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Pursuant to Iowa Code section 17A.6, the Iowa Administrative Code (IAC) is a loose-leaf publication containing all rules adopted and filed by state government agencies and an index to those rules. The IAC is organized by agencies and divided into chapters. Each agency that has been delegated rule-making authority by the Iowa General Assembly has been assigned an agency number which appears in each rule adopted by that agency as well as at the top of each page of the agency's rules.

The first volume of the IAC contains explanatory information under the following headings:

General Information about the IAC
Chapter 17A of the Iowa Code
Style and Format of Rules
Table of Rules Implementing Statutes
Uniform Rules on Agency Procedure

Replacement pages incorporating amendments to rules are published and distributed on a biweekly basis as the Iowa Administrative Code Supplement. Each page of rules reflects the date of its publication; and each chapter of rules concludes with a historic listing of the dates on which that chapter changed, including dates of filing with the Administrative Rules Coordinator, publication of Notice of Intended Action in the Iowa Administrative Bulletin, publication of the IAC Supplement, and effective date of the change.

INSTRUCTIONS

FOR

Updating Iowa Administrative Code
with Biweekly Supplement

NOTE: Please review the "Preface" for both the Iowa Administrative Code and Biweekly Supplement and follow carefully the updating instructions.

The boldface entries in the left-hand column of the updating instructions correspond to the tab sections in the IAC Binders.

Obsolete pages of IAC are listed in the column headed "Remove Old Pages." New and replacement pages in this Supplement are listed in the column headed "Insert New Pages." It is important to follow instructions in both columns.

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UPDATING INSTRUCTIONS
February 24, 1999, Biweekly Supplement

[Previous Supplement dated 2/10/99]

IOWA ADMINISTRATIVE CODE

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*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

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Environmental Protection Commission[567]	Ch 60, p. 1, 2	Ch 60, p. 1, 2
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UNIFORM RULES ON AGENCY PROCEDURE

The Uniform Rules on Agency Procedure, which were drafted in 1985*, have been amended by the Iowa Attorney General's office to comply with 1998 Iowa Acts, chapter 1202, effective July 1, 1999. The amendments were drafted by Elizabeth Osenbaugh, Julie Pottorff, Pam Griebel, Lucy Hardy, Dan Hart, and Libby Nelson and approved for publication by Governor Thomas J. Vilsack's Administrative Rules Coordinator, Brian Gentry.

*Note: Governor Terry E. Branstad appointed a nine-member task forte in the summer of 1985 to draft uniform rules on agency procedure suitable for adoption by all or most state agencies. The members of the task force were Arthur E. Bonfield, Chair, Barbara B. Burnett, Robert F. Holz, Jr., Kathryn L. Hove, Dennis J. Nagel, Elizabeth M. Osenbaugh, Julie F. Pottorff, Joseph A. Royce, and Ted Yanecek.

CHAPTER X
PETITIONS FOR RULE MAKING

Agency No.—X.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the agency at (designate office). A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten, or legibly hand-written in ink and must substantially conform to the following form:

(AGENCY NAME)

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule X.4(17A).

X.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

X.1(2) The agency may deny a petition because it does not substantially conform to the required form.

Agency No.—X.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

Agency No.—X.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to (designate official by full title and address).

Agency No.—X.4(17A) Agency consideration.

X.4(1) Within 14 days after the filing of a petition, the agency must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

X.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

X.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

CHAPTER X
DECLARATORY ORDERS

Agency No.—X.1(17A) Petition for declaratory order. Any person may file a petition with the (designate agency) for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the (designate agency), at (designate office). A petition is deemed filed when it is received by that office. The (designate agency) shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

(AGENCY NAME)

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by X.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

(An agency may wish to describe here a simplified alternative petition form that would be more appropriate for some members of its clientele in light of their particular circumstances.)

Agency No.—X.2(17A) Notice of petition. Within _____ days (15 or less) after receipt of a petition for a declaratory order, the (designate agency) shall give notice of the petition to all persons not served by the petitioner pursuant to X.6(17A) to whom notice is required by any provision of law. The (designate agency) may also give notice to any other persons.

Agency No.—X.3(17A) Intervention.

X.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within _____ days of the filing of a petition for declaratory order (after time for notice under X.2(17A) and before 30-day time for agency action under X.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

X.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of (designate agency).

X.3(3) A petition for intervention shall be filed at (designate office). Such a petition is deemed filed when it is received by that office. The (designate agency) will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

(AGENCY NAME)

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

(An agency may wish to describe here a simplified alternative petition for intervention form that would be more appropriate for some members of its clientele in light of their particular circumstances.)

Agency No.—X.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The (designate agency) may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

Agency No.—X.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to (designate official by full title and address).

Agency No.—X.6(17A) Service and filing of petitions and other papers.

X.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

X.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with (specify office and address). All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the (agency name).

X.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by (uniform rule on contested cases X.12(17A)).

Agency No.—X.7(17A) Consideration. Upon request by petitioner, the (designate agency) must schedule a brief and informal meeting between the original petitioner, all intervenors, and the (designate agency), a member of the (designate agency), or a member of the staff of the (designate agency), to discuss the questions raised. The (designate agency) may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the (designate agency) by any person.

(The agency may specify any provisions of Iowa Code sections 17A.10 through 17A.18 on contested case proceedings to apply to proceedings for declaratory orders.)

Agency No.—X.8(17A) Action on petition.

X.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the (designate agency head) or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

X.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in (contested case uniform rule X.2(17A)).

Agency No.—X.9(17A) Refusal to issue order.

X.9(1) The (designate agency) shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the (designate agency) to issue an order.
3. The (designate agency) does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the (designate agency) to determine whether a statute is unconstitutional on its face.

(Where the agency's experience enables it to define in advance other specific reasons for refusing to issue a declaratory ruling, it should include them here.)

X.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

X.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

Agency No.—X.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

Agency No.—X.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

Agency No.—X.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the (designate agency), the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory ruling serves only as precedent and is not binding on the (designate agency). The issuance of a declaratory order constitutes final agency action on the petition.

CHAPTER X
AGENCY PROCEDURE FOR RULE MAKING

Agency No.—X.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

Agency No.—X.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)"*a,*" solicit comments from the public on a subject matter of possible rule making by the agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

Agency No.—X.3(17A) Public rule-making docket.

X.3(1) *Docket maintained.* The agency shall maintain a current public rule-making docket.

X.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the (commission, board, council, director) for subsequent proposal under the provisions of Iowa Code section 17A.4(1)"*a,*" the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

X.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)"*a,*" to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule;

b. A citation to all published notices relating to the proceeding;

c. Where written submissions on the proposed rule may be inspected;

d. The time during which written submissions may be made;

e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;

f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;

g. The current status of the proposed rule and any agency determinations with respect thereto;

h. Any known timetable for agency decisions or other action in the proceeding;

i. The date of the rule's adoption;

j. The date of the rule's filing, indexing, and publication;

k. The date on which the rule will become effective; and

l. Where the rule-making record may be inspected.

Agency No.—X.4(17A) Notice of proposed rule making.

X.4(1) *Contents.* At least 35 days before the adoption of a rule the agency shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule;

b. The specific legal authority for the proposed rule;

c. Except to the extent impracticable, the text of the proposed rule;

d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

X.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule X.12(2) of this chapter.

X.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of (specify time period).

Agency No.—X.5(17A) Public participation.

X.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to (identify office and address) or the person designated in the Notice of Intended Action.

X.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

X.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The agency, a member of the agency, or another person designated by the agency who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

X.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

X.5(5) *Accessibility.* The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact (designate office and telephone number) in advance to arrange access or other needed services.

Agency No.—X.6(17A) Regulatory analysis.

X.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

X.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to (designate office). The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The agency may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

X.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

X.6(4) *Qualified requesters for regulatory analysis—economic impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a) after a proper request from:

a. The administrative rules coordinator;

b. The administrative rules review committee.

X.6(5) *Qualified requesters for regulatory analysis—business impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

a. The administrative rules review committee;

b. The administrative rules coordinator;

c. At least 25 or more persons who sign the request provided that each represents a different small business;

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

X.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

X.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

X.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

X.6(9) *Publication of a concise summary.* The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

X.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

X.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

Agency No.—X.7(17A,25B) Fiscal impact statement.

X.7(1) A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

X.7(2) If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

Agency No.—X.8(17A) Time and manner of rule adoption.

X.8(1) *Time of adoption.* The agency shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

X.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

X.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

Agency No.—X.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

X.9(1) The agency shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

X.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the agency shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

X.9(3) The agency shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

X.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

Agency No.—X.10(17A) Exemptions from public rule-making procedures.

X.10(1) *Omission of notice and comment.* To the extent the agency for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the agency may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

X.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them.)

X.10(3) *Public proceedings on rules adopted without them.* The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule X.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule X.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule X.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

Agency No.—X.11(17A) Concise statement of reasons.

X.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to (specify the office and address). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

X.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

X.11(3) *Time of issuance.* After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

Agency No.—X.12(17A) Contents, style, and form of rule.

X.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

a. The date the agency adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the agency in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the agency in its discretion decides to include such reasons; and

g. The effective date of the rule.

X.12(2) *Incorporation by reference.* The agency may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such matter by reference in a proposed or adopted rule only if the agency makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

X.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

X.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

Agency No.—X.13(17A) Agency rule-making record.

X.13(1) *Requirement.* The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

X.13(2) *Contents.* The agency rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the agency, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the (agency head), in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection;

**j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

X.13(3) *Effect of record.* Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

***X.13(4)** *Maintenance of record.* The agency shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in X.13(2), "g," "h," "i," or "j."

(Alternatively, the agency can maintain the file indefinitely.)

(*NOTE: Alternatively to X.13(2)"j" and the amendment to X.13(4), an agency could keep a separate file of significant written criticisms to rules and maintain those for five years.)

Agency No.—X.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

Agency No.—X.15(17A) Effectiveness of rules prior to publication.

X.15(1) *Grounds.* The agency may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

X.15(2) *Special notice.* When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule X.15(2).

Agency No.—X.16(17A) General statements of policy.

X.16(1) *Compilation, indexing, public inspection.* The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)*"a," "c," "f," "g," "h," "k."* Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)*"f,"* or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

X.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule X.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

Agency No.—X.17(17A) Review by agency of rules.

X.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

X.17(2) In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the agency's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

CHAPTER X
FAIR INFORMATION PRACTICES

Agency No.—X.1(17A,22) Definitions. As used in this chapter:

"Agency" in these rules means the (official or body issuing these rules).

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

"Custodian" in these rules means the agency, or a person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

"Open record" in these rules means a record other than a confidential record.

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

"Record" in these rules means the whole or a part of a "public record" as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

"Record system" in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

Agency No.—X.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

Agency No.—X.3(17A,22) Requests for access to records.

X.3(1) *Location of record.* A request for access to a record should be directed to the (insert agency head) or the particular agency office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to (insert agency name and address). If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

X.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are (insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4).

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

X.3(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

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

X.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

X.3(6) *Copying.* A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

X.3(7) *Fees.*

a. When charged. The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of (specify time period). The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. (An agency wishing to deal with search fees authorized by law should do so here.)

d. Advance deposits.

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

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

Agency No.—X.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule X.3(17A,22).

X.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

X.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

X.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

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

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

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

X.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

Agency No.—X.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

X.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

X.5(2) *Request.* A request that a record by treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

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

X.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

X.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

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

X.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

Agency No.—X.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to (designate office). The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

Agency No.—X.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

Agency No.—X.8(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. (Each agency should revise its forms to provide this information.)

CHAPTER X
CONTESTED CASES

The Governor's Task Force has developed this set of contested case rules to serve as a model for state agencies. Although the wide variety of statutory hearings may preclude the adoption of all of these rules by every agency to cover every hearing, the goal of the Task Force is to develop rules which can serve as a model for most agency hearings.

Each agency would designate the appropriate entity or time period in lieu of the language marked by parentheses. For example, wherever the word "agency" or phrase "board, commission, director" appears in the draft rules, the agency would need to carefully consider whether the rule should designate a particular entity within the agency. In the rules governing interagency appeals, the agency should generally substitute the entity designated by statute as having final decision-making authority in a contested case for the parenthetical phrase "board, commission, director."

Agency No.—X.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the (agency name).

Agency No.—X.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the (designate official).

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the (agency name) did not preside.

Agency No.—X.3(17A) Time requirements.

X.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

X.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by (specify rule number). Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

Agency No.—X.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

Agency No.—X.5(17A) Notice of hearing.

X.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure; or

e. (other options).

X.5(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule X.6(17A), that the presiding officer be an administrative law judge.

Agency No.—X.6(17A) Presiding officer.

X.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days (or such other time period the agency designates) after service of a notice of hearing which identifies or describes the presiding officer as the agency head or members of the agency.

X.6(2) The agency (or its designee) may deny the request only upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge with the qualifications identified in subrule X.6(4) is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

i. (The agency may specify other good cause by rule.)

X.6(3) The agency (or its designee) shall issue a written ruling specifying the grounds for its decision within 20 days (or such other time period the agency designates) after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule X.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

X.6(4) An administrative law judge assigned to act as presiding officer in (agency specifies class of contested case) shall have the following technical expertness unless waived by the agency.

(Agency to list qualifications, such as specialized training, certifications, degrees or licenses reasonably required to provide the requisite technical expertness. A different paragraph should be included for each class of contested case in which technical expertness is required.)

X.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

X.6(6) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

Agency No.—X.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

Agency No.—X.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

Agency No.—X.9(17A) Disqualification.

X.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

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

X.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules X.9(3) and X.23(9).

X.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

X.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule X.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule X.25(17A) and seek a stay under rule X.29(17A).

Agency No.—X.10(17A) Consolidation—severance.

X.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

X.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

Agency No.—X.11(17A) Pleadings.

X.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

X.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

X.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

X.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

Agency No.—X.12(17A) Service and filing of pleadings and other papers.

X.12(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

X.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

X.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with (specify office and address). All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the (agency name).

X.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the (designate office), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

X.12(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

Agency No.—X.13(17A) Discovery.

X.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

X.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule X.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

X.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

Agency No.—X.14(17A) Subpoenas.

X.14(1) *Issuance.*

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

X.14(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

Agency No.—X.15(17A) Motions.

X.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

X.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

X.15(3) The presiding officer may schedule oral argument on any motion.

X.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days (or other time period designated by the agency) prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

X.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least (45 days) prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within (15 days), unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than (20 days) after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to X.28(17A) and appeal pursuant to X.27(17A).

Agency No.—X.16(17A) Prehearing conference.

X.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days (or other time period designated by the agency) prior to the hearing date. A prehearing conference shall be scheduled not less than three business days (or other time period designated by the agency) prior to the hearing date.

Written notice of the prehearing conference shall be given by the (designate office) to all parties. For good cause the presiding officer may permit variances from this rule.

X.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

X.16(3) In addition to the requirements of subrule X.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

X.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

Agency No.—X.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

X.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days (or other time period designated by the agency) before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

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

X.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;
f. Any applicable time requirements;
g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
h. The timeliness of the request; and
i. Other relevant factors.

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

Agency No.—X.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

Agency No.—X.19(17A) Intervention.

X.19(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

X.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

X.19(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

X.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

Agency No.—X.20(17A) Hearing procedures.

X.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

X.20(2) All objections shall be timely made and stated on the record.

X.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

X.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

X.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

X.20(6) Witnesses may be sequestered during the hearing.

X.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

Agency No.—X.21(17A) Evidence.

X.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

X.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

X.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

X.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

X.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

X.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

Agency No.—X.22(17A) Default.

X.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

X.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

X.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days (or other period of time specified by statute or rule) after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule X.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

X.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

X.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days (or other time specified by the agency) to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

X.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

X.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule X.25(17A).

X.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

X.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

X.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule X.29(17A).

Agency No.—X.23(17A) Ex parte communication.

X.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule X.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

X.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

X.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

X.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule X.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

X.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

X.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule X.23(1).

X.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule X.17(17A).

X.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

X.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

X.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to (agency to designate person to whom violations should be reported) for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

Agency No.—X.24(17A) Recording costs. Upon request, the (agency name) shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

Agency No.—X.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the (board, commission, director) may review an interlocutory order (of the presiding officer). In determining whether to do so, the (board, commission, director) shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days (or other time period designated by the agency) of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

Agency No.—X.26(17A) Final decision.

X.26(1) When (the agency) (or a quorum of the agency) presides over the reception of evidence at the hearing, its decision is a final decision.

X.26(2) When the (agency name) does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the (agency name) within the time provided in rule X.27(17A).

Agency No.—X.27(17A) Appeals and review.

X.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the (board, commission, director) within 30 days (or other time period designated by the agency) after issuance of the proposed decision.

X.27(2) *Review.* The (board, commission, director) may initiate review of a proposed decision on its own motion at any time within 30 days (or other time period designated by the agency) following the issuance of such a decision.

X.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the (agency name). The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

X.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days (or other time period designated by the agency) of service of the notice of appeal. The (board, commission, director) may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

X.27(5) *Scheduling.* The (agency name) shall issue a schedule for consideration of the appeal.

X.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days (or other time period designated by the agency) of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter (or other time period designated by the agency), any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The (board, commission, director) may resolve the appeal on the briefs or provide an opportunity for oral argument. The (board, commission, director) may shorten or extend the briefing period as appropriate.

Agency No.—X.28(17A) Applications for rehearing.

X.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

X.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule X.27(4), the applicant requests an opportunity to submit additional evidence.

X.28(3) *Time of filing.* The application shall be filed with the (agency name) within 20 days after issuance of the final decision.

X.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the (agency name) shall serve copies on all parties.

X.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

Agency No.—X.29(17A) Stays of agency actions.

X.29(1) *When available.*

a. Any party to a contested case proceeding may petition the (agency name) for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The (board, commission, director) may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the (agency name) for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

X.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or (board, commission, director, as appropriate) shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

X.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the (agency name) or any other party.

Agency No.—X.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

Agency No.—X.31(17A) Emergency adjudicative proceedings.

X.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

X.31(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the agency's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the agency;

(3) Certified mail to the last address on file with the agency;

(4) First-class mail to the last address on file with the agency; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

X.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

X.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

g. (1) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed 24 months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance.

(2) If such suspension occurs and if the policyholder or certificate holder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstituted (effective as of the date of termination of such entitlement) as of the termination of such entitlement if the policyholder or certificate holder provides notice of loss of such entitlement within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.

(3) Reinstitution of such coverages:

1. Shall not provide for any waiting period with respect to treatment of preexisting conditions;
2. Shall provide for coverage which is substantially equivalent to coverage in effect before the date of such suspension; and
3. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

37.7(2) *Standards for Basic ("Core") Benefits Common to All Benefit Plans.* Every issuer shall make available a policy or certificate including only the following basic "Core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic "Core" package, but not in lieu thereof.

a. Coverage of Part A Medicare Eligible Expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period;

b. Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

c. Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A Eligible Expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

d. Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

e. Coverage for the coinsurance amount or in the case of hospital outpatient department services under a prospective payment system, the copayment amount of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

37.7(3) *Standards for Additional Benefits.* The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by 37.8(514D).

a. Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

b. Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A;

c. Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

d. Eighty percent of the Medicare Part B Excess Charges: Coverage for 80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

e. One hundred percent of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

f. Basic Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year to the extent not covered by Medicare.

g. Extended Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

h. Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250 and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

i. Preventive Medical Care Benefit: Coverage for the following preventive health services:

(1) An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph (2) and patient education to address preventive health care measures.

(2) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

1. Fecal occult blood test or digital rectal examination, or both;
2. Mammogram;
3. Dipstick urinalysis for hematuria, bacteriuria and proteinuria;
4. Pure tone (air only) hearing screening test, administered or ordered by a physician;
5. Serum cholesterol screening (every five years);
6. Thyroid function test;
7. Diabetes screening.

(3) Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster (every ten years).

(4) Any other tests or preventive measures determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

j. At-Home Recovery Benefit: Coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(1) For purposes of this benefit, the following definitions shall apply:

1. "Activities of daily living" include, but are not limited to, bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.
2. "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.
3. "Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.
4. "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive 4 hours in a 24-hour period of services provided by a care provider is one visit.

37.9(9) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

a. An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(1) Other Medicare supplement policies or certificates offered by the issuer; and

(2) Other Medicare Select policies or certificates.

b. A description (including address, telephone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

c. A description of the restricted network provisions, including payments for coinsurance and deductibles, when providers other than network providers are utilized.

d. A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

e. A description of limitations on referrals to restricted network providers and to other providers.

f. A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

g. A description of the Medicare Select issuer's quality assurance program and grievance procedure.

37.9(10) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to 37.9(9) and that the applicant understands the restrictions of the Medicare Select policy or certificate.

37.9(11) A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. Such procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

a. The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

b. At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

c. Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.

d. If a grievance is found to be valid, corrective action shall be taken promptly.

e. All concerned parties shall be notified about the results of a grievance.

f. The issuer shall report no later than each March 31 to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

37.9(12) At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

37.9(13) *a.* At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

b. For the purposes of this subrule, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

37.9(14) Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select program to be reauthorized under law or its substantial amendment.

a. Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies and certificates available without requiring evidence of insurability.

b. For the purposes of this subrule, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

37.9(15) A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select program.

191—37.10(514D) Open enrollment.

37.10(1) No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subrule without regard to age.

