and community-based corrections; and*

(8) ~~Permanent~~ *Former permanent* employees who ~~resigned~~ *resign* from state employment in good standing may, within 60 calendar days following their termination date, make application to be included on nonpromotional lists for classes for which they were on promotional lists at the time of their termination.

~~All other applicants may apply to be on nonpromotional lists only when the job class is open for recruitment.~~

5.2(5) Application pending license or graduation. An applicant ~~currently enrolled in an educational institution~~ who does not meet the minimum education or license requirements, *but who is currently enrolled in an education program that will result in meeting such requirements*, may be placed on the appropriate eligible list with a "pending graduation" or "pending license" status provided the applicant will meet, or has a reasonable expectation of meeting, the requirements within the following eight months. If certified in the top six available scores, the applicant may be selected for employment, but may not be appointed until all *qualification* requirements are met.

5.2(6) Disqualification or removal of applicants. The director may refuse to place an applicant on a list of eligibles for an unlimited period, refuse to certify an applicant to a job class or a position, refuse to approve the appointment of a certified applicant, or remove an applicant from the list of eligibles for a class or a certificate for a position if it is found that the applicant:

a. Does not meet the minimum qualifications or special requirements for the job class or position as provided for specified in the specification job class description, administrative rule rules, or law, or as documented through identification of essential functions.

b. Is physically or mentally incapable of performing the essential duties functions of the job classification or position and a reasonable accommodation cannot be provided.

c. Has knowingly misrepresented facts when submitting information relative to the an application, testing test, or certification process, appeal, or any other facet of the selection process.

d. Has used or attempted to use coercion, or bribery or other illegal means to secure an advantage in the application, testing, appeal or selection process.

e. Has obtained examination information to which applicants are not entitled.

f. Has failed to submit the application within the designated time limits on the announcement.

g. Was previously discharged from a position in state government.

h. Has been convicted of a felony crime that is shown to have a direct relationship to the duties of the a job class or position.

i. Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a direct threat to state property or to the safety of others.

j. Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U. S. Immigration and Naturalization Service.

Applicants disqualified or removed under this subrule shall be so notified in writing by the director within five working days workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed in accordance with rule 581—12.3(19A). Formal appeal of disqualification or removal shall be in accordance with 581—subrule 12.2(4).

PERSONNEL DEPARTMENT[581](cont'd)

581—5.4(19A) Development and administration of examinations.

5.4(1) Examination development. The director shall oversee the development, purchase, or use of examination materials, forms, procedures, and instructions.

5.4(2) Examination administration. The director shall arrange for suitable locations and conditions to conduct examinations. *Locations in various areas of the state and out of state may be used.* The director may postpone, cancel, or reschedule the date of an examination.

a. Examination of persons with disabilities. Persons with disabilities may request specific examination accommodations. *Reasonable accommodations will be granted in accordance with policies for accommodations established by the department.* Persons in the certified disability program or any other formal waiver program established by the department shall may be exempt from participation in examinations used for the purpose of ranking qualified applicants on nonpromotional eligible lists.

b. Special admittance. Requests for special admittance to an examination after the closing date for application shall be submitted in writing to the director. *The request shall explain why the applicant seeks special admittance to the examination.*

c. Retaking examinations. Applicants may not retake ~~apptitude, psychological, video-based or other the same department of personnel written examination examinations or one with the same or similar content for 30 60~~ calendar days following the last date the examination was taken except as provided for in rule 581—5.6(19A). ~~Applicants who are not state employees may retake an examination only if the job class is open for recruitment.~~ Violation of a ~~the~~ waiting period for a ~~an~~ written examination shall result in the current examination score being voided and an additional waiting period of ~~30 60~~-calendar- days ~~day~~ waiting period being imposed. ~~Applicants may not retake a psychological examination that is administered by or on behalf of the department until 60 calendar days following the last date the examination was taken.~~

~~State employees may retake keyboard Keyboard examinations, such as typing, may be retaken at any time without a waiting period, if equipment is available at any time. Applicants who are not state employees may retake keyboard examinations at any time the job class is open for recruitment.~~

The most recent examination score shall determine the applicant's rank on the nonpromotional-eligible-list corresponding eligibility lists and the eligibility expiration date.

Applicants who are required to take examinations covered by the rules or procedures of other agencies other than department of personnel examinations are subject to applicable rules or procedures on retakes for these such examinations of that agency.

~~d.—Removing examination material. Any unauthorized person who removes examination material from an examination site or who is otherwise in possession of examination material shall be subject to prosecution.~~

5.4(3) Examination materials.

a. Examination materials, including working papers, test booklets, test answer sheets and test answer keys are not public records under Iowa Code chapter 22. *All examination materials are the property of the department and shall not be released without the consent of the director.*

b. *Removing examination material. Any unauthorized person who removes examination material from an examination site, who participates in unauthorized distribution of examination materials, who is in unauthorized possession of*

examination material or who otherwise compromises the integrity of the examination process shall be subject to discipline, up to and including discharge if employed by the state, as well as prosecution.

581—5.5(19A) Scoring examinations. All nonpromotional applicants for positions covered by merit system provisions in the same job class shall be given uniform treatment in all phases of the examination scoring process applicable to the job class and status of the applicant. Applicants may be required to obtain at least a minimum score in any or all parts of the examination process in order to receive a final score or to be allowed to participate in the remaining parts of an examination.

5.5(1) Adjustment of errors. Examination scoring errors which that are called to the attention of the director will be corrected. A correction shall not, however, invalidate any certificate already issued or any appointment already made, and shall not extend the life of the score.

5.5(2) Points for veterans. Honorably separated veterans who reside in Iowa and who served on in active duty status in the armed forces of the United States in any war, campaign, or expedition for which a campaign badge or service medal has been authorized may request to have five points added to qualifying scores.

Proof of eligibility for points to be added shall must be provided by the veteran applicant in the form of a certified photocopy of a DD214 Form form (Armed Forces Report of Transfer or Discharge) or other official document containing dates of services service or a listing of service medals and campaign badges. Veterans Applicants who were awarded a Purple Heart, or who have a service-connected disability, or who are receiving disability compensation, or pension under laws administered by the U.S. Veterans Administration may request to have a maximum of ten points added to qualifying scores. Proof of current disability dated within the last 12 24 months and updated each 12 24 months thereafter after initial application must be submitted for continued eligibility.

581—5.6(19A) Review of written examination questions. Any applicant Applicants may request to review their incorrectly answered questions on department of personnel written examinations except that aptitude, psychological, and video-based examinations are not subject to review. Requests for review must be submitted to the director within 15 calendar days following the date the notice of examination results was issued by the department. Reviews will be held during regular business hours and must be scheduled in advance. Reviews will be held during scheduled examination periods at no charge to the applicant. Reviews held at other times shall be subject to costs determined by the director. An applicant who reviews written examination questions may not retake that examination or an examination with the same or similar content for 90 60 calendar days following the review, and then only if the class is open for recruitment. Violation of the this waiting period shall result in that the current examination score being voided and an additional 90 60-calendar-day waiting period being imposed.

ITEM 18. Amend subrule 6.1(2) as follows:

6.1(2) Promotional lists. These Promotional lists shall consist of the names of permanent employees and those as designated in subrule 5.2(4), paragraph "a," who have applied for a job class and who have met the minimum qualifications and other promotional screening requirements for the class. The length of time for of eligibility for promotional promotion from these lists need not be the same as that for appointment from nonpromotional lists.

PERSONNEL DEPARTMENT[581](cont'd)

ITEM 19. Amend subrule 6.1(3) as follows:

6.1(3) Nonpromotional lists. ~~These Nonpromotional~~ lists shall consist of the names of persons who are not eligible for placement on promotional lists who have applied for positions covered by merit system provisions, met the minimum qualifications for the class, and undergone, *and as necessary passed*, the designated examinations for the class. Persons in the certified disability program *or any other formal waiver program established by the department* shall be placed on the nonpromotional list without score or rank and shall be eligible for hire along with applicants in the top six available scores.

ITEM 20. Rescind subrule **6.1(4)**.

ITEM 21. Amend rule 581—6.5(19A) as follows:

581—6.5(19A) Removal of names from eligible lists. The director may remove names from an eligible list for a particular job class(es) for any of the following reasons, *in addition to those cited in 581—subrule 5.2(6)*:

1. Failure by the applicant to maintain a record of current address as evidenced by the return of ~~the~~ a properly addressed letter or other *similar* evidence.

2. Failure by the applicant to respond to a written inquiry from the director or an appointing authority as to availability within five workdays following the *date the inquiry was sent*.

3. Receipt of a statement that the applicant no longer wants to be on the list for the class.

4. Declination of an appointment or promotion under previously agreed-to conditions.

5. Appointment to a job class. ~~Employees Applicants~~ *appointed or promoted* will be removed for job classes in the same or lower pay grade.

6. Abolition ~~of~~ or expiration of an eligible list for a job class(es).

7. In the case of promotional lists, separation from state service.

8. In the case of nonpromotional lists, attainment of permanent status.

9. *Correction of erroneous placement on a list.*

9-10. Violation of any of the provisions of Iowa Code chapter 19A or these rules. Applicants removed for this reason shall be notified in writing by the director within five ~~working days~~ *workdays* following removal. Appeal of removal for this reason shall be in accordance with 581—subrule 12.2(4).

11. *Failure by the applicant to maintain contact as instructed by the department concerning current availability, mailing address and telephone number.*

ITEM 22. Amend rule 581—7.2(19A) as follows:

581—7.2(19A) Certificate requests. An appointing authority shall submit a *multiple list request form* ~~for a certificate~~ when filling a vacancy in a position covered by merit system provisions, ~~except that a certificate shall be requested to fill any position when there are employees eligible for recall to the class, or as otherwise provided in these rules.~~

ITEM 23. Amend subrule 7.3(1) as follows:

7.3(1) Recall certificate. The director will certify the names of those persons who are eligible for recall *on the date and time issued* in accordance with the provisions of 581—subrule 11.3(6) or applicable collective bargaining agreements.

ITEM 24. Rescind subrule **7.3(4)**.

ITEM 25. Amend rule 581—7.11(19A) as follows:

581—7.11(19A) Referral and appointment of “conditional” applicants. The names of applicants who are on the eligible list for a class “pending graduation” or “pending license” are considered to be “conditional.” In order to have these applicants referred on a certificate, the appointing authority must ~~explain in writing the need and the efforts to recruit and consider qualified applicants request that “conditional” applicants be included on the eligible list, Upon approval, in which case the scores of both “conditional” and qualified applicants will be referred to the agency. If a “conditional” applicant is selected, the appointment shall not be effective no sooner than when the until the applicant has met the minimum requirements for qualification have been met.~~ Appointments shall be made in accordance with 581—subrule 5.2(5) and rule 581—7.6(19A).

ITEM 26. Rescind and reserve rule **581—8.3(19A)**.

ITEM 27. Amend rule 581—8.5(19A) as follows:

581—8.5(19A) Intermittent appointment. ~~Where the scheduling of work requires the services of an employee(s) on an intermittent basis, selection shall be made in accordance with subrule 7.3(2) when applicable. Persons may be appointed with intermittent status without regard to merit system provisions.~~

~~An intermittent~~ *Intermittent appointment appointments* may be made to established intermittent positions or to permanent positions, or on an overlap basis to unauthorized positions.

An intermittent appointment shall not exceed 700 work hours in a fiscal year. Hours worked in noncontract classes during the period provided for seasonal appointment in rule 581—8.11(19A) shall not accumulate toward this 700-hour maximum. ~~If appointed to a class requiring certification from an eligible list, intermittent employees may continue to work without recertification in the same class, under the same certification conditions for the same appointing authority in succeeding years. Failure of an appointee to work during any succeeding year shall require recertification for appointment if the position is covered by merit system provisions.~~

Where intermittent service immediately precedes a probationary appointment in the same class in the same agency in which the intermittent service was performed, the current intermittent service shall constitute a part of the probationary period and shall be credited to a maximum of 120 calendar days. Otherwise, intermittent service shall not be credited toward the probationary period. When intermittent service is credited toward the probationary period, vacation and sick leave shall be given retroactively based on the number of hours worked during the 120-calendar-day period immediately preceding the probationary appointment. An intermittent employee may be given a probationary appointment in the same class, agency and location, and under the same certification conditions without recertification.

The acceptance or refusal of an intermittent appointment shall not affect an applicant’s standing on an eligible list nor eligibility for a probationary appointment. An intermittent employee shall not be eligible for any right of appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits.

An intermittent employee in a contract-covered class shall only be given another temporary type of appointment to the extent that the total number of hours worked in all temporary appointments in a fiscal year does not exceed 700. Prior to accruing 700 worked, the employee shall either be given a

PERSONNEL DEPARTMENT[581](cont'd)

probationary or permanent appointment, given a temporary appointment in a noncontract class, or terminated.

ITEM 28. Amend rule 581—8.6(19A) by adding the following **new** unnumbered paragraph:

Former employees who are reinstated shall accrue vacation at the same rate as at the time they separated from state employment. This paragraph shall be effective retroactive to January 1, 1995.

ITEM 29. Rescind rule 581—8.7(19A) and insert in lieu thereof the following **new** rule:

581—8.7(19A) Emergency appointment. The director may authorize appointing authorities to make emergency appointments to positions. Emergency appointments may be made to any class and at any rate of pay within the range for the class to which appointed. Emergency appointments shall not exceed 350 hours for any one person in any fiscal year.

Persons may be appointed with emergency status without regard to merit system provisions, and shall have no rights of appeal, transfer, promotion, demotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits.

A person appointed with emergency status to a classification covered by a collective bargaining agreement shall not work in excess of 350 hours in that status in such a class or classes, nor shall that person accumulate more than 700 hours worked in any combination of temporary statuses in any agency or any combination of agencies during a fiscal year.

ITEM 30. Amend subrule 8.10(3) as follows:

8.10(3) Successful completion of an internship appointment of at least ~~three months~~ *120 contact hours* shall allow *authorize* the appointee to be certified from a promotional list for any job class for which the appointee *has submitted an application and qualifies*. Only persons formally enrolled in the department's intern development program are eligible to be on promotional lists. Successful completion shall be as determined by the director at the time of enrollment. *An intern's name may remain on the promotional list for up to two years. If an appointment has not been made by the end of the two-year period, the name will be removed from the list. The intern may then reapply through the standard nonpromotional process.* After initial selection from a promotional certificate, the ~~employee's~~ *intern's* name shall be removed from all promotional lists until ~~the employee has attained~~ permanent status *has been attained*.

ITEM 31. Rescind rule 581—8.11(19A) and insert in lieu thereof the following **new** rule:

581—8.11(19A) Seasonal appointment. The director may authorize appointing authorities to make seasonal appointments to positions. Seasonal appointments may be made to any class and at any rate of pay within the range for the class to which appointed. Seasonal appointments may, however, be made only during the seasonal period approved by the director for the agency requesting to make the appointment, and must be concluded by the end of that period. To be eligible to make seasonal appointments, the appointing authority must first submit a proposed seasonal period to the director for approval. Such period shall not exceed six months in a fiscal year.

Persons may be appointed with seasonal status without regard to merit system provisions, and shall have no rights of appeal, transfer, promotion, demotion, reinstatement, or oth-

er rights of position, nor be entitled to vacation, sick leave, or other benefits.

A person appointed with seasonal status to a classification covered by a collective bargaining agreement shall not work in excess of 700 hours in that status in such a class or classes, nor shall that person accumulate more than 700 hours worked in any combination of temporary statuses in any agency or any combination of agencies during a fiscal year.

ITEM 32. Rescind and reserve rule 581—8.12(19A).

ITEM 33. Amend rule 581—9.9(19A) as follows:

581—9.9(19A) Probationary period for promoted employees. This rule shall only apply to promotions within an appointing authority's *jurisdiction department and* to positions covered by merit system provisions.

~~A permanent~~ An employee may be required to serve a six-month probationary period in the class to which promoted before the promotion becomes permanent.

At any time during the promotional probationary period, the appointing authority may return the employee to the formerly held class. Return under this ~~probation~~ *probationary period rule* shall not be considered a demotion and there shall be no right to an appeal. The former salary and pay increase eligibility date shall be restored with credit allowed for the time spent in the higher class.

ITEM 34. Rescind and reserve rule 581—10.5(19A).

ITEM 35. Amend subrule 11.1(1), paragraph "b," first unnumbered paragraph, as follows:

Participants shall be in pay status a maximum of 32 hours per week and a minimum of 20 hours per week during the first four years in the program. After the completion of four years in the program, participants shall be in pay status a maximum of 20 hours per week *for the fifth year in the program*. An employee may not increase the number of hours in pay status once ~~a reduction~~ *participation in the program has been made begun*. An employee may participate for a maximum of five years in the program. *At the conclusion of the agreed-upon period of participation in the program, the employee shall retire from state employment.*

ITEM 36. Amend rule 581—11.2(19A) as follows:

581—11.2(19A) Disciplinary actions. *Except as otherwise provided,* ~~In~~ in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when based on a standard of just cause: suspension; reduction of pay within the same pay grade; disciplinary demotion; or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

11.2(1) Suspension. ~~An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days. Suspensions shall be without pay except that an appointing authority may suspend an employee for up to 14 calendar days with pay pending an investigation. If, upon investigation, the decision is that a suspen-~~

PERSONNEL DEPARTMENT[581](cont'd)

sion without pay was warranted, the appointing authority shall recover the pay received by the employee for the imposed period of suspension without pay. A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

a. *Suspension pending investigation.* An appointing authority may suspend an employee for up to 21 calendar days with pay pending an investigation. If, upon investigation, it is determined that a suspension without pay was warranted as provided in 11.2(1) "b" (1) below for an employee covered by the premium overtime provisions of the Fair Labor Standards Act, the appointing authority shall recover the pay received by the employee for the imposed period of suspension without pay.

b. *Disciplinary suspension.* An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days as provided in either subparagraph (1) or (2) below. A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action.

(1) *Employees who are covered by the premium overtime provisions of the federal Fair Labor Standards Act may be suspended without pay.*

(2) *Employees who are exempt from the premium overtime provisions of the federal Fair Labor Standards Act will not be subject to suspension without pay except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director. Otherwise, when a suspension is imposed on such an employee, it shall be with pay and shall carry the same weight as a suspension without pay for purposes of progressive discipline. The employee will perform work during a period of suspension with pay unless the appointing authority determines that safety, morale, or other considerations warrant that the employee not report to work.*

11.2(2) Reduction of pay within the same pay grade. An appointing authority may reduce the pay of an employee who is covered by the overtime provisions of the federal Fair Labor Standards Act to a lower step or rate of pay within the same pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

Employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act will not be subject to reductions of pay within the same pay grade except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director.

11.2(3) *Disciplinary demotion.* A disciplinary demotion may be used to permanently move an employee to a lower job classification. A temporary disciplinary demotion shall not be used as a substitute for a suspension without pay or reduction in pay within the same pay grade. An employee receiving a disciplinary demotion shall only perform the duties and responsibilities consistent with the class to which demoted. An appointing authority may disciplinarily demote an employee to a vacant position. In the absence of a vacant position, the appointing authority may effect the same disciplinary result by removing duties and responsibilities from the employee's position sufficient to cause it to be reclassified to a lower class. A written statement of the reasons for the dis-

ciplinary demotion shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

No disciplinary demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being eligible for appointment. Disciplinary demotion of an employee with probationary status to a position covered by merit system provisions shall be in accordance with 581—subrule 9.2(2).

