

State of Iowa

1973

IOWA DEPARTMENTAL RULES

JULY

1973

SUPPLEMENT

Containing

The permanent rules of general application promulgated by
the state departments from January 1, 1973 to July 12, 1973



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PUBLISHED BY THE
STATE OF IOWA

UNDER AUTHORITY OF CHAPTER 14, CODE 1973

NOTICE

The statutes provide that the Code Editor may publish cumulative, semiannual supplements to the Iowa Departmental Rules. Inquiry should be made each six months of the Superintendent of Printing for distribution of these supplements.

PREFACE

This volume is published in compliance with section 14.6(5) of the Code. The rules of the various boards and departments are arranged in alphabetical order, using the names of the departments in general use.

Not all of the rules promulgated by the state departments have been included. The Act specifies "permanent" rules of "general application." Where rules have been omitted by the editor there is a notation indicating where such rules may be obtained.

THE EDITORS

July 1973

PUBLICATION OF DEPARTMENTAL RULES

Section 14.6 of the Code, subsection 5 as amended by 65 G.A., H.F. 209, § 2, requires the Code editor to:

"Prepare the manuscript copy, and cause to be printed by the state superintendent of printing in each year in which a Code is published, a volume which shall contain the permanent rules and regulations of general application, promulgated by each state board, commission, bureau, division or department, other than a court, having state-wide jurisdiction and authority to make such rules. The Code editor may omit from said volume all rules and regulations applying to professional and regulatory examining and licensing provisions and any rules and regulations of limited application and temporary rules. The Code editor may make reference in the volume as to where said omitted rules and regulations may be procured.

"This volume shall be known as the Iowa Departmental Rules and any rule printed therein may be cited asI.D.R. . . .giving the year of publication and the page where the particular rule, by number, may be found.

"The volume of rules and regulations published by the Code editor shall be sold and distributed by the superintendent of printing in the same manner as Codes and session laws.

"The Code editor may provide cumulative, semiannual supplements for insertion in the latest published volume."

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IOWA

DEPARTMENTAL RULES

JULY 1973

AGRICULTURE DEPARTMENT

Pursuant to the authority of section 163.1 of the Code, rules appearing in 1973 IDR pages 7 to 22 (chapter 1) relating to livestock diseases are hereby amended as follows:

[Filed April 18, 1973]

ITEM 1. Rescind 1.29(1) to 1.29(9).

ITEM 2. Amend 1.30(163) as follows:

Strike all of lines 1 to 7 and insert in lieu thereof the following: "All cattle sold, moved or otherwise disposed of shall meet the following requirements."

Strike all of 1.30(1) "e" and reletter paragraph "f" as paragraph "e".

ITEM 3. Rescind 1.32(163).

ITEM 4. Amend 1.37(163) as follows:

Rescind 1.37(6) and insert in lieu thereof the following:

"1.37(6) 'Brucellosis test classification' means the designation of animals tested by

the methods of card test or rivanol or any other method approved jointly by the state and federal departments of agriculture."

Rescind all of subrule 1.37(8).

ITEM 5. Rescind rule 1.38(163) and reserve the number for future use.

ITEM 6. Rescind subrule 1.41(5).

ITEM 7. Amend 1.45(1), line 3 by deleting "Ames" and inserting in lieu thereof "Des Moines".

ITEM 8. Rescind 1.46(1) and renumber the remaining subrules.

ITEM 9. Rescind 1.47(3) and reserve the number for future use.

ITEM 10. Rescind 1.77(163) to 192(163) and reserve the numbers for future use.

ITEM 11. Rescind the division entitled "Feeding Garbage" (pages 20, 21), being rules 1.116(163) to 1.130(163), and reserve the numbers for future use.

[Effective April 18, 1973]

AGRICULTURE DEPARTMENT

(continued)

Pursuant to the authority of section 163A.9 of the Code, rules appearing in 1971 IDR, pages 7 to 21 (chapter 1) [1973 IDR, 7 to 22] relating to livestock diseases are hereby amended by adding a new division as follows:

~~[Filed May 14, 1973]~~

1.138 and 1.139 Reserved for future use.

BREEDING SWINE BRUCELLOSIS CONTROL PROGRAM

1.140(163A) All persons who wish to have breeding swine tested for brucellosis

under the provisions of section 163A.12 of the Code, shall have each seller of breeding swine sign a test request form furnished by the department of agriculture stating:

1. The name and address of the owner of the breeding swine;

2. The designation of the county and state of origin; and

3. That the seller requests the department of agriculture to inspect and test his breeding swine for brucellosis.

1.141(163A) The department of agriculture will designate a federal or state veterinarian, or a lay person under the supervision of a veterinarian, to make the inspections and tests provided for in chap-

ter 163A to determine that the breeding swine are free from brucellosis.

This rule is intended to implement chapter 163A.

[Effective May 14, 1973]

AGRICULTURE DEPARTMENT

(continued)

Pursuant to the authority of section 267.6 of the Code, the rules appearing in 1973 IDR, pages 43 to 46, chapter 12, relating to state entomologist are rescinded and the following adopted in lieu thereof.

[Filed March 15, 1973]

CHAPTER 12

STATE ENTOMOLOGIST

12.1(267) Nursery stock. Nursery stock approved for sale in Iowa in accordance with section 267.9 is defined as cultivated or wild woody plants and parts capable of propagation except seeds, such as all fruit trees and vines; forest or shade trees; evergreens; ornamental shrubs and vines; all small fruits such as strawberry and raspberry plants; flowering bulbs or corms; roots or rooted hardy herbaceous perennials to be used for ornamental purposes.

12.2(267) Plants not included as nursery stock. Plants not included as nursery stock [12.1(267)] are greenhouse plants; field crop seeds; vegetable and flower seeds; vegetable plants grown as annuals; annual flower plants. Annual means a plant started from seed that makes a vegetative growth, flowers and produces seed and then dies within one year of the time the seed is sown.

Growers of greenhouse plants, hardy herbaceous perennials, bulbs or tubers of flowering plants, or other plants, who wish to make shipments into states requiring that an inspection certificate accompany such plants must make application for inspection services before such certificate can be issued. These plants shall be subject to the same rules and fees as Iowa nursery stock.

12.3(267) Person. The word "person" shall include individual or combination of

individuals, corporation, society, association, partnerships, institution or public agency.

12.4(267) Nurseryman. A "nurseryman" is a person who grows or propagates nursery stock for sale or distribution.

12.5(267) Nursery. A "nursery" is any grounds or premises on or in which nursery stock is propagated or grown for sale or distribution, including any grounds or premises on or in which nursery stock is being fumigated, treated, stored or packed for sale or movement.

12.6(267) Nursery dealer. A "nursery dealer" is any person, not a nurseryman, grower or propagator of nursery stock who:

12.6(1) Buys nursery stock for resale or reshipping within the state of Iowa.

12.6(2) Transplants or moves trees, shrubs or other nursery stock, regardless of where or how grown, from place to place within this state for other persons for a consideration in payment of nursery stock, for planting of same, or for both nursery stock and planting.

12.7(267) An agent or salesman. An "agent" or "salesman" is a person who has authority to represent a nurseryman, nursery dealer, or another agent in soliciting wholesale or retail orders for nursery stock, but who keeps no nursery stock on hand for advertising or display purposes or for delivery at the time an order is taken.

12.8(267) Collected from wild. Nursery stock may include plants collected from the wild state if they bear a label plainly marked "Collected from Wild". Plants collected from the wild state and grown in the nursery row for at least one growing season before being offered for sale do not have to be so labeled.

12.9(267) Out-of-state nurserymen. Every out-of-state nurseryman or dealer who ships nursery stock into the state of Iowa must file with the state entomologist of Iowa a signed copy of his current valid certificate of inspection. This, together with the payment of either a fee of \$10.00 or a fee equivalent to that charged by his state to out-of-state nurserymen and nursery dealers, shall entitle him to an out-of-state certificate. The state entomologist of Iowa shall determine which fee shall be paid.

12.10(267) Reciprocal agreements without payment of required fee. Notwithstanding the provision of 12.9(267), the state entomologist may enter into reciprocal agreements with the responsible officers of other states whereby the required out-of-state certificate may be granted to nurserymen and nursery dealers of such states without the payment of the required fee, provided Iowa nurserymen are permitted to ship nursery stock into such states without having to pay a fee for a certificate granting that privilege; and provided, further, the state entomologist shall find that other states before issuing their certificates require inspections equal to those required by the Iowa law.

12.11(267) Nursery inspection. Each nursery within the state of Iowa shall be inspected at least annually to ascertain if they are infested with insect pests or infected with plant diseases. If serious insect pests or disease infections are found, control measures or cleanup measures shall be required necessitating further inspections before a certificate of inspection is issued. Cleanup measures will be required if excessive weeds in the nursery make an adequate inspection impossible.

12.11(1) Two field inspections shall be required for the certification of strawberry plants. The first inspection shall be made in early spring prior to the time of fruit setting and the second inspection during late summer or early fall. Certified plants must be apparently free of insect pests, plant diseases and parasitic nematodes and must originate from plantings in which the number of plants infested with certain pests do not exceed the tolerances provided:

a. Red Stele disease—zero.

b. Crimp (Foliar nematode disease)—zero.

c. Root knot nematode—zero; provided, that planting not generally infested may be submitted for an inspection after the plants have been dug and graded.

d. June yellows (Blakemore yellows)—one percent provided visibly affected plants are rogued.

e. Crinkle and virus yellows—zero.

f. Aster yellows and witches broom—one percent provided infected are rogued.

12.11(2) Bramble plants shall be inspected twice during the growing season with an interval of at least 30 days between inspections. Certified plants must be apparently free of insect pests, plant diseases, and parasitic nematodes and subject to the following provision; that there shall not be more than two percent of the plants infested with orange rust or virus type diseases at the time of the first inspection and not more than one percent at the time of the second inspection. All infected plants must be removed from the planting to the satisfaction of the inspector.

12.11(3) Two inspections of gladiolus shall be required, one during the growing season and one when the corms are in storage.

a. Field inspection standards. An aggregate tolerance of one percent shall be allowed per variety for such diseases as white break mosaic and aster yellows or other virus diseases that seriously affect true color, shape, or size of the bloom or leaves or vigor of the plant, providing the infected plants of a variety are rogued at the time of inspection.

b. An aggregate percentage of eight percent per variety will be allowed for fungal and bacterial diseases provided not more than three percent of the corms are infected with diseases other than bacterial scab which has a tolerance of five percent.

c. Corms infested with thrips will not be approved for certification, except infested corms may be given an approved treatment and resubmitted for inspection and certification.

12.12(267) References. If deemed advisable by the state entomologist, each

applicant for a dealer's certificate shall furnish a written recommendation of one banker, one businessman and three nurserymen and must satisfy the state entomologist as to his business honesty and integrity.

12.13(267) Fee schedule. Before a certificate of inspection is issued an inspection fee, based on the following schedule, shall be paid to the department.

Acres	Fee
1-10	\$ 5.00
11-20	7.50
21-35	10.00
36-50	15.00
51-100	20.00
101-200	30.00
201-300	40.00
301-400	50.00
401-500	60.00
500 plus	65.00

12.14(267) Nursery dealer certificate. Nursery dealers shall secure a nursery dealer's certificate from the state entomologist under which to carry on their business within the state. For the purposes of this regulation each separate place of business whether owned or operated by an individual, firm or corporation shall be considered as distinct and operate under its own certificate. In case of a system of chain stores or chain nurseries each store or nursery shall obtain a dealer's certificate from the state entomologist for the conduct of the nursery business in each store or nursery. The fee for each dealer's certificate shall be \$5.00.