37.10(2) If an applicant under subrule 37.10(1) submits an application during the time period referenced in subrule 37.10(1) and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

If the applicant qualifies under subrule 37.10(1) and submits an application during the time period referenced in subrule 37.10(1) and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The secretary shall specify the manner of the reduction under this subrule.

37.10(3) Except as provided in 37.21(514D), subrule 37.10(1) shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

191—37.11(514D) Standards for claims payment.

37.11(1) An issuer shall comply with Section 1882(c)(3) of the Social Security Act (as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Pub. L. No. 100-203) by:

a. Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

b. Notifying the participating physician or supplier and the beneficiary of the payment determination;

c. Paying the participating physician or supplier directly;

d. Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

e. Paying user fees for claim notices that are transmitted electronically or otherwise; and

f. Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

37.11(2) Compliance with the requirements set forth in 37.11(1) shall be certified on the Medicare supplement insurance experience reporting form.

37.15(2) Notice requirements.

a. As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner.

(1) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

(2) Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

b. The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

c. Such notices shall not contain or be accompanied by any solicitation.

37.15(3) Outline of coverage requirements for Medicare supplement policies.

a. Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of such outline from the applicant; and

b. If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12-point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

c. The outline of coverage provided to applicants pursuant to this subrule consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than 12-point type. All plans "A" to "J" shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

d. The following items shall be included in the outline of coverage in the order prescribed below.

[Company Name]
Outline of Medicare Supplement Coverage—Cover page:
Benefit Plans _____ [insert letters of plans being offered]

Medicare supplement insurance can be sold in only ten standardized plans plus two high deductible plans. The chart shows the benefits in each plan. Every company must make available Plan "A." Some plans may not be available in Iowa.

BASIC BENEFITS: Included in All Plans.
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses or, in the case of hospital outpatient department services under a prospective payment system, applicable copayments).
Blood: First three pints of blood each year.

A	B	C	D	E	F	F*	G	H	I	J	J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits		Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	
		Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance		Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible		Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	
		Part B Deductible			Part B Deductible					Part B Deductible	
					Part B Excess (100%)		Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)	
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	
			At-Home Recovery				At-Home Recovery		At-Home Recovery	At-Home Recovery	
								Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)	
				Preventive Care						Preventive Care	

*Plans F and J also have an option called a high deductible Plan F and a high deductible Plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year [$1,500] deductible. Benefits from high deductible Plans F and J will not begin until out-of-pocket expenses are [$1,500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but do not include, in Plan J, the plan's separate prescription drug deductible or, in Plans F and J, the plan's separate foreign travel emergency deductible.

191—37.24(514D) Guaranteed issue for eligible persons.

37.24(1) Eligible persons are those individuals described in subrule 37.24(2) who apply to enroll under the policy not later than 63 days after the date of the termination of enrollment described in subrule 37.24(2), and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subrule 37.24(3) that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

37.24(2) An eligible person is an individual described in any of the following paragraphs:

a. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide some or all such supplemental health benefits to the individual;

b. The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under Part C of Medicare, and any of the following circumstances apply:

"(1) The organization's or plan's certification [under this part] has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

"(2) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area;

"(3) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

"1. The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

"2. The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

"(4) The individual meets such other exceptional conditions as the Secretary may provide."

c. The individual is enrolled with:

(1) An eligible organization under a contract under Section 1876 (Medicare risk or cost); or

(2) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; or

(3) An organization under an agreement under Section 1833(a)(1)(A) (Health care prepayment plan); or

(4) An organization under a Medicare Select policy; and

(5) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph 37.24(2)"*b.*"

d. The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(1) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

Of other involuntary termination of coverage or enrollment under the policy;

(2) The issuer of the policy substantially violated a material provision of the policy; or

(3) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

e.(1)The individual was enrolled under a Medicare supplement policy and terminated enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under Part C of Medicare, any eligible organization under a contract under Section 1876 (Medicare risk or cost), any similar organization operating under demonstration project authority, an organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and

(2) The subsequent enrollment under subparagraph *"e"*(1) terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act); or

f. The individual, upon first becoming enrolled for benefits under Part B of Medicare at age 65 or older enrolls in a Medicare+Choice plan under Part C of Medicare, and disenrolls from the plan by not later than 12 months after the effective date of enrollment.

37.24(3) Products to which eligible persons are entitled. The Medicare supplement policy to which eligible persons are entitled under:

a. Subrule 37.24(2), paragraphs *"a," "b," "c,"* and *"d,"* is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

b. Paragraph 37.24(2)*"e"* is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in paragraph 37.24(3)*"a."*

c. Paragraph 37.24(2)*"f"* shall include any Medicare supplement policy offered by any issuer.

37.24(4) Notification provisions.

a. At the time of an event described in subrule 37.24(2) because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this subrule, and of the obligations of issuers of Medicare supplement policies under subrule 37.24(1). Such notice shall be communicated contemporaneously with the notification of termination.

b. At the time of an event described in subrule 37.24(2) because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this subrule, and of the obligations of issuers of Medicare supplement policies under subrule 37.24(1). Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

These rules are intended to implement Iowa Code chapter 514D.

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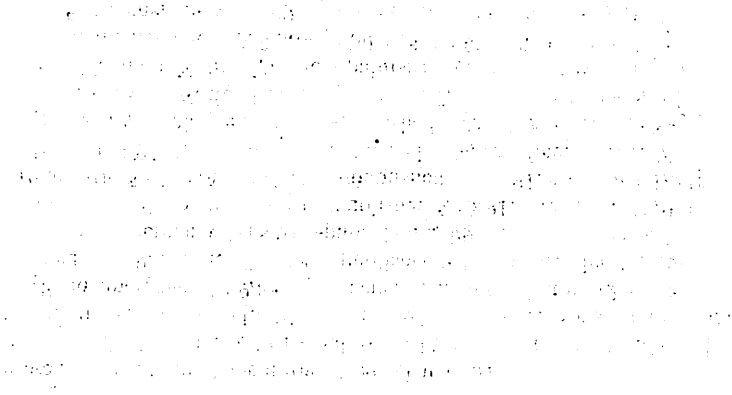
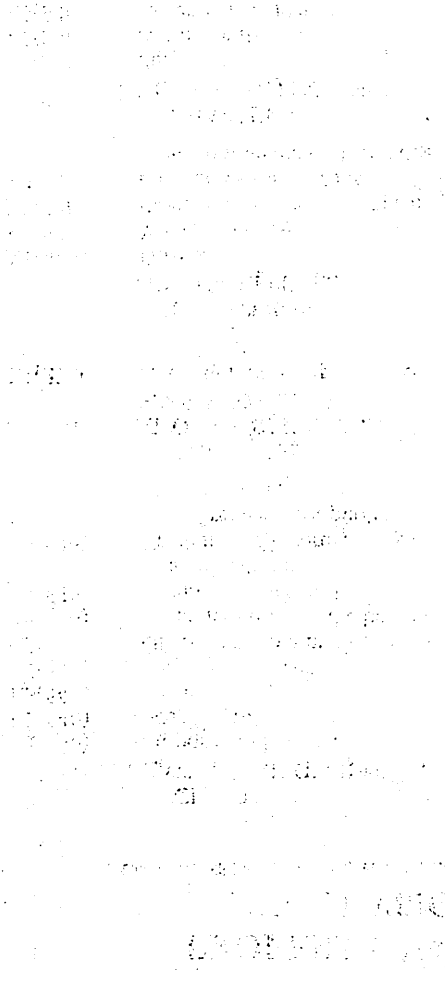
*Effective date of 12/31/81 delayed 70 days by Administrative Rules Review Committee.



PROFESSIONAL LICENSING AND REGULATION DIVISION[193]

Created by 1986 Iowa Acts, Chapter 1245, under the "umbrella" of the Department of Commerce[181]



CHAPTER 1
ORGANIZATION AND OPERATION

193—1.1(546) Purpose of chapter 1. This chapter describes the organization and operation of the professional licensing and regulation division (hereinafter referred to as the "division"), including the office where, and the means by which, any interested person may obtain public information and make submittals or requests.

193—1.2(546) Scope of rules. The rules for the division are promulgated under Iowa Code chapter 17A and section 546.10, and shall apply to all matters before the division. No rule shall, in any way, relieve a person affected by or subject to these rules, or any person affected by or subject to the rules promulgated by the various boards of the division from any duty under the laws of this state.

193—1.3(546) Definitions.

"Administrator" means the administrator of professional licensing and regulation, the chief administrative officer of the professional licensing and regulation division of the department of commerce.

"Board" means an examining board within the professional licensing and regulation division.

"Department" means the department of commerce.

"Division" means the professional licensing and regulation division of the department of commerce.

"Person" means an individual, corporation, partnership, association, professional corporation, licensee, certificate holder, or registrant.

"Staff" means employees assigned to the professional licensing and regulation division.

193—1.4(546) Purpose of division. The division exists to coordinate the administrative support for the following six professional licensing boards:

1.4(1) The engineering and land surveying examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of four professional engineers, one land surveyor, and two public members. The board administers Iowa Code chapter 542B, Professional Engineers and Land Surveyors, and board rules published under agency number [193C]—Chapters 1 to 7, Iowa Administrative Code.

1.4(2) The accountancy examining board is an eight-member board, appointed by the governor and confirmed by the senate. The board is composed of five certified public accountants, two public members, and one licensed accounting practitioner. The board administers Iowa Code chapter 542C, Public Accountants, and board rules published under agency number [193A]—Chapters 1 to 18, Iowa Administrative Code.

1.4(3) The real estate commission is a five-member commission appointed by the governor and confirmed by the senate. It is composed of three members licensed under Iowa Code chapter 543B and two public members. The commission administers Iowa Code chapters 543B, Real Estate Brokers and Salespersons; 543C, Sales of Subdivided Land Outside of Iowa; 557A, Time-Share Act; and commission rules published under agency number [193E]—Chapters 1 to 7, Iowa Administrative Code.

1.4(4) The architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered architects and two public members. The board administers Iowa Code chapter 544A, Registered Architects, and board rules published under agency number [193B]—Chapters 1 to 9, Iowa Administrative Code.

1.4(5) The landscape architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered landscape architects and two public members. The board administers Iowa Code chapter 544B, Landscape Architects, and board rules published under agency number [193D]—Chapters 1 to 7, Iowa Administrative Code.

1.4(6) The real estate appraiser examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five certified real estate appraisers and two public members. The board administers Iowa Code chapter 543D, Real Estate Appraisals and Appraisers, and board rules published under agency number [193F]—Chapters 1 to 11, Iowa Administrative Code.

193—1.5(546) Offices and communications. Correspondence and communications with the division or the boards in the division shall be addressed or directed to their offices at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Each of the boards may be contacted through the division telephone number (515)281-5602.

193—1.6(546) Responsibilities of the boards. Each of the boards in the division retains the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters. Each board shall adopt rules pursuant to Iowa Code chapter 17A. Decisions by each board are final agency actions for purposes of chapter 17A.

193—1.7(546) Responsibilities of the administrator.

1.7(1) To make rules pursuant to Iowa Code chapter 17A to implement division duties except to the extent that rule-making authority is vested in the boards in the division.

1.7(2) To carry out policy making and enforcement duties assigned to the division under the law.

1.7(3) To hire, allocate, develop, and supervise members of the staff employed to perform the duties assigned to the division and the boards in the division.

1.7(4) To coordinate the development of an annual budget for the division and the boards in the division.

1.7(5) To supervise and direct personnel and other resources to accomplish duties assigned to the division by law.

1.7(6) To authorize expenditures from any appropriation or trust fund established on behalf of the division.

1.7(7) Except to the extent that decision-making authority is vested in the boards in the division or other body, decisions of the administrator are final agency actions pursuant to chapter 17A.

1.7(8) Except to the extent otherwise vested in the boards in the division, the administrator has the authority to establish fees assessed to the regulated industry.

193—1.8(546) Custodian of records, filings, and requests for public information. Unless otherwise specified by the rules of the boards in the division, the division is the principal custodian of its own divisional orders, statements of law or policy issued by the division, legal documents, and other public documents on file with the division.

Any interested party may examine all public records promulgated or maintained by the division at its offices during regular business hours. The offices of the division and the boards in the division are open from 8 a.m. until 4:30 p.m. Monday through Friday. The offices are closed Saturdays, Sundays, and official state holidays.

These rules are intended to implement Iowa Code section 546.10.

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[Filed 2/4/99, Notice 12/30/98—published 2/24/99, effective 3/31/99]

CHAPTER 4
PROOF OF LEGAL PRESENCE

193—4.1(546) Purpose. This chapter outlines a uniform process for applicants and licensees of all boards in the division to establish proof of legal presence pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C.1621).

193—4.2(546) Applicability.

4.2(1) After July 1, 1999, applicants and licensees who are U.S. citizens or permanent resident aliens shall produce evidence of their lawful presence in the United States as a condition of initial licensure or license renewal. Submission of evidence to the division will be required once. Acceptable evidence (List A) is outlined in subrule 4.3(1).

4.2(2) After July 1, 1999, applicants and licensees residing in the United States, other than those described in subrule 4.2(1) above, shall provide evidence of lawful presence in the United States at the time of initial licensure and with every subsequent renewal. Acceptable evidence (List B) is outlined in subrule 4.3(2).

4.2(3) Evidence shall not be required by foreign national applicants or licensees who are not physically present in the United States.

193—4.3(546) Acceptable evidence. The division shall accept as proof of lawful presence in the United States documents outlined in Lists A and B below. The division will not routinely retain the evidence sent and will not return the evidence once submitted. Documents may be retained in computer "imaged" format. Legible copies will be accepted. Original documents will not be required unless a question arises concerning the documentation submitted.

4.3(1) *List A—acceptable documents to establish U.S. citizenship.*

a. A copy of a birth certificate issued in or by a city, county, state, or other governmental entity within the United States or its outlying possessions.

b. U.S. Certificate of Birth Abroad (FS-545, DS-135) or a Report of Birth Abroad of U.S. Citizen (FS-240).

c. A birth certificate or passport issued from:

1. Puerto Rico, on or after January 13, 1941.
2. Guam, on or after April 10, 1989.
3. U.S. Virgin Islands, on or after February 12, 1927.
4. Northern Mariana Islands after November 4, 1986.
5. American Samoa.
6. Swain's Island.
7. District of Columbia.

d. A U.S. passport (expired or unexpired).

e. Certificate of Naturalization (N-550, N-57, N-578).

f. Certificate of Citizenship (N-560, N-561, N-645).

g. U.S. Citizen Identification Card (I-79, I-197).

h. An individual Fee Register Receipt (Form G-711) that shows that the person has filed an application for a New Naturalization or Citizenship Paper (Form N-565).

i. Any other acceptable document which establishes a U.S. place of birth or indicates U.S. citizenship.

4.3(2) *List B—acceptable documents to establish alien status.*

a. An alien lawfully admitted for permanent residence under the Immigration and Naturalization Act (INA). Evidence includes:

1. INS Form I-551 (Alien Registration Receipt Card commonly known as a "green card"); or
2. Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94.

b. An alien who is granted asylum under Section 208 of the INA. Evidence includes:

1. INS Form I-94 annotated with stamp showing grant of asylum under Section 208 of the INA.
2. INS Form I-668B (Employment Authorization Card) annotated "274a.12(a)(5)."
3. INS Form I-776 (Employment Authorization Document) annotated "A5."
4. Grant Letter from the Asylum Office of INS.
5. Order of an immigration judge granting asylum.

c. A refugee admitted to the United States under Section 207 of INA. Evidence includes:

1. INS Form I-94 annotated with stamp showing admission under Section 207 of the INA.
2. INS Form I-668B (Employment Authorization Card) annotated "274a.12(a)(3)."
3. INS Form I-766 (Employment Authorization Document) annotated "A3."
4. INS Form I-571 (Refugee Travel Document).

d. An alien paroled into the United States for at least one year under Section 212(d)(5) of the INA. Evidence includes INS Form I-94 with stamp showing admission for at least one year under Section 212(d)(5) of the INA.

e. An alien whose deportation is being withheld under Section 243(h) of the INA (as in effect immediately prior to September 30, 1996) or Section 241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-2-8). Evidence includes:

1. INS Form I-668 (Employment Authorization Card) annotated "271a.12(a)(10)."
2. INS Form I-766 (Employment Authorization Document) annotated "A10."
3. Order from an immigration judge showing deportation withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of the INA.

f. An alien who is granted conditional entry under Section 203(a)(7) of the INA as in effect prior to April 1, 1980. Evidence includes:

1. INS Form I-94 with stamp showing admission under Section 203(a)(7) of the INA.
2. INS Form I-668 (Employment Authorization Card) annotated "274a.12(a)(3)."
3. INS Form I-776 (Employment Authorization Document) annotated "A3."

g. An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980). Evidence includes:

1. INS Form I-551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, or CH6.
2. Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with code CU6 or CU7.
3. INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" under Section 212(d)(5) of the INA.

h. An alien paroled into the United States for less than one year under Section 212(d)(5) of the INA. Evidence includes INS Form I-94 showing this status.

i. An alien who has been declared a battered alien. Evidence includes INS petition and supporting documentation.

j. Any other documentation acceptable under the INA.

These rules are intended to implement Iowa Code chapter 546.

[Filed 2/4/99, Notice 12/30/98—published 2/24/99, effective 3/31/99]

COMMUNITY ACTION AGENCIES DIVISION[427]

Created by Iowa Code chapter 216A, under the "umbrella" of Department of Human Rights[421]

CHAPTER 22
COMMUNITY SERVICES BLOCK GRANT

CHAPTER 23
EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

CHAPTER 24
COMMUNITY SERVICES BLOCK GRANT
FLOOD RELIEF PROGRAM

CHAPTER 1
Reserved

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

427—2.1(22) Adoption by reference. The commission adopts by reference 421—Chapter 2, Iowa Administrative Code.

427—2.2(22) Custodian of records. The custodian for the records maintained by this division is the division administrator.

These rules are intended to implement Iowa Code chapters 17A, 22, and 216A.

[Filed emergency 8/19/88 after Notice 5/18/88—published 9/7/88, effective 8/19/88]

CHAPTERS 3 and 4
Reserved

CHAPTER 5
WEATHERIZATION ASSISTANCE PROGRAM
[For rules on Weatherization prior to 9/24/86, see 380—Ch15 and 630—Ch19]

427—5.1(216A) Purpose. Pursuant to a grant from the Department of Energy (DOE), Part A, 42 U.S.C. 6861-6870 of Title IV of the Energy Conservation and Production Act, Public Law 94-385, Title IV, Part A, as amended by Public Law 95-619, 10 Code of Federal Regulations (CFR), Part 440, Title XXVI of the Omnibus Budget Reconciliation Act (Public Law 98-558), and Iowa Code section 216A.99, the Department of Human Rights, Division of Community Action Agencies, will administer the weatherization assistance program.

The purpose of the program is to assist in achieving a healthful dwelling environment and maximum practicable energy conservation in the dwellings of low-income persons, particularly those of elderly and handicapped persons, in order to both aid those persons least able to afford higher utility costs and to conserve needed energy.

427—5.2(216A) Eligible households. All households assisted by this program must meet income eligibility requirements.

5.2(1) Only households with incomes no higher than 150 percent of the poverty guidelines determined in accordance with criteria established by the director of the office of management and budget (OMB) may be assisted by the programs.

5.2(2) Both owner-occupied and renter-occupied dwellings may be weatherized. However, in the latter case, rental units occupied by low-income residents shall be weatherized providing benefits accrue primarily to the low-income tenants, rents are not raised because of the weatherization, and no undue or excessive enhancement occurs to the value of the dwelling unit.

5.2(3) Further program criteria is contained in the Iowa state plan for the weatherization assistance program, which is incorporated by reference as part of these rules. This document, as well as delegate agreements and reporting forms, is available at the Department of Human Rights, Division of Community Action Agencies, Lucas State Office Building, Des Moines, Iowa 50319, and is available for public inspection between the hours of 8 a.m. and 4:30 p.m. Monday to Friday. Copies of these documents and forms may be obtained at cost by contacting the Department of Human Rights at the above address, telephone (515)281-4204.

427—5.3(216A) Local administering agencies (LAA). The department of human rights, division of community action agencies, shall administer this program by utilizing community action agencies (CAAs), their approved subcontractors, or other public or nonprofit entities that have shown the ability or have the capacity to undertake a timely and effective weatherization program.

Funds shall be used for the purchase of weatherization materials, e.g., insulation, storm windows, caulking, weatherstripping and other related items; training and technical assistance; administration; and supportive services.

LAAs will be required to sign a contractual agreement which specifies allowable program activities, regulations and special conditions, participant forms and audit requirements.

427—5.4(216A) Appeal and hearing procedure. The following appeal and hearing procedure shall be used:

5.4(1) When an applicant is denied assistance or wishes to file a complaint about the quality or extent of work performed, the applicant has 90 days from the date of the denial letter or completion of the work to appeal that decision by mailing or delivering the request for appeal to the local administering agency (LAA).

5.4(2) If the LAA neither approves nor denies a complete application within 90 calendar days of receipt, the applicant may treat the failure to act as a denial. The applicant then has 30 additional calendar days to appeal.

5.4(3) To appeal, the applicant (claimant) must contact the agency at which the application was made and tell the agency of the wish to appeal, what action the applicant would like taken, and any other information which might affect the decision. All appeals must be in writing. Those claimants unable to read or write shall have the LAA assist them in reading, writing or understanding appeals, hearings and their associated procedures.