An agency may not disciplinarily demote an employee from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee's written consent regarding the change in coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.

11.2(4) *Discharge.* An appointing authority may discharge an employee. Prior to the employee being discharged, the appointing authority shall inform the employee during a face-to-face meeting of the impending discharge and the reasons for the discharge, and at that time the employee shall have the opportunity to respond. A written statement of the reasons for the discharge shall be sent to the employee within 24 hours after the effective date of the discharge, and a copy shall be sent to the director by the appointing authority at the same time.

~~When an employee has been qualified and appointed to a position occupies a position where a current qualification for appointment is covered by merit system provisions based upon the required possession of a temporary work permit or on the basis of possession of a license or certificate, and that document expires, is revoked or is otherwise determined to be invalid, the employee shall either be discharged for failure to meet or maintain license or certificate requirements, or otherwise appointed to another position in accordance with these rules. This action shall be effective no later than the pay period following the failure to obtain, revocation of, or expiration of the permit, license, or certificate.~~

When an employee occupies a position where a current qualification for appointment is based upon the requirement of an approved background or records investigation and that approval is later withdrawn or unobtainable, the employee shall be immediately discharged for failure to maintain those background or records requirements, or may be appointed to another position in accordance with these rules.

11.2(5) No change.

ITEM 37. Amend rule 581—11.3(19A) as follows:

Amend subrule 11.3(2), paragraphs "d" to "f" as follows:

d. The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the effective date of the reduction in force, the reduction in force unit(s), the reason(s) for choosing the unit(s) if smaller than a bureau, the number of permanent merit system covered employees by class to be eliminated or reduced in hours the cutoff date for the establishment of performance records, the selection criteria to be used, the weighted percentages to be assigned to performance records and to length of service, and any other information requested by the director. The appointing

PERSONNEL DEPARTMENT[581](cont'd)

authority shall post each approved reduction in force plan for 60 calendar days, ~~unless budgetary limitations require a lesser period of time,~~ in conspicuous places throughout the reduction in force unit. The posting shall include the names of all permanent merit system covered employees in each affected job class in the reduction in force unit.

e. The appointing authority shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee's rights under these rules. A copy of the employee's retention points computation worksheet shall be furnished to the employee. The official notifications to affected employees shall be made at least 20 workdays prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. These official notifications shall occur only after the agency's reduction in force plan has been approved by the director, unless otherwise authorized by the director, *and* following the application of the selection criteria called for in 581—subrules 11.3(2), 11.3(3) and 11.3(4).

f. The appointing authority shall notify the affected employee(s), in writing, of any options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days ~~from~~ following the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

Amend subrule 11.3(5), paragraph "a," as follows:

a. Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a lower formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of the reduction in force. Bumping shall be ~~only~~ limited to positions covered by merit system provisions *and positions covered by a collective bargaining agreement*. The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required.

Amend subrule 11.3(6), paragraph "c," subparagraph (2), as follows:

(2) Any lower classes (or equivalent if retitled) held prior to the reduction in force or termination, except classes from which voluntarily or disciplinarily demoted; and

Amend subrule 11.3(6), paragraph "d," subparagraphs (1) and (2), as follows:

d. The following provisions shall apply to the issuance and use of recall certificates:

(1) Recall certificates shall be issued for merit system covered positions *and contract covered positions* only.

(2) When one or more names are on the recall list for a class in which a vacancy exists, the agency ~~must filling fill that vacancy on employee from that list who were laid off by that agency. If no such former employee is available, the agency shall next consider recalling former employees on the recall list who were laid off by other agencies.~~ If no one from such a recall certificate is selected, the agency shall justify that de-

cision to the director before the position may be filled by other methods.

ITEM 38. Amend subrule 12.1(1), paragraph "c," as follows:

c. Step 3. If the grievant is not satisfied with the decision obtained at the second step, the grievant may, within 14 calendar days after the day the written decision at the second step was received, or should have been received, file the grievance in writing with the director. The director shall, within 30 calendar days after the day the grievance is received, attempt to resolve the grievance and send a decision in writing to the grievant with a copy to the appointing authority. The director may affirm, modify, or reverse the decision made at the second step or otherwise grant appropriate relief. If the relief sought by the grievant is not granted, the director's response shall ~~also incorporate the verbatim content of subrule 12.2(5), including the specific number of days remaining in which an appeal must be filed.~~ *inform the grievant of the appeal rights in 12.2(5).*

ITEM 39. Amend subrule 12.2(4), introductory paragraph, as follows:

12.2(4) Appeal of disqualification, ~~or~~ restriction, or removal from eligible lists. An employee who has been disqualified or whose name has been restricted or removed from an eligible list in accordance with ~~subrules 5.2(6) or 6.5(2), paragraph "d" 581—5.2(19A) or 581—6.5(19A),~~ or who has been restricted from certification in accordance with rule 581—7.7(19A) may file a written appeal to the employment appeal board in the department of inspections and appeals for a review of that action. *The written appeal must be filed with the board within 30 calendar days following the notice of disqualification, removal from the eligible list, or restriction from certification. The burden of proof to establish eligibility shall rest with the appellant.*

ITEM 40. Amend subrule 12.2(5) as follows:

12.2(5) Appeal of grievance decisions. An employee who has alleged a violation of Iowa Code chapter 19A or the rules adopted to implement chapter 19A may, within 30 calendar days after the date the director's response at the third step of the grievance procedure was issued or should have been issued, file an appeal with the public employment relations board. *A nontemporary noncontract employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status may, if not satisfied with the decision of the director, request an appeal hearing before the public employment relations board within 30 calendar days after the date the director's decision was issued or should have been issued.* However, when the grievance concerns allegations of discrimination within the meaning of Iowa Code chapter 601A 216, the Iowa civil rights commission procedures shall be the exclusive remedy for appeal and shall, in such instances, constitute final agency action. In all other instances, decisions by the public employment relations board constitute final agency action.

ITEM 41. Amend subrule 12.2(6), introductory paragraph, as follows:

12.2(6) Appeal of disciplinary actions. Any nontemporary, noncontract employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, shall bypass steps one and two of the grievance procedure provided for in

PERSONNEL DEPARTMENT[581](cont'd)

rule 581—12.1(19A) and may file an appeal in writing to the director for a review of the action within 14 calendar days after the effective date of the action. *The appeal shall be on the forms prescribed by the director.* The director shall affirm, modify or reverse the action and shall give a written decision to the employee within 30 calendar days after the receipt of the appeal. *The time may be extended by mutual agreement of the parties.* If not satisfied with the decision of the director, the employee may request an appeal hearing before the public employment relations board *as provided in 581—12.2(5).* ~~The request must be filed within 30 calendar days after the date the director's decision was issued or shall have been issued. Decisions by the public employment relations board constitute final agency action.~~

ITEM 42. Amend 581—Chapter 13 as follows:

CHAPTER 13
PERFORMANCE REVIEW PLANNING
AND EVALUATION

581—13.1(19A) System established. The director shall establish, administer and maintain a uniform system of performance planning and ~~evaluation review~~ to be applied to all employees in the executive branch of state government, excluding board of regents employees, and shall prescribe forms and procedures for its use. ~~The appointing~~ *Appointing authority authorities* shall ~~prescribe~~ *determine and assign* the job duties to be performed by employees.

581—13.2(19A) Minimum requirements.

13.2(1) Performance plan. The performance plan shall be based on the responsibilities assigned ~~by the supervisor~~ during the ~~evaluation rating~~ period and shall include the standards *or expectations* required for performance to be considered competent *or as meeting job expectations.* The performance plan shall be given to and discussed with the employee. Significant changes in responsibilities, ~~or standards or expectations~~ that occur during the ~~evaluation rating~~ period shall be included in the performance plan, and a revised copy given to and discussed with the employee.

13.2(2) Performance evaluation. A performance evaluation shall be prepared for each employee at least every 12 months ~~by the supervisor.~~ Additional evaluations may be prepared at the discretion of the supervisor. ~~Numerical ratings~~ *Ratings* on the evaluation form ~~shall may~~ be accompanied by descriptive comments supporting the ratings. The evaluation ~~shall may~~ also include job-related comments concerning areas of strength, areas for improvement, and training/development plans. The supervisor *or team* shall discuss the evaluation with the employee and the employee shall be given the opportunity to attach written comments.

Periods of service during educational leave required by the appointing authority, or military leave, shall be considered competent (3.00) *or as meeting job expectations.*

Exit performance ~~evaluations~~ *reviews* shall be completed by the former supervisor on or before the last day before the movement of an employee to employment in another section, bureau, division or agency of state government. This ~~evaluation review~~ shall be for the period between the previous ~~evaluation review~~ up to the movement to the other position. A copy shall be forwarded to the new supervisor of the employee.

581—13.3(19A) Copies of records. The employee shall receive ~~a copies~~ *copy* of each performance plan and ~~evaluation review.~~ The originals shall be retained by the employee's ~~department~~ *agency* in accordance with the policies of the depart-

ment. The performance ~~evaluation review~~ and attachments are confidential records within the meaning of Iowa Code section 22.7, subsection 11.

ITEM 43. Amend subrule 14.2(1) as follows:

14.2(1) ~~A probationary or permanent employee~~ *Nontemporary employees* shall earn vacation for continuous state ~~service employment~~ as follows:

a. Two (2) unscheduled holidays to be added to the vacation ~~allowance~~ *accrual* each year.

b. Two (2) weeks of vacation during the first and through the fourth year of employment (~~80 hours plus 16 hours~~ *3.69 hours for the first and second biweekly pay periods; 3.72 hours for the third biweekly pay period*).

c. Three (3) weeks of vacation during the fifth and through the eleventh year of employment (~~120 hours plus 16 hours~~ *5.23 hours for the first and second biweekly periods; 5.24 hours for the third biweekly pay period*).

d. Four (4) weeks of vacation during the twelfth year and through the nineteenth year of employment (~~160 hours plus 16 hours~~ *6.77 hours for the first and second biweekly pay periods; 6.76 hours for the third biweekly pay periods*).

e. Four and four-tenths (4.4) weeks of vacation during the twentieth year and through the twenty-fourth year of employment (~~176 hours plus 16 hours~~ *7.39 hours for the first biweekly pay period; 7.38 hours for second and third biweekly pay periods*).

f. Five (5) weeks of vacation during the twenty-fifth and all subsequent years of employment (~~200 hours plus 16 hours~~ *8.31 hours for the first and second biweekly pay periods; 8.28 hours for the third biweekly pay period*).

ITEM 44. Amend subrule 14.2(2) by adding the following ~~new~~ paragraph "p":

p. An employee may donate accrued vacation for use by another state employee who is suffering from a catastrophic illness. Such contributions shall be designated as "donated leave" and shall be subject to the policies and procedures of the department. Use of donated leave shall be subject to the approval of the appointing authority. The initial approval to use donated leave shall be for a period of no more than one year. Use of donated leave beyond one year shall be subject to further review and approval by the appointing authority. For the purpose of this paragraph, "catastrophic illness" means a physical or mental illness or injury as certified by a licensed physician that will result in the inability of the employee to work for more than 30 workdays on an intermittent or consecutive basis. Leave donated under this paragraph shall be irrevocable after it is credited to the recipient. Donated leave hours not credited to the recipient will not be deducted from the donor's vacation leave balance. Persons utilizing donated leave shall not accrue sick leave or vacation.

ITEM 45. Amend rule 581—14.9(19A) as follows:

581—14.9(19A) Military leave.

14.9(1) ~~A probationary or permanent~~ *nontemporary* employee who is a member of the ~~national guard, organized reserve, or any component part of the military of the state of Iowa or the United States~~ *shall uniformed services*, when ordered by proper authority to ~~active or inactive state or federal military service~~ *serve* in the uniformed services, shall be granted leave. ~~including~~ *Such leave shall include* a reasonable amount of time for commuting, for the period of active or inactive state or federal military service without loss of pay, *benefits, seniority, or position* during the first 30 workdays of leave. Thereafter, absences required for military service shall be in accordance with the rules on vacation, com-

PERSONNEL DEPARTMENT[581](cont'd)

pensatory leave, or leave without pay, and 38 U.S.C. sections 4301-4333. Military leave may be utilized for up to 30 workdays in any calendar year. Any amount of military leave taken during any part of an employee's scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid workday maximum. Work schedule changes shall not be made for the purpose of avoiding payment of military leave.

14.9(2) A probationary or permanent nontemporary employee who is inducted into military service may elect to be placed on leave without pay or be separated and removed from the payroll. The maximum period of accumulated time an employee can be on leave without pay or be separated from employment and still have return rights is five years.

a. The following periods shall be excluded from accumulation to determine return rights of an employee:

(1) Periods in which the employee is required, beyond five years, to complete an initial period of obligated service.

(2) Periods during which a person is unable to get orders releasing the person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of the person.

(3) Periods ordered to be performed under 10 U.S.C. Sections 270, 672(a), 672(g), 673, 673(c), and 688; 14 U.S.C. Sections 331, 332, 359, 360, 367, and 712; and 32 U.S.C. Sections 502(a) and 503.

(4) Periods ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or Congress.

(5) Periods ordered to or retained on active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under the authority of 10 U.S.C. Section 673(b).

(6) Periods ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services or called into federal service as a member of the National Guard under 10 U.S.C. Chapter 15 or under Sections 3500 or 8500.

b. The employer is not required to reemploy an individual if the individual's employment prior to military service was for a brief, nonrecurring period and there was no reasonable expectation that it would continue indefinitely; if reemployment would cause an undue hardship on the employer; if the employer's circumstances have so changed as to make such reemployment impossible or unreasonable; or if the employee has not received an honorable discharge for the employee's period of service in the uniformed services.

a. 14.9(3) Employees Nontemporary employees who elect to separate from employment for induction into military service shall be given 30 workdays of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

b. Employees who elect to be placed on leave without pay when inducted into military service shall continue to receive regular pay and benefits for the first 30 workdays of leave. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days workdays.

e. 14.9(4) The employee must notify the agency or institution from which separated or placed on leave without pay of the intent to exercise return rights. The employee must provide this notification within 90 calendar days after honorable discharge from military service or from hospitalization con-

tinuing after discharge for a period of not more than one year. Employees who do not return to work or notify the agency or institution of their intent to return to work within the time specified shall forfeit return rights. Rights upon return from military service shall be in accordance with the provisions of rule 581—14.6(19A). If the service is less than 31 days (or for the purpose of taking an examination to determine fitness for service) the employee must report to the employer for reemployment at the beginning of the first full regularly scheduled working period on the first calendar day following completion of service and the expiration of eight hours after a time for safe transportation back to the employee's residence. If reporting within that period is impossible or unreasonable through no fault of the employee, the employee shall report to work as soon as possible.

If the period of service was for 31 days or more but less than 181 days, the employee must submit an application to the employer no later than 14 calendar days following completion of service (if submitting an application is impossible or unreasonable through no fault of the employee, then the next calendar day when submission of the application is possible). For service over 180 days, the employee must submit an application with the employer no later than 90 days after completion of the service.

These time period restrictions shall be extended by up to two years if an employee is hospitalized or convalescing from an injury caused by active duty. The two-year period will be extended by the minimum time required to accommodate the circumstances beyond the individual's control which makes reporting within the time limits impossible or unreasonable.

14.9(5) The employer may request that an employee provide the employer with documentation that establishes the timeliness of the application for reemployment and the length and character of uniformed service. If documentation is unavailable, the employer must reemploy the employee until the documentation becomes available. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements for reemployment, the employer may terminate the employment of the person.

14.9(6) An employee with fewer than 91 days of uniformed service must be reemployed promptly in a position that the employee would have attained if continuously employed, unless proved not qualified after reasonable efforts are made by the employer to qualify the employee. If not qualified for that position, the person will be reemployed in the position the person left. These requirements are the same for service of 91 days or more, with the additional option that a position of like seniority, status and pay may be offered. If unqualified after reasonable efforts by the employer to qualify the employee for such a position or the position that was left prior to service, the employee must be reemployed in any other position of lesser status and pay for which the employee is qualified, with full seniority. The position for which the employee is entitled is further governed by rule 581—14.6 (19A).

An employee with a service-connected disability who is not qualified for employment in the position the employee would have attained but for military service, or in the position that was left (even after reasonable efforts by the employer to accommodate the disability) must be reemployed promptly in any other position of similar seniority, status, and pay for which qualified or would become qualified with reasonable efforts by the employer. If these efforts fail, reemployment must be in a position which is the nearest approxi-

PERSONNEL DEPARTMENT[581](cont'd)

mation consistent with the circumstances of the employee's case.

If two or more employees are entitled to reemployment in the same position or classification, the individual who left first for service in the uniformed services has the higher right to be reemployed first.

14.9(7) Upon reemployment, a person is entitled to the seniority and other benefits the individual would have attained, with reasonable certainty, had the person remained continuously employed. The employee may be required to pay the employee cost, if any, of any benefit to the extent that other employees are required to pay.

14.9(8) Any person taking military leave may use any vacation that is accrued prior to service. Upon reemployment, the employee's accrual rate for vacation shall be the same rate as if the employee had not taken military leave.

14.9(9) An employee may maintain health and dental insurance coverage while on military leave for up to 18 months. The employee is responsible for paying the employee's share of the health and dental insurance premiums if the period of military service is less than 31 days. If beyond 31 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon reemployment, health and dental insurance coverage will become effective either on the first day of the month following the month the employee was reemployed or the first day of the month in which the employee was reemployed. Coverage under the plans will not have an exclusion or waiting period upon reemployment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans' Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

14.9(10) A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person's period of service in the uniformed services. No forfeiture of benefits already accrued will be permitted and there will be no necessity to requalify for participation in a retirement system by reason of absence for military service. To the extent required by law, employers will be required to make, on behalf of returning service members, any contributions to their pensions that the employer would have made if the service member had not been absent for military service. Employees will have up to three times the period of service to make up missed contributions (not to exceed five years). The employer is required to make matching contributions only to the extent that the reemployed service member makes the required employee contributions. No interest or penalty will be charged on the employee or employer contribution, nor will the employee be credited with interest that would have been earned on such contributions.

ITEM 46. Amend rule 581—14.14(19A) as follows:

581—14.14(19A) Disaster service volunteer leave. Subject to the approval of the appointing authority, an employee who is a certified disaster service volunteer for the American Red Cross may, at the request of the American Red Cross, be granted leave with pay to participate in disaster relief services relating to a disaster in the state of Iowa. Such leave shall be only for hours regularly scheduled to work and shall not be for more than 15 workdays in a fiscal year period. Employees granted such leave shall not lose any rights or benefits of employment while on such leave. An employee while on leave under this rule shall not be deemed to be an employee of the state for the purposes of workers' compensation or for the purposes of the Iowa tort claims Act.

ITEM 47. Amend rule 581—15.1(19A) as follows:

581—15.1(19A) Health insurance benefits. The director is authorized by the executive council of Iowa to administer health insurance and health benefit programs for employees of the state of Iowa, except for employees of the board of regents.