12.15(267) Proper facilities. Individuals, firms or corporations who are offering nursery stock for sale at nursery grounds, stores, roadside stands, public market places, or any other place, shall have and maintain proper facilities for keeping all nursery stock in a viable condition and shall keep such stock in a viable condition pending sale and shall keep in view of the public the proper kind of certificate showing that they have the right to be offering nursery stock for sale. Proper facilities should include ready access to an adequate water supply and a storage and display area, which prevents excess drying of plant

tissues. An example of such a site would be one protected from direct sunlight and protected from the wind.

12.16(267) Storage and display. All nursery stock offered for sale or distribution shall be stored and displayed as follows:

1. Balled and burlapped stock shall be kept moist at all times and should be kept in sawdust, shingle tow, peat, sphagnum moss or other moisture-holding material not toxic to plants, of sufficient depth to cover the top of the ball of earth.

2. Container stock shall be watered sufficiently to maintain the viability and vigor of the stock. Potting soil shall be maintained at a depth so as to cover all roots of the plants.

3. Bare-root stock shall be kept under conditions of temperature and moisture to retard etiolated (nongreen) or otherwise abnormal growth and maintain viability. Moisture must be supplied to the root system by high humidity conditions in storage or by covering the roots with soil, sawdust, peat, wood shavings or other moisture-holding material not toxic to plants; such material is to be kept moist at all times. Roots of healed-in stock must be covered with well packed soil at least one inch above the crown of the plant.

4. Prepackaged stock with roots packaged in moisture-retaining plastic, peat, wood shavings or other material not toxic to plants must be stored and displayed under conditions that will retard etiolated (nongreen) or otherwise abnormal growth and will insure an adequate supply of moisture to the roots at all times. Storage and display at cool temperatures and with frequent watering will retard the break of dormancy and increase the viability of prepackaged nursery stock.

12.17(267) All nursery stock offered for sale or distribution shall meet these minimum indices of viability:

1. Woody stemmed deciduous stock shall have moist, green cambium tissue in the stems and branches and shall have viable buds or normal green unwilted growth sufficient to permit the stock to live and grow in a form characteristic of

the species when planted and given reasonable care, except that in the case of rose bushes each stem must show moist, green undamaged cambium in at least the first eight inches above the graft. In the case of potted roses, it shall be the existing stem above the graft. Any single stem on a rose bush not meeting this specification shall disqualify the entire plant; provided that a bush may be pruned to remove dead or damaged canes and the plant is sold at the proper grade according to Standards of the American Association of Nurserymen.

2. Nursery stock when in a wilted, rotted or other such condition indicative of subnormal vitality shall not be sold or offered for sale.

3. Any bare-rooted or prepackaged woody-stemmed stock having more than two inches of etiolated (nongreen) growth from individual buds shall not be sold or offered for sale.

4. Balled and burlapped stock in a weakened condition as evidenced by die-back or dryness of foliage or such stock having broken or loose balls or earth balls of a size smaller than that specified by the American Association of Nurserymen's

USA Standards for Nursery Stock shall not be sold or offered for sale.

5. Colored waxes or other materials used to coat the aerial parts of plants that change the appearance of the plant surface so as to prevent adequate inspection are prohibited.

Nursery stock on display at sales outlets not meeting the foregoing minimum indices of viability shall be destroyed or removed from public view and not offered for sale.

12.18(267) **Certificates.** Certificates issued to nurserymen or nursery dealers are nontransferable and are for the exclusive use of the one to whom they are issued. Each and every form of these may be revoked by the state entomologist at any time.

12.19(267) **Insect pests and plant diseases.** The state entomologist does hereby declare the following insect pests and plant diseases and each and every plant and thing infested or infected therewith to be a public nuisance of such nature that their dissemination within the state of Iowa should be prevented within the meaning of section 267.5 of the Code.

COMMON NAME	SCIENTIFIC NAME	HOST
Apple scab	Venturia inaequalis	Several trees
Anthraxnose	Several species	Various plants
Ants	Several species	Various plants
Aphids	Various species	Wide variety of plants
Arborvitae leaf miner	Argyresthia thuiella	Arborvitae
Asparagus beetle	Two species	Asparagus
Bagworms	Thyridopteryx ephemeraeformis	Variety of plants
Bark beetles	Several species	Various trees
Black knot	Dibotryon morbosum	Apricot, prune, plums
Black spot	Diplocarpon rosae	Rose
Black spot of peach	Phytophthora pruni	Peach, plum, etc.
Blackberry rust-orange rust	Gymnoconia interstitialis	Blackberry, raspberry
Black stem rust of grain	Puccinia graminis	Common barberry, cereals, grasses
Black vine weevil	Brachyrhinus sulcatus	Various plants
Blight, juniper	Phomopsis juniperovora	Various junipers and conifers
Blight, leaf	Various species	Various plants
Blight, willow	Venturia chlorospora	Willows
Blister beetles	Several species	Various plants
Borers	Various species	Fruit and shade trees, shrubs
Boxelder bug	Leptocoris trivittatus	Various trees
Boxwood leaf miner	Monarthropalpus buxi	Boxwood
Bulb mites	Rhizoglyphus sp. boisduval	Various bulbs
Buffalo treehopper	Ceresa bubalus	Various trees
Cankers	Various species	Wide variety of plants
Cankerworms	Paleacrita vernata	Various trees
Cane blight	Various species	Raspberry, rose
Cherry casebearer	Coleophora pruniella	Cherry trees
Carpenter worm	Prionoxystus robiniae	Various trees
Chestnut blight	Endothia parasitica	Chestnut
Corn earworm	Heliopsis zea	Various plants
Crown gall and hairy root	Agrobacterium sp.	Wide variety
Cucumber beetles	Diabrotica sp.	Various plants
Dutch elm disease	Ceratocystis ulmi	Elm

COMMON NAME	SCIENTIFIC NAME	HOST
European corn borer	<i>Ostrinia nubilalis</i>	Various plants
European pine shoot moth	<i>Rhyacionia buoliana</i>	Various pines
Fire blight	<i>Erwinia amylovora</i>	Pear, apple, quince
Galls	Various species	Various plants
Gladiolus diseases	Various species	Gladiolus
Grape colaspis	<i>Colaspis flvida</i>	Grape
Grape phylloxera	<i>Phylloxera vitifoliae</i>	Grape
Grasshoppers	Several species	Wide variety of plants
Iris root borer	<i>Macronoctua onusta</i>	Iris
Iris soft rot	<i>Pectobacterium caratovororum</i>	Iris
Lace bug	Various species	Various plants
Leaf beetles	Various species	Various plants
Leaf crumpler	<i>Mineola indigenella</i>	Various trees
Leafhoppers	Many species	Various plants
Leaf miners	Many species	Various plants
Leaf skeletonizer	Several species	Various plants
Leaf spots	Many species	Various plants
Leaf rollers	Many species	Various plants
Lepidopteran larvae	Many species	Various plants
Mealy bugs	Several species	Various plants
Mildews	Several species	Various plants
Nantucket pine tip moth	<i>Rhyacionia frustana</i>	Various pines
Nematodes	Many species	Various plants
Oak wilt	<i>Endocondiophora fagacearum</i>	Oaks
Oriental fruit moth	<i>Grapholitha molesta</i>	Apple, pear, peach
Pear blister mite	<i>Erophyes pyri pagenstecher</i>	Pear, apple, etc.
Peony diseases	<i>Fusarium</i> sp., <i>Botrytis</i> sp., <i>Sclerotium</i> sp., and Mosaic disease	Peonies
Peach scab	<i>Cladosporium carpophilum</i>	Peach
Pine bark aphid	<i>Pineus stobi</i>	Conifers
Plant bugs	Various species	Various plants
Pine tube moth	<i>Argyrotaenia pinatubana</i>	Various pines
Psylla	Several species	Various plants
Raspberry spur blight	<i>Didymella applanta</i>	Raspberry
Red stele	<i>Phytophthora fragariae</i>	Strawberry
Root aphids	Several species	Various plants
Rusts	Several species	Various plants
Root and collar rots	Several species	Many plants
Sawfly slugs	Several species	Various plants
Scale insects	Many species	Various plants
Spider mites	Several species	Nursery and greenhouse plants
Spittle bugs	Several species	Various plants
Spruce budworm	<i>Choristoneura fumiferana</i>	Conifers
Spruce needle miner	<i>Recurvaria piceaella</i>	Conifers
Strawberry crown borer	<i>Tyloclonus fragariae</i>	Strawberry
Strawberry root weevil	<i>Anthonomus signatus</i>	Strawberry
Strawberry rootworms	Several species	Strawberry
Symphylids	Several species	Various plants
Termites	Several species	General
Tree cricket	<i>Oecanthus</i> sp.	Various plants
Viruses	Many species	Many plants
White flies	Several species	Various plants
White grubs	Various species	Many plants
Wilt	Several species	Many plants
Wetwood disease	<i>Erwinia nimipressuralis</i>	Several trees
White pine weevil	<i>Pissodes strobi</i>	Conifers
White pine blister rust	<i>Cronartium ribicola</i>	White pine
Webworms	Several species	Various plants
Zimmerman pine moth	<i>Dioryctria zimmermani</i>	Pine trees

Other insect pests or diseases which may be introduced into Iowa.

section 267.5 of the Code.

These rules are intended to implement

[Effective March 15, 1973]

AGRICULTURE DEPARTMENT
(continued)

Pursuant to the authority of section 215.18 of the Code, rule 14.33(215), 1973 IDR 50, is amended as follows:

Rule 14.33(215) [line 6] is amended by inserting after the words "44-4th Edition" the words "and supplements thereto up to January 1, 1973."

[Filed March 15, 1973]

[Effective March 15, 1973]

AGRICULTURE DEPARTMENT

(continued)

The following meat inspection mark was inadvertently placed in 1973 IDR at the end of chapter 17, page 58.

Said mark should appear in 1973 IDR following rule 17.3(189A), page 55.

IOWA INSP'D AND
CONDEMNED



BANKING DEPARTMENT

STATE BANK DIVISION

Pursuant to the authority of section 524.213 of the Code, rules appearing in 1973 IDR, page 83, relating to maximum interest on time and savings deposits are rescinded and the following adopted in lieu thereof:

[Filed June 28, 1973]

8.2(524) Maximum interest on time and savings deposit. The superintendent of banking hereby prescribes the following maximum rates of interest payable on time and savings deposits.

8.2(1) Single maturity time deposits of \$100,000 or more. There is no maximum rate of interest presently prescribed on any single maturity time deposit of \$100,000 or more.

8.2(2) Single maturity time deposits of less than \$100,000. The following schedule shall apply:

Maturity	Maximum percent
30 days or more but less than 1 year	5 %
1 year or more but less than 2 years	5½ %
2 years or more	5¾ %

8.2(3) Multiple maturity time deposits. The following schedule shall apply:

Maturity	Maximum percent
30 days or more but less than 90 days	4½ %
90 days or more but less than 1 year	5 %
1 year or more but less than 2 years	5½ %
2 years or more	5¾ %

8.2(4) Savings deposit. The maximum rate of interest is four and one-half percent per annum.