5.4(4) The LAA will act on the claimant's request and notify the claimant of the result in writing within seven calendar days of the date an appeal was requested (postmark date if sent in mail).

5.4(5) If the claimant does not agree with the decision reached, the claimant may write the LAA again within 17 calendar days of the decision (postmark date if sent in mail) and request that a state hearing be held. The claimant must explain in writing why the agency's decision is being appealed and include any information which might affect the decision.

5.4(6) Within seven calendar days (postmark date if sent by mail) the LAA will forward all information concerning the request for hearing to the state, and a hearing will be scheduled. The claimant will receive written notice of a state-scheduled hearing from the director of the department of human rights, division of community action agencies. The notice will include the date, time and place of the hearing. State hearings may be held by telephone at a mutually convenient time. Prior to the hearing the agency will provide an opportunity for the claimant to review the case file and any written evidence that will be used in the hearing. An informal conference with the director or appropriate state staff personnel may be requested for the purpose of discussing actions taken and resolving the issues raised in the request for hearing.

427—5.5(216A) Public information. All parties interested in further information concerning the weatherization assistance program should contact the Department of Human Rights, Division of Community Action Agencies, Lucas State Office Building, Des Moines, Iowa 50319, telephone (515)281-4204.

Income guidelines, contractual agreements, application and reporting forms are on file at the above address and available for public inspection between the hours of 8 a.m. to 4:30 p.m., Monday to Friday.

427—5.6(216A) Payments.

5.6(1) *Duplicate and fraudulent payment control.* Each LAA is required to provide a system to monitor and prevent possible duplicate and other fraudulent applications and payments. Duplication cross-checks shall be based on household members' names, addresses and social security numbers.

5.6(2) *Referrals.* Each LAA is required to refer all suspected cases of fraud, including duplicate payments and fraudulent statements on applications, to the DHR/DCAA for investigation.

5.6(3) *Overpayments.* If the DHR/DCAA receives information from an LAA or from any source that an overpayment has occurred because of client error, client fraud, client misrepresentation or agency error, the DHR/DCAA may refer the overpayment to the department of inspections and appeals (DIA) for investigation and collection in accordance with the procedures under 481 IAC 71.

These rules are intended to implement Part A, 42 U.S.C. 6861-6870 of Title IV of the Energy Conservation and Production Act, Public Law 94-385,90 Statute 1125 et seq., and Iowa Code section 216A.99.

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NOTE: See Energy Policy Council[380], Chapter 15, prior to 9/24/86

CHAPTERS 6 to 9
Reserved

CHAPTER 10
LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

[Prior to 9/24/86, Energy Policy Council[380] Ch 14]

427—10.1(216A,PL97-35,PL98-558) Purpose. Pursuant to the requirements of the Department of Health and Human Services (DHHS) and the Social Security Administration (SSA), as set forth in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, PL 97-35 as amended by PL 98-558, and Iowa Code section 216A.92, the department of human rights, division of community action agencies (DHR, CAA), will administer the low-income home energy assistance program (LIHEAP).

LIHEAP is designed to aid qualifying low-income Iowa households (homeowners and renters) in the payment of a portion of their residential heating costs for the winter heating season, to encourage regular utility payments, to promote energy awareness and to encourage reduction of energy usage through energy efficiency, client education, and weatherization.

427—10.2(216A,PL97-35,PL98-558) Program criteria.

10.2(1) Households with incomes at or below the annually determined guidelines, but not to exceed 150 percent of the Office of Management and Budget's federal poverty income guidelines, revisions of which are published annually in the Federal Register, may be eligible for assistance under LIHEAP. To receive benefits, an application must be made, eligibility determined, and program funds available before any payments may be made.

10.2(2) All payments are contingent upon the availability of federal funds.

10.2(3) The amount of assistance a household may receive depends upon available funding,total household income, household size, dwelling type, type of primary heating fuel the household uses, other targeting factors enumerated in the payment matrix, and whether a household qualifies for a crisis assistance award as described in 10.14(216A,PL97-35,PL98-558) in addition to the basic energy assistance payment.

10.2(4) Residents of publicly assisted housing units who are not billed directly for their primary heating source by a utility company and whose rent is established as a percentage of their income are not eligible for assistance.

10.2(5) All clients applying for this program will simultaneously be making application for weatherization assistance, and 427—Chapter 5 shall govern such weatherization applications.

10.2(6) Both owner-occupied and renter-occupied households will be assisted.

427—10.3(216A,PL97-35,PL98-558) Local administering agencies.

10.3(1) The department of human rights shall administer the LIHEAP program by contracting with local administering agencies (LAAs) meeting program and fiscal guidelines as required by federal law.

10.3(2) Outreach activities. The LAAs will be required to sign a contract which specifies required and allowable program activities, including Department of Health and Human Services regulations, special conditions, transfer of electronic data to fuel vendors and the state, program and fiscal reporting to department of human rights, and audit requirements.

10.3(3) Each LAA will ensure that eligible households are made aware of this program. In addition to its normal outreach functions, each LAA will authorize its workers to take applications in a potential client's home as well as at local community, church, and elderly centers. The program is to be made easily accessible to all who are eligible, especially the elderly and disabled. All LAAs are required to visit each elderly meal site in their geographic area to publicize the Energy Assistance program. When taking applications at a location other than an outreach office, the date and time of the visit should be publicized at least one week in advance.

Applications may be made by mail. A notice of the appeal and hearing procedure must be posted at each intake site, and a copy of the appeal and hearing procedure and any other state-required handouts must be given to each client at the time of application.

427—10.4(216A,PL97-35,PL98-558) Application period. Clients may apply for energy assistance between the first working day of October and the last working day of February each year. Applications will be processed and the applicant and the appropriate energy suppliers notified of eligibility within 30 days of the date of application to comply with the terms of the winter moratorium on disconnections.

427—10.5(216A,PL97-35,PL98-558) Income.

10.5(1) Proof of income eligibility is required. All income shall be verified for each household member based on the 3-month or 12-month period immediately preceding the application date or the most recent calendar year. Verification of income shall be made through documentary evidence in the possession of the applicant household. If documentary evidence is not available from the household, verification shall be obtained from the source of income.

10.5(2) Household income refers to total annual cash receipts before taxes from all sources, with the exceptions noted below. Income includes money, wages and salaries before any deductions; net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership after deductions for business expenses); net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Family Investment Program, Supplemental Security Income, emergency assistance money payments, nonfederally funded general assistance or general relief money payments), training stipends; alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions (including military retirement pay), regular insurance or annuity payments; college or university scholarships, assistantships; dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

10.5(3) For program eligibility purposes, income does not include the following: capital gains, any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, housing assistance, and other income, the exclusion of which is required by law.

10.5(4) Further income criteria and guidelines are contained in the Iowa state plan for the Low-Income Home Energy Assistance Program and the Low-Income Home Energy Assistance Program Procedures Manual as described in 10.6(216A,PL97-35,PL98-558).

427—10.6(216A,PL97-35,PL98-558) Determining eligibility. The gross income of all household members residing in the household at the time of application shall be counted to determine eligibility. Any individual listed on an LIHEAP-approved application for the current fiscal year may not be listed on another application. Written verification of income is required of all participants before an application is complete. This verification may take the form of pay receipts, payroll checks, or a statement signed by the employer if the salary is paid in cash. Other evidence, such as copies of unemployment checks or Medicaid cards, may also be accepted. If an applicant refuses to produce proof of income and does not authorize the agency to verify earnings, the applicant shall not be eligible for program benefits. Written verification shall be provided before eligibility may be certified. An applicant may elect to use the most recent 90 days, the last 12 months, or the most recent calendar year to qualify. If an applicant is not eligible under the time period first selected, an alternative time period may be selected to qualify.

427—10.7 (216A,PL97-35,PL98-558) Energy assistance payments. No household is entitled to a certain amount or form of assistance from this program. Households must meet the income eligibility guidelines and there must be program funds available before assistance payments can be made. No payments will be made to households that are not responsible for payment of any portion of their heating costs. All payments are contingent upon the availability of federal funds. Both owner-occupied and renter-occupied households will be assisted. The amount of assistance a household may receive depends upon available funding, total household income, household size, dwelling type, type of primary heating fuel the household uses, and whether a household qualifies for a bonus energy assistance award or a crisis assistance award in addition to the basic energy assistance payment.

10.7(1) *Assistance awards.* The availability of energy assistance awards shall be based on the amount of the annual Low-Income Home Energy Assistance block grant appropriation and the number of qualifying households and will be described in the state plan each year.

10.7(2) *Regulated fuels.* Rescinded IAB 12/4/96, effective 11/5/96.

10.7(3) *Deliverable fuels.* Rescinded IAB 12/4/96, effective 11/5/96.

427—10.8(216A,PL97-35,PL98-558) Payments.

10.8(1) The following types of energy assistance payments may be made:

a. To home energy suppliers in the form of a single payment. One check may be issued to an energy supplier for more than one household. The client's assistance shall remain as a credit on the client account until the program assistance is expended or the account is terminated. The basic energy assistance award is to be applied to the cost of the heating source supplying the household's nonbusiness, residential, primary heating fuel.

b. Eligible households that pay an undesignated portion of the rent toward energy costs will receive assistance sent directly to the household for the full amount.

c. The assistance award for households whose primary source of heat is wood will be forwarded to the household's electric supplier if a suitable wood vendor is not available. If no electric supplier exists, a direct payment for the "wood/coal" award may be made.

10.8(2) Duplicate and fraudulent payment control. Each LAA is required to provide a system to monitor and prevent possible duplicate and other fraudulent applications and payments. Duplication cross-checks shall be based on household members' names, addresses and social security numbers.

10.8(3) Referrals. Each LAA is required to refer all suspected cases of fraud, including duplicate payments and fraudulent statements on applications, to the DHR/DCAA for investigation.

10.8(4) Overpayments. If the DHR/DCAA receives information from an LAA or from any source that an overpayment has occurred because of client error, client fraud, client misrepresentation or agency error, the DHR/DCAA may refer the overpayment to the department of inspections and appeals (DIA) for investigation and collection in accordance with the procedures under 481 IAC 71.

427—10.9(216A,PL97-35,PL98-558) Change in status. The level of assistance for the program year will be determined based on the household's circumstances at the time of approval. If a household moves or ceases to exist, any unused funds remaining with the vendor shall be returned to the local administering agency within 30 days. If the client contacts the local administering agency within 30 days after moving, any unused portion of the assistance award shall be forwarded to the client's new vendor or to the client's address. If the client fails to notify the agency of the new address within 30 days, any unused funds returned to the local administering agency shall be returned to program funds.

427—10.10(216A,PL97-35,PL98-558) Prioritization of applications. Each LAA must notify the department of human rights in writing when 5 percent of its program budget remains unobligated. At that point, payments will be prioritized according to the date and time recorded on the intake form. For homebound and handicapped applications, the date and time of application shall be when the household first contacted the office, not when a home visit to the applicant is made.

427—10.11(216A,PL97-35,PL98-558) Statewide database reporting. Each LAA shall provide the state, via computer diskette, a composite listing of all approved, denied and paid applications, including all client characteristics. This shall be done each time diskettes are sent to vendors, or at least weekly during the application and approval period.

427—10.12(216A,PL97-35,PL98-558) Vendor agreement. A signed vendor agreement must be on file with the LAA before any payments may be made. In the event a particular fuel supplier will not sign a vendor agreement, a direct payment may be made to the eligible applicant.

427—10.13(216A,PL97-35,PL98-558) Crisis assistance. To be eligible for crisis assistance, a household must file an application, must meet the income guidelines of the Energy Assistance Program, and must meet the definition of a "crisis situation."

10.13(1) *Definition.* "Crisis situation" is defined as one which poses an immediate threat to life or health.

10.13(2) *Evaluation.* Each crisis situation will be evaluated individually by the LAA energy coordinator who shall determine the amount of assistance to be made up to the maximum allowed.

The nature of the crisis and the method of determining assistance shall be documented for the file and shall be subject to review by the local agency director.

10.13(3) *Resolution.* Federal regulations require that a life-threatening situation be evaluated and resolved in the following manner.

a. Not later than 48 hours after a household applies for energy crisis benefits, each administering agency must provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits;

b. Not later than 18 hours after a household applies for crisis benefits, each administering agency must provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits and is in a life-threatening situation; and

c. Each administering agency must;

(1) Accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served by such entity; and

(2) Provide to low-income individuals who are physically infirm the means to submit applications for energy crisis benefits without leaving their residences; or to travel to the sites at which such applications are accepted by such entity.

10.13(4) *Crisis appeal procedure.* Any household which has been denied crisis assistance may utilize the regular appeal procedure.

10.13(5) *Crisis payments.* A combination of one or more of the following crisis payments may be made to an eligible household to resolve a crisis situation:

a. In a life-threatening situation, an additional payment of up to $200 may be made after regular benefits have been exhausted to ensure an uninterrupted supply of fuel. This portion of the crisis program begins the first working day of November and ends the last working day of March.

b. Payment for repair or replacement of furnace/heating systems for eligible homeowners. A maximum payment of $1000 per household may be made. This component of the crisis program begins the first working day of October and ends the last working day of September.

c. Payment for obtaining temporary shelter, purchase of blankets or heaters. A maximum of $200 per household may be made. This component of the crisis program begins the first working day of October and ends the last working day of March.

d. Bill payment buy-down to avoid disconnection or to ensure reconnection. A payment of up to $100 each year may be made to heat or electric vendors to buy down an account balance upon which an eligible client will be required to arrange a bill payment plan. Applications will be accepted from the first working day of April until the last working day of October.

427—10.14(216A,PL97-35,PL98-558) Client services/assessment and resolution. Client services for assessment and resolution of energy management problems, including budget counseling, energy education, arranging deferred or budget payments, staying disconnects or negotiating payments or reconnections, will be made available to all energy assistance recipients on a year-round basis.

427—10.15(216A,PL97-35,Pl98-558) Appeal and hearing procedures. The following appeal and hearing procedures shall be used.

10.15(1) When an applicant is denied assistance or believes that the assistance amount was incorrectly determined, the applicant has 30 calendar days from the date of the approval or denial letter to appeal that decision by mailing or delivering the request for appeal to the LAA.

10.15(2) If the local administering agency neither approves nor denies the application within 30 calendar days of receipt of a complete application, the applicant may treat the failure to act as a denial. The applicant then has 30 additional calendar days to appeal.

10.15(3) To appeal, the applicant (claimant) must contact the agency at which the application was made and tell the agency of the wish to appeal, what action the applicant would like taken, and any other information which might affect the decision. All appeals must be in writing. Those claimants unable to read or write shall have the LAA assist them in reading, writing, or understanding appeals, hearings, and their associated procedures.

10.15(4) The LAA will act on the claimant's request and notify the claimant of the result in writing within seven calendar days of the date an appeal was requested (postmark date if sent in mail).

10.15(5) If the claimant does not agree with the decision reached, the claimant may write the LAA again within 17 calendar days of the decision (postmark date if sent in mail) and request that a state hearing be held. The claimant must explain in writing why the agency's decision is being appealed and include any information which might affect the decision.

10.15(6) The agency will then forward all information about the request for a hearing to the state and a hearing will be scheduled. The claimant will receive written notice of a state scheduled hearing from the Iowa department of inspections and appeals. the notice will include the date, time, and place of the hearing. State hearings may be held by telephone at a mutually convenient time. Prior to the hearing the agency will provide an opportunity for the claimant to review the case file and any written evidence that will be used in the hearing. All hearings will be conducted in accordance with Iowa department of inspections and appeals contested case hearings, 481—Chapter 10.

427—10.16(216A,PL97-35,PL98-558) Further criteria. The low-income home energy assistance program state plan, the low-income home energy assistance program procedures manual and assistance award criteria for the program are incorporated by reference as part of these rules. These documents as well as delegate agreements and department of human rights reporting forms are on file at the address below and are available for public inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Copies of these documents may be obtained at cost by contacting the Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-3943.

These rules are intended to implement Iowa Code section 216A.92 and PL97-35 as amended by PL98-558.

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NOTE: See Energy Policy Council[380] Chapter 14, prior to 9/24/86

TITLE IV
WASTEWATER TREATMENT AND DISPOSAL

CHAPTER 60
SCOPE OF TITLE—DEFINITIONS—FORMS—RULES OF PRACTICE

[Prior to 7/1/83, see DEQ Chs 15 and 24]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—60.1(455B,17A) Scope of title. The department has jurisdiction over the surface and groundwater of the state to prevent, abate and control water pollution, by establishing standards for water quality and for direct or indirect discharges of wastewater to waters of the state and by regulating potential sources of water pollution through a system of general rules or specific permits. The construction and operation of any wastewater disposal system and the discharge of any pollutant to a water of the state requires a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable in this title and rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this title.

Chapter 61 contains the water quality standards of the state, including classification of surface waters. Chapter 62 contains the standards or methods for establishing standards relevant to the discharge of pollutants to waters of the state. Chapter 63 identifies monitoring, analytical and reporting requirements pertaining to permits for the operation of wastewater disposal systems. Chapter 64 contains the standards and procedures for obtaining construction, operation and discharge permits for wastewater disposal systems other than those associated with animal-feeding operations. Chapter 65 specifies minimum waste control requirements and permit requirements for animal-feeding operations. Chapter 66 specifies restrictions on pesticide application to waters. Chapter 68 contains standards and licensing requirements applicable to commercial septic tank cleaners. Chapter 69 specifies guidelines for private sewage disposal.

567—60.2(455B) Definitions. The following definitions apply to this title, unless otherwise specified in the particular chapter of this title:

"Act" means the Federal Water Pollution Control Act as amended through July 1, 1998, 33 U.S.C. §1251 et seq.

"Acute toxicity" means that level of pollutants which would rapidly induce a severe and unacceptable impact on organisms.

"Aquatic pesticide" means any pesticide, as defined in Iowa Code section 206.2, that is labeled for application to surface water.

"ASTM" means "Annual Book of Standards, Part 31, Water." The publication is available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, Pennsylvania 19103.

"Best management practice (BMP)" means a practice or combination of practices that is determined, after problem assessment, examination of alternative practices, and appropriate public participation, to be the most effective, practicable (including technological, economic and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

"Biochemical oxygen demand (five-day)" means the amount of oxygen consumed in the biological processes that break down organic matter in water by aerobic biochemical action in five days at 20°C.

"Carbonaceous biochemical oxygen demand (five-day)" means the amount of oxygen consumed in the biological processes that break down carbonaceous organic matter in water by aerobic biochemical action in five days at 20°C.

"Chronic toxicity" means that level of pollutants which would, over long durations or recurring exposure, cause a continuous, adverse or unacceptable response in organisms.

"Continuing planning process (CPP)" means the continuing planning process, including any revision thereto, required by Sections 208 and 303(e) of the Act (33 U.S.C. §§1288 and 1313(e)) for state water pollution control agencies. The continuing planning process is a time-phased process by which the department, working cooperatively with designated areawide planning agencies:

a. Develops a water quality management decision-making process involving elected officials of state and local units of government and representatives of state and local executive departments that conduct activities related to water quality management.

b. Establishes an intergovernmental process (such as coordinated and cooperative programs with the state conservation commission in aquatic life and recreation matters, and the soil conservation division, department of agriculture and land stewardship in nonpoint pollution control matters) which provides for water quality management decisions to be made on an areawide or local basis and for the incorporation of such decisions into a comprehensive and cohesive statewide program. Through this process, state regulatory programs and activities will be incorporated into the areawide water quality management decision process.

c. Develops a broad-based public participation (such as utilization of such mechanisms as basin advisory committees composed of local elected officials, representatives of areawide planning agencies, the public at large, and conservancy district committees) aimed at both informing and involving the public in the water quality management program.

d. Prepares and implements water quality management plans, which identify water quality goals and established state water quality standards, defines specific programs, priorities and targets for preventing and controlling water pollution in individual approved planning areas and establishes policies which guide decision making over at least a 20-year span of time (in increments of 5 years).

e. Based on the results of the statewide (state and areawide) planning process, develops the state strategy to be updated annually, which sets the state's major objectives, approach, and priorities for preventing and controlling pollution over a five-year period.

f. Translates the state strategy into the annual state program plan (required under Section 106 of the federal Act), which establishes the program objectives, identifies the resources committed for the state program each year, and provides a mechanism for reporting progress toward achievement of program objectives.

g. Periodically reviews and revises water quality standards as required under Section 303(c) of the federal Act.

"CFR" means the Code of Federal Regulations as published by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

"Crossover point" means that location in a river or stream in which the flow shifts from being principally along one bank to the opposite bank. This crossover point usually occurs within two curves or an S-shaped curve of a water course.

"Culture water" means reconstituted water or other acceptable water used for culturing test organisms.