15.1(1) An insurance carrier or other entity proposing to provide a group health insurance or benefit plan benefits or a prepaid group health care plan to state employees shall must, as an entity or in terms of the plan proposed, be eligible to contract with the executive council state of Iowa as provided in Iowa Code section 509A.6, and shall provide the following to the department not later than March 1 preceding the plan year for which services are proposed:

a. ~~Their proposed~~ Proposed solicitation brochures, membership literature, and master contracts. ~~Content~~ The content of these materials in terms of clarity of benefits, services, and plan funding descriptions shall require prior approval by the department before distribution to any other party. The information about any health benefit plan which has regional or provider restrictions shall include a list of its service counties, a list of available physician providers by name, specialty, and address, and a list of all other contracted providers.

b. ~~Their proposed~~ Proposed premium rates, and administrative service charges, and reserve interest rates.

c. Evidence of agreement to the state's administrative requirements including a defined remittance methodology, negotiated enrollment/eligibility guidelines, ability to direct bill all former employees, a defined coverage methodology for employees electing to change carriers, the ability to offer a conversion health plan, extend coordination of benefits, rules for subrogation, confirmation of compliance with COBRA, TEFRA, OBRA, and any other administrative requirements deemed reasonable.

15.1(2) The executive council of Iowa shall determine the amount of the state's contribution toward each individual non-contract-covered employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.

15.1(3) Health maintenance organizations (HMO) and organized delivery systems (ODS). Beginning with the 1998 benefit year, any HMO or ODS seeking approval to offer benefits to state employees shall provide evidence of accreditation by the National Committee for Quality Assurance or the Joint Commission on Accreditation of Health Care Organizations.

a. **15.1(4) Definitions.** The following definitions shall apply when used in this rule:

"Employee" means any employee of the state of Iowa covered by Iowa Code chapter 509A except employees of the board of regents.

"HMO" means any health maintenance organization as defined in Iowa Code section 514B.1(3).

"ODS" means any organized delivery system as defined in rule 641—201.2(135,75GA,ch158).

"Operational" means having entered into health care service contracts with enrollees and providers and providing services in accordance with those contracts.

b. ~~Expanded choice.~~ The intent of this subrule is to provide state employees with the choice to be covered by health care benefit programs which may differ from standard fee-for-service group health insurance programs.

PERSONNEL DEPARTMENT[581](cont'd)

e b. HMO minimum qualifications. The executive council state of Iowa may contract to provide health care benefits to state employees with any HMO that provides evidence the following to the department that the HMO not later than March 1 preceding the plan year for which services are proposed:

(1) Has met the requirements for a mandated offering in accordance with subpart "H" of subchapter "J," health care delivery systems, Title 42, Code of Federal Regulations, (Federal Register page 72517 dated October 31, 1980, as amended on Federal Register page 19341 dated May 5, 1982, and Federal Register page 6176 dated February 14, 1985); or

(2) Has been determined to be a qualified HMO in the state of Iowa in accordance with Section 1310(d) of Public Health Service Act, 42 U.S.C. 300e-330e-17 by the Secretary of the U.S. Department of Health and Human Services; or

(3)(1) Has been Evidence that it is licensed to do business in the state of Iowa by the insurance division of the Iowa department of commerce.

If the requirement specified in this subrule, paragraph "b," subparagraph (2) or (3), has been met, the HMO shall also be required to provide the following to the department not later than March 1 preceding the plan year for which services are proposed:

1. (2) Evidence that the HMO it has been operational for not less than one year unless the requirement is waived by the executive council of Iowa director.

2. (3) Evidence that the HMO it offers, either itself or by contract, a benefit plan to all Medicare recipients which that supplements, but which does not duplicate, Medicare benefits.

3. (4) Evidence that the HMO it has filed with the insurance division of the Iowa department of commerce its most recent quarterly and annual reports in compliance with Iowa Code section 514B.12 and rule IAC 191—40.12(514B).

4. (5) The dates of its most recent examinations by the insurance division of the Iowa department of commerce and by the Iowa department of public health as required in Iowa Code section 514B.24, an accounting of any discrepancies discovered in the such examinations and an indication of the extent to which the such discrepancies have been corrected.

5. (6) Their proposed solicitation brochures, membership literature, master contracts, and the information specified in Section 110.803(c)(2) through (8), subpart "H" of subchapter "J," health care delivery systems, Title 42, Code of Federal Regulations (Federal Register page 72517 dated October 31, 1980, as amended on Federal Register page 6176 dated February 14, 1985) except that the information required in Section 110.803(c)(4) need not include indication of physician acceptance of new patients from the HMO membership. Content of the solicitation brochures, membership literature, and master contracts in terms of clarity of benefit, service, and plan funding descriptions shall require prior approval by the department. Master contracts shall include A master contract which includes provisions requiring delivery of written termination notice by either party to the contract to the other party not less than 60 calendar days prior to contract termination.

6. (7) Proposed premium rates supported by:

- Actual claims and utilization experience;
- Quoted trend factors;
- Quality assurance indicators;
- A description of the rating methodology used to develop the rate quote;
- A description of the application of the rating methodology used in developing the rate quote;

- Other potential administrative issues not listed.

d.—HMO compliance. Each HMO shall be governed by the following provisions:

(1) (8) Annual utilization data and reports shall be furnished to the director in accordance with the director's specifications. If all other requirements have been met and it is the initial year that an HMO has been authorized to offer benefits to state employees,

(2) If an HMO has met the qualifications specified in subrule 15.1(3), paragraph "c," subparagraph (1), failure to comply with the state's group-specific data requirement specified in subrule 15.1(3), paragraph "d," subparagraph (1), shall not result in the removal of the HMO from the state benefit plan.

e c. ODS minimum qualifications. The executive council state of Iowa may contract to provide health care benefits to state employees with any ODS which provides evidence to the department that the ODS:

(1) Has received approval of its application from the Iowa department of public health; and

(2) Has been licensed to do business in the state of Iowa by the Iowa department of public health.

If the requirements specified in subparagraphs (1) and (2) have been met, the ODS shall also be required to provide the following to the department not later than March 1 preceding the plan year for which services are proposed:

1. Evidence that the ODS has been operational for not less than one year, unless the requirement is waived by the executive council of Iowa director.

2. Evidence that the ODS offers, either itself or by contract, a benefit plan to all Medicare recipients which supplements, but does not duplicate, Medicare benefits.

3. Evidence that the ODS has filed its most recent financial statements in compliance with rule IAC 641—201.12(135,75GA,ch158).

4. The dates of its most recent examination by the commissioner of insurance in compliance with IAC 641—subrule 201.12(5).

5. The proposed solicitation brochures, membership literature, and master contracts. Content of the solicitation brochures, membership literature, and master contracts in terms of clarity of benefit, service, and plan funding descriptions shall require approval by the department. Master contracts shall include A master contract which includes provisions requiring delivery of written termination notice by either party to the contract to the other party not less than 60 calendar days prior to contract termination. Such information must also include a list of the counties included in the ODS' service area, a list of available ODS physician providers by name, specialty, and address, and a list of all other contracted providers.

6. Proposed premium rates supported by:

- Actual claims and utilization experience;
- Quoted trend factors;
- Quality assurance indicators;
- A description of the rating methodology used to develop the rate quote;
- A description of the application of the rating methodology used in developing the rate quote; and
- Other potential administrative issues not listed.

7. A copy of the surety bond referenced in IAC 641—subrule 201.12(3).

f d. ODS compliance. Each ODS shall be governed by the following provisions:

(1) Annual data utilization reports shall be furnished to the director in accordance with the director's specifications. If all other requirements have been met, and it is the initial

PERSONNEL DEPARTMENT[581](cont'd)

year that an ODS has been authorized to offer benefits to state employees, failure to comply with the state group specific data requirement shall not result in the removal of the ODS from the state benefit plan.

(2) The results of the most recent member satisfaction survey and a copy of the most recent report filed with the department of public health regarding measures of quality and access shall be furnished to the director.

ITEM 48. Amend subrule 15.4(3) as follows:

15.4(3) Employees who receive benefits under the state workers' compensation program shall have those benefits, except for benefits designated as medical costs pursuant to Iowa Code section 85.27 and that portion of benefits paid as attorneys' fees approved pursuant to Iowa Code section 86.39, deducted from any state long-term disability benefits received where the workers' compensation injury or illness was a substantial contributing factor to the award of long-term disability benefits. *Disability benefit payments will be further reduced by primary and family social security payments as determined at the time social security disability payments commence, railroad retirement disability income, and any other state-sponsored sickness or disability benefits payable.*

ITEM 49. Adopt the following new rule 581—15.5(19A) as follows:

581—15.5(19A) Health benefit appeals.

15.5(1) A member who disagrees with a group health benefit company's decision on the application of group contract benefits may:

- a. File a written appeal with the respective company as defined in the group contract, or
- b. File a written appeal with the commissioner of insurance at the department of commerce.

15.5(2) A member who disagrees with an organized delivery system's decision on the application of group contract benefits may:

- a. File a written appeal with the respective ODS as defined in the group contract, or
- b. File a written appeal with the director of the department of public health.

ITEM 50. Amend subrule 15.9(2), introductory paragraph, as follows:

15.9(2) Moving expenses for reassigned employees. A state employee who is reassigned or transferred at the direction of the appointing authority shall be reimbursed for moving and related expenses and expenses in accordance with the policies of the director or the applicable collective bargaining agreement. Eligibility for payment shall occur when all of the following conditions exist:

ITEM 51. Amend subrule 15.9(3) as follows:

15.9(3) Moving expenses for newly hired employees. If approved by the appointing authority, a person newly hired may be reimbursed for moving and related expenses incurred at the same rate rates used provided for the reassignment reimbursement of a current employee who has been reassigned or transferred. Reimbursement shall not occur until the employee is on the payroll.

ITEM 52. Amend rule 581—15.9(19A) by adding the following new subrule:

15.9(4) Repayment. As a condition of receiving reimbursement for moving expenses, the recipient must sign an agreement to continue employment with the appointing authority for a period of no less than 24 months following the

date of receipt of repayment. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority one-twenty-fourth of the amount received for each month remaining in the 24-month period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck.

ITEM 53. Amend rule 581—15.10(19A) as follows:

581—15.10(19A) Education financial assistance. Education financial assistance may be granted for the purpose of assisting employees in developing skills that will improve their ability to perform their present job responsibilities. Assistance may be in the form of direct payment to the organization or institution, or by reimbursement to the employee as provided for in these rules.

15.10(1) Employee eligibility. Any nontemporary employee may be considered for education financial assistance.

15.10(2) Workshop, seminar, or conference attendance. The appointing authority may approve education financial assistance for an employee attending a workshop, seminar, or conference conducted by a professional, educational, or governmental organization or institution when attendance by the employee would not require a reduction in job responsibilities.

a. Assistance may be approved for meeting continuing education requirements (CEUs) when necessary to maintain a professional registration, certification, or license related to the duties and responsibilities of the employee's position.

b. Payment of registration fees and other costs, such as lodging, meals, and travel may be made to the employee or by direct billing of the department by the organization or institution, with following the approval of by the appointing authority.

c. If attendance is outside the state of Iowa, travel must first be authorized by the executive council, per Iowa Code section 421.38(2).

15.10(3) Educational institution coursework. Education financial assistance to an employee taking academic courses at an educational institution, with or without educational leave, shall require the approval of the appointing authority and the director. Requests for reimbursement shall be on forms prescribed by the director.

a. An employee may take academic courses at any accredited educational institution (university, college, area community college) within the state. Attendance at an out-of-state institution may be approved provided there are geographical or educational considerations which make attendance within the state impractical.

b. Reimbursement requests shall be made to the director prior to the employee taking the courses. If the director does not approve the request, the employee shall not be reimbursed.

c. Reimbursement may be approved for courses taken to meet continuing education requirements (CEUs) when necessary to maintain a professional registration, certification, or license when the courses relate to the duties and responsibilities of the employee's position.

d. An employee receiving other financial assistance, such as scholarship aid or veterans administration assistance, shall be eligible to receive education financial assistance only to the extent that the total of all methods of reimburse-

PERSONNEL DEPARTMENT[581](cont'd)

ment does not exceed 100 percent of the payment of expenses, which are limited to tuition, fees and books.

e. In order to be reimbursed, the employee's department shall submit to the department of revenue and finance the employee's original paid receipt from the educational institution, to the department of revenue and finance for payment of expenses, along with the approved education financial assistance form, and proof of the employee's successful completion of the courses as follows:

(1) Undergraduate courses shall require at least a "C" grade.

(2) Graduate courses shall require at least a "B" grade.

(3) Successful completion of vocational or correspondence courses or continuing education courses shall require an official certificate, diploma or notice.

15.10(4) Annual report. The appointing authority shall report to the director and legislative council, not later than October 1 of each year, the direct and indirect costs to the department for education financial assistance granted to employees during the preceding fiscal year in a manner prescribed by the director.

ITEM 54. Amend 581—Chapter 15 by adding a **new** rule as follows:

581—15.12(19A) Tax sheltered annuities(TSA).

15.12(1) Administration. The director is authorized by Iowa Code section 19A.30 to administer a tax-sheltered annuity program for eligible employees.

15.12(2) Definitions. The following definitions shall apply when used in this rule:

"Company" means any life insurance company or mutual fund provider that issues a policy under the tax-sheltered annuity plan authorized under Iowa Code section 19A.30.

"Employee" means a full-time or part-time nontemporary employee of the state of Iowa, including employees of the board of regents administrative staff on the centralized payroll system.

"Employer" means the state of Iowa.

"Normal retirement age" means 70½ years of age per Internal Revenue Code (IRC) Section 403(b)(10).

"Participating employee" means an employee participating in the plan.

"Plan" means the tax-sheltered annuity plan authorized in Iowa Code section 19A.30.

"Plan administrator" means the designee of the director who is authorized to administer the tax-sheltered annuity plan.

"Plan year" means a calendar year.

"Policy" means any retirement annuity, variable annuity, family of mutual funds or combination thereof provided by the Internal Revenue Code Section 403(b) and Iowa Code section 19A.30.

"Salary reduction agreement" means the tax-sheltered annuity agreement signed by the participating employee and employer.

15.12(3) Eligibility.

a. **Initial eligibility.** Any full-time or part-time nontemporary employee who is regularly scheduled to work for 20 or more hours per week and who works for the department of education or the board of regents administrative office is eligible to defer compensation under this rule. Final determination on eligibility shall rest with the plan administrator.

b. **Eligibility after terminating deferral of compensation.** Any employee who terminates the deferral of compensation may choose to reenroll in the plan in accordance with paragraphs 15.12(4)"a" and "b" and 15.12(6)"b."

15.12(4) Enrollment and termination.

a. **Enrollment.** Employees may enroll in the tax-sheltered annuity plan at any time. The request for a salary reduction agreement must be submitted to the employing agency personnel assistant for approval in accordance with subrule 15.12(11). A satisfactorily completed enrollment form must be received by the plan administrator no later than the first day of a calendar month in order for deductions to begin with the first paycheck of the following month. Deductions shall be taken from the employee's paycheck beginning no sooner than the first paycheck of the following month. The policy shall become effective on the first day of the month following the beginning of payroll deductions. Agencies are responsible for timely submission of payroll documents to initiate salary deductions.

b. **Forms submission.** Within five calendar days following the first day of the pay period in which the first deduction is to be made, the employing agency shall provide the plan administrator with the applicable enrollment form. A form received after that date will be processed later, and the effective date of the deduction will be changed to reflect the first payroll deduction of the following month.

c. **Termination of participation in the plan.** A participating employee may terminate participation in the plan provided notification is received by the employee's department ten days prior to the employee's first deduction of the month.

d. **Availability of forms.** It is the responsibility of each employee interested in participating in the program to obtain the necessary forms from the agency of employment. It is the responsibility of each agency to inform its employees where and how they may obtain these forms. The forms shall be prescribed by the plan administrator, and agencies shall be advised as to their availability.

15.12(5) Tax status.

a. **FICA and IPERS.** The amount of compensation deferred under the salary reduction agreement shall be included in the gross wages subject to FICA and IPERS until the maximum taxable wages established by law have been reached.

b. **Federal and state income taxes.** The amount of earned compensation deferred under the agreement is exempt from federal and state income taxes until such time as the funds are paid or made available as provided in IRC Section 403(b).

15.12(6) Deductions from earnings.

a. **When deducted.** Each participating employee shall have the option as to whether the entire monthly amount of deferred compensation shall be deducted from the first paycheck of the month, the second paycheck of the month, or be equally divided between the first and second paychecks received during the month. If the monthly deferral cannot be divided into two equal payments, the third option is not available. Deferrals will not be deducted from the third paycheck of a month.

b. **Deferral amount changes.** Participating employees may increase or decrease their monthly deferral amount once during the calendar year by giving not less than 30 days' prior written notice to the plan administrator. The tax-sheltered annuity "salary reduction agreement" form, as provided for in paragraph 15.12(11)"a," must be submitted to the plan administrator by the employee's agency within the first five calendar days after the first day of the pay period in which the first deduction is to be made. The first premium shall be deducted from the employee's paycheck beginning with the first paycheck of the second month following satisfactory completion of the prescribed form. Contributions can be changed to permit a one-time lump sum deferral from the last paycheck due to termination of employment.

PERSONNEL DEPARTMENT[581](cont'd)

c. Maximum deferral limits. Employees' deferrals may not exceed 20 percent of their annual gross salary minus IRC Section 125 pretax and dependent care deductions, with a maximum limitation of \$9500 per calendar year or as otherwise provided for in the Internal Revenue Code. Calculations will be based on the FICA taxable wages.

d. Minimum amount deferred. The minimum amount of deferred compensation to be deducted from the earnings of a participating employee during any month shall be \$25.

15.12(7) Companies.

a. Identification number. Each participating company shall be assigned an identification number by the plan administrator.

b. Time of payment. Payments shall be transmitted by the plan administrator to the companies within ten calendar days after the last workday of each month.

c. Annual status report. An annual status report stating the value of each participant's policy shall be provided by each company to the participating employee at the employee's home address. This practice shall be continued even after the participating employee terminates or cancels participation in the program. These annual reports are required as long as a value exists in the contract or any activity occurs during the year.

d. Method of payment. Each company shall be paid by one warrant each month regardless of the number of individual accounts with the company. Companies must minimize crediting errors and provide timely and reasonable credit resolution.

e. Solicitation. There shall be no solicitation of employees by companies at the employees' workplace during employees' work hours, except as authorized by the plan administrator.

f. Dividends. The only dividend options available on cash value policies are those where the dividend remains with the company to increase the value of the policy.

g. Removal from participation. Failure to comply with the provisions of these rules will result in permanent removal as a participating company and may require that the monthly ongoing deferrals to existing contracts be discontinued, as determined by the director.

15.12(8) Disposition of funds.

a. Termination of employment. An employee who has terminated state employment (including retirement) may request to defer distributions or withdraw funds under any option available in the policy. If an employee elects to start receiving benefits at the normal retirement age, the amount withdrawn each year shall equal a settlement option which meets or exceeds the IRS minimum distribution requirements. Distributions will be made in accordance with applicable IRS regulations. If the former employee works beyond the age of 70½, the employee shall select a retirement option within 30 days after termination of employment.

b. Financial hardship. A participating employee may request that the company allow the withdrawal of some or all of the funds from the policy based on a financial hardship and in accordance with 401(k) regulations. Deferrals to a TSA will not be allowed for one year after such withdrawal according to IRC Section 403(b)(7).

c. Method of payment. The employee must notify the company of the intent to withdraw funds.

d. Federal and state withholding taxes. It shall be the responsibility of the company or mutual fund provider, when making payments to the former employee, to withhold the required federal and state income tax based on W-4P, to remit them timely to the proper government agency, and to file all

necessary reports as required by federal and state regulations, including IRS Form 1099R.

e. Federal penalties.