[Effective June 28, 1973]

BANKING DEPARTMENT

(continued)

STATE BANK DIVISION

Pursuant to the authority of section 524.213 of the Code, rules filed with the Secretary of State and effective June 28, 1973, relating to maximum interest on time and savings deposits are rescinded and the following adopted in lieu thereof:

[Filed July 10, 1973]

8.2(524) Maximum interest on time and savings deposit. The superintendent of

banking hereby prescribes the following maximum rates of interest payable on time and savings deposits.

8.2(1) Single maturity time deposits of \$100,000 or more. There is no maximum rate of interest presently prescribed on any single maturity time deposit of \$100,000 or more.

8.2(2) Single maturity time deposits of less than \$100,000. The following schedule shall apply:

Maturity	Maximum percent
30 days or more but less than 90 days	5 %
90 days or more but less than 1 year	5½ %
1 year or more but less than 2½ years	6 %
2½ years or more	6½ %
4 years or more	No maximum (certificates of \$1,000 or more)

8.2(3) *Multiple maturity time deposits of less than \$100,000.* The following schedule shall apply:

Maturity	Maximum percent
30 day or more but less than 90 days	5 %
90 days or more but less than 1 year	5½ %
1 year or more but less than 2½ years	6 %
2½ years or more	6½ %
4 years or more	No maximum (certificates of \$1,000 or more)

8.2(4) *Savings deposit.* The maximum rate of interest is five percent per annum.

[Effective July 10, 1973]

CONSERVATION COMMISSION

Pursuant to the authority of sections 107.24, 106.3, 106.26 and 106.31 of the Code, chapter 30, appearing in 1971 Iowa Departmental Rules, page 199, [1973 IDR, 217] is hereby amended as follows:

[Filed March 15, 1973]

DIVISION OF LANDS AND WATERS

30.1(106) to 30.6(106) are hereby rescinded and the following adopted in lieu thereof.

30.1(106) **Rathbun Lake, Appanoose county—watercraft use.** Motorboats of outboard, inboard-outdrive, and inboard type with power not to exceed 450 horsepower shall be permitted on Lake Rathbun.

30.2 to 30.5 Reserved for future use.

30.6(106) **Rathbun Lake, Appanoose county—zoned areas.**

30.6(1) No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading and plainly marked by the use of buoys or signs in accordance with chapter 31, rules of the state conservation commission.

30.6(2) No motorboats, except authorized emergency vessels, shall be operated in restricted speed areas between the nearest shore and a line designated by uniform marker buoys or signs at a speed greater than the limit designated on the buoys or signs marking the area.

Such zoned areas shall be not less than 50 feet nor more than 400 feet from shore.

Said buoys or signs shall be in accordance with chapter 31, rules of the state conservation commission.

This rule is intended to implement sections 106.26 and 106.31 of the Code.

[Effective March 15, 1973]

CONSERVATION COMMISSION

Pursuant to the authority of sections 107.24 and 321G.2 of the Code, chapter 50, snowmobiles, appearing in 1971 Iowa Departmental Rules, page 205, and January, 1972, Iowa Departmental Rules Supplement, page 12, [1973 IDR, 223, 224] is hereby amended as follows:

[Filed February 13, 1973]

DIVISION OF LANDS AND WATERS

50.6, 50.7 and 50.8 Reserved for future use.

50.9(321G) **Procedure for placement of validation and expiration decal.** Except as provided in section 321G.5, unnumbered paragraph three, the validation or expiration decal shall be placed on the identifica-

tion number plate, decal or sign between the letter prefix and number. The validation or expiration decal shall be placed in an upright position approximately equal distance between the prefix letter and the first number.

This rule shall apply to all snowmobiles, including those being used by dealers in accordance with section 321G.21.

This rule is intended to implement section 321G.5.

[Effective February 13, 1973]

EMPLOYMENT SECURITY COMMISSION

Pursuant to the authority of Section 96.11 of the Code, rule 1.2(96) appearing in 1973 Departmental Rules, at page 252, is amended by adding the following new subrule:

[Filed May 8, 1973]

1.2(4) The provisions of section 96.11, subsection 7, and section 96.16, subsection 3, shall be applicable to all persons or firms appointed or designated as agents of the commission.

[Effective May 8, 1973]

IOWA OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Pursuant to authority of section 88.8(3) of the Code the following rules are adopted.

[Filed April 27, 1973]

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CHAPTER 1

RULES OF PROCEDURE FOR HEARINGS BEFORE COMMISSION

DIVISION I

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CHAPTER 1

RULES OF PROCEDURE FOR
HEARINGS BEFORE COMMISSION

DIVISION I

GENERAL PROVISIONS

- 1.1(88) Definitions as used herein.

1.1(1) "*Act*" means the Iowa Occupational Safety and Health Act, chapter 88, Iowa Code 1973.

1.1(2) "*Commission,*" "*person,*" "*employer,*" "*employee,*" "*emergency temporary standards,*" "*occupational safety and health standard,*" "*imminent danger,*" "*secretary,*" and "*federal law*" have the meanings set forth in section 88.3 of the Code.

1.1(3) "*Commissioner*" means the commissioner of labor or his duly authorized representative.

1.1(4) "*Executive secretary*" means the executive secretary of the commission.

1.1(5) "*Affected employee*" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.

1.1(6) Reserved for future use.

1.1(7) "*Authorized employee representative*" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.

1.1(8) "*Representative*" means any person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

1.1(9) "*Citation*" means a written communication issued by the commissioner of labor to an employer pursuant to section 88.7 of the Code.

1.1(10) "*Notification of proposed penalty*" means a written communication issued by the commissioner of labor to an employer pursuant to section 88.8 of the Code.

1.1(11) "*Day*" means a calendar day.

1.1(12) "*Working day*" means all days except Saturdays, Sundays, state and federal holidays.

1.1(13) "*Proceeding*" means any proceeding before the Iowa occupational safety and health review commission.

1.2(88) Scope of rules—applicability of Iowa rules of civil procedure.

1.2(1) These rules shall govern all proceedings before the commission.

1.2(2) In the absence of a specific provision, procedures shall be in accordance with the Iowa rules of civil procedure.

1.3(88) Use of gender and number.

1.3(1) Words importing the singular number may extend and be applied to the plural and vice versa.

1.3(2) Words importing the masculine gender may be applied to the feminine gender.

1.4(88) Computation of time.

1.4(1) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, state or federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, state or federal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, state and federal holidays shall be excluded in the computation.

1.4(2) Where service of a pleading or document is by mail pursuant to rule 1.7(88), three days shall be added to the time allowed by these rules for the filing of a responsive pleading.

1.5(88) Extensions of time. Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is due to be filed.

1.6(88) Record address. The initial pleading filed by any person shall contain his name, address and telephone number. Any change in such information must be communicated promptly in writing to the commission, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

1.7(88) Service and notice.

1.7(1) At the time of filing pleadings or other documents a copy thereof shall be

served by the filing party or intervenor on every other party or intervenor.

1.7(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

1.7(3) Unless otherwise ordered, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

1.7(4) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

1.7(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

1.7(6) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in subrule 1.7(3).

1.7(7) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subrule.

(Name of employer)

Your employer has been cited by the Commissioner of Labor for violation of the Iowa Occupational Safety and Health Act. The citation has been contested and will be the subject of a hearing before the Iowa Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Iowa Occupational Safety

and Health Review Commission in its rules of procedure. Notice of intent to participate should be sent to: Iowa Occupational Safety and Health Review Commission, State Office Building, 300 Fourth Street, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Commissioner of Labor for abatement of the violation has been contested and will be the subject of a hearing before the Iowa Occupational Safety and Health Review Commission.

1.7(8) The authorized employee representative, if any, shall be served with the notice set forth in subrule 1.7(7) and with a copy of the notice of contest.

1.7(9) A copy of the notice of the hearing to be held before the commission shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

1.7(10) A copy of the notice of the hearing to be held before the commission shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in subrule 1.7(3), if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

1.7(11) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with rule 1.35(88) of this division, serve a copy thereof on such authorized employee representative in the manner prescribed in subrule 1.7(3) and shall file proof of such service.

1.7(12) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in subrule 1.7(7).

1.7(13) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

1.7(14) Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

1.8(88) Filing.

1.8(1) All papers shall be filed with the Executive Secretary, Iowa Occupational Safety and Health Review Commission, State Office Building, 300 Fourth Street, Des Moines, Iowa 50319.

1.8(2) Unless otherwise ordered, all filing may be accomplished by first class mail.

1.8(3) Filing is deemed effected at the time of mailing.

1.9(88) Consolidation. Cases may be consolidated on the motion of any party, or on the commission's own motion, where there exists common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

1.10(88) Severance. Upon its own motion, or upon motion of any party or intervenor, the commission may, for good cause, order any proceeding severed with respect to some or all issues or parties.

1.11(88) Protection of trade secrets and other confidential information. Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by section 88.12 of the Code, the commission shall issue such orders as may be appropriate to protect the confidentiality of such matters.

DIVISION II

PARTIES AND REPRESENTATIVES

1.20(88) Party status.

1.20(1) Affected employees may elect to participate as parties at any time before the commencement of the hearing before the commission, unless, for good cause shown, the commission allows such election at a later time. See also rule 1.21(88).

1.20(2) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing before the commission. See also rule 1.21(88).

1.21(88) Intervention—appearance by nonparties.

1.21(1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing before the commission.

1.21(2) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

1.21(3) The commission may grant a petition for intervention to such an extent and upon such terms as the commission shall determine.

1.22(88) Representatives of parties and intervenors.

1.22(1) Any party or intervenor may appear in person or through a representative.

1.22(2) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

1.22(3) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

1.22(4) Nothing contained herein shall be construed to require any representative to be an attorney at law.

1.22(5) Withdrawal of appearance of any representatives may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

DIVISION III

PLEADINGS AND MOTIONS

1.30(88) Form.

1.30(1) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with rule 1.31(88), which shall include the commission's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

1.30(2) It is recommended that pleadings and other documents (other than exhibits) be typewritten, double spaced, on legal size paper (approximately 8½ inches by 14 inches), have adequate margins and be fastened at the upper left corner.

1.30(3) Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

1.30(4) The commission may refuse for filing any pleading or document which does not comply with the requirements of subrules 1.30(1), 1.30(2) and 1.30(3).

1.31(88) Caption—titles of cases.

1.31(1) Cases initiated by a notice of contest shall be titled:

Commissioner of Labor, Complainant v. (Name of Contestant), Respondent.

1.31(2) Cases initiated by a petition for modification of the abatement period shall be titled:

(Name of employer), Petitioner v. Commissioner of Labor, Respondent.

1.31(3) The titles listed in subrules 1.30(1) and 1.30(2) shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

1.31(4) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the commission.

1.32(88) **Notices of contest.** The commissioner of labor shall, within seven days of receipt of a notice of contest, transmit the original to the commission, together with copies of all relevant documents.

1.33(88) **Employer contests.**

1.33(1) *Complaint.*

a. The commissioner of labor shall file a complaint with the commission no later than twenty days after his receipt of the notice of contest.

b. The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

- (1) The basis for jurisdiction;
- (2) The time, location, place, and circumstances of each alleged violation; and
- (3) The considerations upon which the period for abatement and the proposed penalty on each such alleged violation is based.

c. Where the commissioner of labor seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

1.33(2) *Answer.*

a. Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the commission.

b. The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

1.34(88) **Petitions for modification of abatement period.**

1.34(1) An employer may file with the commissioner of labor a petition for modification of an abatement period no later than the close of the next working day following the date on which abatement is required.