"Deep well" means a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

"Diluted effluent sample" means a sample of effluent diluted with culture water at the same ratio as the dry weather design flow to the applicable receiving stream flow contained in the zone of initial dilution as allowed in 567—subrule 61.2(4), regulatory mixing zones, including paragraphs *"b," "c"* and *"d."*

b. Amendments. A permittee seeking an amendment to its operation permit shall make a written request to the department which shall include the nature of the requested amendment and the reasons therefor. A variance or amendment to the terms and conditions of a general permit shall not be granted. If a variance or amendment to a general permit is desired, the applicant must apply for an individual permit following the procedures in 567—paragraph 64.3(4)*"a."*

(1) Schedules of compliance. Requests to amend a permit schedule of compliance shall be made at least 30 days prior to the next scheduled compliance date which the permittee contends it is unable to meet. The request shall include any proposed changes in the existing schedule of compliance, and any supporting documentation for the time extension. An extension may be granted by the department for cause. Cause includes unusually adverse weather conditions, equipment shortages, labor strikes, federal grant regulation requirements, or any other extenuating circumstances beyond the control of the requesting party. Cause does not include economic hardship, profit reduction, or failure to proceed in a timely manner.

(2) Interim effluent limitations. A request to amend interim effluent limitations in an existing permit shall include the proposed amendments to existing effluent limitations and any documentation in support of the proposed limitations. The department will evaluate the request based upon the capability of the disposal system to meet interim effluent limitations, taking into account the contributions to treatment capability which can be made by good operation and maintenance of the disposal system and by minor alterations which can be made to the system to improve its capability. The department may deny a request where the inability of the disposal system to meet interim effluent limitations is due to increased waste loadings on the system over those loadings upon which the interim limitations were based.

(3) Monitoring requirements. A request for a change in monitoring requirements in an existing permit shall include the proposed changes in monitoring requirements and documentation therefor. The requesting permittee must provide monitoring results which are frequent enough to reflect variations in actual wastewater characteristics over a period of time and are consistent in results from sample to sample. The department will evaluate the request based upon whether or not less frequent sample results accurately reflect actual wastewater characteristics and whether operational control can be maintained.

Upon receipt of a request the department may grant, modify, or deny the request. If the request is denied, the department may notify the permittee of any violation of its permit and may proceed administratively on the violation or may request that the commission refer the matter to the attorney general for legal action.

These rules are intended to implement Iowa Code section 17A.3(1)*"b"* and chapter 455B, division III, part 1.

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c. Waste stabilization ponds. Departmental secondary treatment standards for waste stabilization ponds are the same as those found in subrule 62.3(1) concerning secondary treatment with the exception of the standards for suspended solids which are as follows:

(1) SS, the 30-day average shall not exceed 80 mg/l.

(2) SS, the 7-day average shall not exceed 120 mg/l.

d. Less concentrated influent wastewater for separate sewers. The department may substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements in 62.3(1) and 62.3(3) provided that the permittee demonstrates that:

(1) The treatment works is consistently meeting or will consistently meet, its permit effluent concentration limits but its percent removal requirements cannot be met due to less concentrated influent wastewater.

(2) To meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards, and

(3) The less concentrated influent wastewater is not the result of excessive infiltration/inflow (I/I). A system is considered to have nonexcessive I/I when an average wet weather influent flow (as defined in the department's design standards 567—paragraph 64.2(9)*"b,"* Chapter 14.4.5.1.b) comprised of domestic wastewater plus infiltration plus inflow equals less than 275 gallons per day per capita.

e. Upgraded facilities designed to operate in a split flow mode. The department may substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements in 62.3(1) only (not 62.3(3)),provided that the treatment works is designed to split part of the primary treated wastewater flow around the secondary treatment unit(s). The design to accommodate split flow must be approved by the department and consistent with applicable design standards for wastewater treatment facilities. The requirements of 62.3(2)*"d"* would apply to facilities considered under this subrule. This subrule shall not be considered for facilities eligible for treatment equivalent to secondary treatment under 62.3(3).

Any applicant requesting a permit limit adjustment must include as part of the request an analysis of the I/I sources in the system and a plan for the elimination of all inflow sources such as roof drains, manholes and storm sewer interconnections. Infiltration sources that can be economically eliminated or minimized shall be corrected.

f. Dilution. Nothing in this subrule or any other rule of the department shall be construed to encourage dilution of sewage as a means of complying with secondary treatment effluent standards. Reasonable efforts to prevent and abate infiltration of groundwater into sewers, and prevention or removal of any significant source of inflow, are required of all persons responsible for facilities subject to these standards.

62.3(3) *Treatment equivalent to secondary treatment.* This subrule describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment in terms of the pollutant measurements $CBOD_5$, SS and pH. Treatment works shall be eligible at any time for consideration of effluent limitations described for treatment equivalent to secondary treatment if:

a. The $CBOD_5$ and SS effluent concentrations consistently achievable through proper operation and maintenance of the treatment works exceed the minimum level of the effluent quality set forth in 62.3(1)*"a"* and 62.3(1)*"b"*; and

b. A trickling filter or waste stabilization pond is used as the principal process; and

c. The treatment works provide significant biological treatment of municipal wastewater; and

d. The facility was not constructed since January 1, 1972, in order to achieve design effluent limits set forth in 62.3(1)*"a," "b,"* and *"c"* or predecessor rules on secondary treatment. An eligible trickling filter or waste stabilization pond may have undergone an upgrade to achieve the effluent requirements specified in this subrule. Nothing in this subrule shall be construed to allow a facility to circumvent the design standards of 567—Chapter 64 in the replacement or construction of the individual treatment units; and

e. The treatment works is one that does not receive organic or hydraulic loadings which prevent the facilities from consistently complying with 62.3(3)*"f," "g,"* and *"h."*

All requirements for the specified pollutant measurements in paragraphs *"f," "g,"* and *"h"* following in this subrule shall be achieved except as provided for above in 62.3(2) or paragraph *"i"* of this subrule below.

f. $CBOD_5$ limitations:

(1) The 30-day average shall not exceed 40 mg/l.

(2) The 7-day average shall not exceed 60 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

g. SS limitations. Except where SS values have been adjusted in accordance with subrule 62.3(2), paragraph *"c,"* above:

(1) The 30-day average shall not exceed 45 mg/l.

(2) The 7-day average shall not exceed 65 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

h. pH. The requirements of above subrule 62.3(1), paragraph *"c,"* shall be met.

i. Permit adjustments. More stringent limitations are required if the 30-day average and 7-day average $CBOD_5$ and SS effluent values that could be achievable through proper operation and maintenance of the upgraded or existing treatment works, based on an analysis of the past performance of the treatment works, would enable the treatment works to achieve more stringent limitations. These more stringent limitations shall be maintained and not relaxed unless as specified in subrule 62.3(2)*"b."*

Effluent concentrations consistently achievable through proper operation and maintenance are:

(1) The ninety-fifth percentile value of the 30-day average effluent quality achieved by the upgraded or existing treatment works in a period of at least two years, excluding values attributable to upsets, bypasses, operational errors, or other unusual conditions, and

(2) A 7-day average value equal to 1.5 times the value derived for the 30-day average above.

This subrule shall only be applied when the existing or upgraded facility has achieved its design organic loading as specified in the most recent construction permit or its accompanying documentation. The determination of the effluent concentration consistently achievable through proper operation and maintenance shall only be based on the effluent quality data following the period when the design organic loading has been achieved.

567—62.4(455B) Federal effluent and pretreatment standards. The federal standards, 40 Code of Federal Regulations (CFR), revised as of July 1, 1998, are applicable to the following categories:

62.4(1) *General provisions.* The following is adopted by reference: 40 CFR Part 401.

62.4(2) *Cooling water intake structures.* Reserved.

62.4(3) *General pretreatment regulations for existing and new sources of pollution.* The following is adopted by reference: 40 CFR 403.

62.4(4) *Thermal discharges.* The following is adopted by reference: 40 CFR Part 125, Subpart H.

62.4(5) *Dairy products processing industry point source category.* The following is adopted by reference: 40 CFR Part 405.

62.4(60) *Hospital point source category.* The following is adopted by reference: 40 CFR Part 460.

62.4(61) *Battery manufacturing point source category.* The following is adopted by reference: 40 CFR Part 461.

62.4(62) Reserved.

62.4(63) *Plastic molding and forming point source category.* The following is adopted by reference: 40 CFR Part 463.

62.4(64) *Metal molding and castings point source category.* The following is adopted by reference: 40 CFR Part 464.

62.4(65) *Coil coating point source category.* The following is adopted by reference: 40 CFR Part 465.

62.4(66) *Porcelain enameling point source category.* The following is adopted by reference: 40 CFR Part 466.

62.4(67) *Aluminum forming point source category.* The following is adopted by reference: 40 CFR Part 467.

62.4(68) *Copper forming point source category.* The following is adopted by reference: 40 CFR Part 468.

62.4(69) *Electrical and electronic components point source category.* The following is adopted by reference: 40 CFR Part 469.

62.4(70) Reserved.

62.4(71) *Nonferrous metals forming and metal powders.* The following is adopted by reference: 40 CFR Part 471.

567—62.5(455B) Federal toxic effluent standards. The following is adopted by reference: 40 CFR Part 129, revised as of July 1, 1998.

567—62.6(455B) Effluent limitations and pretreatment requirements for sources for which there are no federal effluent or pretreatment standards.

62.6(1) *Definitions.* As used in this rule:

a. *"Average"* means the sum of the total daily discharges by weight, volume or concentration during the reporting period (as specified in the operation permit) divided by the total number of days during the reporting period when the facility was in operation. With respect to the monitoring requirements, the "daily average" discharge shall be determined by the summation of all the measured daily discharges by weight, volume or concentration divided by the number of days during the reporting period when the measurements were made.

b. *"Maximum"* means the total discharge by weight, volume or concentration which cannot be exceeded during a 24-hour period.

c. *"Best engineering judgment"* means a judgment that considers any or all of the following:

(1) Known state-of-the-art (i.e., demonstrated treatment that is being done or can be done);

(2) Published technical articles and research results;

(3) Engineering reference books;

(4) Consultation with acknowledged experts in the field;

(5) Availability of equipment;

(6) Known or suspected toxicity of the pollutants;

(7) Safety, welfare and aesthetic effects on persons who may come in contact with the discharge; and

(8) Standards and rules of other regulatory agencies and states.

62.6(2) *Time of compliance.* Effluent limitations and pretreatment limitations established pursuant to this rule shall be achieved within a reasonable time after receipt of notice from the department of the applicability of these limitations.

62.6(3) *Effluent limitations.* This subrule establishes effluent limitations on the discharge of pollutants from sources other than publicly owned treatment works and privately owned domestic sewage treatment works that are not subject to the federal effluent standards adopted by reference in 62.4(1) and 62.4(3) to 62.4(60).

a. There shall be established an effluent limitation that represents the best engineering judgment of the department of the degree of effluent reduction consistent with the Act and Iowa Code chapter 455B.

b. The following wastes shall not be introduced into privately owned treatment works subject to this subrule:

(1) Wastes that create a fire or explosion hazard in the treatment works.

(2) Wastes at a flow rate or pollutant discharge rate, or both, which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency such that the effluent limitations in the permit of the treatment works are violated.

62.6(4) *Pretreatment requirements for incompatible wastes.* This subrule establishes pretreatment requirements for incompatible pollutants that apply to sources other than those covered by 40 CFR §128.133, (i.e., sources other than existing "major contributing industries" as defined in 40 CFR §128.124), and to sources that are new or existing major contributing industries for which there is no federal pretreatment standard (i.e., sources which do not fall within a point source category or, if they do fall within a point source category, sources for which the administrator has not yet promulgated a pretreatment standard).

a. For sources that are within a point source category adopted by reference in 62.4(455B) for which there are promulgated effluent limitation guidelines, but no promulgated pretreatment standards, the pretreatment standard for incompatible pollutants shall be the promulgated effluent limitation guideline. Provided, that if the treatment works which receives the pollutants is committed in its operation permit to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

b. For sources that are not subject to paragraph *"a,"* there shall be established an effluent limitation that represents the best engineering judgment in the department of the degree of effluent reduction consistent with the Act and Iowa Code chapter 455B.

c. In no case shall a discharge into a publicly owned treatment works or a privately owned domestic sewage treatment works by a source subject to this subrule intermittently change the pH of the raw waste reaching the treatment plant by more than 0.5 pH unit or cause the pH of the waste reaching the plant to be less than 6.0 or greater than 9.0.

567—62.7(455B) Effluent limitations less stringent than the effluent limitation guidelines. An effluent limitation less stringent than the effluent limitation guideline (adopted by reference in 62.4(455B)) representing the degree of effluent reduction achievable by application of the best practicable control technology currently available may be allowed in an NPDES permit if the factors relating to the equipment or facilities involved, the process applied, or other such factors related to the discharger are fundamentally different from the factors considered by the administrator in the establishment of the guidelines. An individual discharger or other interested person may submit evidence concerning such factors to the director. On the basis of such evidence or other available information, the director will make a written finding that such factors are or are not fundamentally different from the facility compared to those specified in the development document. Any such less stringent effluent limitations must, as a condition precedent, be approved by the administrator.

567—62.8(455B) Effluent limitations or pretreatment requirements more stringent than the effluent or pretreatment standards.

62.8(1) *Effluent limitations more stringent than the effluent limitation guidelines.* An effluent limitation more stringent than the effluent limitation guidelines representing the degree of effluent reduction achievable by application of the best practicable control technology currently available may be required in an NPDES permit if the factors relating to the equipment or facilities involved, the process applied, or other such factors related to the discharger are fundamentally different from the factors considered by the administrator in the establishment of the guidelines. An individual discharger or other interested person may submit evidence concerning such factors to the director. On the basis of such evidence or other information available to the director, the director will make a written finding that such factors are or are not fundamentally different for the facility compared to those specified in the development document. Any such more stringent effluent limitation must, as a condition precedent, be approved by the administrator.

62.8(2) *Effluent limitations necessary to meet water quality standards.* No effluent, alone or in combination with the effluent of other sources, shall cause a violation of any applicable water quality standard. When it is found that a discharge that would comply with applicable effluent standards in 62.3(455B), 62.4(455B) or 62.5(455B) or effluent limitations in 62.6(455B) would cause violation of water quality standards, the discharge will be required to meet whatever effluent limitations are necessary to achieve water quality standards, including the nondegradation policy of 567—subrule 61.2(2). Any such effluent limitation shall be determined using a statistically based portion of the calculated waste load allocation, as described in "Supporting Document for Iowa Water Quality Management Plans" (Iowa Department of Water, Air and Waste Management, July 1976, Chapter IV, as revised on March 20, 1990). (Copy available upon request to the Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319. Copy on file with the Iowa Administrative Rules Coordinator.)

62.8(3) *Pretreatment requirements more stringent than pretreatment standards or requirements.* The department or the publicly owned treatment works may impose pretreatment requirements more stringent than the applicable pretreatment standard of 62.4(455B) or pretreatment requirements of 62.6(455B) if such more stringent requirements are necessary to prevent violations of water quality standards, or the permit limitations of the treatment works.

62.8(4) *Effluent limitations or pretreatment requirements in approved areawide waste treatment management plans.* Effluent limitations or pretreatment requirements more stringent than applicable effluent or pretreatment standards in 62.3(455B) to 62.5(455B) or effluent limitations or pretreatment requirements in 62.6(455B) may be imposed by the department if the more stringent effluent limitations or pretreatment requirements are required by an approved areawide waste treatment management (208(b)) plan.

62.8(5) *Effluent limitations for pollutants not covered by effluent or pretreatment standards.* An effluent limitation on a pollutant not otherwise regulated under 62.3(455B) to 62.6(455B) (e.g., polybrominated biphenyls, PBBs) may be imposed on a case-by-case basis. Such limitation shall be based on effect of the pollutant in water and the feasibility and reasonableness of treating such pollutant.

567—62.9(455B) Disposal of pollutants into wells. Commencing September 1, 1977, there shall be no disposal of a pollutant other than heat into wells within Iowa. Any disposal of heat shall be sufficiently controlled to protect the public health and welfare and to prevent pollution of ground and surface water resources. In reviewing any permits proposed to be issued for the disposal into wells, the director shall consider, among other things, any policies, technical information, or requirements specified by the administrator in regulations issued pursuant to the Act or in directives issued to EPA regional offices.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

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CHAPTER 63
MONITORING, ANALYTICAL AND REPORTING REQUIREMENTS

[Prior to 7/1/83, DEQ Ch 18]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—63.1(455B) Guidelines establishing test procedures for the analysis of pollutants. Only the procedures prescribed in this chapter shall be used to perform the measurements indicated in an application for an operation permit submitted to the department, a report required to be submitted by the terms of an operation permit, and a certification issued by the department pursuant to Section 401 of the Act.

63.1(1) *Identification of test procedures.*

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, revised as of July 1, 1998.

b. All parameters for which testing is required by a wastewater discharge permit, permit application, or administrative order, except operational performance testing, must be analyzed using approved methods specified in 40 CFR Part 136.3 or, under certain circumstances, by other methods that may be more advantageous to use when such other methods have been previously approved by the director pursuant to 63.1(2). Samples collected for operational testing pursuant to 63.3(4) need not be analyzed by approved analytical methods; however, commonly accepted test methods should be used.

63.1(2) *Application for alternate test procedures.*

a. Any person may apply to the EPA regional administrator through the director for approval of an alternate test procedure.

b. The application for an alternate test procedure may be made by letter and shall:

(1) Provide the name and address of the responsible person or firm holding or applying for the permit (if not the applicant) and the applicable ID number of the existing or pending permit and type of permit for which the alternate test procedure is requested and the discharge serial number, if any.

(2) Identify the pollutant or parameter for which approval of an alternate testing procedure is being requested.

(3) Provide justification for using testing procedures other than those specified in 40 CFR Part 136.3.

63.1(3) *Required containers, preservation techniques and holding times.* All samples collected in accordance with self-monitoring requirements as defined in an operation permit shall comply with the container, preservation techniques, and holding time requirements as specified in Table VI. Sample preservation should be performed immediately upon collection, if feasible.

63.1(4) All laboratories conducting analyses required by this chapter must be certified in accordance with 567—Chapter 83 except that routine, on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements such as flow and cell depth, and operational monitoring tests specified in 63.3(4) are excluded from this requirement.

567—63.2(455B) Records of monitoring activities and results.

63.2(1) The permittee shall maintain records of all information resulting from any monitoring activities required in its operation permit.

63.2(2) Any records of monitoring activities and results shall include for all samples:

a. The date, exact place and time of sampling.

b. The dates analyses were performed.

c. Who performed the analyses.

d. The analytical techniques or methods used, and

e. The results of such analyses.

63.2(3) The permittee shall retain for a minimum of three years any records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. The period of retention shall be considered to be extended during the course of any unresolved litigation or when requested by the director or the regional administrator.

567—63.3(455B) Minimum self-monitoring requirements in permits.

63.3(1) *Monitoring by organic waste dischargers.* The minimum self-monitoring requirements to be incorporated in operation permits for facilities discharging organic wastes shall be the appropriate requirements in Tables I, II, and IV. Additional monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, industrial contribution to the system, complexity of the treatment process, history of noncompliance or any other factor which requires strict operational control to meet the effluent limitations of the permit.

63.3(2) *Monitoring by inorganic waste dischargers.* The minimum self-monitoring requirements to be incorporated in the operation permit for an inorganic waste discharge shall be the appropriate requirement in Table V. Additional monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor which requires strict control to meet the effluent limitations of the permit.

63.3(3) *Monitoring of industrial contributors to publicly owned treatment works.* All major contributing industries as defined in 567—60.2(455B) and industrial contributors that are subject to national pretreatment standards shall be monitored in accordance with the requirements in Tables I, II and V, provided that the monitoring program of a publicly owned treatment works with a pretreatment program approved by the department may be used in lieu of the tables. The results of such monitoring shall be submitted to the department in accordance with the reporting requirements in the operation permit.

63.3(4) *Operational monitoring.* The minimum operational monitoring to be incorporated in permits shall be the appropriate requirements in Table III. These requirements reflect minimum indicators that any adequately run system must monitor. The department recognizes that most well-run facilities will be monitored more closely by the operator as appropriate to the particular system. However, the results of this monitoring need not be reported to the department. Operational monitoring requirements may be modified or reduced at the discretion of the director when adequate justification is presented by the permittee that the reduced or modified requirements will not adversely impact the operation of the facility. Additional operational monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor that requires strict control to meet the effluent limitations of the permit.

567—63.4(455B) Effluent toxicity testing requirements in permits.

63.4(1) *Effluent toxicity testing.* All major municipal and industrial dischargers shall be required to carry out effluent toxicity testing. Minor dischargers may be required to conduct effluent toxicity tests based on a case-by-case evaluation of the impact of the discharge on the receiving stream or industrial contribution to the system. All dischargers required to conduct effluent toxicity tests shall conduct, at a minimum, one valid effluent toxicity test annually. The testing requirements will be placed in the operation permit for each discharger required to conduct this testing. Additional monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, industrial contribution to the system, complexities of the treatment process, history of noncompliance or any other factor which requires strict operational control to meet the effluent limitations of the permit. Any effluent toxicity test completed by the department or other agency and conducted according to procedures stated or referenced in this rule may be used to determine compliance with an operational permit.

Table VI Notes

1. Polyethylene (P) or Glass (G).

2. Sample preservation should be performed immediately upon sample collection. For composite samples, each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed.

3. Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analysis and still be considered valid. Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that the specific types of samples under study are stable for the longer time, and has received a variance from the executive director. Some samples may not be stable for the maximum time period given in the table. A permittee, or monitoring laboratory, is obligated to hold the sample for a shorter time if knowledge exists to show this is necessary to maintain sample stability.