(1) Under IRC Section 72(1), an additional tax of 10 percent of the amount includable in gross income applies to early withdrawal for qualified plans as defined in IRC Section 4974(c). A Section 403(b) contract is a qualified plan for these purposes.

(2) A 20 percent mandatory tax withholding of the taxable portion of the eligible holding distribution will occur when funds are withdrawn unless the eligible rollover amount is directed entirely to another TSA or IRA plan within 60 days of the withdrawal, or the funds are left in the original contract.

(3) A 15 percent excess tax applies if a participant takes a taxable distribution in one year that is greater than the amount provided for in IRC Section 4980(a).

15.12(9) Group plans.

a. Availability. Iowa Code section 19A.30 provides that the director may arrange for the purchase of group contracts for employees.

b. Size of group. One or more employees shall constitute a group under this program.

15.12(10) General.

a. Orientation and information meetings. Agencies may hold orientation and information meetings for the benefit of their employees using materials developed or approved by the plan administrator, but there shall be no solicitation of employees by companies allowed at such meetings. The presence of a representative of a company will be interpreted as solicitation.

b. Location of policies. The company shall send the original policy to the employee.

c. Number of companies. Employees shall be limited to deferring contributions to only one company at a time. Only life insurance companies or mutual fund providers authorized to do business in the state of Iowa may sell policies under the plan, and then only if they agree to perform the specified administrative functions under the plan.

d. Company changes.

(1) If a participating employee wishes to change deferrals to another company, the employee shall submit forms to the plan administrator in accordance with paragraph 15.12(6)"b." The new company policy shall be effective on the first day of the month following the initial month of payroll deduction.

(2) The funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy in accordance with applicable IRC Section 403(b) provisions.

(3) An employee may change companies at any time during the calendar year. However, if one change in the deferral amount has already occurred in the current calendar year, the amount being deferred must remain the same as of the effective date of the change.

e. Deferred compensation or tax-sheltered annuity participation—maximum contribution. Employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax sheltered annuities shall be allowed to participate in one or the other of the programs, but not both. If, in the same calendar year, an eligible employee changes from a deferred compensation plan to a tax-sheltered annuity plan or vice versa, the maximum deferral for that calendar year for both plans combined may not exceed \$7500, and all deferrals made in that calendar year, regardless of which

PERSONNEL DEPARTMENT[581](cont'd)

plan, must be included when determining the remaining amount that can be deferred in that calendar year.

f. Employee termination from a tax-sheltered annuity eligible agency. When an employee leaves an agency that is eligible for tax-sheltered annuity participation under IRC Section 403(b), no further tax-sheltered annuity deductions will be allowed.

g. Direct transfer/rollover.

(1) An eligible roll-over distribution that is directly rolled over to an eligible retirement plan is considered to be a distribution followed by an immediate rollover. Amounts are subject to Section 403(b)(11) or 403(b)(7) withdrawal restrictions and are not eligible for rollover. Spousal consent and other similar participant and beneficiary protection rules apply.

(2) A direct transfer pursuant to IRS ruling 90-24 is not treated as a plan distribution. Amounts subject to Section 403(b)(11) or 403(b)(7) withdrawal restrictions may be transferred to another Section 403(b) funding vehicle provided the new funding vehicle imposes as stringent withdrawal restrictions as the old funding vehicle imposed prior to the transfer.

(3) A direct transfer may not be made to an IRA and is not limited to the participant or spouse beneficiary. Any beneficiary under an IRC Section 403(b) annuity is eligible to effect a direct transfer between Section 403(b) funding vehicles under IRS ruling 90-24.

(4) A participant may roll over an eligible roll-over distribution within 60 days following the date the distribution is received.

15.12(11) Forms. The administration of the TSA program shall be accomplished through the forms described in this subrule. Except as otherwise provided, all forms shall be developed by the plan administrator and distributed by the agency of employment.

a. Salary reduction agreement. This form shall authorize the plan administrator to make a stated deduction from the participating employee's compensation as part of an IRC Section 403(b) plan.

b. Application for policy. A policy application form shall be supplied by the company to which the participating employee elects to defer compensation. The completed form shall be approved by the participating employee. The completed application form shall show the owner and beneficiary of the policy to be the participating employee.

15.12(12) Forfeiture. Section 403(b)(1)(c) of the IRC provides that an employee's interest in a Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.

15.12(13) Nontransferability. The interest of the employee in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.

ITEM 55. Amend rule **581—16.3(19A)** by adding the following **new** unnumbered paragraph:

Persons found by proper authority to have violated the provisions of the federal Hatch Act are subject to summary discharge.

ITEM 56. Amend 581—Chapter 18 as follows:

CHAPTER 18
CONDUCT OF EMPLOYEES

581—18.1(19A) General. Employees shall fulfill to the best of their ability the duties and responsibilities of the ~~positions~~ *position* to which appointed. In carrying out their official job duties, employees shall work for the appointing authority's efficient and effective delivery of services. Employees shall perform assigned responsibilities in such a manner as neither to endanger their impartiality nor to give occasion for distrust or question of their impartiality.

581—18.2(68B) Selling of goods or services. Employees in state regulatory agencies shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the agency of employment except as authorized by the appointing authority in accordance with Iowa Code Supplement section 68B.4 and the provisions of this rule.

18.2(1) Definitions.

"Agency or agency of state government" means one of the state executive branch regulatory agencies, *including regulatory agencies* as defined in Iowa Code sections 68B.2(1) and ~~68B.2(13)~~ 68B.2(2).

"Compensation" means ~~remuneration for the sale of goods or services, including cash or other forms of payment any money, thing of value, or financial benefit conferred in return for the sale of goods or services rendered or to be rendered.~~

"Employee" means a nontemporary employee of an executive branch regulatory agency of state government. The provisions of this rule shall also apply to the spouse and minor children of *such* an employee, a firm in which the employee is a partner, and any corporation in which the employee, either directly or indirectly, holds 10 percent or more of the stock. Employee, as used in this rule, shall not mean an independent contractor, or an official in a regulatory agency who is (1) elected or appointed to serve on a board, commission, or elective office; (2) a department head; or (3) any other individual who by law is appointed by the governor.

"Regulatory agency" means the department of agriculture and land stewardship, department of employment services, department of commerce, department of public health, department of public safety, department of education, board of regents, department of human services, department of revenue and finance, department of inspections and appeals, department of personnel, public employment relations board, department of transportation, civil rights commission, department of public defense, and department of natural resources.

"Sale of goods or services" means the receipt of compensation by an employee for providing goods or services. For purposes of this rule, the sale of goods or services shall not apply to outside employment activities that constitute an employer-employee relationship.

18.2(2) Requests for agency consent. ~~Requests for the sale of goods or services shall be subject to the following. An employee's request for an agency's consent to the sale of goods or services shall be obtained in the following manner:~~

a. A written request for the sale of goods or services shall be filed with the appointing authority at least 20 calendar days in advance of the proposed sale of goods or services. A request shall not be considered filed until all information specified below is received.

b. The request shall include, but not be limited to, the following:

PERSONNEL DEPARTMENT[581](cont'd)

(1) The prospective recipient(s) of the goods or services and the recipient's relationship to the agency's regulatory authority;

(2) Anticipated date(s) of delivery of the goods or services;

(3) Description of the goods or services;

(4) Approximate amount and form of compensation; and

(5) Statement by the employee explaining why the proposed sale of goods or services will not create a conflict of interest.

c. Consent or denial of the request shall be issued in writing by the appointing authority within 14 calendar days following the date the request was filed. If the request is denied, the appointing authority shall state the reason(s) for the denial and the employee's right to grieve the decision in accordance with rule 581—12.1(19A).

d. If the decision is grieved, the employee shall be required to substantiate, as part of the grievance, why the proposed sale of goods or services will not create a conflict of interest within the meaning of Iowa Code Supplement section 68B.4.

e. Approved requests are valid only to the extent that all relevant facts have been disclosed and the relevant facts under which consent was granted remain unchanged.

f. Approved requests are subject to immediate revocation at any time with written notice by the appointing authority to the requester.

g. Requests and responses are public records within the meaning of Iowa Code section 22.1 and are open for public examination.

18.2(3) Agency guidelines. Agencies that are subject to this rule shall develop written guidelines concerning the selling of goods or services by their employees. The guidelines shall be consistent with the provisions of this rule and shall include, but not be limited to, the following:

1. A description of the regulatory authority of the agency and the types of individuals, associations, or corporations that are subject to this authority;

2. The conditions for granting consent as provided in Iowa Code section 68B.4;

3. A procedure for submitting requests to sell goods or services consistent with subrule 18.2(2); and

4. The name or position of the ~~appointing~~ *management* authority who will review and approve or deny such requests.

The guidelines shall be made known and available to employees throughout the agency through well-publicized means.

18.2(4) Expressly prohibiting or permitting classes of sales. An agency may adopt *and amend* rules which identify sales of goods or services that are expressly prohibited (or permitted) by the agency, based on the agency's conclusion that the sales do (or do not), as a class, constitute a conflict of interest. Classes of sales that are expressly permitted by the agency shall not require individual requests and approval as provided in subrule 18.2(2) unless there are unique factors that otherwise present a conflict of interest.

18.2(5) Effect of other laws. Neither this rule nor any consent provided under this rule constitutes consent for any activity which would constitute a conflict of interest at common law or which would violate any applicable statute or rule. Despite consent under this rule, the sale of goods or services to someone subject to the jurisdiction of the agency may violate the gift, bribery, or corruption laws of the state of Iowa. It is the responsibility of the employee to assure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

This rule is intended to implement Iowa Code Supplement section 68B.4.

581—18.3(19A, 68B) Other Outside employment or activity. Employees shall not engage in any outside employment or activity which ~~has been reasonably determined and made known in writing by the appointing authority to be inconsistent, incompatible or in conflict with the employees' job duties and responsibilities.~~

~~In making that determination appointing authorities shall give consideration to, but are not limited to, activities which: is or has the potential to be in conflict with the employees' job duties and responsibilities.~~

"Conflict" means a situation created where an employee receives a personal gain or advantage as a result of employment with an agency of state government.

18.3(1) Determination of conflict. *The management authority shall reasonably determine and make known in writing whether a particular outside employment or activity creates or could create an unacceptable conflict with an employee's job duties and responsibilities. In making the determination, the management authority shall give consideration to, but not be limited to, the following:*

18.3(1) a. Involve *Involves* private gain or advantage by the use of the state's time, facilities, equipment and supplies; or, the use of the badge, uniform, prestige, or influence of the employee's job.

18.3(2) b. Involve *Involves* the receipt of, promise of, or acceptance by an employee of any money or other consideration from anyone, other than the state, for the performance of any act that the employee would be required or expected to perform as part of regular duties or during hours of state employment.

18.3(3) c. Involve *Involves* the performance of an act or work, ~~in other than the employee's job as a state employee,~~ which may later be subject, directly or indirectly, to control, inspection, review, audit, or enforcement by the employee or the ~~appointing~~ *management* authority for which the employee ~~works~~ *performs state duties or responsibilities.*

18.3(2) Result of conflict. *If the management authority reasonably determines that the outside employment or activity creates or could create an unacceptable conflict, the employee shall cease the outside employment or activity. Failure to do so may result in disciplinary action, up to and including discharge.*

581—18.4(19A) Performance of duty. Employees shall, during scheduled hours of work, devote their full time, attention and efforts to assigned duties and responsibilities subject to the Iowa Code and the Iowa Administrative Code. ~~Tenure of Continued~~ *Continued* employment is dependent upon the satisfactory performance of assigned duties and responsibilities, *i.e., "meets job expectations,"* as well as appropriate conduct as provided for in these rules *and the work rules of their agency of employment.* This rule shall not be interpreted to prevent the separation or reduction of employees because of the lack of funds, ~~curtailment of or work, or reorganization done in accordance with these rules, the Iowa Code, or the provisions of the Iowa Code or a collective bargaining agreement.~~

581—18.5(19A) Prohibitions relating to certain actions by state employees.

18.5(1) Employees shall not be prohibited from disclosing any information to members or employees of the general assembly, or to any other public official or law enforcement agency if the employee believes the information is evidence of *a the* violation of a law, a rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and spe-

PERSONNEL DEPARTMENT[581](cont'd)

cific danger to public health or safety. *An employee need not inform the appointing authority about such disclosure unless the employee presented the information as the official position of the appointing authority.*

a. This subrule does not apply to the disclosure of information prohibited by statute.

b. Agencies are prohibited from making any reprisals in the form of a disciplinary action or failure to appoint or promote an employee who discloses information, *fails to inform the appointing authority of the disclosure of information*, or who declines to contribute to a charity or organization. Reprisals for disclosing information shall be subject to civil action.

18.5(2) Employees may contact the office of the Iowa Citizens' Aide at 1-800-358-5510 to report violations of this rule.

ITEM 57. Amend 581—rule 20.6(19B) as follows:

581—20.6(19B) Discrimination complaints, including disability-related and sexual harassment complaints. Each agency shall take proper and immediate action to investigate complaints of alleged discrimination. ~~When it is in the best interests of the state, the~~ *The* director may investigate a *any* discrimination complaint against an agency, negotiate a settlement to resolve ~~the~~ *a* complaint, and order *an* appropriate *disposition of a complaint* that may include, but ~~are~~ *is* not limited to, discharge, suspension, or reduction in rank or grade as defined in Iowa Code section 19A.9(16) *and these rules*. All information gathered in the course of an investigation, including, but not limited to, investigative reports prepared by the department, is confidential and shall not be released to persons outside of the department unless the director deems such disclosure to be in the best interest of the state, or unless ~~otherwise~~ ordered by a court. This section does not supersede the remedies provided under Iowa Code chapter ~~601A~~ *216*.

20.6(1) General procedures. Each agency shall:

~~a. Identify the name, job title, and work location of the employee responsible for the agency's equal employment opportunity and affirmative action compliance.~~

a. Identify employees who are to receive and investigate discrimination complaints.

b. Investigate all allegations complaints of discrimination and utilize, using, at a minimum, the procedural guidelines established by the department, and fully document all such investigations.

c. Provide, where possible, for the informal resolution of all complaints.

d. Report the filing of all discrimination complaints to the director as follows:

(1) Provide information to Inform the director concerning all immediately upon receipt or notice of any alleged employment discrimination complaints filed against the agency within five workdays following receipt of the complaint under any federal, state, or local regulations.

(2) Provide the director with information describing allegations and issues involved.

(3) Provide a copy of any proposed resolution and supporting documentation to the director for review prior to the final disposition of complaints.

(2)(4) Inform the director within five workdays following official notice of any suit filed in a court of law alleging employment discrimination and naming the state or the agency as a party to the alleged discrimination.

ITEM 58. Amend 581—Chapter 25 as follows:

CHAPTER 25
COMBINED CHARITABLE CAMPAIGN

581—25.1(79)(19A) Policy. These rules define and structure the ~~annual on-site state~~ *state's* charitable organization campaign program. The intent of the campaign is to provide an opportunity for state employees to contribute to eligible charitable agencies, to have the option of doing so through the state's payroll deduction process, to ensure accountability to participants with regard to the funds raised, and to minimize workplace disruption and administrative costs by allowing a solicitation campaign at the worksite only once per year. Nothing about this program shall be construed as support or endorsement by the state of Iowa for any individual charitable agency or federation of agencies.

581—25.2(79)(19A) Definitions.

~~"Campaign manager administrator"~~ means the individual appointed by the director to ~~oversee the annual one-gift campaign~~ *administer the combined charitable campaign program.*

~~"Charitable agency"~~ means an agency or federation of agencies that is eligible to receive contributions which may be deducted on the contributor's Iowa individual tax return in accordance with U.S. Internal Revenue Code ~~sections~~ *Sections* 501(a) and 501(c)3, and which otherwise meets the criteria provided for in rule 581—25.6(79)(19A).

~~"Director"~~ means the director of the department of personnel.

~~"One gift campaign"~~ means the annual ~~state employee~~ fund-raising campaign for charitable agencies which meets the eligibility requirements established in these rules.

~~"State employees employee"~~ means any employee subject to a state payroll system, except for employees of the ~~state~~ board of regents, for whom rules shall be promulgated by the ~~state~~ board of regents.

581—25.3(79)(19A) Basic premises.

25.3(1) Campaign chairs. The governor may annually appoint a campaign chair and cochair ~~who shall~~ *to* coordinate with the ~~campaign manager administrator~~ to plan the campaign *solicitation* activities for that year. ~~The campaign chairs may appoint or request the involvement of persons in local communities to assist in coordinating the campaign.~~

25.3(2) Solicitation period. The solicitation period shall fall within the period of September 1 through November 30. ~~Pilot campaigns may be conducted prior to this period with the approval of the director, the campaign manager and the campaign chairs.~~ The length of the campaign is otherwise intended to be no more than eight weeks, although that period may be extended with the approval of the director, ~~the campaign manager and the campaign chairs.~~

25.3(3) Workplace solicitation. Individual charitable agencies or federations of agencies may not, ~~on their own motion,~~ solicit state employees at their workplace. Workplace solicitation of employees will occur only during the solicitation period, only in accordance with the procedures contained in this chapter, and only ~~under the direction of the campaign chairs and with the approval of the campaign manager administrator.~~

25.3(4) Employee solicitation. Employee solicitations are to be conducted using only methods that encourage voluntary giving. Actions that do not allow *for and encourage* free choice or that even create the appearance that employees may not have a *totally* free choice to give or not give are *absolutely* prohibited. This should in no way be interpreted as restricting the need for an effective, well-organized education program ~~among~~ *for* employees. All employees will be

PERSONNEL DEPARTMENT[581](cont'd)

given the necessary information to make an informed, *free-will* decision. Group meetings for this purpose are ~~encouraged~~ *permitted*. Employees may choose to attend or not attend such meetings.

Employees shall be free to publicize their gifts or keep them confidential. Individual employee contribution records are confidential records in the meaning of Iowa Code section 22.7(11).

25.3(5) Pledge authorization forms. The campaign ~~manager administrator authorized under this chapter~~ shall issue ~~an approve the annual~~ pledge authorization form to all state employees. Pledge authorization forms shall conform to the provisions of department of revenue and finance rule 701—203.13(70A).

25.3(6) Terminations. ~~Any employee~~ Employees wishing to terminate ~~their deduction~~ deductions shall be required to give 30 days' advance notice in writing to the appointing authority of the department in which ~~they work the employee works~~, as required by department of revenue and finance rule 701—203.12(70A).

581—25.4(79)(19A) Administration. The director shall select a campaign ~~manager administrator~~ to organize and manage the ~~campaign program~~. The department of revenue and finance shall serve as the one gift's fiscal agent. It shall be the *sole* responsibility of the director and the campaign ~~manager administrator~~ to determine, using the criteria set forth in these rules, which charitable agencies or federations of agencies shall be eligible to participate in the campaign.