1.34(2) The commissioner of labor shall transmit such petition to the commission within three days after its receipt.

1.34(3) The commissioner of labor shall file a response within ten days of receipt of the petition.

1.34(4) The burden of proving the need for modification of the abatement period shall rest with the petitioner.

1.35(88) **Employee contests.**

1.35(1) Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the commissioner of labor shall, within ten days from his receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.

1.35(2) Not later than ten days after receipt of the statement referred to in subrule 1.35(1), the contestant shall file a response.

1.36(88) **Statement of position.** At any time prior to the commencement of the hearing before the commission, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

1.37(88) **Response to motions.** Any party or intervenor upon whom a motion is served shall have ten days from service of the motion to file a response.

1.38(88) **Failure to file.** Failure to file any pleading pursuant to these rules when due, may, in the discretion of the commission, constitute a waiver of the right to further participation in the proceedings.

DIVISION IV

PREHEARING PROCEDURES AND DISCOVERY

1.50(88) Withdrawal of notice of contest. At any stage of a proceeding, a party may withdraw his notice of contest, subject to the approval of the commission.

1.51(88) Prehearing conference.

1.51(1) At any time before a hearing, the commission, on its own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues to expedite the proceedings.

1.51(2) The commission may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

1.52(88) Requests for admissions.

1.52(1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen days after service of the request, or within such shorter or longer time as the commission may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

1.52(2) Copies of all requests and responses shall be served on all parties in accordance with the provisions of subrule 1.7(1) and filed with the commission within the time allotted and shall be a part of the record.

1.53(88) Discovery depositions and interrogatories.

1.53(1) Except by special order of the commission, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

1.53(2) In the event the commission grants an application for the conduct of such discovery proceedings, the order

granting the same shall set forth appropriate time limits governing the discovery.

1.54(88) Failure to comply with orders for discovery. If any party or intervenor fails to comply with an order of the commission to permit discovery in accordance with the provisions of these rules, the commission may issue appropriate orders.

1.55(88) Issuance of subpoenas—petitions to revoke or modify subpoenas—right to inspect or copy data.

1.55(1) The commission shall, on the application of any party directed to the commission, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

1.55(2) Any person served with a subpoena shall, within five days after the date of service of the subpoena upon him, move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The commission shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The commission shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

1.55(3) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

1.55(4) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the commission shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Act. The commission shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

DIVISION V

HEARINGS

1.60(88) **Notice of hearing.** Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten days in advance of such hearing, except as otherwise provided in rule 1.101(88).

1.61(88) Postponement of hearing.

1.61(1) Postponement of a hearing ordinarily will not be allowed.

1.61(2) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least three days in advance of the time set for the hearing.

1.61(3) No postponement in excess of thirty days shall be allowed without commission approval.

1.62(88) Failure to appear.

1.62(1) Subject to the provisions of 1.62(3), the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the commission.

1.62(2) Requests for reinstatement must be made, in the absence of extraordinary circumstances, within five days after the scheduled hearing date.

1.62(3) The commission, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

1.63(88) **Payment of witness fees and mileage—fees of persons taking depositions.**

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the district courts of the state of Iowa, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the district courts of the state of Iowa. Witness fees and mileage shall be paid by the party whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

1.64(88) **Reporter's fees.** Reporter's fees shall be borne by the party requesting a court reporter.

1.65(88) Transcript of testimony.

1.65(1) Hearings shall be electronically recorded. A record of testimony taken at the hearing shall be filed in the commission office.

1.65(2) Upon receipt of a copy of a petition filed in a district court of Iowa praying that an order of the commission be modified or set aside pursuant to section 88.9 of the Code, the commission shall have the electronically recorded testimony transcribed, shall certify it and promptly file the transcript with the court.

1.66(88) **Duties and powers of the commission.** It shall be the duty of the commission to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The commission shall have authority to:

1. Administer oaths and affirmations;
2. Issue authorized subpoenas;
3. Rule upon petitions to revoke subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the needs of justice would be served;
6. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

7. Hold conferences for the settlement or simplification of the issues;

8. Dispose of procedural requests or similar matters, including motions and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of its decisions;

9. Reserved for future use.

10. Call and examine witnesses and to introduce into the record documentary or other evidence;

11. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

12. Adjourn the hearing as the needs of justice and good administration require;

13. Take any other action necessary under the foregoing and authorized by the Act and published rules of the commission.

1.67(88) Disqualification of member of commission.

1.67(1) A member of the commission may withdraw from a proceeding whenever he deems himself disqualified.

1.67(2) Any party may request any member of the commission before the filing of the decision to withdraw on ground of personal bias or disqualification, by filing with the commission promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

1.67(3) If, in the opinion of the commission, the affidavit referred to in 1.67(2) is filed with due diligence and is sufficient on its face, the commission member shall forthwith disqualify himself and withdraw from the proceeding.

1.67(4) If the commission member does not disqualify himself and withdraw from the proceeding, the commission shall so rule upon the record, stating the grounds for its ruling and shall proceed with the hearing, or, if the hearing has closed, it shall proceed with the issuance

of its decision, and the provisions of rule 1.90(88) shall thereupon apply.

1.68(88) Examination of witnesses. Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

1.69(88) Affidavits. An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

1.70(88) Deposition in lieu of oral testimony — application-procedures — form-rulings.

1.70(1) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as "the officer"). Such application shall be filed with the commission and shall be served on all other parties and intervenors. Where good cause has been shown, the commission shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

1.70(2) Such deposition shall be taken pursuant to the Iowa rules of civil procedure.

1.70(3) The officer shall immediately deliver the transcript, together with his certificate, in person or by registered mail to the Executive Secretary at State Office Building, 300 Fourth Street, Des Moines, Iowa 50319.

1.70(4) The commission shall rule upon the admissibility of the deposition or any part thereof.

1.70(5) All errors or irregularities in compliance with the provision of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been discovered.

1.70(6) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

1.71(88) Exhibits.

1.71(1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

1.71(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the commission pursuant to rule 1.72(88).

1.71(3) Unless the commission finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

1.71(4) All exhibits offered, but denied admission into evidence, shall be identified as in 1.71(1) and shall be placed in a separate file designated for rejected exhibits.

1.72(88) **Rules of evidence.** Hearings before the commission shall be in accordance with these rules and insofar as practicable shall be governed by the rules of evidence applicable in the Iowa district courts.

1.73(88) Burden of proof.

1.73(1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner of labor.

1.73(2) In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

1.74(88) Objections.

1.74(1) Any objections with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the commission may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

1.74(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

1.75(88) Reserved for future use.

1.76(88) **Filing of briefs and proposed findings with the commission—oral argument at the hearing.** Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the electronically recorded report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the commission. The commission may fix a reasonable period of time for such filing, but such initial period may not exceed twenty days from the close of the hearing.

DIVISION VI

POST HEARING PROCEDURES

1.90(88) Decisions of commission.

1.90(1) The decision of the commission shall include findings of fact, conclusions of law, and an order.

1.90(2) The commission shall sign and date the decision, and it shall be the final order of the commission.

1.91(88) Reserved for future use.

1.92(88) Stay of final order.

1.92(1) Any party aggrieved by a final order of the commission may, while the matter is within the jurisdiction of the commission, file a motion for a stay.

1.92(2) Such motion shall set forth

the reasons a stay is sought and the length of the stay requested.

1.92(3) The commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

1.93(88) Reserved for future use.

DIVISION VII

MISCELLANEOUS PROVISIONS

1.100(88) Settlement.

1.100(1) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

1.100(2) Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order.

1.100(3) Where parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in rule 1.7(88). Proof of such service shall accompany the proposed settlement when submitted to the commission.

1.101(88) Expedited proceeding.

1.101(1) Upon application of any party or intervenor, or upon his own motion, the commission may order an expedited proceeding.

1.101(2) When such proceeding is ordered, the executive secretary shall notify all parties and intervenors.

1.101(3) The commission in an expedited proceeding shall make necessary rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

1.102(88) Standards of conduct. All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the State of Iowa.

1.103(88) Ex parte communication.

1.103(1) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the commission, including any members, officer, employee, or agent of the commission who is employed in the decisional process, and any of the parties or intervenors.

1.103(2) In the event such ex parte communication occurs, the commission may make such orders or take such action as fairness requires. Upon notice and hearing, the commission may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

1.104(88) Restrictions as to participation by investigative or prosecuting officers. In any proceeding noticed pursuant to the rules in chapter 1, the commissioner of labor shall not participate or advise with respect to the commission decision.

1.105(88) Inspection and reproduction of documents.

1.105(1) Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the commission, inspect and copy any document filed in any proceeding.

1.105(2) Costs shall be borne by such person.

1.106(88) Restrictions with respect to former employees.

1.106(1) No former employee of the commission or the commissioner of labor (including a member of the commission or the commissioner of labor) shall appear before the commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.

1.106(2) No former employee of the commission or the commissioner of labor

(including a member of the commission or the commissioner of labor) shall appear before the commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which he was personally responsible during the period of his employment, unless one year has elapsed since the termination of such employment.

1.107(88) Amendments to rules. The commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor and in compliance with Iowa law amend or revoke any of the rules contained herein. Such suggestions should be addressed to the commission at State Office Building, 300 Fourth Street, Des Moines, Iowa 50319.

1.108(88) Special circumstances—waiver of rules. In special circumstances not

contemplated by the provisions of these rules, or for good cause shown, the commission may, upon application by any party or intervenor, or on its own motion, after three days' notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

1.109(88) Penalties.

1.109(1) All penalties assessed by the commission are civil.

1.109(2) The commission has no jurisdiction under sections 88.14(5), 88.14(6), 88.14(7) and 88.14(8) of the Code and will conduct no proceeding thereunder.

1.110(88) Reserved for future use.

[Effective April 27, 1973]

LABOR, BUREAU OF

Pursuant to the authority of section 88.6 of the Code, rules filed with the Secretary of State on August 29, 1972, relating to recording and reporting occupational injuries and illnesses (chapter 4) are amended by inserting a new rule following rule 4.15 as follows:

[Filed April 2, 1973]

4.16(88) Small employers.

4.16(1) An employer who has no more than seven employees at any one time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this chapter except 4.4(2) concerning two or more lost workday injuries and 4.8(88) concerning fatalities or multiple hospitalization accidents (i.e., he need not

maintain the log, OSHA Form No. 100, the supplementary record, OSHA Form No. 101 or State of Iowa Form L-1/WC-1, nor prepare or post the summary, OSHA Form No. 102).

4.16(2) Subrule 4.16(1) shall not apply when an employer has been notified in writing by the United States Bureau of Labor Statistics that he has been selected to participate in a statistical survey of occupational injuries and illnesses. If selected, an employer will be required to maintain the log of occupational injuries and illnesses (OSHA Form No. 100) in accordance with 4.2(88) and to make reports (OSHA Form No. 103) in accordance with 4.14(88) for the period of time which is specified in the notice.

[Effective April 2, 1973]

LABOR, BUREAU OF

(continued)

Pursuant to the authority of sections 88A.3, 88A.4 and 88A.11 of the Code, the following rules are adopted.