4. Should only be used in the presence of residual chlorine.

5. Maximum holding time is 24 hours when sulfide is present. Optionally, all samples may be tested with lead acetate paper before the pH adjustment in order to determine if sulfide is present. If sulfide is present, it can be removed by the addition of cadmium carbonate powder until a negative spot test is obtained. The sample is filtered and then NaOH is added to pH 12.

6. Samples should be filtered immediately onsite before adding preservative for dissolved metals.

These rules are intended to implement Iowa Code section 455B.173.

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PROFESSIONAL LICENSURE DIVISION[645]

Created within the Department of Public Health[641] by 1986 Iowa Acts, chapter 1245.
Prior to 7/29/87, for Chs. 20 to 22 see Health Department[470] Chs. 152 to 154.

645—20.9(158) Apprenticeship. An applicant for a license as a barber in Iowa who is licensed as a barber or registered as an apprentice barber in another state may receive credit toward the required 2100 hours of course of study prescribed by Iowa Code section 158.8 at a ratio of 100 hours credit for each 400 hours of registered apprenticeship completed in the state in which the applicant is licensed or registered as an apprentice.

This rule is intended to implement Iowa Code section 158.8.

645—20.10(158) Unlicensed manicurists—definitions. For the purpose of Iowa Code section 158.14, paragraph 2:

"Manicuring" means the practice of cleansing, shaping, polishing the fingernails and massaging the hands and lower arms of any person. It does not include the application of nail extensions, artificial nails or pedicuring.

"Manicurist" means a person who performs the practice of manicuring in a licensed barbershop or a licensed cosmetology salon.

"Such employment" means that a person who was employed by a licensed barbershop to manicure fingernails prior to July 1, 1989, may continue employment in any licensed barbershop without meeting licensing requirements under Iowa Code chapter 157.

This rule is intended to implement Iowa Code section 158.14.

645—20.11(158) Demonstrator's permit. The board may issue a demonstrator's permit for the purpose of demonstrating barbering skills to the public. The board shall determine and state the length of time the permit is valid.

1. A demonstrator permit shall be valid only for the person, location, purpose and duration stated on the permit.
2. A demonstrator permit shall be applied for at least 30 days in advance of dates of intended use.
3. A demonstrator permit shall be issued for from one to ten days.
4. The application shall be accompanied by the fee as set forth in 645—20.214(147).
5. No more than four permits shall be issued to any applicant during a calendar year.

645—20.12(158) Application. All persons who practice barbering in the state of Iowa are required to be licensed as barbers. To be considered eligible for examination or licensure, or both, an applicant shall meet the licensure requirements of Iowa Code section 158.3 and submit fees and a completed application form prescribed by the board. An application for examination must be filed with the board at least 45 days preceding the examination. Application forms may be obtained from the barber school at which the student is enrolled, or by contacting the Board of Barber Examiners, Department of Public Health, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

645—20.13 to **20.99** Reserved.

BARBER CONTINUING EDUCATION AND DISCIPLINARY PROCEDURES

645—20.100(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

"Accredited sponsor" means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an accredited sponsor, all continuing education activities of such person or organization may be deemed automatically approved.

"Approved program or activity" means a continuing education program activity meeting the standards set forth in these rules which has received advance approval by the board pursuant to these rules.

"Board" means the board of barber examiners.

"Hours" of continuing education means a clock-hour spent after December 31, 1978, by a licensee in actual attendance at and completion of an approved continuing education activity.

"Licensee" means any person licensed to practice barbering in the state of Iowa.

645—20.101(272C) Continuing education requirements.

20.101(1) Each person licensed to practice barbering in this state shall complete during each license renewal biennial period a minimum of eight hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent biennial license renewal period beginning July 1 of each even-numbered year and ending June 30 of the next even-numbered year.

20.101(2) Rescinded IAB 6/3/98, effective 7/8/98.

20.101(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, either previously accredited by the board or the Iowa board of cosmetology arts and sciences or which otherwise meets the requirements herein and is approved by the board pursuant to 20.103(272C).

20.101(4) It is the responsibility of each licensee to finance the costs of continuing education.

20.101(5) Carryover credit of continuing education shall not be permitted.

20.101(6) Those persons newly licensed during the license renewal period shall not be required to complete continuing education as prerequisite for their first renewal of license.

This rule is intended to implement Iowa Code section 272C.2.

645—20.102(272C) Standards for approval. A continuing education activity shall be qualified for approval if the board determines that:

20.102(1) It constitutes an organized program of learning focusing on the specified skills or knowledge (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

20.102(2) It pertains to common subjects or other subject matters which integrally relate to the practice of barbering; and

645—20.214(147) License fees. All fees are nonrefundable.

20.214(1) License to practice barbering issued on basis of examination is $75. Retake of examination is $75.

20.214(2) License by reciprocity is $100.

20.214(3) Renewal of barbering license for biennial is $60. Penalty for late renewal is $25, in addition to renewal fee, if not postmarked by the July 1 expiration date.

20.214(4) License for new barber school is $500.

20.214(5) Renewal or change of location of barber school license is $250.

20.214(6) License to instruct in barber school on basis of examination is $75.

20.214(7) Renewal of instructor's license for biennial is $70.

20.214(8) License for new barbershop is $30.

20.214(9) Renewal of barbershop license is $30. Penalty for late renewal is $10, in addition to renewal fee if not postmarked by the July 1 expiration date.

20.214(10) Transfer of barbershop or barber school license is $25.

20.214(11) An original barber assistant license is $25.

20.214(12) Renewal of barber assistant license is $5.

20.214(13) Temporary permit to practice barbering is $10.

20.214(14) Verified statement that a licensee is licensed in this state is $10.

20.214(15) Duplicate license is $10.

20.214(16) A demonstrator's permit is $35 for the first day and $10 for each day thereafter that the permit is valid.

This rule is intended to implement Iowa Code section 147.80.

645—20.215 to **20.299** Reserved.

PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS

645—20.300(28A) Conduct of persons attending meetings.

20.300(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

20.300(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board person presiding at the meeting.

This rule is intended to implement Iowa Code section 28A.7.

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*See Public Health Department[641], IAB
**Effective date of rule 20.10(158) delayed 70 days by the Administrative Rules Review Committee at its meeting held December 11, 1991; delayed until adjournment of the 1992 General Assembly at the Committee's meeting held February 3, 1992.

653—12.14(272C) Doctor-patient privileged communications. The privilege of confidential communication between the recipient and the provider of health care services shall not extend to afford confidentiality to medical records maintained by or on behalf of the subject of an investigation by the board, or records maintained by any public or private agency or organization, which relate to a matter under investigation. No provisions of Iowa Code section 622.10, except as it relates to an attorney of the licensee, or stenographer or confidential clerk of the attorney, shall be interpreted to restrict access by the board, its staff or agents to information sought in an investigation being conducted by the board.

653—12.15(272C) Confidentiality of investigative files. Complaint files, investigation files, and all other investigation reports and other investigative information in the possession of the board or peer review committee acting under the authority of the board or its employees or agents which relates to licensee discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the board, its employees and agents involved in licensee discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, a final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

653—12.16(272C) Impaired physician review committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the board establishes the impaired physician review committee.

12.16(1) *Definitions.*

"Approved evaluating facility" means a hospital, agency, or other program approved by the IPRC pursuant to subrule 12.16(11).

"Approved treatment provider" means a physician, counselor, or other individual approved by the IPRC pursuant to subrule 12.16(17).

"Impaired physician recovery contract" or *"contract"* means the written document establishing the terms for participation in the impaired physician recovery program prepared by the impaired physician review committee.

"Impairment" means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychiatric or physical disorder or disability.

"Initial agreement" means the written document establishing the initial terms for participation in the impaired physician recovery program.

"IPRP" or *"program"* means the impaired physician recovery program.

"IPRC" or *"committee"* means the impaired physician review committee.

"Self-report" means the licensee providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging the same from a second party.

12.16(2) *Purpose.* The impaired physician review committee evaluates, assists, monitors and, as necessary, makes reports to the board on the recovery or rehabilitation of physicians who self-report impairments.

12.16(3) *Composition of the committee.* The chairperson of the board shall appoint the members of the IPRC. The membership of the IPRC includes, but is not limited to:

a. Executive director of the board or the director's designee from the board's staff;

b. One physician who has remained free of addiction for a period of no less than two years since successfully completing a board-approved recovery program and board-ordered probation for drug or alcohol dependency, addiction, or abuse;

c. One practitioner with expertise in substance abuse/addiction treatment programs;

d. One physician with expertise in the diagnosis and treatment of neuropsychiatric disorders and disabilities; and

e. One public member.

12.16(4) *Eligibility.* To be eligible for participation in the impaired physician recovery program, a licensee must self-report an impairment or suspected impairment directly to the office of the board. A licensee is deemed ineligible to participate in the program if the board or committee finds evidence of any of the following:

a. The licensee engaged in the unlawful diversion or distribution of controlled substances or illegal substances to a third party or for personal profit or gain;

b. At the time of the self-report, the licensee is already under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;

c. The licensee has caused harm or injury to a patient;

d. There is currently a board investigation of the licensee that concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;

e. The licensee has been subject to a civil administrative or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or a foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of medicine; or

f. The licensee failed to provide truthful information or to fully cooperate with the board or committee.

12.16(5) *Type of program.* The impaired physician recovery program is an individualized recovery or rehabilitation program designed to meet the specific needs of the impaired physician. The committee, in consultation with the licensee and upon the recommendation of an IPRC-approved evaluator, shall determine the type of recovery or rehabilitation program required to treat the licensee's impairment. The committee shall prepare an impaired physician recovery contract, to be signed by the licensee, that shall provide a detailed description of the goals of the program, the requirements for successful completion, and the licensee's obligations therein.

12.16(6) *Terms of participation.* A licensee shall agree to comply with the terms for participation in the IPRP established in the initial agreement and contract. Terms of participation specified in the contract shall include, but are not limited to:

a. Duration. The length of time a licensee shall participate in the program shall be determined by the committee in accordance with the following:

(1) Participation in the program for licensees impaired as a result of chemical dependency or alcohol or substance abuse or addiction is set at a minimum of four years.

(2) Length of participation in the program for licensees with impairments resulting from neuropsychiatric or physical disorders or disabilities will vary depending upon the recommendations for treatment provided by a qualified evaluator designated by the committee to establish an appropriate treatment protocol.

b. Noncompliance. A licensee participating in the program is responsible for notifying the committee of any instance of noncompliance including, but not limited to, a relapse. Notification of noncompliance made to the IPRC by the licensee, any person responsible for providing or monitoring treatment, or another party shall result in the following:

(1) First instance. Upon receiving notification of a first instance of noncompliance including, but not limited to, a relapse, the IPRC shall make a report to the board that includes recommendations as to whether treatment should be augmented or formal charges should be filed.

(2) Second instance. Upon receiving notification of a second instance of noncompliance including, but not limited to, a relapse, the IPRC shall nullify the contract and refer the case to the board for the filing of formal charges or other appropriate action.

c. Practice restrictions. The IPRC may impose restrictions on the license to practice medicine as a term of the initial agreement or contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restrict practice in accordance with the terms specified in the initial agreement or contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the initial agreement or contract, the committee shall refer the licensee to the board for appropriate action.

12.16(7) *Limitations.* The IPRC establishes the terms and monitors a participant's compliance with the program specified in the initial agreement and contract. The IPRC is not responsible for participants who fail to comply with the terms of or successfully complete the IPRP. Participation in the program under the auspices of the IPRC shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of medicine by a participant shall be referred to the board for appropriate action.

12.16(8) *Confidentiality.* The IPRC is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the IPP under the auspices of the IPRC is not a matter of public record.

12.16(9) *Evaluating facilities.* As of April 1, 1999, the physician who self-reports an impairment and is determined by the IPRC to be in need of evaluation shall undergo a comprehensive multidisciplinary evaluation at an evaluating facility approved by the IPRC in accordance with subrules 12.16(10) to 12.16(13).

12.16(10) *Standards for approval of evaluating facilities.* A hospital, agency, or other program shall be approved by the IPRC as an approved evaluating facility if each of the following requirements is satisfied:

a. The evaluation process is directed by a licensed physician and involves a multidisciplinary team including psychologists, social workers, addiction counselors, or other therapists who are licensed or certified in their discipline.

b. The evaluation process is an objective, measurable program which utilizes appropriate tools and testing procedures.

c. The evaluation process involves an inpatient or an intensive outpatient component.

d. The evaluation includes a complete medical history and physical examination.

e. The evaluation includes a psychiatric evaluation and mental status examination, including neuropsychiatric or psychiatric testing as indicated.

f. The evaluation includes a comprehensive chemical use history.

g. The evaluation includes urine screening or blood alcohol screening, or both, with legal chain of custody and forensic capability protocol.

h. The evaluation includes a family and social history with corroboration from at least two sources.

i. The evaluation culminates in the formulation of an evaluation report which includes specific diagnoses and recommendations for corrective action.

j. The facility has substantial experience in the evaluation of impaired physicians and others with similar professional backgrounds.

k. The facility is certified or registered as an alcoholism program or drug treatment program by the appropriate state agency or is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

12.16(11) *Procedure for approval.* A hospital, agency, or other program which meets the standards for approval and seeks to be designated as an approved evaluating facility shall apply on an application form provided by the IPRC. In addition to evaluating the application, the IPRC or its designee may conduct an on-site inspection of the hospital, agency, or other program. If approved by the IPRC, such hospital, agency, or other program shall be designated as an approved evaluating facility.

12.16(12) *Notification of changes.* An approved evaluating facility shall notify the IPRC of the following changes prior to the change's becoming effective, and any such change may result in reevaluation of approval status:

a. Transfer of ownership of the facility;

b. Change in location of the facility; or

c. Any substantial change in policies and procedures, treatment philosophy, or quality management.

12.16(13) *Review of approved evaluating facilities.* The IPRC may at any time reevaluate an approved evaluating facility. Upon evidence that the facility has failed to meet the requirements of subrule 12.16(10) or for good cause, the IPRC may revoke the approval.

12.16(14) *Postapproval.* In the event an impaired physician undergoes a comprehensive multidisciplinary evaluation at a facility which has not been approved by the IPRC, the physician shall submit evidence to the IPRC that the facility which performed the evaluation substantially meets the qualifications as defined by subrule 12.16(10). In the event the IPRC determines that the facility does not substantially meet the qualifications as defined by subrule 12.16(10), the IPRC shall require that the physician undergo a comprehensive multidisciplinary evaluation at an approved facility.

12.16(15) *Treatment providers.* As of April 1, 1999, all physicians, counselors, or other individuals providing treatment to a physician pursuant to an impaired physician program shall be approved for such purpose by the IPRC in accordance with subrules 12.16(16) to 12.16(18).

12.16(16) *Standards for approval of treatment providers.* A physician, counselor, or other individual shall be approved by the IPRC as an approved treatment provider if each of the following requirements is satisfied:

a. The provider is licensed by the appropriate licensing board and has not been disciplined by the licensing board for a violation which concerns serious matters related to the provider's ability to practice with reasonable safety and skill.

b. The provider has not been convicted of violating any federal or state law pertaining to furnishing or using narcotics or illegal substances.

c. The provider has demonstrated education, training, and expertise in the treatment of substance abuse or other impairments.

d. The philosophy and individualized treatment plan of the provider is based on the disease concept.

e. The chemical dependency model of treatment is based on a 12-step addiction recovery model such as Alcoholics Anonymous.

f. The provider has treated impaired physicians and others with similar professional backgrounds. The provider encourages peer support and frequent contact with vocationally focused peer support groups.

g. The provider has a network of referral agencies or professionals to meet the needs of the impaired physician and significant others in the event the needs go beyond the provider's expertise or available facilities.

h. The provider involves the family and significant others of the impaired physician in appropriate aspects of treatment.

i. The provider agrees to execute the treatment provider agreement of the IPRC with respect to each impaired physician to whom treatment is provided.

12.16(17) *Procedure for approval.* A physician, counselor, or other individual who meets the standards for approval and seeks to be designated as an approved treatment provider shall apply on an application form provided by the IPRC. In addition to evaluating the application, the IPRC or its designee may conduct an on-site inspection of the offices of the physician, counselor, or other individual. If approved by the IPRC, such physician, counselor, or other individual shall be designated as an approved treatment provider.

12.16(18) *Review of approved treatment provider.* The IPRC may at any time reevaluate an approved provider. Upon evidence that the provider has failed to meet the requirements of subrule 12.16(16) or for good cause, the IPRC may revoke the approval.

12.16(19) *Appeal.* In the event of a denial or revocation of approval of an evaluating facility or treatment provider, the applicant or approved facility or provider shall have the right to request a hearing before the IPRC. The request must be sent within 20 days after the receipt of the notification of denial or revocation. The hearing shall be conducted by the IPRC and the final decision shall be rendered by the IPRC.

12.16(20) *Board orders for physician evaluation or treatment.* In cases where the board of medical examiners orders a physician to be evaluated for an impairment, the physician shall be evaluated only at an evaluating facility approved by the IPRC under this chapter. In cases where the board of medical examiners orders a physician to undergo treatment or counseling for an impairment from a physician, counselor, or other individual, such treatment providers shall be approved by the IPRC under this chapter.

Rules 12.1(272C) to 12.16(272C) are intended to implement Iowa Code sections 147.55, 148.6, 272C.3, 272C.4, 272C.6, 272C.8, and 272C.9.

653—12.17 to **12.49** Reserved.

DISCIPLINARY PROCEDURE

653—12.50(147,148,17A,272C) Disciplinary procedure.

12.50(1) *Proceedings.* The proceeding for revocation or suspension of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or to discipline a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or the denial of a license, shall be substantially in accord with the following procedures which are an alternative to or in addition to the procedures stated in Iowa Code sections 147.58 through 147.71, 148.6 through 148.9.

12.50(2) *Investigations.* The board shall, upon receipt of a complaint, or upon its own motion, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline. Complaints received relating to physician supervision of physician assistants shall be copied or summarized and forwarded to the board of physician assistant examiners.

12.50(3) *Form and content of the complaint.* The complaint shall be made in writing, orally, or in any other form deemed acceptable by the board. A form provided by the board may be used. The form may be obtained from the office of the board upon request. The complaint shall contain the following information:

1. The full name and address of the complainant except in instances in which the identity of the complainant is unknown.
2. The full name, address and telephone number, if known, of the physician.
3. A clear and accurate statement of the facts that fully apprises the board of the allegations against the physician.

12.50(4) *Place and time of filing of the complaint.* The complaint may be delivered in person, by telephone, other telecommunications or electronic devices, or by mail to the executive director of the board. The current office address is: Iowa Board of Medical Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0180.

Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

12.50(5) *Investigation of allegations.* For the board to determine if probable cause exists to file a statement of charges, the executive director shall direct compliance staff to conduct an investigation of the allegations made in the complaint. The executive director may refer the complaint directly to a registered peer review committee or medical expert for investigation or consultation.

Prior to the commencement of a contested case proceeding, the licensee who is the subject of the complaint shall be contacted by the executive director, an investigator, a medical expert consulting with the agency, or peer review committee, and offered the opportunity to respond to the allegations made in the complaint. Contact with the licensee and the licensee's response to the allegations may be made in writing or through a personal interview or conference.

12.50(6) *Investigation report.* Upon completion of the investigation, the executive director or designee shall prepare a report for the board's consideration, which report shall contain the position or defense of the respondent, discuss jurisdiction and set forth any legal arguments and authorities that appear applicable to the case. The report shall be concluded with a recommendation as to whether probable cause exists for further proceedings.

12.50(7) *Informal settlement.* The executive director or the respondent may request that an informal conference be held to determine whether licensee discipline can be resolved in a just manner and in furtherance of the public interest. Neither the executive director nor respondent is required to use this informal procedure. If the executive director and respondent agree to negotiate a settlement, the various points of a proposed settlement, including a stipulated statement of facts, shall be set forth in writing. Negotiations for a proposed settlement shall be completed at least seven days prior to the hearing date set by the order for hearing. Except, the executive director shall have power to grant additional time after consultation with the board chairperson (or a member designated by the chairperson) for continued negotiations in instances where additional time will clearly lead to a satisfactory settlement prior to the hearing date. The proposed settlement shall be binding if approved by the board and signed by both the board chairperson (or a member designated by the chairperson) and the respondent.

12.50(8) *Ruling on the initial inquiry.*

a. Rejection. If a determination is made by the board to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the board shall be sent to the respondent.

b. Requirement of further inquiry. If determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

c. Acceptance of the case. If a determination is made by the board to initiate disciplinary action the board may enter into an informal settlement, issue a citation or warning or recommend formal disciplinary proceedings. Prior to the initiation of formal disciplinary action in matters involving the supervision of physician assistants the board shall, before initiating such action, forward a copy of the investigative report to the board of physician assistant examiners for its advice and recommendations. The board of physician assistant examiners shall respond within six weeks, or sooner if the issues warrant it. The board shall consider the advice and recommendations of the board of physician assistant examiners.

12.51(7) *Failure to make payment.* Failure of a licensee to pay any fees and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

This rule is intended to implement Iowa Code chapters 17A, 147, 148 and 272C.

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CHAPTER 2
BAIL ENFORCEMENT, PRIVATE INVESTIGATION AND PRIVATE SECURITY BUSINESSES

[Prior to 4/20/88, see Public Safety Department [680] Ch 2]

661—2.1(80A) Licensing. The administrative services division shall administer the bail enforcement, private investigation and private security statute. Any questions, comments, information, requests for information, or application for a license or an identification card shall be directed to the Department of Public Safety, Field Services Bureau, Wallace State Office Building, Third Floor, Des Moines, Iowa 50319-0045, or, with the exception of applications, by electronic mail via the Internet to piinfo@dps.state.ia.us.