25.4(1) Request to participate. Charitable agencies and federations of charitable agencies wishing to participate in the one gift campaign program shall forward three copies of the completed application packet developed by the campaign ~~manager administrator~~ to the director prior to February 1 of each year, unless another date is selected *by the campaign administrator* and publicized. *Applications received after February 1 or the publicized date may be accepted with the approval of the campaign administrator.*

25.4(2) Notification of agencies. The campaign ~~manager administrator~~ shall, within 30 calendar days following the closing date for applications, send letters of denial or acceptance on behalf of the director, and include reasons for denial as *when applicable*.

25.4(3) Request for reconsideration. A charitable agency which has been denied admission will be allowed ten calendar days following the date of the notice of denial to file a written request for reconsideration with the director. The director shall notify agencies of the final decision within ten calendar days following the date the request was received. The director's decision shall constitute final agency action.

25.4(4) Distribution of campaign moneys.

a. An approved pledge authorization form shall be used. Pledge authorization forms shall be developed by the campaign ~~manager administrator~~ and fiscal agent as provided for in department of revenue and finance rule 701—203.6(70A). State employees shall be allowed to specifically designate their gifts to agencies or federations of agencies described in the campaign materials, and the pledge authorization form shall be designed to accommodate *such* designations.

b. Gifts not specifically designated shall be distributed to participating agencies or federations of agencies based on the same percentage ratio as the designated dollars *are* distributed. This fact shall be prominently displayed in the campaign materials.

c. The one gift campaign shall charge the actual administrative costs of managing the campaign to each participat-

ing charitable agency based on the percentage of total campaign moneys received by that agency. *Such charges shall not include the salaries of state employees involved in the ongoing administration of the program.*

d. Any shrinkage (moneys pledged but not contributed) shall reduce the moneys distributed to *charitable* agencies in the same ratio as the designated moneys.

e. Moneys collected will be sent to the charitable agencies monthly by the ~~centralized state payroll system~~ *department of revenue and finance*.

f. *Moneys collected that cannot be distributed to a charitable agency because the agency has ceased to do business or the agency has been disqualified from participation in the campaign shall be distributed to participating charitable agencies or federations of agencies based on the same percentage ratio as the designated dollars are distributed.*

581—25.5 Reserved.

581—25.6(79)(19A) Eligibility of charitable agencies.

25.6(1) Criteria to be included in campaign. Any charitable agency or federation of agencies ~~whose purpose is to provide or support health or human needs services or medical research~~ may participate in the campaign provided it meets the following criteria:

a. Be a charitable agency as defined in IAC 581—rule 25.2(79)(19A).

b. Make available to the general public, ~~and the campaign manager administrator, and the director~~ an annual financial report which is prepared by an independent certified public accountant, and provide for an annual external audit by an independent certified public accountant.

c. Receive its funds from either a communitywide solicitation or a statewide solicitation.

d. Be a nonprofit, tax-exempt charitable organization within the meaning of Section 501(c)3 of the United States Internal Revenue Code and any relevant state laws.

e. Have an active and responsible governing board that meets at least semiannually whose members have no ~~material~~ conflict of interest and who, except for a paid staff director, serve without compensation.

f. Be providing or supporting ~~health or human needs services or medical research~~ in the state of Iowa that *is are* readily accessible to residents of the state of Iowa, *except the following*:

(1) *Lobbying for the passage or defeat of legislation.*

(2) *Sectarian activities, including activities aimed at promoting the adoption or defeat of any one or more religious viewpoints.*

g. Have a direct and substantial local presence in the state of Iowa. A telephone number alone shall not constitute a local presence.

h. Operate without discrimination, religious, racial, or otherwise, both in employment and *in* the delivery of services, as well as *in* the distribution of funds.

i. Make a report available on an annual basis to the general public detailing the local activities of the agency.

j. Have a detailed annual budget, approved by its governing board, in a form consistent with financial statements and generally accepted accounting *principles and procedures wherein the organization's administrative, salary and fund-raising expenses do not exceed 15 percent of its total revenue from donations.*

25.6(2) Federations (umbrella organizations). Applications submitted on behalf of federations shall include a certification that all participating constituent agencies meet these eligibility criteria, and that they agree to comply with the

PERSONNEL DEPARTMENT[581](cont'd)

rules set forth in this chapter. No charitable agency may participate both individually and as a member of a federation.

~~25.6(3) Criteria for ongoing participation. Once approved for participation, any charitable agency may be disqualified from participation in the campaign by the director for any of the following reasons: Once approved for participation, annual reapplication is not necessary. The campaign administrator may, at any time, review a charitable agency's continuing eligibility and may request additional information which demonstrates that the criteria for participation are still being met. The campaign administrator will send notice on behalf of the director to any charitable agency which may be disqualified from further participation in the campaign stating the reason(s) for disqualification. Reasons for disqualification include, but shall not be limited to:~~

- a. Failure to comply with the rules contained in this chapter.
- b. Filing an application to participate in the campaign which contains false or misleading information.
- c. ~~The campaign manager shall send notice on behalf of the director to the agency listing the reasons for disqualification. Failure to provide eligibility information requested by the campaign administrator.~~

25.6(4) Reconsideration of decertification. Any disqualified agency may request reconsideration of the director's decision using the procedures for reconsideration in subrule 25.4(3).

25.6(5) Contributions to decertified agencies. Any charitable agency decertified under the provisions of subrule 25.6(3) shall have any further payment of contributions terminated. Future collections of pledges to the decertified agency shall be distributed in the same ratio as are other undesignated gifts.

ARC 6809A

**PROFESSIONAL LICENSURE
DIVISION[645]**

**IOWA BOARD OF SPEECH PATHOLOGY
AND AUDIOLOGY 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 sections 147.76 and 148C.3, the Board of Speech Pathology and Audiology Examiners gives Notice of Intended Action to amend Chapter 302, "Speech Pathology and Audiology Assistants," Iowa Administrative Code.

These amendments give the definition and minimum requirements and amend the duties and supervision of the audiology assistant I and II.

Any interested person may make written comments on these proposed amendments on or before November 13, 1996, addressed to Marge Bledsoe, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These amendments are intended to implement Iowa Code chapters 147.76 and 148C.3.

The following amendments are proposed.

ITEM 1. Amend rule 645—302.2(147) by adopting the following new subrules:

302.2(3) Audiology assistant I. Is more broadly trained and may be given a variety of duties depending upon the individual's training.

302.2(4) Audiology assistant II. Is trained specifically for a single task for screening.

ITEM 2. Amend rule 645—302.3(147) as follows:

645—302.3(147) Minimum requirements. A speech pathology assistant I or II or audiology assistant I must satisfy the following minimum requirements:

302.3(1) Reach the age of majority.

302.3(2) A high school education, or its equivalency.

302.3(3) Completion of a three semester-hour (or four quarter-hour) course in introductory speech and language pathology for speech pathology assistants or in audiology for audiology assistants from an accredited educational institution and 15 hours of instruction in the specific tasks which the assistant will be performing; or

302.3(4) A minimum training period comprised of 75 clock hours on instruction and practicum experience.

302.3(5) An audiology assistant II must satisfy the following requirements:

1. Reach the age of majority.

2. A high school education, or its equivalency.

3. A minimum of 15 clock hours of instruction and practicum experience in the specific task which the assistant will be performing.

ITEM 3. Amend subrule 302.4(2) as follows:

302.4(2) A written plan of the activities and supervision must be provided to the board by the licensee supervising the assistant. This supervision must include direct on-site observation for a minimum of 20 percent of the assistant's direct patient care for all audiology assistants and level I speech pathology assistants and 10 percent for the level II speech pathology assistants. level I speech pathology and level I audiology assistants and 10 percent for level II speech pathology assistants. Level II audiology assistants must be supervised 10 percent of the time. At least half of that time must be direct on-site observation with the other portion provided as time interpreting results.

ITEM 4. Rescind subrule 302.6(1) and renumber subrules 302.6(2) to 302.6(6) as 302.6(1) to 302.6(5).

ARC 6819A

**REVENUE AND FINANCE
DEPARTMENT[701]**

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 421.14 and 422.68, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 19, "Sales and Use Tax on Construction Activities," Iowa Administrative Code.

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

One of the most difficult areas of sales and use tax law lies in the application of that law to construction materials, machinery and equipment, and the obligations of collection and payment of tax which that law imposes upon contractors, contractor-retailers, retailers, and repairpersons.

These amendments are an attempt to clarify the law in this difficult area. They do not change any basic departmental interpretations of that law. Among other changes, the amendments refine the definition of "contractor-retailer" and add examples to explain a contractor-retailer's sales and use tax duties. An entirely new rule explains the application of sales and use tax to prefabricated housing, and existing rules are also amended to incorporate material about prefabricated housing into them. Some effort is also made to clarify what is and is not exempt "remodeling" and to explain the difference between a "contractor" and a "retailer." Finally, a new right of refund for tax paid by contractors and builders exists for businesses and supporting businesses in an economic development area. This right is similar to that currently enjoyed by governments and private, nonprofit educational institutions and museums.

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than November 12, 1996, to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P. O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 22, 1996. Such written comments should be directed to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P. O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 15, 1996.

These amendments are intended to implement Iowa Code Supplement sections 422.42(15) and 422.42(16).

The following amendments are proposed.

ITEM 1. Amend 701—19.1(422,423), introductory paragraph, as follows:

701—19.1(422,423) General information. Iowa Code section 422.43 imposes a tax upon the gross receipts from the sales of tangible personal property, consisting of goods, wares or merchandise sold at retail in this state to consumers and users. Also subject to tax are certain enumerated services. Those relating to the construction industry include carpentry; roof, shingle and glass repair; electrical repair and installa-

tion; equipment and other tangible personal property rental; excavating and grading; house and building moving; laboratory testing; landscaping; machinery operator services; machine repair of all kinds; oilers and lubricators; painting, papering, and interior decorating; pipe fitting and plumbing; wood preparations; termite, bug, roach, and pest eradicators; tin and sheet metal repair; welding; well drilling; and wrecking services. *Under Iowa law, contractors are consumers or users of certain tangible personal property. Contractors may also be retailers of tangible personal property and taxable enumerated services.* It should be noted that these services are exempt from taxation when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. The services of a general building contractor, architect or engineer are also therefore exempt from tax when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling. (Codified in section 422.43 of the 1979 Code.) See rule 701—26.2(422). For the purposes of this exemption, a structure is defined as that which is artificially built up or composed of parts joined together in some definite manner and which also has some obvious or apparent functional use or purpose. Nonexclusive examples of structures include: buildings; roads, whether paved or otherwise; dikes; drainage ditches; and ponds. See rule 19.11(422,423) relating to structures.

This chapter details the obligation of contractors, contractor-retailers, retailers, and repairpersons to pay or collect sales tax on the gross receipts from sales of building materials, supplies, equipment, and other tangible personal property and the obligation of these parties to collect tax or claim exemption for their performances of taxable services. How one is classified, whether as a contractor, contractor-retailer, retailer, or repairperson is the basis for determining many of those obligations. It can be very difficult for a person starting a business to determine if that business will be engaged in contracting, retailing, a combination of the two, or providing repairperson services. However, one status must be chosen. Any reasonable assessment of a new business's status will be honored by the department. A status, once chosen, should not be changed, unless it has become clear from an extended course of dealing that the business has become something other than what it was established to be. For instance, if a business is founded to engage in contracting and purchases construction materials based on the fact that it is a contractor, but the founder must sell construction materials at retail if the business is to survive, and after two years' operation half the revenue is from construction contracts and half from retail sales, then the business has become a contractor-retailer and henceforth should purchase construction materials based on that status. Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

ITEM 2. Amend 701—19.2(422,423), introductory and first unnumbered paragraphs, as follows:

701—19.2(422,423) Contractors are consumers of building materials, supplies, and equipment by statute. Iowa Code section 422.42(9) 422.42(15) provides that sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or the alteration, repair or improvement of real property are retail sales in whatever quantity sold. *This means that a contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later*

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

separately itemizes material and labor charges for construction contracts. Building materials and supplies would generally consist of items which are incorporated into real property, lose their identity as tangible personal property and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract. See subrules 19.3(1), 19.3(2) and 19.3(3). Building equipment would ordinarily consist of machinery and tools. See subrule 19.3(4). ~~This means that the building materials, building supplies and building equipment generally cannot be purchased by a contractor, subcontractor or builder for resale.~~ The fact that a contractor, subcontractor or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rule 19.3(422,423) and rule 19.4(422,423).

A contractor (general, special or subcontractor) when bidding on a contract should anticipate that sales or use taxes will increase the cost of materials by the tax. *This is true even if the contract is with an entity (e.g., federal, state, or county government, or a private, nonprofit educational institution) whose purchases are exempt from sales tax.* See rule 19.12(422,423). The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

ITEM 3. Amend rule 701—19.3(422,423), introductory paragraph, as follows:

701—19.3(422,423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders or owners. Suppliers or dealers who sell materials and supplies to contractors, subcontractors, builders or owners are required to collect Iowa sales tax from said *those* persons based upon the receipts from such sales. The fact that a contractor, subcontractor, or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rules 19.2(422,423) and 19.4(422,423). Purchase discounts are not part of the sales price and are not part of the base for computing sales and use tax provided the retailer has not collected the tax on the full selling price. See rule 701—15.6(422,423). Materials purchased out of state for use in Iowa are subject to the Iowa use tax which is payable in the quarter the materials are delivered into the state. Tax is imposed on the contractor, subcontractor or builder even though the contract is with a governmental unit or a nonprofit educational institution. See Iowa Code section 422.45(7) and rule 19.12(422,423).

ITEM 4. Amend subrule 19.3(3) as follows:

19.3(3) Typical items. While not intended to be inclusive, the following is a list of typical items regarded as building materials and supplies:

| | | |
|--------------------------|---------------------------------|------------------|
| Asphalt | Lime | Reinforcing mesh |
| Bricks | Linoleum* | Rock salt |
| Builders' hardware | Lubricants | Roofing |
| Caulking material | Lumber | Rope |
| Cement | Macadam | Sand |
| Central air conditioning | Millwork | Sheet metal |
| Cleaning compounds | <i>Modular and mobile homes</i> | Steel |
| Conduit | Mortar | Stone |

| | | |
|---|---|---------------------------|
| Doors | Oil | Stucco |
| Ducts | Paint | Tile |
| Electric wiring, connections, and switching devices | Paper | Wallboard |
| Fencing materials | Piping, valves, and pipe fittings | Wall coping |
| Flooring* | Plaster | <i>Water conditioners</i> |
| Glass | <i>Plates and rods used to anchor masonry foundations</i> | Weather stripping |
| Gravel | Plumbing supplies | Windows |
| Insulation | Polyethylene covers | Window screens |
| Lath | Power poles, towers, and lines | Wire netting and screen |
| Lead | Putty | Wood preserver |
| Lighting fixtures | | |

* Floor coverings which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks or tack strips or by some other method making a permanent attachment are considered to be building materials. See rule 701—16.48(422,423) for an exception concerning carpeting. *Carpeting (whether attached to the floor or not) is not treated as a building material for the purposes of this chapter.* Rugs, mats and linoleum types of floor coverings which are not attached but which are simply laid on finished floors are not considered *to be* building materials *either*.

ITEM 5. Amend 701—19.4(422,423) as follows:

Amend 701—19.4(422,423), introductory paragraph, as follows:

701—19.4(422,423) Contractors, subcontractors or builders who are retailers. In some instances, contractors, subcontractors and builders are in a dual business which includes reselling to the general public on a recurring "over-the-counter" basis, the same type of building materials and supplies which are used by them in their own construction work. A person operating in such a manner is referred to in this rule as a contractor-retailer. *Any person who is engaged in the performance of construction contracts and who also sells building materials or other items at retail is obligated to examine the person's business and determine if it is that of a contractor or a contractor-retailer (see below).* A sale by a contractor-retailer of building materials, supplies and equipment which does not provide for installation of the merchandise sold is considered a retail sale and subject to sales tax. Conversely, a sale by a contractor-retailer of building supplies, materials and equipment which provides for installation of the merchandise is considered a construction contract and tax shall be paid by the contractor-retailer based upon the cost of materials at the time the materials are withdrawn from inventory for use in a construction contract *performed in Iowa.* *When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the price charged for materials used in the repair and on the price charged for any labor used in the repair which is a taxable service or on the entire charge if materials and labor are not separately invoiced.* See rules 701—18.31(422,423) and 19.13(422,423). See Iowa Code subsection 422.42(9).

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

Further amend **701—19.4(422,423)** by rescinding the first unnumbered paragraph and replacing with the following **new** paragraph:

The following is a list of the characteristics of the usual contractor-retailer:

1. A contractor-retailer is a business which makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts (see rule 701—19.7(422,423)). In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business's activity. Thus, the maintenance of a small retail outlet does not automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

2. A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

3. A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule. See rules 701—15.3(422,423) and 19.19(422,423) for a detailed explanation of this matter.

4. A contractor-retailer purchasing construction material which will not be placed in its inventory purchases that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

5. A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

6. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa. See Iowa Code Supplement section 422.42(15).

Amend **701—19.4(422,423)**, Example 4, as follows:

EXAMPLE 4. Down Home Construction Company is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents **annually**. Down Home Construction Company would not be considered a contractor-retailer under this rule. Rather, Down Home Construction Company would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Down Home Construction Company should have a sales tax permit. However, Down Home Construction Company can adjust its sales tax report by taking a credit for tax paid to its vendor on the item sold to the local resident.

Amend **701—19.4(422,423)** by adding the following **new** Examples 5 and 6:

EXAMPLE 5. Intown Home Construction Company places modular homes on slabs or basement foundations, makes electrical, plumbing and other connections, and otherwise

prepares the modular homes for sale as real estate. Intown also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Intown is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner. See rule 701—17.22(422,423) for an explanation of the basis on which tax is computed.

EXAMPLE 6. Smith's Plumbing has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

ITEM 6. Amend 701—19.5(422), parenthetical implementation, as follows:

701—19.5(422,423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

ITEM 7. Amend subrule 19.5(4) as follows:

19.5(4) ~~The~~ *A manufacturer's* purchase of tangible personal property consumed ~~by a manufacturer~~ as building material in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts within Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. See rule 701—16.3(422,423) for a characterization of the term "fabricated costs." The purchase of tangible personal property consumed by a manufacturer as building material in the manufacturer's or the manufacturer's subcontractor's performance of a construction contract outside Iowa is not subject to tax.

ITEM 8. Amend 701—Chapter 19 by adding the following **new** rule:

701—19.6(422,423) Prefabricated structures.

19.6(1) Basic concepts and general rules. A "prefabricated structure" is any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor. The term "prefabricated structure" includes a "modular home" as defined in rule 701—17.22(422,423), a mobile home whether or not sold subject to the issuance of a certificate of title, sectionalized housing, precut housing packages, and panelized construction. With a few major exceptions (see 19.6(2) below regarding the "60 percent rule"), the sales and use tax treatment of prefabricated structures generally follows the treatment of construction materials: Tax is due when those structures are sold to or used by owners, contractors, subcontractors, or builders. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable at the time of retail sale. The usual basis for computing sales or use tax is the purchase price charged to a consumer or user by the seller of a prefabricated structure. *Custom Built Homes Co. v. Kansas State Commission of Revenue and Taxation*, 184 Kan. 31, 334 P.2d 808 (1959). Sales or use tax is due on the full purchase price when a prefabricated structure is delivered under a contract for sale or sold for use

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

in Iowa. *Dodgen Industries Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968).