[Filed February 21, 1973]

AMUSEMENT PARK AND
RIDE DIVISION

CHAPTER 61

SAFETY INSPECTION AND
REGULATION OF

AMUSEMENT PARKS AND RIDES

61.1(88A) *Purpose, scope and definitions.* These rules establish minimum safety standards for the installation, repair, maintenance, use, operation and inspection of amusement parks, amusement rides and concession booths. They also institute administrative and operational procedures for implementation of these rules. As used in this chapter unless the context clearly requires otherwise:

61.1(1) *Reference.* The definitions and interpretations contained in section 88A.1 shall be applicable to such terms when used in this chapter.

61.1(2) *"Act"* means the Iowa Amusement Park and Ride Safety Inspection and Regulation Act of 1972, chapter 88A of the Code.

61.1(3) *"Amusement park"* means a tract, structures, area and equipment, including electrical equipment used principally as a location for supporting amusement rides, amusement devices and concession booths.

61.1(4) *"Average adult passenger"* means, for purposes of design, a person weighing 170 pounds.

61.1(5) *"Average child passenger"* means, for purposes of design, a child weighing 75 pounds.

61.1(6) *Specific classes of amusement rides.*

a. *"Major ride"* is a device designed to carry a specific maximum number of passengers, adults or children, either by power or gravity in cars or other suitable fixtures for conveying persons.

b. *"Kiddie ride"* is a device designed primarily for use by children but which may accommodate adults.

c. *"New ride"* means a ride or device for which a permit has not been issued

by the commissioner for operation in the state, a newly purchased ride, a ride or device that has undergone major alteration, or any other ride or device upon change of title or ownership.

61.1(7) *"Special inspector"* means an operator or an employee designated by an operator who is authorized annually by the commissioner to conduct inspections and other functions.

61.1(8) *"Factor of safety"* or *"safety factor"* means the ratio of the ultimate or breaking strength of a member or piece of material to the actual working stress or to the maximum permissible or safe load stress when in use.

61.1(9) *Fees.*

a. *"Permit fee"* is an annual fee established by the Act for a permit to operate.

b. *"Annual inspection fee"* is a fee instituted by the Act for the annual inspection.

c. *"Reinspection fee"* is a fee established by the Act for a reinspection.

d. *"Special inspector fee"* is an annual fee for authorizing special inspectors.

61.1(10) *Inspections.*

a. *"Annual inspection"* is the official inspection of a ride or device made by the commissioner or his authorized representative except for inspections made by special inspectors.

b. *"Reinspection"* is an inspection, other than the annual inspection made during the year, of a ride or device as a result of a major breakdown, major alteration, or for any cause which may be deemed necessary by the commissioner.

61.1(11) *"Load design"* or *"design load"* means the load established by the design engineer or the commissioner for normal operation plus acceptable factors of safety. A device shall be designed to withstand static, dynamic, shock and wind loads.

61.1(12) *"Major alteration"* is a change in the type or capacity of an amusement ride or device or a change in the structure or mechanism that materially affects its function or operation. This in-

cludes but [is] not limited to changing its mode of transportation from nonwheeled to a truck or flat-bed mount, and changing its mode of assembly or other operational functions from manual to mechanical or hydraulic.

61.1(13) "*Major breakdown*" means a stoppage of operation from whatever cause resulting in damage, failure or breakage of a stress bearing part of a ride or device.

61.1(14) "*Rated capacity*" is a capacity established by the design engineer for the normal loading and operation of a ride or device, or in absence thereof, as established by the commissioner after inspection and determination.

61.1(15) "*Ride operator*" is a person or persons causing the amusement ride or amusement device to go and stop or perform its entertaining function. A ride operator can be the operator's employee.

61.1(16) "*Rope*", "*wire rope*" and "*cable*" are interchangeable terms except where the term fiber rope is used.

61.1(17) "*Safety retainer*" is a secondary safety cable, bar, chain, attachment or other device designed to prevent parts of a ride or device from becoming disengaged from the main mechanism or from tipping or tilting in a manner to cause injury to persons riding on or in the vicinity of a ride or device.

61.1(18) "*Restraining device*" is a safety belt, harness chain, bar or other mechanism designed and utilized for physical support, retention or restraint to the passenger of a ride or device.

61.1(19) "*Containing device*" is a strap, belt, bar, gate or other safety device designed to prevent accidental or inadvertent dislodgement of a passenger from a ride or device but which does not actually provide physical support.

61.2(88A) *Design criteria.* Structural materials and construction of rides and devices shall conform to recognized engineering practices, procedures, standards and specifications. The design, materials and construction features shall incorporate safety factors acceptable to the commissioner.

61.2(1) *Manufacturers' analyses.* Before a new amusement ride or amusement device is put into operation for the public's use, or whenever any additions or alterations are made which change the structure, mechanism, classification or capacity of any ride or device, the operator shall file with the commissioner a notice of his intention and shall furnish design data, safety factors, materials utilized, stress analysis and other pertinent data deemed necessary by the commissioner. This information shall also be furnished by an operator for existing rides and devices if required by the commissioner. Such stress analysis and other data pertinent to the design, structure, factors of safety or performance characteristics shall be in accordance with accepted engineering practices, acceptable to the commissioner and written in English. Such data may be requested for, but not limited to, the following materials, parts or components of rides or devices: Structural materials including bars; cables; chains; ropes; rods; tubing; pipes; girders; braces; fittings; fasteners; trusses; pressure vessels; pressure piping; gears; clutches; speed reducers; welds; bearings; couplings; carriers such as tubs, cars, chairs, gondolas or seating and carrying apparatus of any description; axles; hangars; pivots; safety bars, belts, harnesses, chains, gates or other restraining, containing or retaining devices. Data shall be furnished at the request of the commissioner concerning forces generated by acceleration or deceleration, centrifugal action, inertia or other forces either constant, reversible or eccentric.

61.2(2) *Rating.* Manufacturers shall identify the capacity of an amusement ride or amusement device in terms of number of passengers and operating speed. This information may be included on the bureau's identification symbol.

61.2(3) *Seating and carrying devices.* Tub, cars, chairs, seats, gondolas and other carriers used on rides or devices shall be designed and constructed as strong as practical. Their interior and exterior parts with which passengers may come in contact shall be smooth, rounded, free from sharp, rough or splintered edges or corners, and with no protruding screws or projections which might cause injury. Parts upon or against which passengers might be thrown by ac-

tion of the ride shall be adequately padded to prevent or minimize the possibility of injury. Propellers or other moving parts or decorations attached to tubs, cars, chairs, seats, gondolas and other carriers shall be securely fastened to such equipment and keyed or otherwise secured so that they cannot come off during operation of the ride. Vanes, canopies or other attachments which might become disengaged shall be secured with safety straps to prevent their flying away in case of breakage or dislocation.

61.2(4) *Speed limiting.* An amusement ride or amusement device capable of exceeding its maximum safe operating speed shall be provided with a maximum speed-limiting device. Steam engines that require an overspeed throttle setting to initiate the operation are exempted.

61.2(5) *Brakes and stops.* On a ride or device where coasting renders the operation dangerous, either during the period while the ride or device is being loaded or unloaded or in case of power failure or other unforeseeable situation, a method of braking shall be provided. Where rollback may cause injury, anti-rollback devices shall be provided.

61.2(6) *Retaining, restraining and containing safety devices.*

a. Retaining safety devices. Tubs, cars, chairs, seats, gondolas or other carriers on a ride that depend upon a single means of attachment or support shall be equipped with safety retainers to prevent a carrier, if it becomes disengaged from its support or attachment, from being catapulted from the ride and to prevent any action of the carrier which might throw the occupants from the carrier. This rule only applies to rides, a ride design or situations determined to be hazardous by the commissioner.

b. Restraining and containing safety devices. Restraining devices used on tubs, cars, chairs, seats, gondolas or other carriers on a ride wherein the forces generated by the action of the ride require retention, restraint or actual physical support of the passenger shall be designed, constructed and installed to withstand impact and forces of a minimum of 850 pounds per passenger. On a ride or a ride design where,

after inspection by the commissioner, it is deemed necessary to install safety devices to prevent accidental or inadvertent dislodgement of a passenger from any tub, car, chair, seat, gondola or other carrier, a containing device shall be installed to withstand the design loads.

61.2(7) *Motors, motor circuits and controllers* shall be manufactured, constructed and utilized in accordance with Article 430, National Electric Code—1971. Any motor operating with greater than 50 volts shall have its frame grounded with a conductor.

61.2(8) *Safety stop circuits.* Electrical safety stop circuits shall be closed circuits so that in case of power failure or malfunction of any element the system will cause the ride or device to which the circuit pertains to fail safe. Circuits shall be all metallic and ungrounded unless otherwise approved by the commissioner. After actuation of a safety stop, the cause shall be determined and the situation corrected before operation of the ride or device is resumed. Safety stop circuits shall not be bypassed during operation.

61.2(9) *Master switch.* Each electrically operated amusement device not designed to be controlled directly by the public shall be provided with a disconnect power switch placed within unobstructed reach of the ride operator.

61.2(10) *Chains.* Chains with certified load carrying capacities may be utilized for safety devices or in stress bearing applications. Noncertified chains, such as twisted wire or stamped tin, shall not be used.

61.2(11) *Lock out.* A means shall be provided for locking out or securing rides or equipment for maintenance, repair or inspection. This can be a padlock latch on the master switch.

61.2(12) *Rebuilt or modified ride or device.* An amusement ride or device that is being considered for a major alteration shall be treated as a new ride subject to subrules 61.2(1) to 61.2(11). The altered ride or device shall require an inspection prior to operation.

61.3(88A) *Concession booth requirements.*

61.3(1) *General.* Concession booths shall be designed so that bracing rods and the tie down ropes are not projecting in front of booth where the public can trip, stumble or run into the braces or ropes. All front openings and awnings shall be designed with safety latching or safety pin devices that prevent the wind or crowds from forcing rings over pins, braces off from supporting studs or any other type of supporting device off its temporary structural mount. The concession booths shall be constructed to meet the requirements of standard for Tents, Grandstands, Air-Supported Structures Used for Places of Assembly, NFPA No. 102-1957, Section 5, Tents, Paragraph 52, Structural Requirements. Arm rests and seating devices shall be designed with adequate strength, smooth and round edges. No sharp material that can cut, puncture or scrape shall be utilized.

61.3(2) *Hazardous.* Concession booths shall not utilize normal hunting or other highpowered rifles or ammunition in shooting galleries. Specific gallery shooting or propelling devices that utilize shells and pellets shall use a nonspattering soft non-ricocheting bullet or shot designed and made for shooting galleries. Ricocheting into the public shall be avoided by side reflecting absorbent wings or panels. Ricocheting out the back of the concession booth shall be prevented by adequate absorbing walls and sandbagging or other types of banking along the bottom, rear and side edges of booths. The framework reflecting semihazardous devices, such as handballs and handdarts shall be constructed to prevent ricocheting or a direct passage through the booth to the public.

61.4(88A) *Walking surfaces, access and egress.*

61.4(1) *General requirements.* Safe and adequate means of access to and egress from amusement rides, devices, concession booths, permanent structures and temporary structures shall be provided. The design, number, location and identification of exits shall be in accordance with the Standard for Tents, Grandstands and Air-Supported Structures Used for Places of Assembly, NFPA No. 102-1967, Section 7, Ways of Egress. All passageways are to be

kept free from debris, obstructions, projections and other hazards. All surfaces shall be such as to prevent slipping and tripping, and floors shall be kept free of protruding nails, splinters, holes or loose boards. Where mechanical handling equipment is used, sufficient safe clearances shall be allowed for passageways.