661—2.2(80A) Definitions. As used in this chapter unless the context otherwise requires:

"Aggravated misdemeanor" means an offense so defined in Iowa Code.

"Applicant" means any person applying to the commissioner for a license, or a permanent identification (ID) card.

"Assault conviction resulting from domestic abuse" means a conviction at any level that has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

"Bail enforcement agent" means a person engaged in the bail enforcement business, including licensees and persons engaged in the bail enforcement business whose principal place of business is in a state other than Iowa.

"Bail enforcement business" means the business of taking or attempting to take into custody the principal on a bail bond issued or a deposit filed in relation to a criminal proceeding to ensure the presence of the defendant at trial, but does not include such actions that are undertaken by a peace officer or law enforcement officer in the course of the officer's official duties.

"Chief law enforcement officer" means the county sheriff, or the sheriff's designee, in the county where the defendant is located, or the chief of police, or the chief's designee, when the defendant is located within the city limits of a city or town which has a police force.

"Commissioner" means the commissioner of the department of public safety or the commissioner's authorized designee.

"Convicted" means a judgment has been entered against the person in a criminal case.

"Defendant" means the principal on a bail bond issued or deposit filed in relation to a criminal proceeding in order to ensure the presence of the defendant at trial.

"Department" means the department of public safety.

"Felony" means an offense defined as a felony by the jurisdiction in which the offense was committed.

"Judged guilty" means that a person is charged with a criminal offense and the court finds as a matter of fact and concludes as a matter of law that the individual committed the offense, whether or not the court enters judgment to that effect.

"Licensee" means a person licensed under this chapter.

"Moral turpitude" is an act of baseness, vileness, or depravity or conduct which is contrary to justice, honesty, or good morals. The following is a nonexclusive list of examples of moral turpitude:

1. Any act or pattern of conduct involving dishonesty, fraud, or deception;
2. Any act or pattern of conduct of harassment or stalking;
3. Any act of sexual misconduct;
4. Any offense with a specific criminal intent;
5. Domestic abuse assault or other assault conviction resulting from domestic abuse.

"Peace officer" means such persons as may be so designated by law and who have the lawful authority and power to so act in the state of Iowa.

"Person" means an individual, partnership, corporation, or other business entity.

"Private investigation agency" means a person engaged in a private investigation business.

"Private investigation business" means the business of making, for hire or reward, an investigation for the purpose of obtaining information on any of the following matters:

1. Crime or wrongs done or threatened.
2. The habits, conduct, movements, whereabouts, associations, transactions, reputations, or character of a person.
3. The credibility of witnesses or other persons.
4. The location or recovery of lost or stolen property.
5. The cause, origin, or responsibility for fires, accidents, or injuries to property.
6. The truth or falsity of a statement or representation.
7. The detection of deception.
8. The business of securing evidence to be used before authorized investigating committees, boards of award or arbitration, or in the trial of civil or criminal cases.
9. The business of locating owners or heirs of unclaimed funds.

"Private security agency" means a person engaged in a private security business.

"Private security business" means a business of furnishing, for hire or reward, guards, watch personnel, armored car personnel, patrol personnel, or other persons to protect persons or property, to prevent the unlawful taking of goods and merchandise, or to prevent the misappropriation or concealment of goods, merchandise, money, securities, or other valuable documents or papers, and includes an individual who for hire patrols, watches, or guards a residential, industrial, or business property or district.

"Proof of financial responsibility" means proof of the ability of a licensee to respond in damages for liability on account of accidents or wrongdoings occurring subsequent to the effective date of the proof, arising out of ownership and operation of a bail enforcement business, private security business or a private investigative business in amounts as follows:

1. With respect to agencies holding only a bail enforcement, private investigative or private security agency license and having five or fewer permanent and temporary employees, the amount of $5,000.
2. With respect to agencies holding more than a single agency license and having five or fewer permanent and temporary employees, the amount of $10,000.
3. With respect to agencies holding only a bail enforcement, private investigative or private security agency license and having more than 5 and fewer than 30 permanent and temporary employees, the amount of $20,000.
4. With respect to agencies holding more than a single agency license and having more than 5 and fewer than 30 permanent and temporary employees, the amount of $30,000.

5. With respect to agencies holding only a bail enforcement, private investigative or private security agency license and having 30 or more permanent and temporary employees, the amount of $50,000.

6. With respect to agencies holding more than a single agency license and having 30 or more permanent and temporary employees, the amount of $100,000.

"Reserve peace officer" means a volunteer, nonregular, sworn member of a law enforcement agency who serves under the direction of regular peace officers with or without compensation, has regular police powers while functioning as a law enforcement agency's representative, and participates on a regular basis in the law enforcement agency's activities including crime prevention and control, preservation of the peace, and enforcement of law.

"Uniform" means a manner of dress of a particular style and distinctive appearance as distinguished from ordinary clothing customarily used and worn by the general public.

661—2.3(80A) Persons exempt. This chapter does not apply to the following:

2.3(1) An officer or employee of the United States, or a state, or a political subdivision of the United States or of a state while the officer or employee is engaged in the performance of official duties.

2.3(2) A peace officer engaged in the private security business or the private investigation business with the knowledge and consent of the chief executive officer of the peace officer's law enforcement agency.

2.3(3) A person employed full- or part-time exclusively by one employer in connection with the affairs of the employer.

2.3(4) An attorney licensed to practice in Iowa, while performing duties as an attorney.

2.3(5) A person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of persons.

2.3(6) A person exclusively employed in making investigations and adjustments for insurance companies.

2.3(7) A person who is the legal owner of personal property which has been sold under a security agreement, or a conditional sales agreement, or a secured party under the terms of a security interest while the person is performing acts relating to the repossession of the property.

2.3(8) A person engaged in the process of verifying the credentials of physicians and allied health professionals applying for hospital staff privileges.

2.3(9) A person engaged in the business of retrieval and dissemination of public record information from the federal, state or local government.

2.3(10) A person engaged in the business of process service in either a criminal or civil action, where the determination of the whereabouts of the person is only incidental to the service of process.

2.3(11) The business of repossession or recovery of property where the determination of the whereabouts of the person is only incidental to the repossession.

2.3(12) A person engaged in the business of genealogical research.

2.3(13) A person who sells, installs, maintains, repairs or monitors burglar alarm systems at protected premises or premises to be protected.

2.3(14) Iowa Code sections 80A.2, 80A.4(1)*"b,"* and 80A.4(3) address the ability of peace officers to operate as private investigators and private security guards. The department interprets these three references, when read in concert, to mean the following:

a. An individual peace officer may perform private investigative business or private security business with permission of the officer's chief executive, without securing either a state license or ID card.

b. Two or more peace officers may form a partnership to perform private investigation business or private security business without securing either a state license or ID card. The partnership, association, or business may employ other peace officers to perform investigation or security functions; however, the chief executive of each partner, association member, owner, or employee must give permission to engage in the business.

c. A partnership owned and operated by peace officers may not employ nonpeace officers to perform investigation or security functions.

d. An agency licensed by the department may not have any peace officers involved in the ownership or management of the agency.

e. An agency licensed by the department may not employ a peace officer to do investigative or security functions.

f. No corporation in the private security or private investigation business is exempt from the license or ID card requirement or limitations on the employment of peace officers.

2.3(15) A person engaged in the business of transporting prisoners under a contract with the Iowa department of corrections or a county sheriff, a similar agency from another state, or the federal government.

661—2.4(80A) Licenses. Each person who engages in, who performs any service as, or who in any way represents or holds out as engaging in, a bail enforcement business, private investigative business or private security business or activity in this state shall be licensed prior to such activity. Each business requires a separate license. For a license to be valid, the business shall have at least one current valid licensee who is a director, officer, partner or person who is actively involved in the business in Iowa. Failure to maintain a valid license shall be grounds for revocation of the license.

2.4(1) *Application for licenses—generally.* Anyone who wishes to be considered for a bail enforcement, private investigative or private security license or ID card should contact the field services bureau as indicated in rule 661—2.1(80A) and request application information.

2.4(2) *Forms.* An applicant for a license or ID card shall execute forms provided by the department. These forms must be submitted to the commissioner and will not be processed by the commissioner unless complete. The forms used in the administration of this chapter are as follows:

a. "Application for Bail Enforcement Agency License, Private Investigative Agency License and/or Private Security Agency License" Form #PD1

b. "Identification Card Application For: Private Investigator/Private Security Guard/Bail Enforcement Agent" Form #PD2

c. "Application for License Renewal" Form #PD3

d. "Fingerprint Card" Form #FD-258

e. "Reference Form" Form #PD5

f. "Surety Bond" Form #PD6

g. "Corporate Information" Form #PD7

h. "Identification Card" Form #PD8

2.4(3) *Application requirements.* An applicant for a license as a bail enforcement agency, private investigative agency or private security agency must submit the following to complete the application process:

a. A completed Application for Bail Enforcement Agency License, Private Investigative Agency License and/or Private Security Agency License (Form #PD1) for each individual.

With respect to an applicant who is a corporation, Form #PD1 must be completed by the president of the corporation and by each officer or director who is actively involved in the licensed business in Iowa.

With respect to an applicant who is a partnership or association, Form #PD1 must be completed by each partner or association member.

b. Two completed Fingerprint Cards (Form #FD-258) for each individual identified in this subrule, paragraph *"a."*

c. A completed Surety Bond Form (Form #PD6) issued by a surety company authorized to do business in this state.

d. If the applicant is a corporation, a completed Corporate Information Form (Form #PD7).

e. Two color photographs 1" wide × 1" high of the head and shoulders of each individual identified in this subrule, paragraph *"a,"* taken not more than one year prior to application.

f. A fee of $100 for each agency license requested plus $10 for each identification card requested pursuant to this subrule.

g. Proof of financial responsibility.

2.4(4) *Abandonment of applications.* If an applicant for an agency license fails to complete the application within one year after it has been filed, or fails to take and pass the examination within a six-month period after becoming eligible, the application shall be deemed abandoned. Any application submitted subsequent to the abandonment of a former application shall be treated as a new application, and must be filed in accordance with subrule 2.4(3).

2.4(5) *Proof of financial responsibility.* Proof of financial responsibility may be given by filing:

a. The certificate of insurance demonstrating coverage for general liability, completed operations and personal injury. Personal injury insurance shall include the following group of offenses:

1. False arrest, detention, or imprisonment, or malicious prosecution.
2. Libel, slander, defamation or violation of rights of privacy.
3. Wrongful entry or eviction or other invasion of rights of private occupancy.

The certificate shall provide that the insurance shall not be modified or canceled unless 30 days' prior notice is given to the department.

b. An annual net worth statement, signed by a licensed certified public accountant, public accountant, or accounting practitioner, evidencing a net worth of at least three times the financial responsibility amount required in the definition of "Proof of financial responsibility" in rule 661—2.2(80A). The net worth statement shall be as of a date not more than six months prior to the filing date and a new net worth statement shall be filed annually within 30 days of the date of the original filing.

Money or security deposited pursuant to this rule shall not be subject to attachment or execution unless attachment or execution arises out of a suit for damages for liability on account of accidents or wrongdoings occurring subsequent to the effective date of the proof, arising out of ownership and operation of the licensed business.

c. An irrevocable letter of credit from an acceptable financial institution. Such letter of credit shall contain substantially the following:

"IRREVOCABLE LETTER OF CREDIT"

Be advised that an irrevocable letter of credit has been issued to _____ _____ of _____, state of _____, debtor, in the sum of _____ dollars, ($_____). This letter of credit shall be effective from _____ 19____ through _____ 19____ inclusive.

The provisions of this letter of credit are such that the proceeds shall be available to the Iowa Department of Public Safety, or its designee, for payment of judgments against the debtor from damages for liability on account of accidents or wrongdoings occurring subsequent to the effective date of proof, arising out of the ownership or operation of the licensed business, when said judgment has not otherwise been satisfied within thirty days of entry.

This obligation can be canceled prior to its expiration date only with the mutual consent of the Iowa Department of Public Safety, the debtor and issuing institution.

Executed and dated this _____ day of _____ 19____

d. Such other proof of assets that the commissioner may agree to accept.

2.4(6) *Application for examination.* An applicant is not eligible to take the examination until the applicant has filed a completed application accompanied by the appropriate fee. Completed applications must be filed in person or mailed to the department not later than 14 days prior to the next scheduled examination date. An applicant who fails to file within the above time period may, at the commissioner's discretion, be scheduled to take the following scheduled examination.

2.4(7) *Mandatory examinees.* Each licensed business shall have at least one licensee who has taken and successfully completed the written examination and who has met all other licensing requirements.

2.4(8) *Time and place of examination.* Examinations shall be given monthly on the second Tuesday of each month and at such other times as the commissioner deems necessary.

2.4(9) *Reexaminations.* An applicant who fails to pass the examination or who fails to appear for the examination shall not be permitted to take any subsequent examination unless the applicant has duly filed a request for reexamination.

A written request for reexamination should be addressed to the department at the following address: Department of Public Safety, Field Services Bureau, Wallace State Office Building, Third Floor, Des Moines, Iowa 50319-0045.

661—2.5(80A) License requirements. In order to be considered for a license or identification (ID) card, the applicant or the ID cardholder must:

2.5(1) Be at least 18 years old;

2.5(2) Not be a peace officer (except a reserve peace officer);

2.5(3) Never have been convicted of a felony or aggravated misdemeanor. For the purpose of this rule a deferred judgment issued under the provisions of Iowa Code chapter 907 shall be considered a conviction until the individual has been discharged from probation and the court's criminal record expunged pursuant to Iowa Code section 907.9;

2.5(4) Not be an abuser of alcohol or a controlled substance;

2.5(5) Not have a history of repeated acts of violence;

2.5(6) Be of good moral character.

Consideration of whether an applicant is of good moral character includes but is not limited to:

a. Any of the applicant's references indicating the applicant is not of good moral character;

b. The sheriff of the county of residence or business or the police chief of the city of residence or business so indicating in writing;

c. The applicant failing to discharge just obligations;

d. The applicant writing a check on an account with knowledge that there are insufficient funds to cover it;

e. The applicant failing to pay employees wages legally due the employees;

f. The applicant knowingly obstructing justice or interfering in the lawful duties of a peace officer or with any official investigation;

g. Unless rendered confidential by law, the applicant failing to report:

(1) A serious crime, or

(2) The location of any stolen property;

h. The applicant committing an act which involves moral turpitude, whether or not a criminal conviction occurred.

2.5(7) Not been convicted of any crime defined in Iowa Code section 708.3, 708.4, 708.5, 708.6, 708.8, or 708.9; or a like offense in another jurisdiction;

2.5(8) Not been convicted by any court of illegally using, carrying, or possessing a dangerous weapon;

2.5(9) Not have a history of mental illness or instability;

2.5(10) Comply with the bonding requirements in the amount and for the purpose delineated in the Iowa Code; and

2.5(11) Comply with the proof of financial responsibility requirements in the amount and for the purpose delineated in the Iowa Code and administrative rules. Licensees will have no more than 60 days to comply with these requirements following any specified expiration dates.

661—2.6(80A) ID cards. Each prospective ID cardholder must satisfy the qualifications required by rule 2.5(80A) and complete the appropriate forms.

An applicant for an ID card as an employee of a bail enforcement business, private investigative agency or private security agency must submit the following:

1. A completed Identification Card Application For: Private Investigator/Private Security Guard/Bail Enforcement Agent, #PD2;
2. Two 1" × 1" color photographs of the head and shoulders of the applicant;
3. A fee of $10 for each ID card; and
4. Two Fingerprint Cards, Form #FD-258.

For purposes of this rule, an employee is an agent or employee who is engaged in the activities of the business which render it subject to the regulation of Iowa Code chapter 80A.

EXAMPLE: A person engaged strictly in clerical functions shall not be considered an employee under this definition.

661—2.7(80A) License fee. A fee of $100 must accompany each application for a bail enforcement, private investigative or private security license. Upon approval of the application, the money shall be applied to the license fee, but if disapproved, the entire amount deposited shall be refunded to the applicant.

661—2.8(80A) Display of license. Immediately upon receipt of the license issued by the department, the licensee named therein shall cause such license to be posted and at all times displayed in a conspicuous place in the licensee's principal place of business within the state, so that all persons visiting such place may readily see it. If there is more than one place of business, then there shall be a copy of the original license issued by the department posted in every such place of business which is located in Iowa, and in a county contiguous to the state of Iowa. The licensee shall notify the commissioner of each location where a copy of the license is posted. If the licensee has no office in the state of Iowa, the licensee shall post the license at the principal place of business and notify the commissioner of the address where such license is posted. Such license shall at all reasonable times be subject to inspection by the commissioner. It shall be unlawful for any person holding such license to post such license or to permit such license to be posted upon premises other than those authorized therein. Every license, and each copy thereof, shall be surrendered to the department within seven days after written notice to the holder that such license has been revoked. Failure to comply with any of the provisions of this rule is sufficient cause for the revocation of the license.

661—2.9(80A) Duplicate license. The commissioner shall issue a duplicate license upon the payment of $5 and upon receiving a written statement that the original license has been lost, destroyed, stolen or otherwise rendered useless, and that if the original license is recovered, the original or the duplicate will be returned immediately to the department.

661—2.10(80A) License renewal. Each applicant for a license renewal must execute Form #PD3 provided by the department. This form must be submitted to the commissioner not less than 30 days prior to expiration of the applicant's current license and is not required to be processed unless complete. In order to be complete, the applicant must satisfy the bail enforcement, private investigation and private security rules 661—2.4(80A), 661—2.5(80A), and 661—2.7(80A), and for license renewals after July 1, 1999, 661—2.22(80A). The reference date for any deadline enumerated in these rules will be determined by the postmark on the piece of mail.

In no event will a renewal license be granted if the application for renewal is received more than 30 days after the expiration date of the existing license.

Upon the passage of 30 days subsequent to the expiration date, the license will become invalid, and if the former licensee wishes to continue the bail enforcement, private investigative or private security business, the former licensee must reapply as if the former licensee were making an initial application.

Upon satisfying all the pertinent rules, the applicant's license remains valid until the applicant receives a renewal license or a notification that the license will not be renewed.

661—2.11(80A) Identification (ID) cards. Upon the issuance of a license, a pocket ID card of the following content shall be issued by the commissioner.

Full legal name	Social security number
Date of birth	Color of eyes
Address	Licensee's name
Sex	Type of business
Height	License number
Weight	Date of issuance
Hair color	
1" × 1" color photo	

This ID card is invalid without the commissioner's signature and the department's seal embossed on it. The ID card shall be evidence that the holder is duly licensed, and the holder shall have this card in the holder's possession at all times when the holder is within the scope of employment. Failure to do so may result in suspension or revocation of the ID card or the licensee's license. This ID card shall remain the department's property. When any person to whom a card is issued terminates the person's position for any reason, the card must be surrendered to the commissioner within seven days. In the event of loss, destruction, or theft of this card, the licensee shall report (to the commissioner) in writing the circumstances surrounding the loss, destruction, or theft within five days of such discovery. The fee for each original, temporary, replacement or renewal ID card is $10. If the agency license has been terminated or revoked, the agency must return the license and all ID cards to the commissioner within seven days. The penalty for any knowing or willful misconduct in the use of the ID card may be suspension or revocation of the ID card or the licensee's license, depending on the nature and degree of the misconduct.

2.11(1) *Temporary ID cards.* The Identification Card Application For: Private Investigator/Private Security Guard/Bail Enforcement Agent, Form #PD2, shall contain a temporary identification card that shall be valid for 14 calendar days from the date of issuance. This temporary identification card shall be issued to new employees of a licensee so that the requirement that employees have in their possession a valid identification card may be met while the application for a permanent identification card is being processed.

2.11(2) *Display of ID cards.* Whenever the cardholder is within the holder's scope of employment and is requested to produce some identification, the holder shall promptly comply by displaying the issued ID card, unless compliance would put the cardholder or another in immediate danger or jeopardize the investigation. The cardholder shall permit the requesting person to reasonably examine the ID card and write down any information contained therein. Failure to comply may result in suspension or revocation of the ID card or license.

661—2.12(80A) Badges, uniforms, insignia and equipment. No badges, uniforms, or insignia will be approved for private investigative or bail enforcement agents. No holder of a license or ID card while performing the duties of a private security guard shall wear any uniform, or wear, display, or likewise use any badge, insignia, device, shield, or the like, without the prior written approval of such by the commissioner.

The commissioner will not approve any item subject to this rule if in the commissioner's opinion it would cause a person to confuse the operation of the licensed business with that of a law enforcement agency.

Metal badges will be approved only for private security as a part of an approved uniform. No badge will be approved which contains the word or words "police", "officer", "policeman", or "enforcement", or the Great Seal of the State of Iowa.

661—2.13(80A) Advertisement, cards, letterhead and the like. No holder of a license or ID card shall use, display, cause to be printed or distributed in any fraudulent, false, or misleading manner, cards, letterheads, circulars, brochures, or any other advertising material or advertisement in which any name or indicia of the license status of the licensee is set forth in any manner other than the name under which the licensee is duly licensed.