19.6(2) Exceptions to the general rules. There are a number of exceptions to the general rules stated above in 19.6(1). Those exceptions are applicable to modular and mobile homes and are explained below.

a. **Modular homes.** Only 60 percent of the gross receipts from the sale of a modular home are subject to Iowa tax. See rule 701—17.22(422,423). This rule is applicable only to a “modular home” as that phrase is defined in rule 701—17.22(422,423) and not to other types of prefabricated structures which do not meet the definition of the term such as sectionalized housing or panelized construction. Also, the rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. **Mobile homes.** Iowa use tax and not Iowa sales tax is imposed on mobile homes sold subject to the issuance of a certificate of title, and, similar to 19.6(2)“a” above, use tax is imposed only upon 60 percent of the purchase price of these mobile homes. See rule 701—32.3(423). All mobile homes sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park; see Iowa Code chapter 435.

19.6(3) Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.

a. A retailer (dealer) who is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor who is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor’s sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of rule 19.4(422,423).

c. A dealer who is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in the performance of a construction contract as explained in rule 19.4(422,423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the gross receipts from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 19.6(4) below in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than gross receipts from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes. However, one distinct difference is that mobile homes are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home for subsequent resale to a customer as tangible personal property and then will place or install the mobile home on a site prepared by the customer. This is not the performance of a construction contract (see rule 19.7(422,423)), and the mobile home dealer is a retailer who installs tangible personal property and is not a construction contractor.

19.6(4) Manufacturers who perform construction contracts. When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer’s part. See rule 701—16.3(422,423) for a detailed description

of the sales tax treatment of this sort of transaction. The 60 percent rule (see 19.6(2) above) is not applicable when calculating the amount of tax owed by a manufacturer.

19.6(5) The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner, or acts as a contractor in erecting the home. The incidence of tax depends on several factors, such as the nature of the manufacturer’s business, the point of delivery, the contractual agreement for erection and whether or not a sale for resale has occurred.

EXAMPLE 1. The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in its factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer’s income relates to on-site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to another state.

EXAMPLE 2. The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer’s foundation. The manufacturer delivers the home into Iowa on its own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the selling price to the Iowa builder/dealer.

EXAMPLE 3. The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a “nexus” requiring the manufacturer to collect Iowa tax. In this situation the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4. The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa who will resell the home to the final customer. The manufacturer may deliver the home or delivery may be made by a common carrier. The manufacturer has no contractual obligation for erection. In this situation the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5. The manufacturer is located in Iowa. The manufacturer sells a home to a customer F.O.B. plant site. The manufacturer, under a separate invoice, agrees to transport the home to the job site and also do the setup of the home.

The manufacturer should collect tax on 60 percent of the selling price of the home irrespective of where final delivery occurs, as legal delivery occurs in Iowa. The transportation and setup charge are not taxable when separately contracted for and separately invoiced. If these charges are not separately stated and the sale contract is for a lump sum, the tax is computed on 60 percent of the lump sum selling price.

EXAMPLE 6. The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer

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

withdraws the home from inventory and transports the home to the other state for setup. In this example, the Iowa manufacturer does not owe any Iowa tax because Iowa Code section 422.42(12) exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 7. The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the selling price of the home. The customer also wanted a garage. The manufacturer agreed to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail and the manufacturer should collect tax on the entire selling price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire selling price of the appliances.

EXAMPLE 8. The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer who is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, who transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services which are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer who is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home's invoice price.

ITEM 9. Amend **701—19.7(422,423)**, the list following the first unnumbered paragraph, by adding the following **new** activities and items in alphabetical order:

- Central air conditioner installation.
- Installation of modular homes on foundations.
- Water heater and softener installation.

Further amend the list by replacing the term "Signs (other than portable)" with "Sign installation (other than portable sign installation)".

ITEM 10. Amend rule **701—19.8(422,423)**, the second unnumbered paragraph, as follows:

~~When In a mixed contract~~ "**mixed contract**" (when a construction contract is mingled with a machinery and equipment sales contract), the elements of the contract should be separated for sales tax purposes. See rule 19.9(422,423).

ITEM 11. Amend subrule **19.10(1)** by adding the following **new** paragraph:

f. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens, and combination ovens and steamers with stands. This subparagraph is not applicable to similar items used in residential kitchens. See Petition of Taylor Industries Inc. (Dkt No. 94-30-6-0367, 3-14-95).

ITEM 12. Amend subrule **19.10(2)**, paragraphs "c" and "e," as follows:

c. Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air conditioning units, building elevators, sanitation and plumbing systems, *decks*, and heating, cooling and ventilation systems.

e. Improvements to land including *patios*, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection. See rule 701—18.35(422,423) relating to drainage tile.

ITEM 13. Amend subrule **19.10(2)** by adding **new** paragraph "f" and relettering existing paragraphs "f" to "n" as "g" to "o":

f. Mobile and modular homes installed on foundations.

ITEM 14. Amend rule 701—19.12(422,423) as follows:

701—19.12(422,423) Contracts with governmental units, private nonprofit educational institutions, and nonprofit private museums, and businesses in economic development areas. Contractors, subcontractors, and builders who enter into written construction contracts with governmental units, or private nonprofit educational institutions, or nonprofit private museums, or *businesses or supporting businesses in economic development areas* are still required to remit sales tax on building materials, supplies and equipment to their suppliers or to pay a corresponding use tax. If the construction contract is a contract which includes machinery or equipment or a mixed contract, the machinery and equipment must be purchased tax-free because these items will be resold. There would be no sales tax charged on the sale of machinery and equipment to a governmental unit or a private nonprofit educational institution or a nonprofit private museum since these sales are exempt under Iowa Code section 422.45, subsections 5 and 8. See rules 19.8(422,423) and 19.9(422,423) relating to machinery and equipment sales. See also 261—subrule 58.4(7) for an explanation of the exemption for sales of machinery and equipment to businesses or supporting businesses in an economic development area.

In addition, under the provisions of Iowa Code section 422.45(7) or 15.331A "a," the contractor is required to provide the governmental unit, or private nonprofit educational institution, or nonprofit private museum, or *business or supporting business in an economic development area* with a statement before final settlement of the contract, showing the amount of sales of goods, wares or merchandise or services rendered, furnished or performed and used in the performance of the contract, and the amount of sales and use taxes paid on said items. The department provides Form 35-002 (ST-172) for this purpose. The governmental unit, or private nonprofit educational institution, or nonprofit private museum, or *business or supporting business* has six months after final settlement to file a claim for refund on Form 35-003 (ST-173) for sales and use taxes paid by the contractor. The failure of a contractor to remit taxes on materials, supplies and equipment used in the performance of a construction contract does not relieve the contractor of liability even though the refund was not or cannot be claimed. See *Dealers Warehouse Co. Inc. v. Department of Revenue, Jasper County District Court, 90-3910936, December 6, 1978*. Contracts financed by industrial bonds provided under the provisions of Iowa Code chapter 419 are eligible for the special refund provisions provided in Iowa Code section 422.45(7) when the bond issue was approved by a municipality prior to November 1, 1982, and upon completion of the project the property becomes public property or is devoted to educational uses. The refund applies only to taxes paid on goods, wares, or merchandise purchased after November 1, 1982.

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

This rule is intended to implement Iowa Code section 422.45(7).

ITEM 15. Amend rule 701—19.13(422,423), introductory paragraph and first unnumbered paragraph, and subrule 19.13(1) as follows:

701—19.13(422,423) Tax on enumerated services. The tax on the services enumerated in Iowa Code section 422.43 is basically a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of real property or structures, they are exempt from tax. ~~This would not include the~~ *The repair of machinery on the job site is not exempt from tax under this rule.*

The distinction between a repair (see subrule 19.13(1)) and new construction, reconstruction, alteration, expansion and remodeling activities (see subrule 19.13(2)) can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project may become the factors which determine whether certain enumerated services are taxable. *An area of particular difficulty is the distinction between repair and remodeling. "Remodeling" a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof. See Board of Commissioners of Guadalupe County v. State, 43 N.M. 409, 94 P.2d 515 (1939) and City of Mayville v. Rosing, 19 N.D. 98, 123 N.W. 393 (1909).*

19.13(1) Repair is synonymous with mend, restore, maintain, replace and service. A repair contemplates an existing structure or thing which has become imperfect and constitutes the restoration to the original existing structure which has been lost or destroyed. A repair is not a capital improvement; that is, it does not materially add to the value or substantially prolong the useful life of the property.

Iowa Code section ~~422.42(5)~~ **422.42(13)** defines a person engaged in the business of ~~making performing~~ taxable services as a retailer. Since retailers may purchase building materials, supplies and equipment for resale, persons making taxable repairs (~~handymen repairpersons and servicemen~~ *servicepersons*) are not considered to be contractors and are not subject to the provisions of Iowa Code section ~~422.42(9)~~ **422.42(15)**. In addition, such persons are not considered to be owners, subcontractors or builders. *So repairpersons and servicepersons will normally purchase building materials and supplies free of tax for subsequent resale to their customers; contractor-retailers will also do this.* However, contractors, subcontractors or builders who may make repairs are subject to Iowa Code section ~~422.42(9)~~ **422.42(15)** and must pay tax at the time building materials, supplies and equipment are purchased from their ~~vendor vendors~~ even though they hold a valid sales tax permit. See rules 19.2(422,423) and 19.3(422,423). *In determining who is a contractor and who is a retailer of repair services, the department looks to the "total business" of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor.* When contractors do repair work, they should separately itemize labor and materials charges and collect sales tax ~~should be collected~~ on labor charges only. *A contractor's markup on a materials charge is not part of any taxable labor charge unless that markup is a disguised labor charge done with the intent to evade collecting Iowa sales tax.*

~~When a person other persons making repairs sells at retail~~ sell tangible personal property at retail in connection with any taxable service enumerated in Iowa Code section 422.43, then ~~that person those persons~~ shall collect and remit tax on all gross receipts. The person making repairs shall purchase tangible personal property for resale when the property is used in the repair job and is resold to a customer. See rule ~~701—18.31(422,423)~~ *for an explanation of when persons performing services sell the property they use in performing those services to their customers.* Nonexclusive examples of repair situations follow:

1. Repair of broken or defective glass.
 2. Replacement of broken, defective or rotten windows.
 3. Replacing individual or damaged roof shingles.
 4. Replacing or repairing a portion of worn-out or broken kitchen cabinets.
 5. Replacement of garage doors or garage door openers.
 6. Replacing or repairing a portion of a broken or worn tub, shower, or faucets.
 7. Replacing or repairing a portion of a broken water heater, furnace or central air conditioning compressor.
 8. Restoration of original wiring in a house or building.
- ~~See rule 701—18.31(422,423) relating to the sale of tangible personal property by one who is engaged in the performance of a service.~~

ITEM 16. Amend subrule 19.13(2) by adding new lettered paragraphs "l," "m," and "n" as follows:

1. Installing a modular or mobile home on a foundation.
- m. Replacing an entire water heater, water softener, furnace or central air conditioning unit.
- n. Sign installation and well-drilling services are generally performed in connection with new construction.

ITEM 17. Amend subrule 19.13(3) by adding a new fourth unnumbered paragraph as follows:

On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction, for example. For instance, a homeowner hires a general contractor to add a new room to an existing home (which is new construction; see 19.13(2)"d" above). The existing home is in need of a number of the repairs described in 19.13(1); for example, it is in need of rewiring and replacement of a broken window. The general contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

ITEM 18. Amend 701—19.13(422,423) by adding new subrule 19.13(5):

19.13(5) Services associated with new construction or reconstruction, for example, which are not taxable include, but are not limited to, brick laying, concrete finishing, tiling, siding installation, laying of linoleum and other flooring and carpet installation. No tax can be collected on the performance of these services even when they are furnished in connection with the performance of repairs.

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

ITEM 19. Amend rule 701—19.19(422,423) as follows:

701—19.19(422,423) Resale certificates. Whenever machinery and equipment *which will remain tangible personal property after installation* is purchased for a machinery and equipment contract, by a contractor from a supplier or a material supplier, it should be purchased for resale. See rule 19.8(422,423). Resale purchases are most commonly related to machinery and equipment sales contracts with installation and mixed construction contracts. Contractor-retailers and persons making repairs may also purchase materials for resale as long as they collect tax on their retail sales and pay the tax themselves on items withdrawn from inventory for use in the performance of a construction contract. See rule 19.4(422,423) and subrule 19.13(1). Resale certificates can be obtained by contacting the Iowa department of revenue and finance. See rule 701—15.3(422,423) for detailed information on resale certificates.

ARC 6807A**VETERANS AFFAIRS
COMMISSION[801]****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 35A.3(2) and 35A.3(12), the Commission of Veterans Affairs hereby gives Notice of Intended Action to amend Chapter 1, “Organization and Procedures,” Chapter 2, “Petition for Rule Making,” Chapter 3, “Declaratory Rulings,” Chapter 4, “Agency Procedure for Rule Making,” Chapter 6, “Fair Information Practices,” and Chapter 8, “Contested Cases,” Iowa Administrative Code.

These amendments reflect current Commission operating procedures and update Iowa Code references.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 12, 1996. Such written materials should be directed to the Iowa Commission of Veterans Affairs, Camp Dodge, Bldg. A6A, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902; fax (515)242-5659. Persons who wish to convey their views orally should contact the Iowa Commission of Veterans Affairs at (515)242-5331 or at the Commission’s offices at Camp Dodge.

Also, there will be a public hearing on November 12, 1996, at 10 a.m. in the Iowa Commission of Veterans Affairs offices, 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 amendments.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Iowa Commission of Veterans Affairs and advise of specific needs.

These amendments are intended to implement Iowa Code sections 35.9, 35A.1, 35A.1(2), 35A.2(1), 35A.2(3), 35A.2(7), 35A.3(3), 35A.3(12), 35B.6, and 35D.17.

ITEM 1. Amend **801—Chapters 1 and 6** by striking references to Iowa Code chapters 219 and 250 and replacing them with “35D” and “35B,” respectively, to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend rule **801—1.1(35,35A,35D)**, Definitions, as follows:

“Annual ~~recertification course~~” *school of instruction* means annual classroom recertification training for officers sponsored and directed by the commission.

“Certificate of training” means a certificate provided to an officer upon satisfactory completion of the ~~initial training course~~ or an annual ~~recertification training course~~. *school of instruction*.

“~~Initial training course~~” means ~~introductory classroom training provided to all previous and newly appointed officers sponsored and directed by the commission.~~

ITEM 3. Amend subrule 1.2(1) as follows:

1.2(1) Office location. The commission maintains its office at the Iowa ~~Veterans Home in Heinz Hall~~. *Commission of Veterans Affairs at Camp Dodge*. The mailing address is: Iowa Commission of Veterans Affairs, c/o Iowa ~~Veterans Home, 1301 Summit, Marshalltown, Iowa 50158-5485~~. *Camp Dodge, Building A6A, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902*. The telephone number is ~~(515)752-1501~~ *(515)242-5331 or 1-800-838-4692 (1-800-VET-IOWA)*.

ITEM 4. Amend subrule 1.2(2), paragraph “a,” as follows:

a. Meetings. Regular meetings of the commission shall be held the first Wednesday of each quarter (January, April, July, October) at 10 a.m. ~~All meetings shall be held at the Iowa Veterans Home, 1301 Summit, Marshalltown, Iowa.~~ Notice of the time, place, and tentative agenda of all meetings shall be posted on the bulletin board located in the office of the governor 24 hours prior to the meeting. Special meetings shall be held pursuant to call by the chairperson. Notice of time and place shall be posted in the same manner as a regular meeting.

ITEM 5. Amend subrule 1.2(3), paragraphs “a,” “c,” and “f,” as follows:

a. Organize and annually select a chairperson *and vice-chairperson* at the first meeting of each state fiscal year.

c. Prescribe the duties of the executive director and other employees as deemed necessary to carry out the duties of the commission, including but not limited to those set out in rule 1.3(35,35A). *Those duties not all-inclusive are training of officers in accordance with Iowa Code chapter 35B, maintenance of the war orphans educational fund, maintaining information and data concerning military service records of Iowa veterans, collecting and maintaining information concerning veterans affairs, and maintaining armed forces graves registration. The executive director shall report directly to the commission and, if so delegated, the chair of the commission shall serve as responsible supervisor of the executive director. The chair, if designated by the commission, shall supervise the executive director’s administration of commission policy other than those related to the Iowa Veterans Home. The executive director shall make a full and detailed report biennially regarding matters pertaining to the commission other than those related to Iowa Code section 35D.17.*

f. Provide assistance to county commissions including, but not limited to, adoption of rules regarding training of officers, provision of training courses in accordance with Iowa

VETERANS AFFAIRS COMMISSION[801](cont'd)

Code chapter 35B as amended by 1992 Iowa Acts, chapter 1075, section 2, suggested uniform benefits and procedures for carrying out functions and duties.

ITEM 6. Amend subrule 1.4(2) as follows:

1.4(2) Biennial report. The commandant shall make a full and detailed report biennially regarding matters pertaining to the Iowa Veterans Home in accordance with Iowa Code section 35D.17 219.21 as amended by 1992 Iowa Acts, chapter 1140, section 34.

ITEM 7. Amend 801—1.7(35A,35B), implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 35A.3 and 35B.19 250.19 as amended by 1992 Iowa Acts, chapter 1140, sections 9 and 36.

ITEM 8. Amend rule 801—1.10(35,35A) as follows:

801—1.10(35,35A) War orphans educational aid. The war orphans educational aid program shall be administered in accordance with Iowa Code sections 35.9 and 35.10 as amended by 1992 Iowa Acts, chapter 1140, sections 5 and 6.

1.10(1) Definition. A war orphan is:

a. The child of a man or woman who died in service or as a result of such service during one of the following periods:

(1) to (4) No change.

(5) *The Persian Gulf Conflict between August 2, 1990, and the date the president or the Congress of the United States declares a permanent cessation of hostilities, inclusive.*

(6) *While serving in the military or naval forces of the United States, to include members of the reserve components performing service or duties required or authorized under Chapter 39, United States Code, and Title 32, United States Code, Sections 502 through 505.*

(7) *Active state service required or authorized under Iowa Code chapter 29A, or as a result of such service.*

b. The child of a natural national guardsman or other members of reserve components who die or are killed in the performance of training or other duties ordered by competent federal or state authorities.

1.10(2) to 1.10(4) No change.

1.10(5) Amount of payment. The amount of war orphans educational aid allowed eligible war orphans is based upon an appropriation made by the Iowa legislature on an annual basis. In no case can payment of war orphans educational aid be in excess of \$400 \$600 per person per year. Lifetime maximum is \$2000 \$3000 per person.

a. and b. No change.

c. Full-time students are honored for higher payments over part-time students. Payments are prorated by the commission in on behalf of a war orphan on the basis of time spent in school.

d. The school shall submit triplicate billing to the executive director thereby certifying that a war orphan is in attendance and the number of hours.

1.10(6) to 1.10(10) No change.

This rule is intended to implement Iowa Code sections 35.7, 35.9, 35.10 as amended by 1992 Iowa Acts, chapter 1140, sections 4, 5 and 6 and section 35.11.

ITEM 9. Amend rule 801—1.15(35A,35B) and the implementation sentence at the end of 801—Chapter 1 as follows:

801—1.15(35A,35B) Training for county commissions. The commission shall provide training for officers in accordance with Iowa Code section 35A.3 as amended by 1992

Iowa Acts, chapter 1140, section 9, and section 250.6 as amended by 1992 Iowa Acts, chapter 1075, sections 1 and 2.