61.4(2) *Stairways, landings and ramps.* Adequate stairways or ramps and the necessary landings and platforms shall be provided where people enter or leave a device, ride or structure that is above or below grade or floor level at entrance to or exit from such amusement. The design and construction of stairways, ramps and railings shall conform to 29 C.F.R., Chapter XVII, Part 1910 subpart D—Walking—Working surfaces as published at 37 Federal Register 22105 (October 18, 1972) except for the requirement of placement of stairway railings and guards. All stairs with more than one step shall have standard handrails or railings on both sides regardless of width, and when stairways are 88 inches or greater in width, a railing shall be placed approximately in the center. The construction of the standard railings and handrails shall be in accordance with the Federal Register cited in this subrule.

61.5 Reserved for future use.

61.6 Reserved for future use.

61.7(88A) *Signal systems.* Signal systems shall be provided and utilized for controlling, starting and stopping of a ride or device when the operator of the ride or device does not have a clear view of the point where passengers are loaded or unloaded. Where the need for coded signals is required, the code of signals adopted for operation of the ride or device shall be printed and kept posted at both the operator's and signal man's stations. Persons who use the signals shall be instructed in their use and shall be trained to understand thoroughly their operation and meaning. Signal systems shall be tested on each day prior to operation of the ride or device. A ride or device requiring a signal system shall not be operated if the system is not performing correctly.

61.8(88A) *Hazardous materials.* The owner shall store and handle liquid petro-

leum gases and flammable liquids utilized either as fuel for internal combustion engines, for heat or for illumination in accordance with 29 C.F.R., Chapter XVII, Part 1910 subpart H—Hazardous Materials (Paragraphs 1910.106—Flammable and Combustible Liquids and 1910.110—Storage and Handling of Liquified Petroleum Gases as published at 37 Federal Register 22163 (October 18, 1972). Bulk storage (quantities above 50 gallons) shall not be permitted in any area accessible to the public.

61.9 Reserved for future use.

61.10(88A) General environment.

61.10(1) Weather and riot. During a lightning storm, high wind storm, a period of tornado warning, severe storm warning, fire, or when violence, riot or civil disturbance occurs or threatens in or is a direct threat to an amusement park or a carnival lot, passengers shall be unloaded or evacuated from a ride or device and the ride or device shut down and secured immediately. Operation shall not resume until the situation has returned to a normal safe operating condition.

61.10(2) Illumination. Access and exits to and from amusement rides and devices and temporary or permanent structures shall be provided with illumination by natural or artificial means of no less than five-foot candles measured at grade level. No less than ten-foot candles of illumination shall be provided at all work levels for assembly and disassembly of amusement rides and devices and temporary structures.

61.11(88A) Medical and first aid. The operator shall insure the availability of medical personnel. In the absence of an infirmary, clinic or hospital in the proximity to the carnival or amusement park which is available for the treatment of injured public, a person or persons who have a valid certificate in first aid training from the U. S. Bureau of Mines or the American Red Cross shall be available to render first aid. First aid supplies recommended by a consulting physician shall be easily accessible when required. The first aid kit shall consist of materials recommended by the consulting physician in a weatherproof

container with individual sealed packages for each type of item. The contents of the first aid kit shall be checked by the operator or special inspector at each location stand or at least weekly at amusement parks to insure that expended items are replaced. The operator shall insure that he and his special inspectors have telephone numbers for doctor, hospital and ambulance service, and that these numbers are conspicuously posted.

61.12(88A) Fire protection.

61.12(1) Fire extinguishers. The operator shall provide adequate or insure that adequate fire protection equipment is available within and surrounding the temporary structures that are part of his show. The agent or agency responsible for the permanent structures shall provide or insure adequate fire protection equipment exists or is available for the permanent structure. The selection, placement and maintenance of fire extinguishers shall be in accordance with Standard for the Installation of Portable Fire Extinguishers, NFPA Number 10-1970.

61.12(2) Flammable waste and materials. An operator shall provide identified covered metal containers for flammable waste such as oily rags and other flammable materials which shall be kept in easily accessible locations. Such containers shall be located so that they will not obstruct means of ingress or egress or aisles.

61.12(3) Flame resistance. All tents occupied for assembly, or those located within that portion of the premises used by the public and all tents in places of assembly in or about which any devices using fuel are operated, and all tarpaulins and decorative materials used in connection with any of these, shall meet the appropriate requirements for resistance to fire prescribed in the Standard for Flame-Resistant Textiles and Films, NFPA Number 701-1966. Safety nets shall be exempt from the above requirements for resistance to fire. The owner shall have a certificate or a test report from an approved testing agency or engineer indicating fire resistance rating is equal to or better than the above standard.

61.12(4) Alarm. The operator shall insure that he and his special inspectors

have a telephone number for the local fire department and that this number is conspicuously posted.

61.13(88A) Compressed gas and air equipment. Air and gas compressors, tanks, piping and equipment shall be constructed and maintained to insure safe operation at all times. The equipment shall have safety relief devices and be inspected in accordance with 29 C.F.R., Chapter XVII, Part 1910 subpart M—Compressed Gas and Compressed Air Equipment as published at 37 Federal Register 22248 (October 18, 1972). Equipment shall be inspected at least once a year. A record of each inspection shall be kept by the owner where the equipment is used and shall be made available on request by the commissioner.

61.14 Reserved for future use.

61.15(88A) Machinery and machine guarding.

61.15(1) General requirements. One or more methods of machine guarding shall be provided to protect the public from injury. An example of double guarding is public barriers and gear shielding. Guards shall be fixed to the machine where possible and secured elsewhere if for any reason attachment to the machine is not possible. The guard or barrier shall be such that it does not offer an accident hazard in itself. Barriers shall be securely staked or sandbagged to prevent movement or tip-over by the public falling, pressing or stumbling against them. The barriers shall be located to keep the public at least six feet away from the ride. Ride entrances shall have a passenger waiting line retaining chain, bar, gate or device. All machinery designed for a fixed location shall be securely anchored to prevent walking or moving. All rides containing or having a mounting or mountings that would catch, wind up or entangle long hair shall have attached warning signs.

61.15(2) Mechanical power transmission. All power transmission devices and associated moving parts shall be shielded, enclosed or barricaded to protect the public in accordance with 29 C.F.R., Chapter XVII, Part 1910 subpart O—Machinery and Machine Guarding, Paragraph 1910.219—Mechanical Power Transmission

Apparatus as published at 37 Federal Register 22289 (October 18, 1972).

61.16 Reserved for future use.

61.17(88A) Welding, cutting and brazing. No welding, cutting or brazing shall be accomplished where the public can directly observe the process or be hit by sparks or flying materials generated by the process. Any welding, cutting and brazing accomplished when the general public is in attendance, shall be accomplished behind temporary erected solid barriers. The ends of these shall be overlapped to prevent any direct exposure. If the operation cannot be shielded, the operator shall provide a means of keeping the public away from the point of work for a distance of 35 feet for all soldering, brazing, cutting, and gas welding up to 1/2 inch, 50 feet for all gas welding over 1/2 inch and 150 feet for all arc welding utilizing electrodes up to 3/16 inch diameter. All larger arc welding operations shall be accomplished behind solid shielding or prior to or after public attendance hours. All compressed gas, compressed gas cylinders, electrical equipment and other apparatus associated with welding, cutting and brazing shall be stored, handled and meet requirements in accordance with 29 C.F.R., Chapter XIII, Part 1926 subpart J—Welding and Cutting as published at 37 Federal Register 27529 (December 6, 1972).

61.18(88A) Operations.

61.18(1) Location. The general layouts shall be established such that continuous traffic patterns will exist. Box canyons formed by rides, devices and concession booths shall be avoided. The egress of a ride, device or booth shall not be located immediately in front of hazardous equipment. The layouts shall be such to prevent traffic patterns through the concession booth backyards, and shall minimize traffic over any water lines and electrical lines. The intermingling of water lines and electrical lines shall be avoided. Long guy wires or narrow braces utilized for ride, device or booth support shall be clearly marked with streamers or other devices to attract attention when located in traffic patterns.

a. Temporary ride. A ride shall be placed on solid footings, be secured to prevent shifting, tipping, swaying or erratic

motion. No cement, brick or similar type blocks shall be permitted. The provision pertinent to erratic motion or sway does not apply to a ride designed to permit flotation characteristics or flexibility. Use of shim blocks shall be kept to a minimum. Depressions in the ground near the ride footings shall be filled and tamped and adequate means of drainage provided to prevent water from collecting and softening supporting areas in case of rain. The area surrounding the ride shall be clear and kept free from trash and tripping hazards. A daily inspection of the ride motion and footings shall be made.

b. *Permanent ride.* A ride permanently erected in an amusement park shall be set on properly designed and constructed foundations or footings and secured to these footings in a manner to prevent shifting, tipping, swaying or erratic motion. Cement, brick or similar type blocks shall not be permitted. The provision pertinent to erratic motion or sway does not apply to a ride designed to permit flotation characteristics or flexibility. Use of wood shim blocks shall be kept to a minimum.

c. *Public protection.* Temporary booths shall not be located under aerial amusement devices. Temporary booths utilized for cooking food shall be located such that at least ten feet of clearance exists on two sides for the use of fire equipment or other emergency vehicles, and shall not be located within ten feet of amusement rides. A minimum clearance of six feet shall exist between an exterior ride and walls, building and other structures. At least twelve feet of clearance shall be maintained between rides.

Except where electrical distribution and transmission lines have been de-energized and visibly grounded at point of work, operation or where insulating barriers, not a part of or attachment to the equipment, ride structure or machinery, have been erected to prevent physical contact with the lines, equipment, ride or machines shall be operated proximate to power lines only in accordance with the following:

(1) For lines rated 50 kv or below, minimum clearance between the lines and any part of a lifting crane, ride structure or equipment shall be ten feet.

(2) For lines rated over 50 kv,

minimum clearance between the lines and the lifting crane, ride, structure or equipment shall be ten feet plus 0.4 inches for each 1 kv over 50 kv.

(3) During assembly or disassembly a person, preferably a special inspector, shall be designated to observe clearance of the equipment and give timely warning for all maneuvers where it is difficult to maintain the desired clearance by visual means.

The operator shall insure that there exists in the immediate vicinity a device or devices (for example; ladder, fire truck or hydraulic chair lift) which are available for emergency removal of passengers from elevated amusement rides or amusement devices that will not operate.

61.18(2) *Leveling and alignment.* Corner posts, central columns or support structures of a ride designed to operate on a perpendicular axis shall be plumb and secured so that the path of the sweeps or platforms shall be level and operate on a true horizontal plane at right angles to the axis of the pivot. A ride whose carriers are designed to operate on a horizontal axis shall be leveled so that the carriers will orbit in a true perpendicular plane. The base of a ride employing a combination of orbiting planes or a ride whose carriers operate normally in a plane other than true horizontal or vertical shall be leveled and plumbed and secured so that they will not tip or shift and will be stable under the most adverse operating conditions, except for a ride designed to permit flotation characteristics or flexibility or designed to operate properly whether the base is plumb or level or not.