Such holder of a license or ID card shall not publish or cause to be published any advertisement, letterhead, circular or statement or phrase of any sort which suggests that the holder is a peace officer or member of any official investigative agency.

Any violation of this rule may result in suspension or revocation of the ID card or the license, and possible referral for criminal prosecution.

661—2.14(80A) Misleading statements. No holder of a license or ID card may make any statement which indicates or tends to indicate the individual is a peace officer.

661—2.15(80A) Reports. Any private investigative agency licensee who provides services to any client in this state shall make and offer to the client a typed or legibly written ink report containing the findings and complete details of the investigation, a copy of which shall be retained by the licensee for three years and made available to the commissioner for examination at any reasonable time upon a complaint from the client for whom the report was prepared. In the event a client does not desire a written report, the licensee will note the time and date on the file copy of the report that the client stated no desire for a written report or refused the offer. A private security agency need not submit a written report unless the client so requests one.

Descriptive reports, chronological reports, and cover letters to the client shall be personally signed by the licensee or the licensee's designee. The licensee's file copy will reflect the names of all participating employees and a description of the work performed by each one.

661—2.16(80A) Grounds for suspension, revocation, or denial. The commissioner may refuse to issue or may suspend or revoke a license or ID card(s) for either of the following reasons:

a. Violation of any of the provisions of Iowa Code chapter 80A or these rules.

b. Receipt by the department of a certificate of noncompliance from the child support recovery unit of the Iowa department of human services, as provided for in Iowa Code chapter 252J.

661—2.17(80A) Licensee's duty regarding employees. The licensee shall be held responsible for ascertaining that all the licensee's employees meet the requirements of the bail enforcement, private investigation and private security statute and rules.

The licensee shall report to the commissioner any violations of the statute and its rules, and inconsistencies thereof, and take immediate steps to be in compliance with such statute and rules.

The licensee is responsible for ensuring that all employees have a valid temporary or permanent ID card in the employee's possession prior to their commencing work.

Failure to meet these requirements may result in suspension or revocation of the license or ID card(s).

661—2.18(80A) Campus weapon requirements. In addition to the requirements of the statutes, nothing in rule 661—4.3(17A,724) shall preclude the sheriff from requiring additional firearm training. However, if the sheriff so requires additional training the sheriff shall make such training reasonably available to the applicant.

661—2.19(80A) Professional permit to carry weapons. Each person seeking a professional permit to carry weapons must meet the requirements of the Iowa Code and Iowa Administrative Code, 661—Chapter 4.

661—2.20(80A) Appeals. Any action of the department that the applicant or employee considers adverse may be appealed through the process delineated in Iowa Administrative Code, 661—Chapter 10.

661—2.21(252J) Child support collection procedures. The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

2.21(1) The notice required by Iowa Code section 252J.8 shall be served upon the applicant, identification card holder, or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee, identification card holder, or applicant may accept service personally or through authorized counsel.

2.21(2) The effective date of revocation or suspension of a license or identification card, or denial of the issuance or renewal of a license or identification card, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee, identification card holder, or applicant.

2.21(3) Licensees, identification card holders, and applicants for licenses or identification cards shall keep the department informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

2.21(4) All departmental fees for applications, license or identification card renewal or reinstatement must be paid by the licensee, identification card holder, or applicant before a license will be issued, renewed, or reinstated after the department has denied the issuance or renewal of a license or identification card, or has suspended or revoked a license or identification card pursuant to Iowa Code chapter 252J.

2.21(5) In the event a licensee, identification card holder, or applicant files a timely district court action following service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9, the department shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension or denial of the issuance or renewal of a license or identification card, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

10. Public records availability/access.
11. Report writing.
12. Substance abuse in the workplace.
13. Surveillance techniques.
14. Wage and hour law.
15. Workers' compensation law.

Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute to the licensee's professional competence. The responsibility for substantiating that a particular program is acceptable and meets the requirements rests solely upon the licensee.

d. Formal correspondence and formal individual study programs contributing directly to the professional competence of an individual which require registration and provide evidence of satisfactory completion will be considered for credit. The amount of credit to be allowed for correspondence and formal individual study programs is to be recommended by the program sponsor and shall not exceed 50 percent of the continuing education requirement.

e. The right is specifically reserved to the commissioner to approve or disapprove credit for continuing education claimed under these rules.

2.22(5) *Controls and reporting.*

a. Applicants for license renewal must provide a signed statement, under penalty of perjury, on forms provided by the department, setting forth the continuing education in which the licensee and the licensee's employees have participated in such manner and at such times as prescribed by the commissioner. This information may include:

1. School, firm or organization conducting the course.
2. Location of course.
3. Title of course and description of content.
4. Principal instructor.
5. Dates attended.
6. Hours claimed.

b. The commissioner may require sponsors of courses to furnish attendance lists or any other information the commissioner deems essential for administration of these continuing education rules.

c. The commissioner will verify on a test basis information submitted by licensees. If an application for license renewal is not approved, the applicant will be so notified and may be granted a period of time by the commissioner in which to correct the deficiencies noted.

d. Primary responsibility for documenting the requirements rests with the licensee and evidence to support fulfillment of those requirements must be retained for a period of three years subsequent to submission of the report claiming the credit. Satisfaction of the requirements, including retention of attendance records and written course outlines, may be accomplished as follows:

(1) For courses taken for scholastic credit in accredited universities and colleges or high school districts, evidence of satisfactory completion of the course will be sufficient. For noncredit courses taken, a statement of the hours of attendance, signed by the instructor, must be obtained by the permit holder.

(2) For correspondence and formal independent study courses, written evidence of completion must be obtained by the licensee.

(3) In all other instances, the licensee must maintain a record of the information listed in subrule 2.22(4) and a copy of the course outline prepared by the course sponsor.

These rules are intended to implement Iowa Code chapters 80A and 252J.

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***661—5.620(100,135C) General requirements for small group homes (specialized licensed facilities) licensed pursuant to Iowa Code section 135C.2.**

***5.620(1)** *Scope.* This rule applies to specialized licensed facilities licensed under the provisions of Iowa Code section 135C.2 and having three to five beds for individuals who are infirm, convalescent, or mentally or physically dependent.

5.620(2) *Exits.*

a. There shall be a minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms.

b. Interior and exterior stairways shall have a minimum clear width of not less than 30 inches.

5.620(3) *Windows.* Every resident sleeping room shall have an outside window or outside door arranged and located to permit the venting of products of combustion and access to fresh air in the event of an emergency.

a. In new construction, windows shall have a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches and the finished sill height shall be not more than 44 inches above the floor.

b. In existing construction the finished sill height shall be not more than 44 inches above the floor or may be accessible from a platform not more than 44 inches below the window sill.

5.620(4) *Interior finish.* Interior finish in exit shall be Class A, B or C. See Table No. 5-C, following 661—5.105(100).

5.620(5) *Doors.* Doors to resident sleeping rooms shall be a minimum of 1 3/8-inch solid core wood or equivalent.

5.620(6) *Vertical separations.* Basement stairs must be enclosed with one-hour rated partitions and 1¾-inch solid core wood doors equipped with self-closers. These doors must be kept closed unless held open by an approved electromagnetic holder, actuated by an approved smoke detection device located at the top of the stairwell and interconnected with the alarm system.

5.620(7) *Fire detection, fire alarms and sprinklers.*

a. The home shall have smoke detection installed on each occupied floor including basements in accordance with National Fire Protection Association Standard No. 74. Smoke detectors shall be interconnected so that activation of any detector will sound an audible alarm throughout. The system shall be tested by a competent person at least semiannually with date of test and name noted.

b. Homes may be protected with a sprinkler system meeting the requirements of National Fire Protection Association Standard No. 13D, 1989 edition.

5.620(8) *Fire extinguishers.*

a. Approved fire extinguishers shall be provided on each floor, so located that a person will not have to travel more than 75 feet from any point to reach the nearest extinguisher. An additional extinguisher shall be provided in, or adjacent to, each kitchen or basement storage room.

b. Type and number of portable fire extinguishers shall be determined by the fire marshal.

5.620(9) *Mechanical, electrical and building service equipment.*

a. Air conditioning, ventilating, heating, cooking and other service equipment shall be in accordance with state regulations governing same, or nationally recognized standards such as National Fire Protection Association standards governing the type of equipment, and shall be installed in accordance with the manufacturer's specifications. All hazardous areas normally found in one- and two-family dwellings, such as laundry, kitchen, heating units and closets need not be separated with walls if all equipment is installed in accordance with the manufacturer's listed instructions.

b. Portable comfort heating devices are prohibited.

*Effective date of 3/1/99 delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 1999.

5.620(10) *Attendants, evacuation plan.*

a. Every home shall have at least one staff person on the premises at all times while residents are present. This staff person shall be at least 18 years of age and capable of performing the required duties of evacuation. No person other than the management or a person under management control shall be considered as an attendant.

b. Every facility shall formulate a plan for the protection of all persons in the event of fire and for their evacuation to areas of refuge and from the building when necessary. All employees shall be instructed and kept informed respecting their duties under the plan. This plan is to be posted where all employees may readily study it. Fire drills shall be held at least once a month. Records must be kept available for inspection.

5.620(11) *Smoking.*

a. There shall be no smoking in resident sleeping areas and smoking and no smoking policies shall be strictly adhered to.

b. Ashtrays shall be constructed of noncombustible material with self-closing tops and shall be provided in all areas where smoking is permitted.

5.620(12) *Exit illumination.* Approved rechargeable battery-powered emergency lighting shall be installed to provide automatic exit illumination in the event of failure of the normal lighting system.

5.620(13) *Occupancy restrictions.*

a. Occupancies not under the control of, or not necessary to, the administration of residential care facilities are prohibited therein with the exception of the residence of the owner or manager.

b. Nonambulatory residents shall be housed only on accessible floors which have direct access to grade which does not involve stairs or elevators.

5.620(14) *Maintenance.*

a. All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. This includes fire extinguishing equipment, alarm systems, doors and their appurtenances, cords and switches, heating and ventilating equipment, sprinkler systems and exit facilities.

b. Storerooms shall be maintained in a neat and proper manner at all times.

c. Excessive storage of combustible materials such as papers, cartons, magazines, paints, sprays, old clothing, furniture and similar materials shall be prohibited at all times.

This rule is intended to implement Iowa Code section 135C.2(5)*"b."*

661—5.621 to **5.624** Reserved.

661—5.625(100,231B) Elder group homes. This rule applies to elder group homes certified by the Iowa department of elder affairs.

5.625(1) *Definitions.* The following definitions apply to rule 661—5.625(100,231B):

"Elder" means a person 60 years of age or older.

"Elder group home" means a single family residence that is the residence of a person who is providing room, board, and personal care to three to five elders who are not related to the person providing the service within the third degree of consanguinity or affinity and which is certified as an elder group home by the Iowa department of elder affairs.

5.625(2) *Exits.* There shall be a minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms. Interior and exterior exit stairways shall have a minimum clear width of not less than 30 inches.

5.625(3) *Windows.* Each resident sleeping room shall have an outside window or outside door arranged and located to provide ventilation, access to fresh air, and an emergency escape route. New or replacement windows shall have a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches, and the finished sill height shall not be more than 44 inches above the floor.

5.625(4) *Interior finish.* Interior finish in resident occupied areas shall be Class A or B in accordance with Table 5-C, 661 IAC 5.105(100).

5.625(5) *Doors.* Door to resident sleeping rooms shall be a minimum of one and three-eighths inches solid core wood or equivalent.

5.625(6) *Fire detection.* An elder group home shall have smoke detectors installed on each floor, including the basement, and in each sleeping room, in accordance with National Fire Protection Association # 74, Standard for Household Fire Warning Equipment, 1989 edition, and 661 IAC 5.807(100). Smoke detectors shall be interconnected so that activation of any detector will activate detectors throughout the home.

5.625(7) *Fire extinguishers.* Fire extinguishers shall be provided on each floor and shall be located so that a person will not have to travel any more than 75 feet from any point in the home to reach the nearest extinguisher. An additional extinguisher shall be provided in, or adjacent to, the kitchen. Type, distribution, inspection, maintenance, and recharging of extinguishers shall conform to National Fire Protection Association # 10, Standard for Portable Fire Extinguishers, 1990 edition.

5.625(8) *Smoking.* There shall be no smoking in resident sleeping rooms. Smoking may be permitted in designated areas only. If an indoor area within an elder group home is designated as a smoking area, that area shall be equipped with ashtrays constructed of noncombustible material and with self-closing tops.

5.625(9) *Exit illumination.* Approved rechargeable battery-powered emergency lighting shall be installed to provide automatic exit illumination in the event of failure of the normal lighting system.

5.625(10) *Maintenance.* All fire and life safety equipment or devices shall be U.L. or independent testing laboratory approved, installed according to manufacturer specifications, and regularly and properly maintained at all times in accordance with nationally recognized standards. This includes, but is not limited to, fire extinguishing equipment, alarm systems, doors and their appurtenances, and exit facilities. Flammable and combustible materials shall be properly stored in original, properly labeled containers or approved safety containers. Storerooms shall be maintained in a neat and proper manner at all times. Excessive storage of combustible materials is not permitted.

5.625(11) *Equipment.* Electrical, heating, and ventilating equipment shall be installed and maintained in accordance with manufacturer's instructions and nationally recognized standards. Portable space heaters are not permitted.

5.625(12) *Emergency procedures.* Every home shall formulate a plan for the protection of occupants in the event of a fire or other emergency. The plan shall take into consideration areas of refuge within the building as well as evacuation from it. The written plan must be provided to each resident and explained to them at the time they move into the facility and at least annually thereafter.

5.625(13) *Compressed gases.* If oxygen or other compressed gases are required by residents for respiratory purposes, the applicable standards for use, containers, equipment, maintenance and storage of compressed gases, as set forth in National Fire Protection Association # 99, 1993 edition, shall be adhered to.

5.625(14) *Basements.* Interior basement stairways, if enclosed, must have walls and ceilings constructed of five-eighths inch gypsum board or material providing equivalent fire protection. Basements must be separated from the first floor by a self-closing one and three-eighths inch solid wood core door or equivalent. If a basement is used by residents, it must have a door leading to the outside or an operational window having a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches, and the finished sill height shall not be more than 44 inches above the floor.

5.625(15) *Construction.* Unprotected wood frame structures of more than two stories in height, excluding basement, shall not be permitted for use as elder group homes.

EXCEPTION: Unprotected wood frame structures protected throughout by an approved automatic sprinkler system may be used as elder group homes.

This rule is intended to implement Iowa Code chapter 100 and section 231B.2.

661—5.626(231C) Assisted living housing.

5.626(1) *Definitions.* The following definitions apply to rule 661—5.626(231C):

"Assisted living" means provisions of housing with services which may include but are not limited to health-related care, personal care and assistance with instrumental activities of daily living to six or more tenants that are certified by the department of elder affairs or voluntarily accredited.

"Existing assisted living facility" is an assisted living facility operating on or before June 30, 1997, or which was in use on or before June 30, 1997, in another category or categories of state-licensed, long-term residential care facilities and was converted after that date to use as an assisted living facility.

"New assisted living facility" is an assisted living facility which begins operation on or after July 1, 1997, and was not in operation prior to July 1, 1997, in any category of state-licensed, long-term care facility.

5.626(2) *New assisted living facilities.* The standard "NFPA 101, Chapter 22, New Residential Board and Care Occupancies," 1994 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing new assisted living facilities, with the following deletion:

Delete the definition of "Residential board and care occupancy" from Section 22-1.3.

5.626(3) *Existing assisted living facilities.* The standard "NFPA 101, Chapter 23, Existing Residential Board and Care Occupancies," 1994 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing assisted living facilities in existing apartments and in those buildings that are converted from other classifications of state-licensed, long-term residential care facilities with the following deletion:

Delete the definition of "Residential board and care occupancy" from Section 23-1.3.

This rule is intended to implement Iowa Code chapter 231C.

661—5.627 to **5.649** Reserved.

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Subrule 5.305(3) which was delayed 70 days from November 8, 1979, is renumbered and amended as 5.305(2) to be effective January 17, 1980.
Effective date of 5.400 and 5.450 to 5.452 delayed by the Administrative Rules Review Committee 70 days. These amendments published in IAC 10/3/79, ARC 0596.

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**Effective date of 661—5.620(100,135C), introductory paragraph, and subrule 5.620(1) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 1999.

7.8(14) Each installer or distributor of ignition interlock devices approved for use in Iowa pursuant to this rule shall maintain general liability insurance coverage effective in Iowa, and issued by an insurance carrier authorized to operate in Iowa by the Iowa division of insurance, in an amount of not less than $1 million. Each installer or distributor shall furnish the division of criminal investigation with proof of this insurance coverage in the form of a certificate of insurance from the insurance company issuing the policy. All insurance policies required by this subrule shall carry an endorsement requiring that the division of criminal investigation criminalistics laboratory be provided with written notice of cancellation of insurance coverage required by this subrule at least ten days prior to the effective date of cancellation.

7.8(15) Any distributor or installer of ignition interlock devices in Iowa shall cease installing or distributing these devices immediately if any of the following occur:

a. The insurance coverage required under subrule 7.8(14) lapses.

b. Approval by the commissioner of public safety pursuant to Iowa Code sections 321J.4 and 321J.20 of an ignition interlock device which they distribute or install ceases to be valid. If approval by the commissioner of public safety for distribution or installation of an ignition interlock device in Iowa ceases to be valid, a distributor or installer of such a device may continue to distribute or install another ignition interlock device currently approved for use in Iowa, unless the distributor or installer has been ordered by the commissioner of public safety to cease operation as a distributor or installer of ignition interlock devices in Iowa, pursuant to 7.8(15)*"c."*

c. The commissioner of public safety orders the distributor or installer to cease operation as a distributor or installer of ignition interlock devices, and the order has become effective. An order to cease operation may be issued for cause including, but not limited to, any one or more of the following:

(1) Any act of theft or fraud including, but not limited to, violation of Iowa Code chapter 714, or any act of deception or material omission of fact related to the distribution, installation, or operation of any device subject to this chapter.

(2) Any violation of Iowa Code chapter 321J.

(3) Any violation of this chapter.

(4) Any act involving moral turpitude. For purposes of this rule, "moral turpitude" is an act of baseness, vileness, or depravity or conduct which is contrary to justice, honesty, or good morals.

An order to cease operation shall be delivered to the distributor or installer to whom the order is issued at the distributor or installer's place of business or, if this is not practical, at the residence or last-known mailing address of the owner of the business or an officer of the corporation which owns the business, if applicable. Notice shall be given in writing either by personal service or by restricted certified mail.

An order to cease operation as an installer or distributor of ignition interlock devices shall be effective 30 days after its transmittal by the department, unless the order is appealed. An order shall not become effective if it has been appealed until agency action on the appeal process is completed.

EXCEPTION: Upon a finding by the commissioner of public safety that the continued operation of an installer or distributor of ignition interlock devices presents an imminent threat to public safety, an order to cease operation shall become effective immediately upon receipt by the installer or distributor. Notice in these cases shall be by personal service.

An order to cease operation in Iowa as a distributor or installer of ignition interlock devices may be appealed to the department of public safety by filing a protest in accordance with the procedures specified in rule 661—10.101(17A), within ten days of the issuance of the order to cease operation.

661—7.9(321J) Detection of drugs other than alcohol.

7.9(1) Adoption of federal standards. Initial test requirements adopted by the federal Substance Abuse and Health Services Administration in "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 59 FR 29908, as amended in "Revisions to the Mandatory Guidelines," 62 FR 51118, are hereby adopted as standards for determining detectable levels of controlled substances in the division of criminal investigation criminalistics laboratory initial screening for controlled substances detected by the presence of the following: marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines. The following table shows the minimum levels of these substances which will result in a finding that a controlled substance is present at a detectable level:

Substance	Minimum Level (ng/ml)
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	2000
Phencyclidine	25
Amphetamines	1000

NOTE: "ng/ml" means "nanograms per milliliter."

7.9(2) Reserved.

This rule is intended to implement Iowa Code section 321J.2.

These rules are intended to implement Iowa Code chapter 321J.

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LABOR SERVICES DIVISION[875]

[Prior to 11/19/97, see Labor Services Division[347]]

CHAPTER 97
PROFESSIONAL BOXING

CHAPTER 98
ELIMINATION TOURNAMENTS

CHAPTER 99
AMATEUR BOXING

CHAPTER 100
PROFESSIONAL KICKBOXING

CHAPTER 101
PROFESSIONAL SHOOT FIGHTING

CHAPTERS 102 to 109
Reserved

RIGHT TO KNOW

CHAPTER 110
HAZARDOUS CHEMICAL RISKS RIGHT TO KNOW—GENERAL PROVISIONS

CHAPTERS 111 to 129
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CHAPTER 130
COMMUNITY RIGHT TO KNOW

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CHAPTER 140
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CONSTRUCTION—REGISTRATION AND BONDING

CHAPTER 150
CONSTRUCTION CONTRACTOR REGISTRATION

CHAPTER 3
INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/7/98, see 347—Ch 3]

875—3.1(88) Posting of notice; availability of the Act, regulations and applicable standards.

3.1(1) Each employer shall post and keep posted a notice or notices informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the department of workforce development, division of labor services. The notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other materials. The notice or notices will be furnished by the occupational safety and health bureau of the division of labor services.