1.15(1) An officer shall attend an initial training course annual school of instruction. After attending the initial training course annual school of instruction, the officer must take and satisfactorily pass a written test prescribed by the commission except in certain extenuating circumstances. The commission shall issue a certificate of training to the officer upon completion of the initial training course annual school of instruction. Officers appointed prior to January 1, 1993, must complete the initial training course by December 31, 1993. Newly appointed officers must complete the initial training course annual school of instruction within one year from the date of appointment. Attendance at an annual recertification course may not be substituted for completion of the initial training course.

1.15(2) An officer must maintain certification to remain in office. To maintain certification, an officer shall attend an annual recertification course school of instruction. The commission shall issue a certificate of training to the officer upon completion of the annual recertification course school of instruction.

1.15(3) The initial training course, annual recertification course school of instruction, and all associated training materials will be provided at the expense of the commission.

1.15(4) Subject to available appropriation Travel travel and lodging expenses incurred in attending the initial training course or the annual recertification course school of instruction shall be eligible for reimbursed reimbursement by the respective county from the appropriation authorized in Iowa Code section 35B.14.

1.15(5) Attendance at training courses sponsored and directed by veteran organizations other than the commission may not be substituted for the initial recertification course annual school of instruction.

1.15(6) The executive director shall maintain documentation regarding the initial training course and annual recertification course school of instruction including, but not limited to, agendas, presentation dates, attendees, test results, and issuance of certificates of training.

1.15(7) After each initial training course or annual recertification course, the executive director shall provide each officer's test results to the respective county commission who shall report the results to the county board of supervisors.

1.15(8 7) Inquiries regarding an initial training course or an annual recertification course school of instruction shall be directed to the executive director at the address set out in subrule 1.3(1). The executive director shall answer such inquiries.

1.15(9 8) Disputes regarding the initial training courses, annual recertification courses school of instruction, certificates of training and related matters shall be reviewed by the chairperson of the commission and a decision rendered by same. Disputes which remain unresolved shall be referred to the commission. The decision of the commission shall be final.

These rules are intended to implement Iowa Code chapters 35 and 35A and sections 219.1, 219.13, 219.19, 219.21, and 250.11 as amended by 1992 Iowa Acts, chapter 1140, and section 250.6 as amended by 1992 Iowa Acts, chapter 1075, section 2, 35B.6, 35B.11, 35D.1, 35D.13, 35D.16, and 35D.17.

VETERANS AFFAIRS COMMISSION[801](cont'd)

ITEM 10. Amend **801—Chapter 2** as follows:

**CHAPTER 2
PETITION FOR RULE MAKING**

The *Iowa* commission of veterans affairs hereby adopts, with the following exceptions and amendments, the Uniform Administrative Rules pertaining to petitions for rule making which are printed in the first Volume of the *Iowa Administrative Code*.

801—2.1(17A) Petition for rule making.

In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located at Camp Dodge, *Building A6A*, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902”.

In lieu of the words “(agency name)”, insert “*Iowa* commission of veterans affairs”.

2.1(3) The executive director shall notify the chairperson of the commission that the petition has been filed.

801—2.3(17A) Inquiries.

In lieu of the words “(designate official by full title and address)”, insert “the executive director at Camp Dodge, *Building A6A*, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902. The telephone number is (515)242-5331”.

These rules are intended to implement Iowa Code section 17A.7.

ITEM 11. Amend **801—Chapter 3** as follows:

**CHAPTER 3
DECLARATORY RULINGS**

The *Iowa* commission of veterans affairs hereby adopts, with the following exceptions and amendments, the Uniform Administrative Rules pertaining to declaratory rulings which are printed in the first Volume of the *Iowa Administrative Code*.

801—3.1(17A) Petition for declaratory ruling.

In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located at Camp Dodge, *Building A6A*, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902”.

In lieu of the words “(agency name)”, insert “*Iowa* commission of veterans affairs”.

At the end of this rule, insert “The executive director shall notify the chairperson of the commission that the petition has been filed.”

801—3.3(17A) Inquiries.

In lieu of the words “(designate official by full title and address)”, insert “the executive director at Camp Dodge, *Building A6A*, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902. The telephone number is (515)242-5331”.

These rules are intended to implement Iowa Code section 17A.9.

ITEM 12. Amend **801—Chapter 4** as follows:

**CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING**

The *Iowa* commission of veterans affairs hereby adopts, with the following exceptions and amendments, the Uniform Administrative Rules pertaining to procedures for agency rule making which are printed in the first Volume of the *Iowa Administrative Code*.

801—4.3(17A) Public rule-making docket.

4.3(2) In lieu of the words “(commission board, council, director)”, insert “*Iowa* commission of veterans affairs”.

801—4.4(17A) to 801—4.11(17A) No change.

801—4.13(17A) Agency rule-making record.**4.13(2) Contents.**

In lieu of the words “(agency head)”, insert “chairperson of the *Iowa* commission of veterans affairs”.

These rules are intended to implement Iowa Code section 17A.4.

ITEM 13. Amend **801—Chapter 6** as follows:

Amend the introductory paragraph as follows:

The *Iowa* commission of veterans affairs hereby adopts, with the following exceptions and amendments, the Uniform Administrative Rules pertaining to fair information practices which are printed in the first Volume of the *Iowa Administrative Code*.

Amend rule **801—6.1(17A,22)**, Definitions, as follows:

“Agency”. In lieu of the words “(official or body issuing these rules)”, insert “*Iowa* commission of veterans affairs”.

“Mental health information” means oral, written, or otherwise recorded information which indicates the identity of a person receiving professional services, as defined in Iowa Code section 228.1(7)(5), and which relates to diagnosis, course, or treatment of the person’s mental or emotional condition. Mental or emotional conditions include mental illness, mental retardation, degenerative neurological conditions, and any other condition identified in professionally recognized diagnostic manuals for mental disorders.

Amend rule **801—6.6(17A,22)** as follows:

801—6.6(17A,22) Procedure by which additions, dissesents, or objections may be entered into certain records.

In lieu of the words “(designate office)”, insert “office of the *Iowa* commission of veterans affairs”.

Amend subrules 6.12(2) to 6.12(5) as follows:

6.12(2) Military graves registration. These records are collected under the authority of Iowa Code section ~~35A.2(7)~~ 35A.3(11). They are maintained in hard copy by the agency, on Iowa Form 582-1002, CPE-94252. Requests for these records should be referred to the executive director.

6.12(3) World War I, World War II, Korea, Vietnam veterans bonus. These records are collected under the authority of Iowa Code section ~~35A.2(3)~~ 35A.3(5). They are maintained in hard copy by the agency. Requests for these records should be referred to the executive director.

6.12(4) Iowa women veterans. These listings of all women veterans residing in Iowa are collected under the authority of Iowa Code section ~~35A.2(1)~~ 35A.3(5). The records are maintained in hard copy format. Requests for these records should be referred to the executive director.

6.12(5) Members, directors—county commission of veterans affairs. These listings of current mailing addresses of all Iowa county commission members and directors are collected under the authority of Iowa Code section ~~35A.2(2)~~ 35A.3(8). The records are maintained in hard copy format. Requests for these records should be referred to the executive director.

Amend subrule 6.13(3), first sentence, as follows:

6.13(3) Publications. News releases, literature, and reports regarding the *Iowa* commission of veterans affairs, newsletters from various veterans associations or from the federal government are available from the executive director.

VETERANS AFFAIRS COMMISSION[801](cont'd)

ITEM 14. Amend rule 801—8.1(17A,35) as follows:

801—8.1(17A,35) Scope and applicability. This chapter applies to contested case proceedings related to decisions for which the *Iowa* commission of veterans affairs has statutory authority.

ITEM 15. Amend rule **801—8.2(17A,35)**, definition of “Commission,” as follows:

“Commission” means *Iowa* commission of veterans affairs.

ARC 6808A

INSPECTIONS AND APPEALS
DEPARTMENT[481]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby amends Chapter 10, "Contested Case Hearings," Iowa Administrative Code.

The amendment adds language to clarify that the director may appoint a designee to act on the director's behalf when a request for review of a proposed decision is received by the Department. The omission of this clarifying language was determined to be inconsistent with other portions of this rule which allow the director to appoint a designee to act on the director's behalf.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary since the Department is merely correcting inconsistencies in this rule.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and the amendment should become effective September 27, 1996, upon filing with the Administrative Rules Coordinator, as it confers a benefit by allowing immediate clarification of Department procedures regarding contested case hearings.

The amendment was approved by the Department on September 26, 1996.

This amendment is intended to implement Iowa Code section 17A.15.

The following amendment is adopted.

Amend subrules 10.25(3), 10.25(4), and 10.25(5) as follows:

10.25(3) Each party shall have the opportunity to file exceptions and present briefs. The director or a designee may set a deadline for submission of briefs. When the director or *designee* 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.

10.25(4) The director or designee 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 director or *designee* that the additional evidence is material and that there were good reasons for failure to present it in the hearing, the director or *designee* may order the additional evidence taken upon conditions determined by the director or *designee*.

10.25(5) Final decisions shall be issued by the director or *the director's designee*.

[Filed Emergency 9/27/96, effective 9/27/96]

[Published 10/23/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/96.

ARC 6814A

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 personal protective equipment for general industry and a correction and consolidation of repetitive provisions, technical amendments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 31, 1996, as **ARC 6606A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for August 22, 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 October 23, 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 October 23, 1996. The following amendment is adopted.

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)

[Filed Emergency After Notice 10/3/96, effective 10/23/96]
[Published 10/23/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/96.

ARC 6815A

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 consolidation of repetitive provisions; technical amendments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 31, 1996, as **ARC 6608A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for August 22, 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 October 23, 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

LABOR SERVICES DIVISION[347](cont'd)

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 October 23, 1996. The following amendment is adopted.

Amend rule 347—26.1(88) by inserting at the end thereof: 61 Fed. Reg. 31431 (June 20, 1996)

[Filed Emergency After Notice 10/3/96, effective 10/23/96]
[Published 10/23/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/96.

ARC 6822A**MEDICAL EXAMINERS
BOARD[653]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Medical Examiners hereby rescinds Chapter 21, "Eligibility for Physician Assistant Supervision," and adopts a new Chapter 21, "Physician Assistant Supervision," Iowa Administrative Code.

The existing Chapter 21 which was approved for adoption by the Board on February 22, 1996, is being rescinded and replaced with the rules which were previously in effect. The existing rules have never gone into effect as the Administrative Rules Review Committee delayed the effective date until the adjournment of the 1997 General Assembly.

The version of Chapter 21, "Physician Assistant Supervision," which is adopted herein, is the same version which was in effect prior to the latest revision of Chapter 21. These rules incorporate the same procedures always used by the Board for making ineligibility determinations on applications for supervising physicians of physician assistants.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because this amendment rescinds rules which have never taken effect and puts into place rules which were previously in effect.

The Board also finds that these rules confer a significant benefit to the public because without the rules there would be no ascertainable standards for the Board to make determinations of ineligibility for supervising physicians. Pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of the amendments should be waived and this amendment should be made effective immediately upon filing with the Administrative Rules Coordinator on October 4, 1996.

These rules were approved at the September 18, 1996, meeting of the Board of Medical Examiners.

These rules are intended to implement Iowa Code chapters 147, 148, 148C, 150, and 150A.

The following rules are adopted.

Rescind 653—Chapter 21 and insert the following new 653—Chapter 21 in lieu thereof:

**CHAPTER 21
PHYSICIAN ASSISTANT SUPERVISION**

653—21.1 and 21.2 Reserved.

653—21.3(147,148,148C,150,150A) Application requests. To determine whether a physician is ineligible to serve as a supervising physician or an alternate supervising physician for a physician assistant, physicians shall in each case make separate applications for such determination on forms provided by the board of medical examiners.

653—21.4(147,148,148C,150,150A) Ineligibility determinants. A physician shall be ineligible to serve as a supervising physician or alternate supervising physician for a physician assistant for any one or more of the following reasons:

21.4(1) The physician does not hold a current, valid license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy or the physician is not actively engaged in practice.

21.4(2) The physician does not have sufficient training or experience to supervise a physician assistant in the area of medical practice in which a physician assistant is to be utilized.

21.4(3) The physician is in a supervised training program which would interfere with the physician's ability to supervise a physician assistant.

21.4(4) The physician is presently or was in the past under restrictions due to a disciplinary action, or consent agreement, regarding issues which interfere with the physician's current ability to supervise a physician assistant.

21.4(5) The physician is currently under investigation by the board of medical examiners for matters which interfere with the physician's ability to supervise a physician assistant.

21.4(6) If any other factors exist which interfere with the physician's ability to supervise a physician assistant.

653—21.5(147,148,148C,150,150A) Appearances. In any case, the board of medical examiners may require the physician applicant to appear for a personal interview with the board or its designee to ensure that the requirements of these rules are fulfilled.

These rules are intended to implement Iowa Code chapters 147, 148, 148C, 150, and 150A.

[Filed Emergency 10/4/96, effective 10/4/96]
[Published 10/23/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/96.

ARC 6816A**PROFESSIONAL LICENSURE
DIVISION[645]****PHYSICAL AND OCCUPATIONAL
THERAPY EXAMINERS****Adopted and Filed Emergency after Notice**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby amends Chapter 200, "Physical Therapy Examiners," Chapter 201, "Occupational Therapy Examiners," and Chapter 202, "Physical Therapist Assistants," Iowa Administrative Code.

These amendments remove the requirement that applications for physical therapy and physical therapist assistants examination be notarized and be submitted 60 days prior to examination date since the examination service is now using computerized examination through a testing service; rescind

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

the requirement for physical therapy and physical therapist assistants to pass an oral interview for licensure; clarify that the application fee be a check or money order made payable to the Board of Physical and Occupational Therapy Examiners and that the fee for the physical therapy and physical therapist assistant examination be a cashier's check made payable to the Professional Examination Service; require a \$10 fee for a duplicate license; remove the requirement for occupational therapist and occupational therapy assistants applications to be notarized; clarify the issuance of a limited permit for occupational therapist and occupational therapy assistants; and clarify training requirements for occupational therapist and occupational therapy assistants.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 17, 1996, as **ARC 6566A**. No written comments were received. These amendments are identical to the Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of the amendments should be waived and these amendments should be made effective upon filing as they confer a benefit on the licensees.

These amendments were adopted by the Board on September 20, 1996.

These amendments became effective on October 4, 1996.

The amendments are intended to implement Iowa Code chapter 147.

The following amendments are adopted.

ITEM 1. Amend subrule 200.3(1), introductory paragraph, as follows:

200.3(1) Applications for licensure to practice physical therapy in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, ~~at least 60 days before the date of the examination.~~ The application form will be furnished by the board. The ~~notarized~~ application shall include the following:

ITEM 2. Rescind and reserve subrule **200.3(2)**.

ITEM 3. Rescind and reserve subrule **200.4(7)**.

ITEM 4. Rescind and reserve subrule **200.7(3)**.

ITEM 5. Amend subrule 200.9(1) as follows:

200.9(1) The application fee for a license to practice physical therapy issued upon the basis of examination or endorsement is \$55 *in check or money order made payable to the Board of Physical and Occupational Therapy Examiners.* The examination fee is an additional \$185 *made payable by cashier's check to the Professional Examination Service (PES) and submitted to the Board of Physical and Occupational Therapy Examiners with application.*

ITEM 6. Adopt new subrule 200.9(9) as follows:

200.9(9) Fee for a duplicate or replacement license is \$10.

ITEM 7. Amend subrule 201.5(1), introductory paragraph, as follows:

201.5(1) Applications for licensure to practice as an occupational therapist or occupational therapy assistant in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, on an application form furnished by the board. The ~~notarized~~ application shall include the following:

ITEM 8. Amend subrule 201.6(1) as follows:

201.6(1) A limited permit to practice as an occupational therapist or as an occupational therapy assistant may be granted to persons who have completed the educational and experience requirements to be licensed as an occupational therapist or occupational therapy assistant and are waiting to take the certification examination *for the first time.*

ITEM 9. Amend subrule 201.6(4), introductory paragraph, as follows:

201.6(4) An applicant for a limited permit shall submit the limited permit application fee of \$25 and a completed, ~~notarized~~ application as set out in 201.2(2) except for the certification examination results.

ITEM 10. Adopt new subrule 201.12(11) as follows:

201.12(11) Fee for a duplicate or replacement license is \$10.

ITEM 11. Amend subrule **201.22(8)**, paragraph "b," as follows:

b. When the occupational therapist or occupational therapy assistant does not possess the skill to evaluate a patient, plan the treatment program, or carry out the treatment, the licensee is obligated to inform the referring practitioner and assist in identifying a professional qualified to perform the service *or obtain training to carry out the technique in a competent manner. Appropriate documentation of training is necessary.*

ITEM 12. Amend subrule 202.3(1), introductory paragraph, as follows:

202.3(1) Applications for licensure to practice as a physical therapist assistant in Iowa shall be made to Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, ~~at least 60 days before the date of the examination.~~ ~~The~~ *on an* application form ~~will be~~ furnished by the board. The ~~notarized~~ application shall include the following:

ITEM 13. Rescind and reserve subrule **202.3(2)**.

ITEM 14. Rescind and reserve subrule **202.4(7)**.

ITEM 15. Rescind subrule **202.8(3)**.

ITEM 16. Amend subrule 202.10(1) as follows:

202.10(1) The application fee for a license to practice as a physical therapist assistant issued upon the basis of examination or endorsement is \$45 *in check or money order made payable to the Board of Physical and Occupational Therapy Examiners.* The examination fee is an additional \$185 *made payable by cashier's check to the Professional Examination Service (PES) and submitted to the Board of Physical and Occupational Therapy Examiners with application.*

ITEM 17. Adopt new subrule 202.10(9) as follows:

202.10(9) Fee for a duplicate or replacement license is \$10.

[Filed Emergency After Notice 10/4/96, effective 10/4/96]
[Published 10/23/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/96.

ARC 6825A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code chapters 505 and 507B, the Insurance Division hereby adopts Chapter 14, "Life Insurance Illustrations Model Regulation," Iowa Administrative Code.

The new chapter adopts in substance the Life Insurance Illustration Model Regulation as adopted by the National Association of Insurance Commissioners.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 3, 1996, as ARC 6543A. A public hearing was held on July 2, 1996, with a minimal number of comments received. In response to comments received, several minor changes were made from the proposed rules. The changes were not substantive and align the rules more precisely with the language of the model regulation.

The amendment is intended to implement Iowa Code chapter 507B.

These rules will become effective February 1, 1997.

The following new chapter is adopted.

CHAPTER 14

LIFE INSURANCE ILLUSTRATIONS
MODEL REGULATION

191—14.1(507B) Purpose. The purpose of this chapter is to provide rules for life insurance policy illustrations that will protect consumers and foster consumer education. These rules provide illustration formats, prescribe standards to be followed when illustrations are used, and specify the disclosures that are required in connection with illustrations. The goals of these rules are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

191—14.2(507B) Authority. These rules are issued based upon the authority granted the commissioner under Iowa Code section 507B.4.