61.18(3) *Ride operators.* A ride or device shall be operated by a competent ride operator trained for the duty. The ride operator of a kiddie ride or device designed for the exclusive use of children shall be at least 16 years of age. For all other major rides or devices an operator shall be at least 18 years of age. A ride operator shall have knowledge of the use and function of all normal operating controls, signal systems and safety devices applicable to the ride or device and of the proper use, function, capacity and speed of the particular ride or device which he is operating. A ride operator shall have complete control of the ride or device at all times that it is

being operated for the public's use. When the ride or device is shut down provision shall be made to prevent operation by the public. No person other than a trained ride operator shall be permitted to handle the controls of a ride or device during normal operation except where it is designed to be controlled by the passenger.

61.18(4) *Overspeeding and overloading.* A ride or device shall not be loaded beyond its rated capacity nor shall it be operated at an unsafe speed or at any speed other than that prescribed by the design engineer or manufacturer. When this information is not obtainable, the criteria for safe operating speeds and rated capacity will be established by the commissioner.

61.18(5) *Internal combustion power sources.* Fuel tanks for internal combustion power sources should be of adequate capacity to permit uninterrupted operation during normal operating hours. Where it is impossible to provide tanks of proper capacity for a complete day, the ride or device shall be shut down and unloaded or evacuated during the refueling procedure. The fuel supply shall not be replenished while the engines are running. An enclosed area in which an internal combustion engine is operated shall be ventilated. Exhaust fumes from the engine shall be discharged outside the area. Internal combustion power sources shall be located in a manner and shall be protected either by guards, fencing or enclosure to prevent public exposure to hazard and to secure the equipment from the public.

61.18(6) *Maintenance.*

a. General. All equipment relative to amusement rides, amusement devices and concession booths shall be given periodic maintenance service. This shall include properly lubricating and cleaning machinery, engines and motors. Worn mechanical parts, padding material and cushioning shall be replaced and kept in a safe condition, and machinery shall be periodically inspected for loose fasteners. Lockout devices shall be engaged prior to inspecting or servicing a piece of equipment. The upholstery shall be examined, and no loose or flapping portions of upholstery or decoration shall be permitted. Equipment and

structure for amusement rides, amusement devices and concession booths shall be kept free from protruding nails, loose nails, splintered wood, loose and wobbly seats and rough, loose or dangerous arm rests.

b. Wire rope.

(1) Wire rope shall be thoroughly examined. Wire rope found to be damaged shall be replaced with new rope of proper design and capacity. Any of the following conditions shall be cause for rope replacement:

In running ropes, 6 randomly distributed broken wires in 1 rope lay, or 3 broken wires in 1 strand in 1 rope lay. A rope lay is the length along the rope in which 1 strand makes a complete revolution around the rope.

In pendants or standing ropes, (ropes bearing the entire load and subjected to constant pressure and surge shocks) evidence of more than 1 broken wire in 1 rope lay.

Abrasion, scrubbing or peening causing loss of more than $\frac{1}{3}$ of the original diameter of the outside wires.

Severe corrosion.

Severe kinking, severe crushing, or other damage resulting in distortion of the rope structure.

Heat damage resulting from a torch or arc caused by contact with electrical wires.

Reduction from normal diameter of more than $\frac{3}{64}$ inch for diameters up to and including $\frac{3}{4}$ inch; $\frac{1}{16}$ inch for diameters $\frac{7}{8}$ inch to $1\frac{1}{8}$ inches; $\frac{3}{32}$ inch for diameters $1\frac{1}{4}$ inches to $1\frac{1}{2}$ inches. Marked reduction in diameter indicates deterioration of the core resulting in lack of proper support for the load carrying strands.

Bird caging or other distortion resulting in some members of the rope structure carrying more load than others.

Noticeable rusting or development of broken wires in the vicinity of attachments. If this condition is localized in an operating rope, the section in question can be eliminated by making a new attachment. This may be done rather than replacing the entire rope.

(2) Wire ropes used to support, suspend, bear or control forces and weights involved in the movement and utilization of tubs, cars, chairs, seats, gondolas, other

carriers, the sweeps or other supporting members of a ride or device shall not be lengthened or repaired by splicing.

(3) Couplings, sockets and fittings shall be of a design and type approved by the commissioner and installed in accordance with the instructions or specifications of the designer, engineer or manufacturer.

c. Wood components. Footings, splices, uprights, track timbers, ledgers, sills, laps, bracing, flooring and all other wood components of rides, devices and structures shall be inspected for deterioration, cracks or fractures. Emphasis shall be given to insuring tight nails, bolts, lag bolts and other fasteners. A minimum of 18 inches of soil, with respect to grade, shall be removed around piling or wood members embedded in dirt for support to check deterioration. When wood piling requires replacement, ground level concrete piers shall be used. Wood members found to be defective shall be replaced with material of equal or greater strength and capacity. Repairs and replacements to fixed roller coasters shall be made in accordance with the recommendations of the manufacturer.

d. Housekeeping. An adequate number of containers for refuse shall be provided in and around all amusement rides and devices, permanent structures and temporary structures. Excessive accumulations of trash and refuse shall be promptly removed. All parts of amusement rides and devices, temporary structures and permanent structures used by the public shall be maintained in a clean condition. All walkways between amusement rides and devices shall be kept free from debris, obstructions or other hazards.

e. Electric motors. Electric motors exposed to water shall be given a dielectric test at least annually to insure a safe operation and the results are to be kept with the carnival or in the amusement park.

f. Wire rope rollers, drums and sheaves. The mechanical devices that brake, control or come in contact with wire rope, such as rollers, drums and sheaves shall be examined on a periodic basis to insure cleanliness and safe condition. Mechanical devices with broken chips, undue roughness or uneven wear shall be replaced immediately.

g. Articulations and bearings. The articulating pinions, frames, sweeps, eccentrics and other mechanical members shall be inspected for wear, out of round, cracks and other signs of deterioration, and shall be kept in good repair. Bearing surfaces, ball joints and other single or multiple direction mechanical surfaces shall be kept well lubricated, clean and inspected for out of round or out of spherical and shall be kept in good repair. Gear alignment and gear drives shall be kept in good repair.

h. Electrical wiring. Motor wiring, general service circuitry, decorative wiring, festoon wiring and concession stand wiring shall be inspected for insulation wear, fraying or other signs of deterioration such as cracking. Secure tape repairs may be used; however, use of tape repairs shall be kept to a minimum. Wire clips on articulating devices shall be kept in good repair, and wires at elbows and at the end of articulating devices shall be emphasized during inspections.

i. Safety devices. Retaining, restraining and containing devices shall be inspected to insure they can continuously fulfill their function. Worn and damaged areas shall be repaired immediately or shall be cause for immediate replacement.

j. Hydraulic systems. The system is to be checked for leaks, damaged pipes and worn or deteriorated hoses.

k. Relief devices. Pressure relief valves or devices shall be exercised on a periodic basis to insure that they operate properly. This includes compressed air and gas devices.

61.19(88A) Electrical. Electrical conductors and electrical equipment installed and utilized on or around permanent and temporary amusement parks and amusement rides shall conform to National Electrical Code, NFPA Number 70-1971. The following rules are stated for emphasis and clarification and are supplemental to the National Code. If any conflict exists or appears to exist, the National Code shall have precedence.

61.19(1) Installation. Portable electrical systems required by temporary amusement rides or devices and temporary struc-

tures shall be installed by a qualified electrician.

61.19(2) Grounding. A carnival shall not operate until all grounding electrode conductors, equipment and safety grounding connections are secured, polarized and tested. The grounding conductors shall conform to the National Electrical Code, NFPA Number 70-1971, Article 250—Grounding, Paragraphs 250-94 Alternating-Current Systems and 250-95 Size of Equipment Grounding Conductors. The path to ground from circuits, equipment and conductor enclosures shall be permanent and continuous and shall have ample carrying capacity to conduct currents liable to be imposed on it, and shall have impedance sufficiently low to limit the potential above ground and to facilitate the operation of the overcurrent devices in the circuit.

a. Service ground. Equipment or generators operating from a separate supply or supplies which are located closer than 8 feet and all service equipment within itself shall be bonded together. The service ground shall be established by connecting the grounding conductor to the service entrance neutral bar in the hot truck or generator and to an approved type service grounding electrode such as ground rods. A sufficient number of ground rods shall be spaced not less than 6 feet apart and at a secure depth to obtain and maintain 25 ohms or less resistance to ground. A resistance of 3 ohms or less shall exist when grounding to a water system.

b. Circuit and equipment safety. From the service entrance neutral bar, the circuit grounded and equipment safety grounding conductors shall be continuous and separate throughout the entire system. The portable outlet and terminal boxes shall contain a service ground through grounded receptacles for both circuit and safety. The equipment safety grounding conductors shall be attached to each ride, device or concession booth such that a grounding resistance of 25 ohms or less is obtained. Separate steel tracks or steel framework, such as roller coaster tracks or big slides, shall have grounding the same as the service equipment.

61.19(3) Current limiting devices. Conductors shall be fused or protected to their current carrying capacities. No more

than six disconnect switches are to be in the hot truck or generator unless a main switch is provided. All distribution lines from hot trucks or generators shall be either 100 amp. or 200 amp. capacity. No fuses or current limiting devices shall be installed in the neutral or grounding conductors. Motors and lighting circuits shall be fused separately.

61.19(4) Concession booth wiring. Concession booth overhead wiring may be done with approved Type C brewery cord (not smaller than No. 12 with a built-in tracer for identification of the neutral wire) and weatherproof, pigtail lamp sockets, polarized, soldered and taped to the brewery cord with polarized male cord cap on the end that plugs into the current supply. Approved type pin sockets are acceptable when used on stranded conductors. Lengths up to 40 feet may be used without a messenger support wire provided the tie off on each end terminates in an insulating block or knob. S.O. cord sets may be used. Cord sets not to be installed lower than 8 feet except where they are not accessible to the public. Other concession booth wiring may include any of the approved National Electrical Code wiring methods suitable for the condition of use. Portable wiring methods are covered specifically by Article 400 of the National Electrical Code; Section 305 shall also be utilized. If lamps and long sockets are lower than eight feet, they shall be guarded and grounded.

61.19(5) Bus bars. Bus bars shall be located low or near the bottom of the cabinet. Separate bus bars shall be provided for grounding neutral and phase conductors.

Color codes painted on inside and outside of box, but not on contact surfaces of bus bars, are to be:

GROUND—GREEN OR GREEN WITH YELLOW STRIP	1st PHASE—BLACK
NEUTRAL—WHITE OR NATURAL GRAY	2nd PHASE—RED 3rd PHASE—BLUE

On a four-wire delta-connected secondary, the phase conductor having the higher voltage to ground shall be orange. These color codes are to carry on through all connected wiring from service through portable power outlet and terminal boxes. Buses shall not be less than 200 ampere capacity. The load

terminals in a switch-board or panel board shall be located so that it will be unnecessary to reach across or beyond a live bus (hot bus) to make a local connection.

61.19(6) Portable power outlet and terminal box. Boxes are to be rain tight and kept locked during the time when the general public is in the area. Wood boxes may be used if insulated on all sides with fire resistant material or painted with insulating varnish. The service power shall be connected to the box by receptacles mounted on the exterior walls which includes the safety grounding. The distribution within the box shall be accomplished by neutral terminal bar(s) and circuit breakers or fuses. The branch circuits which include the equipment safety grounding shall obtain their power through receptacles mounted on the exterior of the box. The exterior openings of the receptacles must be at least 6 inches above ground level and provided with a protective cover, draining eye or canvas, that will avoid the possibility of rain on the receptacle. If it is required to run conductors directly through an opening on the wall of the box for additional service or to obtain required ampacity, the opening(s) shall be color coded and shall be sized to prevent public accessibility to the interior of the box. The fuses or breakers, in the boxes, shall be secured permanently in place, and all connections to the bus bars within the boxes to be made with threaded screws and lugs of the proper size to fasten wiring in place.