Reproductions or facsimilies of the state poster shall constitute compliance with the posting requirements of Iowa Code section 88.6(3)*"a"* where such reproductions or facsimilies are at least 8½ inches by 14 inches, and the printing size is at least 10 point. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 point.

3.1(2) *"Establishment"* means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, central administrative office or governmental agency or subdivision thereof.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, or the division of labor services. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications and electric, gas and sanitary services, the notice or notices required by this rule shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as harbor workers, traveling salespersons, technicians, engineers, and similar personnel, such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of subrule 3.1(1).

3.1(3) Copies of the Act, all regulations published and all applicable safety and health rules are available from the division of labor services. If an employer has obtained copies of these materials from the division of labor services or the U.S. Department of Labor, the employer shall make them available upon request to any employee or authorized employee representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or authorized employee representative and the employer.

3.1(4) Any employer failing to comply with the provisions of this rule shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

This rule is intended to implement Iowa Code section 88.6(3)*"a."*

875—3.2(88) Objection to inspection.

3.2(1) Upon a refusal to permit a compliance safety and health officer, in the exercise of official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records or to question any employer, owner, operator, agent or employee, or to permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace, the compliance safety and health officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interviews concerning which no objection is raised. The compliance safety and health officer shall endeavor to ascertain the reason for such refusal and shall immediately report the refusal and the reason therefor to the labor commissioner or the commissioner's designee. The labor commissioner shall promptly take appropriate action, including compulsory process, if necessary.

3.2(2) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the labor commissioner or a designee, circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employer's past practice either implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed, or

b. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

3.2(3) For the purposes of this rule, the term "compulsory process" shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this rule.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.3(88) Entry not a waiver. Any permission to enter, inspect, review records or question any person shall not imply or be conditioned upon a waiver of any cause of action, citation or penalty under the Act. Compliance safety and health officers are not authorized to grant any such waiver.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.4(88) Advance notice of inspections.

3.4(1) Advance notice of inspections may not be given, except in the following situations:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

c. Where necessary to ensure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and

d. In other circumstances where the labor commissioner or the commissioner's designee determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

3.4(2) In situations described in 3.4(1), advance notice of inspections may be given only if authorized by the labor commissioner or the commissioner's designee, except that in cases of apparent imminent danger, advance notice may be given by the compliance safety and health officer without such authorization if the labor commissioner or the commissioner's designee is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of the representative is known to the employer. Upon the request of the employer, the compliance safety and health officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the compliance safety and health officer with the identity of the representative and with other information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection. An employer who fails to comply with the obligation under this rule promptly to inform the authorized representative of employees of the inspection, or to furnish such information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection, may be subject to citation and penalty under Iowa Code section 88.14(3). Advance notice in any of the situations described in subrule 3.4(1) shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.14(6).

875—3.5(88) Conduct of inspections.

3.5(1) Inspections shall take place at the times and in the places of employment as the labor commissioner or the commissioner's designee may direct. At the beginning of an inspection, compliance safety and health officers shall present their credentials to the owner, operator or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in 875—4.2(88), 875—4.4(88), and 875—subrule 4.5(1) which they wish to review. However, such designation of records shall not preclude access to additional records.

3.5(2) Compliance safety and health officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of the establishment. As used herein the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of cameras, audio and videotaping equipment, devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

3.5(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that such actions with flash, spark-producing or other equipment would not be hazardous. Compliance safety and health officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

3.5(4) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

3.5(5) At the conclusion of the inspection, the compliance safety and health officer shall confer with the employer or representative and informally advise the employer or representative of any apparent safety or health violations disclosed by the inspection. During the conference, the employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.

3.5(6) Inspections shall be conducted in accordance with the requirements of this chapter.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.6(88) Representatives of employers and employees.

3.6(1) Compliance safety and health officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the compliance safety and health officer during the physical inspection of any workplace for the purpose of aiding the inspection. A compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany the compliance safety and health officer where the compliance safety and health officer determines that the additional representatives will further aid the inspection. A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

3.6(2) Compliance safety and health officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is the representative, the compliance safety and health officer should consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3.6(3) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the compliance safety and health officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, the third party may accompany the compliance safety and health officer during the inspection.

3.6(4) Compliance safety and health officers are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.6(4).

875—3.7(88) Complaints by employees.

3.7(1) Any employee or representative of employees who believes that a violation of the Act exists in any workplace where the employee is employed may request an inspection of the workplace by giving notice of the alleged violation to the commissioner or a designee. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or agent by the commissioner's designee no later than at the time of inspection, except that, upon the request of the person giving the notice, the identity and the identities of individual employees referred to therein shall not appear in the copy or on any record published, released, or made available by the division of labor services.

3.7(2) If upon receipt of notification the commissioner or a designee determines that the complaint meets the requirements set forth in subrule 3.7(1), and that there are reasonable grounds to believe that the alleged violation exists, an inspection shall be made as soon as practicable, to determine if the alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

3.7(3) During any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the compliance safety and health officer of any violation of the Act which they have reason to believe exists in the workplace.

875—3.8(88) Trade or governmental secrets.

3.8(1) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal trade or governmental secrets. If the compliance safety and health officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs and environmental samples, shall be labeled "confidential-trade/governmental secrets" and shall not be disclosed except in accordance with the provisions of Iowa Code section 88.12.

3.8(2) Upon the request of an employer, any authorized representative of employees in an area containing trade or governmental secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no representative or employee, the compliance safety and health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.12.

875—3.9(88) Imminent danger. Whenever and as soon as a compliance safety and health officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, the affected employees and employers shall be notified as provided in Iowa Code section 88.11(3). Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of the danger by the compliance safety and health officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate the danger.

875—3.10(88) Consultation with employees. Compliance safety and health officers may consult with employees concerning matters of occupational safety and health to the extent that they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which the employee has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.6(4).

875—3.11(88) Citations.

3.11(1) Upon receipt of any citation under the Act, the employer shall immediately post the citation or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided in this rule. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, the citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced or covered by other material. Notices of de minimis violations need not be posted.

3.11(2) Each citation or a copy thereof shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect the posting responsibility under this rule unless and until the employment appeal board issues a final order vacating the citation.

3.11(3) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the employment appeal board and the notice may explain the reasons for the contest. The employer may also indicate that specified steps have been taken to abate the violation.

3.11(4) Any employer failing to comply with the provisions of subrules 3.11(1) and 3.11(2) shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

3.11(5) Any employer to whom a citation and notification of penalty have been issued may, under Iowa Code section 88.8, notify the commissioner of the employer's intention to contest the citation or notification of penalty. The notice of contest shall be in writing. The notice of contest shall be received by the division of labor services or postmarked no later than 15 working days after the receipt by the employer of the citation and notification of penalty. The notice of contest may be provided to the division of labor services by mail, personal delivery or facsimile transmission.

This rule is intended to implement Iowa Code sections 88.7(3) and 88.8.

875—3.12(88) Informal conferences. At the request of an affected employer, employee, or representative of employees, the labor commissioner or the commissioner's designee may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at the conference shall be subject to the rules of procedure prescribed by the employment appeal board. If the conference is requested by the employer, an affected employee or the employee's representative shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. Any party may be represented by counsel at the conference. No conference or request for a conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest.

This rule is intended to implement Iowa Code sections 17A.3(1)*"b"* and 17A.10.

875—3.13(88) Petitions for modification of abatement date.

3.13(1) An employer may file a petition for modification of abatement date when the employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond its reasonable control.

3.13(2) A petition for modification of abatement date shall be in writing and shall include the following information:

a. All steps taken by the employer, and the dates of the action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons the additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition and notice informing affected employees of their rights to party status has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with 3.13(3)*"a"* and a certification of the date upon which the posting and service was made. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested additional time to correct one or more of the violations. Affected employees are entitled to participate as parties under terms and conditions established by the Iowa employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file the objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceedings related thereto. Objections shall be sent to the commissioner's designee: IOSH Administrator, Occupational Safety and Health Bureau, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (place reasonably convenient to employees, preferably at or near workplace).

3.13(3) A petition for modification of abatement date shall be filed with the labor commissioner or the commissioner's designee no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of the petition and a notice of employee rights complying with 3.13(2)*"e"* shall be posted in a conspicuous place where all affected employees will have notice thereof or near the location where the violation occurred. The petition and notice of employee rights shall remain posted for a period of ten working days. Where affected employees are represented by an authorized representative, the representative shall be served with a copy of the petition and notice of employee rights.

b. Affected employees or their representatives may file an objection in writing to a petition with the labor commissioner or the commissioner's designee. Failure to file the objection within ten working days of the date of posting of the petition and notice of employee rights or of service upon an authorized representative shall constitute a waiver of any further right to object to the petition.

c. The labor commissioner or the commissioner's designee shall have the authority to approve any filed petition for modification of abatement date. Uncontested petitions shall become final orders pursuant to Iowa Code section 88.8.

d. The labor commissioner or the commissioner's designee shall not exercise approval power until the expiration of 15 working days from the date the petition and notice of employee rights were posted or served by the employer.

3.13(4) Where any petition is objected to by the labor commissioner or the commissioner's designee or affected employees, the petition, citation, and any objections shall be forwarded to the employment appeal board within 3 working days after the expiration of the 15-day period set out in subrule 3.13(3)*"d."*

This rule is intended to implement Iowa Code section 88.8.

875—3.14 to **3.18** Reserved.

875—3.19(88) Abatement verification.

3.19(1) *Scope and application.* This rule applies to employers who receive a citation for a violation of the Iowa Occupational Safety and Health Act.

3.19(2) *Definitions.*

"Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

"Abatement date" means:

1. For an uncontested citation item, the later of:

- The date in the citation for abatement of the violation;
- The date approved by OSHA or established in litigation as a result of a petition for modification of the abatement date (PMA); or
- The date established in a citation by an informal settlement agreement.

2. For a contested citation item for which the employment appeal board has issued a final order affirming the violation, the later of:

- The date identified in the final order for abatement; or
- The date computed by adding the period allowed in the citation for abatement to the final order date;
- The date established by a formal settlement agreement.

"Affected employees" means those employees who are exposed to the hazard(s) identified as a violation(s) in a citation.

"Final order date" means:

1. For an uncontested citation item, the fifteenth working day after the employer's receipt of the citation;

2. For a contested citation item:

- The thirtieth day after the date on which a final order was entered by the employment appeal board or
- The date on which a court issues a decision affirming the violation in a case in which a final order of employment appeal board has been stayed.

"Movable equipment" means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between work sites.

3.19(3) *Abatement certification.*

a. Within ten calendar days after the abatement date, the employer must certify to the division that each cited violation has been abated, except as provided in paragraph *"b"* of this subrule.

b. The employer is not required to certify abatement if the compliance safety and health officer during the on-site portion of the inspection:

(1) Observes, within 24 hours after a violation is identified, that abatement has occurred; and

(2) Notes in the citation that abatement has occurred.

c. The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required in 3.19(8), the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

NOTE: Appendix A contains a sample abatement certification letter.

3.19(4) *Abatement documentation.*

a. The employer must submit to the division, along with the information on abatement certification required by subrule 3.19(3), paragraph *"c,"* documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the division indicates in the citation that the abatement documentation is required.

b. Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

3.19(5) *Abatement plans.*

a. The division may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.

b. The employer must submit an abatement plan for each cited violation within 25 calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

NOTE: Appendix B contains a sample abatement plan form.

3.19(6) *Progress reports.*

a. An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

(1) That periodic progress reports are required and the citation items for which they are required;

(2) The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;

(3) Whether additional progress reports are required; and

(4) The date(s) on which additional progress reports must be submitted.

b. For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

NOTE: Appendix B contains a sample progress report form.

3.19(7) *Employee notification.*

a. The employer must inform affected employees and their representative(s) about abatement activities covered by this rule by posting a copy of each document submitted to the division or a summary of the document near the place where the violation occurred.

b. Where posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer shall:

(1) Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

(2) Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the division.

c. An employee or an employee representative shall submit a request to examine and copy abatement documents within three working days of receiving notice that the documents have been submitted. The employer shall comply with an employee's or employee representative's request to examine and copy abatement documents within five working days of receiving the request.

d. The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the division and that abatement documents are:

(1) Not altered, defaced, or covered by other material; and

(2) Remain posted for three working days after submission to the division.

3.19(8) *Transmitting abatement documents.*

a. The employer must include, in each submission required by this rule, the following information:

1. The employer's name and address;
2. The inspection number to which the submission relates;
3. The citation and item numbers to which the submission relates;
4. A statement that the information submitted is accurate; and
5. The signature of the employer or the employer's authorized representative.

b. The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the division receives the document is the date of submission.

3.19(9) *Movable equipment.*

a. For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the work site or between work sites. Attaching a copy of the citation to the equipment is deemed to meet the tagging requirement of this paragraph as well as the posting requirement of rule 875—3.11(88).

b. The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued.

NOTE: Appendix C (nonmandatory) contains a sample tag that employers may use to meet this requirement.

c. If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

(1) For hand-held equipment, immediately after the employer receives the citation; or

(2) For non-hand-held equipment, prior to moving the equipment within or between work sites.

d. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by OSHA to meet the requirements of this rule when the information required by subrule 3.19(9), paragraph *"b,"* is included on the tag.

e. The employer must ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

f. The employer must ensure that the tag or copy of the citation attached to movable equipment remains attached until:

(1) The violation has been abated and all abatement verification documents required by this regulation have been submitted to the division;

(2) The cited equipment has been permanently removed from service or is no longer within the employer's control; or

(3) The appeal board issues a final order vacating the citation.

875—3.20(88) Policy regarding employee rescue activities.

3.20(1) The labor commissioner or the commissioner's designee shall review the inspection report of the compliance safety and health officer. If, on the basis of the report, the labor commissioner or the commissioner's designee believes that the employer has violated a requirement of Iowa Code section 88.4 or any rule, the commissioner or the commissioner's designee shall issue to the employer either a citation or a notice of de minimis violations which has no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.

3.20(2) Any citation shall describe with particularity the nature of the alleged violation, including a reference to Iowa Code chapter 88, or rule alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

3.20(3) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under subrule 3.7(1) or a notification of violation under subrule 3.7(3), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

3.20(4) Every citation shall state that the issuance of a citation does not constitute a finding that a violation has occurred unless there is a failure to contest as provided for in Iowa Code chapter 88 or, if contested, unless the citation is affirmed by the appeal board.

3.20(5) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

a. The employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and the employer fails to provide protection of the safety and health of the employee, including failing to provide appropriate training and rescue equipment; or

b. The employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

c. The employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual. Additionally, the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

3.20(6) For purposes of this policy, the term "imminent danger" means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

875—3.21 Reserved.

875—3.22(88,89B) Additional hazard communication training requirements.

3.22(1) *Training format.* The employer may present the training program to the employee in any format; however, the employer shall preserve a written summary and synopsis of the training, a cassette tape recording of an oral presentation, or a videotape recording of an audio-video presentation of the training relied upon by the employer for compliance with 29 CFR 1910.1200(h), and shall allow employees and their designated representatives access to the written synopsis, tape recording, or videotape recording.

3.22(2) *Review by the division.* The training program shall be available for review and approval upon inspection by the division. Upon request by the commissioner, the employer shall make available the written synopsis, cassette tape recording, or videotape recording used or prepared by the employer. The commissioner may conduct an inspection to review an actual training program or review the employer's records of a training program.

875—3.23(88) Definitions. The definitions and interpretations contained in Iowa Code section 88.3 shall be applicable to the terms when used in this chapter. As used in this chapter unless the context clearly requires otherwise:

"Act" means the Iowa Occupational Safety and Health Act of 1972, Iowa Code chapter 88.

"Compliance safety and health officer" means a person authorized by the labor commissioner of the department of workforce development, division of labor services, to conduct inspections.

"Division" means the Iowa division of labor of the department of workforce development.

"Inspection" means any inspection of an employer's factory, plant, establishment, construction site or other area, workplace or environment where work is preformed by an employee of an employer, and includes any inspection conducted pursuant to a filed complaint, and any follow-up inspection, accident investigation or other inspections conducted under the Act.

"Working days" means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

This rule is intended to implement Iowa Code section 88.6.

875—3.24(88) Occupational safety and health bureau forms.

3.24(1) IOSH-2 Form: Citation and Notification of Penalty.

3.24(2) IOSH-2B Form: Notification of Failure to Correct.

3.24(3) IOSH-7 Form: Complaint.

3.24(4) IOSH-8 Form: Notice of Alleged Imminent Danger.

3.24(5) IOSH-9 Form: Abatement Notice.

(These forms are being omitted from this publication. For copies of forms contact Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.)

These rules are intended to implement Iowa Code chapters 17A and 88 and sections 84A.1, 84A.2 and 88.2.

NOTE: Appendices A through C provide information and nonmandatory guidelines to assist employers and employees in complying with the appropriate requirements of rule 875—3.19(88).

Appendix A - Sample Abatement—Certification Letter

(Name), IOSH Administrator
Iowa Division of Labor
1000 East Grand Avenue
Des Moines, IA 50319

[Company's Name]
[Company's Address]

The hazard referenced in Inspection Number [insert 9-digit #] for violation identified as:

Citation [insert #] and item [insert #] was corrected on [insert date] by: _____

_____

Citation [insert #] and item [insert #] was corrected on [insert date] by: _____

_____

I attest that the information contained in this document is accurate.

_____

Signature

_____

Typed or Printed Name

Appendix B - Sample Abatement Plan or Progress Report

(Name), IOSH Administrator
Iowa Division of Labor
1000 East Grand Avenue
Des Moines, IA 50319

[Company's Name]
[Company's Address]

Check one:
Abatement Plan [ ]
Progress Report [ ]

Inspection Number [insert 9-digit #] _____

Page _____ of _____

Citation Number(s)* _____

Item Number(s)* _____

Action	Proposed Completion Date (for abatement plans only)	Completion Date (for progress reports only)
1.		
2.		
3.		
4.		
5.		
6.		

Date required for final abatement: _____

I attest that the information contained in this document is accurate.

_____
Signature

_____
Typed or Printed Name

Name of primary point of contact for questions: [optional]

Telephone number: _____

* Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

Appendix C Tag

WARNING

EQUIPMENT HAZARD
CITED BY OSHA

EQUIPMENT CITED:

_____

_____

_____

HAZARD CITED:

_____

_____

_____

FOR DETAILED INFORMATION
SEE OSHA CITATION POSTED AT:

_____

_____

Iowa Division of Labor Services
Occupational Safety and Health Administration

Background color - Orange
Message color - Black

[Filed August 29, 1972]
[Filed 12/15/75, Notice 10/6/75—published 12/29/75, effective 2/4/76]
[Filed emergency 11/20/79—published 12/12/79, effective 11/20/79]
[Filed 1/31/80, Notice 12/26/79—published 2/20/80, effective 3/28/80]
[Filed 7/1/83, Notice 5/11/83—published 7/20/83, effective 9/1/83]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]
[Filed 10/10/91, Notice 6/12/91—published 10/30/91, effective 12/6/91]
[Filed 1/26/99, Notice 12/16/98—published 2/24/99, effective 3/31/99]

110.6(5) Nothing in 875—Chapters 110 and 120 is meant to preclude the parties from pursuing noncontractual remedies to the extent permitted by law.

110.6(6) If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to the division, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, the disclosure.

110.6(7) If the chemical manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:

a. Be provided to the health professional, employee, or designated representative, within 30 days of the request;

b. Be in writing;

c. Include evidence to support the claim that the specific chemical identity is a trade secret;

d. State the specific reasons why the request is being denied; and

e. Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

110.6(8) The health professional, employee, or designated representative whose request for information is denied under subrule 110.6(3) may refer the request and the written denial of the request to the division for consideration.

110.6(9) When a health professional, employee, or designated representative refers the denial to the division under subrule 110.6(8), the division shall consider the evidence to determine if:

a. The chemical manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;

b. The health professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and

c. The health professional, employee, or designated representative has demonstrated adequate means to protect the confidentiality.

110.6(10) If the division determines that the specific chemical identity requested under subrule 110.6(3) is not a bona fide trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by the division.

If a chemical manufacturer, importer, or employer demonstrates to the division that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the commissioner may issue an order or impose additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to ensure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer, importer, or employer.

110.6(11) If a citation for a failure to release specific chemical identity information is contested by the chemical manufacturer, importer, or employer, the matter will be adjudicated before the appeal board in accordance with the enforcement scheme established in Iowa Code chapter 88 and the applicable appeal board rules. In accordance with appeal board rules, when a chemical manufacturer, importer, or employer continues to withhold the information during the contest, the appeal board may review the citation and supporting documentation in camera or issue appropriate orders to protect the confidentiality of the matters.

110.6(12) Notwithstanding the existence of a trade secret claim, a chemical manufacturer, importer, or employer shall, upon request, disclose to the commissioner any information which this rule requires the chemical manufacturer, importer, or employer to make available. Where there is a trade secret claim, the claim shall be made no later than at the time the information is provided to the commissioner so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

110.6(13) Nothing in this rule shall be construed as requiring disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

875—110.7 Rescinded IAB 6/15/88, effective 8/15/88.

These rules are intended to implement Iowa Code sections 89B.4, 89B.5, 89B.8, and 89B.11.

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[Prior to 9/24/86, Labor, Bureau of[530]]
[Prior to 10/21/98, see 347—Ch 120]
Rescinded IAB 2/24/99, effective 3/31/99

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