191—14.3(507B) Applicability and scope. These rules apply to all group and individual life insurance policies and certificates except:

1. Variable life insurance;
2. Individual and group annuity contracts;
3. Credit life insurance; or
4. Life insurance policies or certificates with initial face amounts of \$10,000 or less.

191—14.4(507B) Definitions. For the purposes of these rules:

"Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

"Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

"Currently payable scale" means a scale of nonguaranteed elements in effect for a policy form as of the preparation date

of the illustration or declared to become effective within the next 95 days.

"Disciplined current scale" means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

1. Are consistent with all provisions of these rules;
2. Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;
3. Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and
4. Do not permit assumed expenses to be less than minimum assumed expenses.

"Generic name" means a short title descriptive of the policy being illustrated such as "whole life," "term life" or "flexible premium adjustable life."

"Guaranteed elements" and "nonguaranteed elements."

1. "Guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.

2. "Nonguaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

"Illustrated scale" means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policyowner than the lesser of:

1. The disciplined current scale; or
2. The currently payable scale.

"Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:

1. "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements.

2. "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this regulation, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.

3. "In-force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

"Illustration actuary" means an actuary meeting the requirements of rule 14.11(507B) who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.

"Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in these rules, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100 percent policy persistency thereafter.

"Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

1. Fully allocated expenses;

INSURANCE DIVISION[191](cont'd)

2. Marginal expenses; and

3. A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners.

Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

"Nonterm group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

1. Every plan of coverage was selected by the employer or other group representative;
2. Some portion of the premium is paid by the group or through payroll deduction; and
3. Group underwriting or simplified underwriting is used.

"Policyowner" means the owner named in the policy or the certificate holder in the case of a group policy.

"Premium outlay" means the amount of premium assumed to be paid by the policyowner or other premium payer out of pocket.

"Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policyowner value available. For this purpose, policyowner value will include cash surrender values and any other illustrated benefits amounts available at the policyowner's election.

191—14.5(507B) Policies to be illustrated.

14.5(1) Each insurer marketing policies to which these rules are applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on February 1, 1997, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after February 1, 1997, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

14.5(2) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

14.5(3) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with these rules is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

14.5(4) Potential enrollees of nonterm group life subject to these rules shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for

purposes of these rules, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for nonterm group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any nonterm group life enrollee who requests it.

191—14.6(507B) General rules and prohibitions.

14.6(1) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of these rules, be clearly labeled "life insurance illustration" and contain the following basic information:

- a. Name of insurer;
- b. Name and business address of producer or insurer's authorized representative, if any;
- c. Name, age and sex of proposed insured, except where a composite illustration is permitted under these rules;
- d. Underwriting or rating classification upon which the illustration is based;
- e. Generic name of policy, the company product name, if different, and form number;
- f. Initial death benefit; and
- g. Dividend option election or application of nonguaranteed elements, if applicable.

14.6(2) When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives shall not:

- a. Represent the policy as anything other than a life insurance policy;
- b. Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
- c. State or imply that the payment or amount of nonguaranteed elements is guaranteed;
- d. Use an illustration that does not comply with the requirements of these rules;
- e. Use an illustration that at any policy duration depicts policy performance more favorable to the policyowner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
- f. Provide an applicant with an incomplete illustration;
- g. Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
- h. Use the term "vanish" or "vanishing premium" or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;
- i. Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
- j. Use an illustration that is not "self-supporting."

14.6(3) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

191—14.7(507B) Standards for basic illustrations.

14.7(1) Format. A basic illustration shall conform with the following requirements:

- a. The illustration shall be labeled with the date on which it was prepared.
- b. Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").
- c. The assumed dates of payment receipt and benefit payout within a policy year shall be clearly identified.

INSURANCE DIVISION[191](cont'd)

d. If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.

e. The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.

f. Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

g. If the illustration shows any nonguaranteed elements, they cannot be based on a scale more favorable to the policyowner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.

h. The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (e.g., "see page 1 for guaranteed elements").

i. The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

j. The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policyowner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.

k. Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

l. Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

1. The benefits and values are not guaranteed;
2. The assumptions on which they are based are subject to change by the insurer; and
3. Actual results may be more or less favorable.

m. If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

n. If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

14.7(2) Narrative summary. A basic illustration shall include the following:

a. A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

b. A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

c. A brief description of any policy features, riders or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

d. Identification and a brief definition of column headings and key terms used in the illustration; and

e. A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

14.7(3) Numeric summary.

a. Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years 5, 10 and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years 5, 10, 20 and 30.

(1) Policy guarantees;

(2) Insurer's illustrated scale;

(3) Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

1. Dividends at 50 percent of the dividends contained in the illustrated scale used;

2. Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

3. All nonguaranteed charges, including but not limited to term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

b. In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three bases.

14.7(4) Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policyowner in the case of an illustration provided at time of delivery, as required in these rules.

a. A statement to be signed and dated by the applicant or policyowner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The producer has told me they are not guaranteed."

b. A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

14.7(5) Tabular detail.

a. A basic illustration shall include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(1) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(2) The corresponding guaranteed death benefit, as provided in the policy; and

INSURANCE DIVISION[191](cont'd)

(3) The corresponding guaranteed value available upon surrender, as provided in the policy.

b. For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

c. Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any nonguaranteed elements are shown, they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

191—14.8(507B) Standards for supplemental illustrations.

14.8(1) A supplemental illustration may be provided so long as:

a. It is appended to, accompanied by or preceded by a basic illustration that complies with these rules;

b. The nonguaranteed elements shown are not more favorable to the policyowner than the corresponding elements based on the scale used in the basic illustration;

c. It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and

d. For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

14.8(2) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

191—14.9(507B) Delivery of illustration and record retention.

14.9(1) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with these rules, shall be submitted to the insurer at the time of policy application. A copy shall also be provided to the applicant.

If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this rule, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policyowner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policyowner.

14.9(2) If no illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policyowner.

14.9(3) If the basic illustration or revised illustration is sent to the applicant or policyowner by mail from the insurer, it shall include instructions for the applicant or policyowner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this sub-rule shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

14.9(4) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification either that no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

191—14.10(507B) Annual report; notice to policyowners.

14.10(1) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policyowner with an annual report on the status of the policy that shall contain at least the following information:

a. For universal life policies, the report shall include the following:

(1) The beginning and end date of the current report period;

(2) The policy value at the end of the previous report period and at the end of the current report period;

(3) The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);

(4) The current death benefit at the end of the current report period on each life covered by the policy;

(5) The net cash surrender value of the policy as of the end of the current report period;

(6) The amount of outstanding loans, if any, as of the end of the current report period; and either

(7) For fixed premium policies: If, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(8) For flexible premium policies: If, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

b. For all other policies, where applicable:

(1) Current death benefit;

(2) Annual contract premium;

(3) Current cash surrender value;

(4) Current dividend;

(5) Application of current dividend; and

(6) Amount of outstanding loan.

c. Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years

INSURANCE DIVISION[191](cont'd)

when a change has been made to nonguaranteed policy elements by the insurer.

14.10(2) If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICYOWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's telephone number], writing to [insurer's name] at [insurer's address] or contacting your agent. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in-force illustration.

14.10(3) Upon the request of the policyowner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of subrules 14.6(1), 14.6(2), 14.7(1) and 14.7(5). No signature or other acknowledgment of receipt of this illustration shall be required.

14.10(4) If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.

191—14.11(507B) Annual certifications.

14.11(1) The board of directors of each insurer shall appoint one or more illustration actuaries.

14.11(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of these rules.

14.11(3) The illustration actuary shall:

- a. Be a member in good standing of the American Academy of Actuaries;
- b. Be familiar with the standard of practice regarding life insurance policy illustrations;
- c. Not have been found by the commissioner, following appropriate notice and hearing, to have:
 - (1) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of dealings as an illustration actuary;
 - (2) Been found guilty of fraudulent or dishonest practices;
 - (3) Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or
 - (4) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;
- d. Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under paragraph 14.11(3)"c" above;

e. Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated

for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged or credited to the same or similar forms, this must be disclosed in the annual certification; and

f. Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

- (1) Fully allocated expenses;
- (2) Marginal expenses; or
- (3) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners.

14.11(4) The illustration actuary shall file a certification with the board and with the commissioner:

1. Annually for all policy forms for which illustrations are used; and
2. Before a new policy form is illustrated.

If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

14.11(5) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of the actuary's inability to certify.

14.11(6) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

- a. That the illustration formats meet the requirements of these rules and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and
- b. That the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in 14.11(3)"f."

14.11(7) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

14.11(8) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.

191—14.12(507B) Penalties. In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of these rules shall be found to have committed a violation of Iowa Code section 507B.4.

191—14.13(507B) Separability. If any provision of these rules or their application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the rules and their application to other persons or circumstances shall not be affected.

191—14.14(507B) Effective date. These rules shall become effective February 1, 1997, and shall apply to policies sold on or after the effective date.

[Filed 10/4/96, effective 2/1/97]

[Published 10/23/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/96.

ARC 6821A
MEDICAL EXAMINERS
BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Medical Examiners hereby amends Chapter 11, "Licensure Requirements," Iowa Administrative Code.

These amendments make typographical corrections and technical clarifications to the licensure rules.

Notice of Intended Action was published on April 24, 1996, in the Iowa Administrative Bulletin as **ARC 6377A**. The adopted amendments are identical to those published under Notice.

These amendments were approved at the September 18, 1996, meeting of the Board of Medical Examiners.

These amendments will become effective November 27, 1996.

These amendments are intended to implement Iowa Code chapters 147, 148, 150, 150A, and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule **11.2(2)**, paragraph "**f**," as follows:

f. A *notarized* photocopy of the applicant's degree of doctor of medicine and surgery, osteopathic medicine and surgery, osteopathy, or the equivalent issued by an educational institution approved by the board and a sworn statement from an official of the educational institution certifying the date the applicant received the medical degree. If the educational institution awarding the applicant the degree has not been approved by the board, provide the appropriate documentation of education specified in the eligibility requirements under **11.3(1)"c"**;

ITEM 2. Amend subrule **11.3(1)**, paragraph "**c**" and subparagraph **(1)**, as follows:

c. If the degree granting institution has not been approved by the board, the applicant shall hold and provide a *notarized* photocopy of a medical degree awarded from the educational institution that has not been either approved or disapproved by the board and meet one of the following requirements:

(1) Hold and provide a *notarized* photocopy of a valid certificate issued by the Educational Commission for Foreign Medical Graduates; or

ITEM 3. Amend subparagraphs **11.4(3)"d"(1)** and **(2)** as follows:

(1) A *notarized photocopy of a* diploma from a medical school or college that has neither been approved nor disapproved by the board; and

(2) Either a *notarized photocopy of a* certificate of the Educational Commission for Foreign Medical Graduates or documentation of successful completion of a fifth pathway program established in accordance with the criteria established by the American Medical Association.

ITEM 4. Amend subrule **11.5(1)**, paragraph "**c**," as follows:

c. *Except as otherwise provided in this subrule*, Fulfill all the requirements for licensure by examination administered in this state specified in rule **11.4(147,148,150A)**;

ITEM 5. Amend subrule **11.6(2)**, paragraph "**b**" and subparagraph **(1)**, as follows:

b. Present a ~~photostatic copy~~ *notarized photocopy* of a diploma issued by a school or college of medicine and surgery or a school or college of osteopathic medicine and surgery approved by the board, or present other evidence of equivalent medical education approved by the board. The board may accept, in lieu of a diploma from a school or college of medicine approved by it, all of the following:

(1) A *notarized photocopy of a* diploma issued by a school or college of medicine which has been neither approved nor disapproved by the board.

ITEM 6. Amend subparagraph **11.6(3)"c"(1)** as follows:

(1) The applicant shall present a ~~photostatic copy~~ *notarized photocopy* of an original certificate of license or national board certificate obtained as a result of such examination.

ITEM 7. Amend subrule **11.7(2)**, paragraph "**b**" and subparagraph **(1)**, as follows:

b. Present a ~~photostatic copy~~ *notarized photocopy* of a diploma issued by a school or college of medicine and surgery or osteopathic medicine and surgery approved by the board. The board may accept, in lieu of a diploma from a medical college approved by it, all of the following:

(1) A *notarized photocopy of a* diploma issued by a medical college which has been neither approved nor disapproved by the board; and

ITEM 8. Amend **653—11.11(272C)** by striking each reference in subrules **11.11(1)**, **11.11(2)**, and **11.11(3)** to "category I" and replacing it with "category 1".

ITEM 9. Amend subrule **11.32(1)**, paragraph "**c**," as follows:

c. Evidence of 20 category ~~I~~ 1 hours of continuing medical education for each lapsed year in accordance with rule **11.11(272C)**. Such hours shall not exceed 80 for reinstatement except when there is a demonstrated need for specialized education as determined by the board through a personal interview with the applicant.

ITEM 10. Amend **653—11.33(17A)** as follows:

653—11.33(17A) Forms. All applications for examinations, certificates and licenses shall be on forms prescribed by the board. These forms may include, but not be limited to, the following, and, where practicable, any one or more of the following forms may be consolidated into a single form.

Board

Form

Form Title

- | | |
|---|--|
| 1 | Application for a license to practice medicine and surgery or osteopathic medicine and surgery on the basis of written examination. Application for permanent Iowa medical license. |
| 2 | Application for a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy on the basis of interstate endorsement or by acceptance of the certificate of the National Board of Medical Examiners of the United States of America, Inc., the National Board of Osteopathic Examiners or the Medical Council of Canada Licentiate Qualifying certificate. |

MEDICAL EXAMINERS BOARD[653](cont'd)

- 3 Resident physician's application for licensure.
- 4 Application for a temporary *Iowa medical* license.
- 5 Application for ~~determination of ineligibility for physicians applying to serve as supervising physician physicians or alternate supervising physicians~~ for physician assistants licensed pursuant to Iowa Code chapter 148C.
- 6 Application for reinstatement of a *lapsed Iowa medical* license to practice medicine and surgery.
- 7 Application for renewal of a medicine and surgery license.
- 8 Application for renewal of an osteopathic medicine and surgery license.
- 9 Application for renewal of an osteopathic license.
- 10 Application for renewal of a resident physician's license.
- 11 Rescinded IAB 8/22/90, effective 9/26/90.
- 12 Complaint form.
- 13 Report of continuing medical education.
- 14 Certificate of exemption from continuing education requirements.
- 15 Application for waiver of minimum education requirements due to disability or illness.
- 16 Application for a special *Iowa medical* license.

[Filed 10/4/96, effective 11/27/96]

[Published 10/23/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/96.

ARC 6810A

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3, 147.76, 272C.3, and 272C.5, the Iowa Board of Nursing hereby adopts amendments to 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.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 31, 1996, as **ARC 6603A**.

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

These amendments will become effective November 27, 1996.

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 adopted.

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.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:

NURSING BOARD[655](cont'd)

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.

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(4).~~ 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 655—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:

NURSING BOARD[655](cont'd)

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 practice 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.

[Filed 10/2/96, effective 11/27/96]

[Published 10/23/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/96.

ARC 6818A

TRANSPORTATION
DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on October 1, 1996, adopted amendments to Chapter 131, "Signing on Primary Roads," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the July 31, 1996, Iowa Administrative Bulletin as **ARC 6584A**.

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 identical to the ones published under Notice.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective November 27, 1996.

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. 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.

[Filed 10/4/96, effective 11/27/96]

[Published 10/23/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/23/96.

DELAY

| AGENCY | RULE | DELAY |
|-----------------------------------|--|--|
| Racing and Gaming Commission[491] | 10.6(2)“g”(3), second paragraph, [IAB 9/11/96, ARC 6706A] | Effective date of October 16, 1996, delayed until end of the 1997 General Assembly by the Administrative Rules Review Committee at its meeting held October 8, 1996. [Pursuant to §17A.8(9)] |

OBJECTION**ENVIRONMENTAL PROTECTION COMMISSION[567]**

At its September 10, 1996, meeting the Administrative Rules Review Committee voted to object to the termination of the proposed amendments to 567 IAC subrule 65.18(1) on the grounds the termination is arbitrary. It was the feeling of the committee members that the amendment was necessary to ensure the subrule itself was fairly and equally applied. This termination appears as ARC 6644A, published in IAB Vol. XIX, No. 4 (08-14-96); the original proposal was published as a notice of intended action in IAB Vol. XVIII, No. 17 (02-14-96).

The subrule itself provides that certain animal feeding operations with a weight capacity over 200,000 pounds first occupied after September 22, 1995, must develop manure management plans even though these facilities do not need construction permits. The proposed amendment would have extended this requirement to cover existing facilities which are expanded beyond the 200,000 floor. The committee members felt the amendment was necessary to correct the inherent unfairness of the existing rules. The members contended that new construction and the expansion of existing facilities should be treated similarly, since both types of facilities would pose similar problems concerning the disposal of animal waste.



State of Iowa Executive Department

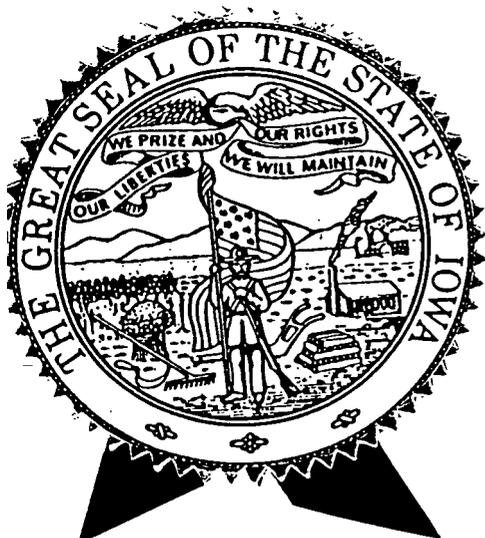
IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 59

- WHEREAS,** the Iowa General Assembly enacted and the Governor signed Senate File 2409 creating a new Workforce Development Department Governing Board; and
- WHEREAS,** the Workforce Development Department Governing Board has responsibility for developing and coordinating a five- and twenty-year plan for Iowa's workforce development system, including federal funds received, and including evaluation of the plans' goals and objectives; and
- WHEREAS,** the Workforce Development Council created by Executive Order Number 53 has similar duties and responsibilities to the Workforce Development Department Governing Board; and
- WHEREAS,** the Workforce Development Council has fulfilled all other duties and responsibilities assigned to it in Executive Order Number 53.
- NOW, THEREFORE,** I, Terry E. Branstad, Governor of the State of Iowa, by the power vested in me by the Laws and Constitution of the State of Iowa, do hereby order that:

- I. Executive Order Number 53 be rescinded.

- II. The Workforce Development Department Governing Board be assigned the responsibility of meeting the State of Iowa's requirement to establish a Human Resource Investment Council, in conformance with P.L. 102-367, the 1992 Amendments to the Job Training Partnership Act. If action is taken by Congress to change the membership requirements of the Human Resource Investment Council, the Governing Board shall have the responsibility to meet the new requirements.
- III. The Workforce Development Department shall provide the necessary support and assistance to the Workforce Development Department Governing Board.



ATTEST:

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 30th day of September in the year of our Lord one thousand nine hundred and ninety-six.

Terry E. Branstad

GOVERNOR

Paul P. Pate

SECRETARY OF STATE

IOWA ADMINISTRATIVE BULLETIN

Iowa State Printing Division
Grimes State Office Building
Des Moines, Iowa 50319

Bulk Rate
U S Postage
PAID
Des Moines Iowa
Permit No 1195