61.19(7) Power sources. Electrical power sources shall be located in a manner permitting proper maintenance and shall be protected either by guards, fencing or enclosure to prevent exposure to hazard and to secure the equipment from the public.

61.20(88A) Administration.

61.20(1) Commissioner or his representative, upon presenting credentials to the operator, is authorized:

a. To enter without delay and at reasonable times any establishment, assembly area or other area where amusement rides, amusement devices and concession booths are stored, being assembled, are in use, being manufactured or being modified.

b. To inspect and investigate dur-

ing regular working hours and at other reasonable times, and within reasonable limits and within a reasonable manner, any such place of amusement, and to question privately any operator, special inspector or employee.

61.20(2) Application for permit to operate. Before operation each year the operator of a ride or device shall apply to the commissioner for a permit to operate amusement rides, amusement devices or concession booths in this state for the forthcoming year as prescribed in the Act. The application shall be made upon forms to be furnished by the commissioner. The application shall be accompanied by the permit fee of five dollars and a certificate of insurance indicating that the owner has obtained insurance in the amount conforming to section 88A.9. As early as possible before operation each year, the owner shall submit to the commissioner a notice of his routing schedule, identifying the rides, devices and booths he intends to operate and the dates and locations where they will be used. Notice of cancellation of location dates, previously unscheduled dates or emergency dates shall be forwarded to the commissioner immediately by telephone or other means of immediate communication and confirmed in writing. Upon receipt of the application for permit and notice of routing schedule, an inspector will be assigned to make the required annual inspection. When an emergency booking makes the first of May application impossible, the owner shall notify the commissioner of the booking by telephone or other means of immediate communication and confirm this notice in writing. The commissioner may schedule and arrange for inspection of the rides and devices and the issuance of a permit to operate as will best serve the needs of the public, owner and the orderly administration of the Act and these rules.

61.20(3) Annual inspection and permit to operate. No person shall operate an amusement ride, amusement device or concession booth unless it has been inspected and a permit to operate has been issued. All permits to operate expire on December 31 of the year issued.

a. An amusement ride, amusement device or concession booth operating in this state shall be subjected to a thorough in-

spection and tests as required by the Act. The scope of these tests and inspections and the manner and method of their execution shall be established by the commissioner. To confirm that a ride, device or booth conforms to these rules, the results of an inspection will be recorded by the inspector upon forms furnished by, and filed with, the commissioner.

b. Upon receipt of the inspection fee of ten dollars for each complete inspection or five dollars for an electrical inspection, inspection forms and certification that the ride, device or booth met the safety standards, the commissioner shall issue a permit to operate the ride, device or booth which has been inspected. The fee and inspection are on a per ride, device or booth basis.

c. No person shall operate a new ride, device or booth which has undergone major alteration until it has been inspected.

d. After a ride, booth, or device has passed inspection, the commissioner shall issue an identification symbol which shall be affixed to a basic part of the ride, device or booth in such a manner as to be readily accessible to the inspector. If a ride, device or booth is rebuilt or has undergone major alteration it shall be reinspected, upon passing inspection, a new identification symbol will be issued. If a ride or device is sold or undergoes major alteration, the symbol shall be obliterated. If an identification symbol is mutilated so that it is no longer legible, the operator shall notify the commissioner and a replacement shall be issued.

61.20(4) *Revocation of permit to operate.* The commissioner may suspend or revoke the permit to operate of an operator for gross negligence, repeated disregard of daily inspection standards, misrepresentation of material information required as a part of the application for permit to operate, failure to comply with a safety order issued by the commissioner or his authorized representative, conduct in the operation of a carnival or an amusement park in derogation or disregard of public safety and welfare, lapsing of the required insurance coverage, or failure to pay fees that are required under the provisions of the Act and these rules.

61.20(5) *Daily inspections.* The amusement rides, amusement devices and concession booths shall be inspected on each day they are intended to be used. This inspection shall be made by a special inspector. Results of these daily inspections shall be recorded in the manner prescribed by or on forms provided by the bureau and certified by a special inspector. The record of daily inspections shall be kept on file by the operator and made available upon request by the commissioner. An operator shall not knowingly use, or permit to be used, a ride or device which is not properly assembled or which is defective or unsafe in any of its parts, controls or safety equipment.

61.20(6) *Application for special inspector authorization.* The operator shall request from the commissioner that an authorization be issued either to himself or to his designated employee. The required number of special inspectors shall be determined by the commissioner on a reasonable basis from the number of rides, devices and booths.

61.20(7) *Special inspector.* The commissioner may issue a special inspector authorization after he has reviewed the application and received a fee of two dollars each. An identification card for the special inspector will be furnished. The authorization is not renewable or transferable and expires on December 31 of the year issued. It will state that the bearer is authorized to perform the required duties of the special inspector only on the rides, devices and booths operated by the operator making the request. The special inspector shall certify the daily inspection reports required by these rules which he has prepared and completed or caused to be prepared and completed, be responsible for making prompt and timely reports of all matters requiring reports as provided by the Act or these rules, and be present on the premises when a ride or device is being operated for use by the public.

61.20(8) *Revocation of special inspector authorization.* The commissioner may suspend or revoke a special inspector authorization for incompetence or negligence in the performance of authorized duties, misrepresentation, violation of the

Act or these rules, or other conduct prejudicial to the safe and proper operation and maintenance of a ride, device or booth.

61.20(9) *Special inspections.* Special inspections shall be made by the commissioner or his representative to check the competency and adequacy of the special inspectors or to check the safety conditions if an investigation is warranted.

61.20(10) *Personal injuries and deaths.* An operator shall report in writing to the commissioner an accident resulting in injury to any person within 48 hours after occurrence of the incident. The report of an accident shall be a duplicate copy of the report submitted to insurance companies. The operator shall immediately report by telephone any accident in which a fatality occurs or a person suffers a fracture, concussion, laceration or other traumatic injury requiring immediate surgical or medical care. The commissioner, after consultation with the operator and determination, may require that the scene of such an accident be secured and not disturbed to any greater extent than necessary for removal of the deceased or injured persons. If a ride is removed from service by the commissioner, he shall order an immediate investigation and the ride or device shall be released for repair and operation only after complete investigation.

61.20(11) *Mechanical failure reports.* The operator shall immediately report to the commissioner a major breakdown after occurrence of the incident by telephone or other media of immediate communication. The operator shall confirm this report in writing within 48 hours on the form provided by the bureau. Upon being advised of such an incident, the commissioner or his authorized agent, after reviewing the circumstances, may order the ride or device to be withheld from operation, and in such cases the commissioner shall conduct an immediate investigation. The ride or device shall be released for repair and operation only after the complete investigation by the commissioner.

61.20(12) *Safety order.* If an inspector finds a condition on the equipment which does not comply with the rules, he will issue a safety order requiring that the condition

be corrected within a time limit. This time limit will be established at the time of the inspection by agreement between the commissioner and the operator. Although a time limit may be established for the completion of the work required under the safety order, this work should be done as quickly as possible. As soon as the work is finished the safety order should be signed and mailed to the commissioner. If the order is not returned within the established time limit or the commissioner is not informed of the reason why the time limit cannot be met, an inspector will be assigned to investigate the situation and take steps necessary to enforce compliance with the order. If a carnival amusement unit should leave the state before complying with the order and the certification of compliance is not mailed, a permit to operate in a subsequent season shall not be issued until it is determined that all provisions of previous orders have been completed. Failure to comply with a safety order may result in revocation of the operator's permit to operate in the state or prosecution for violation of the Act. In a situation where an inspector discovers a condition which is a direct and immediate severe hazard to health or a direct and immediate danger to life, an inspector shall issue a safety order to stop the operation of an amusement ride, amusement device or concession booth immediately. The inspector shall notify the commissioner of the action taken, and the operator shall eliminate the cause of hazard prior to restarting the operation. In the case where a safety order to stop is justified by an associated mechanical failure report submitted by a separate operator, the commissioner shall make an emergency inspection or issue a recommended mechanical repair as soon as possible.

61.20(13) *Receipt and disbursement.* Revenue from permits, annual inspections, reinspections or for any other services or requirements prescribed by the Act or the rules shall be paid to the bureau. Checks for these fees shall be made payable to "Iowa Bureau of Labor/Amusement" and mailed to Iowa Bureau of Labor, East 7th and Court, Des Moines, Iowa 50319. An operator is not required to make payment in any form for any service or any cause or purpose to an inspector or other representative of the commissioner.

61.21(88A) Exemptions. Pursuant to sections 88A.11(3) and 88A.11(4), kiddie rides and amusement devices such as, but not limited to, model horse and model rocket rides, pinball machines and jukeboxes, that have individual self-contained wiring installed by the manufacturer, that operate on less than one hundred and twenty volts, are designed to be coin activated, are located in or attached to permanent buildings and are self operated are exempt from these rules except for the provision of special inspections by the com-

missioner when conditions warrant it. Non-mechanized playground equipment including, but not limited to, swings, seesaws, stationary spring-mounted animal lines, swinging gates and physical fitness devices owned, maintained and operated by any political subdivision of this state are exempt from these rules.

These rules are intended to implement Chapter 88A of the Code.

[Effective February 21, 1973]

IOWA BEER AND LIQUOR CONTROL DEPARTMENT

Pursuant to the provisions of section 123.15 of the Code, the following rules and procedures are adopted for the conduct of appeals and hearings before the hearing board.

[Filed March 15, 1973]

CHAPTER 9

Reserved for future use

CHAPTER 10

HEARING BOARD PROCEDURES

10.1(123) Manner of filing appeal. Appeals to the hearing board should be addressed to the Liquor Hearing Board, State Office Building, 300 Fourth Street, Des Moines, Iowa 50319. No particular form is required and an ordinary letter requesting a hearing or appeal is sufficient to initiate an appeal. The letter should state the grounds or reasons for the appeal and any pertinent facts relating thereto.

10.2(123) Time of hearings. The director of the department shall docket and give notice of a hearing on the appeal to be held before the hearing board to all interested parties within 10 days after the receipt of an appeal. The hearing shall be scheduled not less than 15 days nor more than 60 days from the receipt of the appeal unless another time is mutually agreed to by the parties and the board. The notice shall be in writing, by ordinary mail, and shall specify the time and place of the hearing.

10.3(123) Members participating. The appeal will be heard and decided by at

least two members of the hearing board and if at least two do not agree the decision of the local authority shall stand as the board's decision. A decision shall be signed by a member of the board and shall name the members participating or state that all are present. If one of the three members disagrees, his dissent will be noted and a dissenting opinion may be filed.

10.4(123) Conduct of hearing by hearing board:

10.4(1) The hearing shall be open to the public except that the board may take the appeal under advisement prior to decision.

10.4(2) Unless the board agrees otherwise, the attorney general or his designated representative shall preside at the hearing and in his absence the commissioner of public safety or his representative shall preside.

10.4(3) The hearing shall be informal and all relevant evidence admissible.

10.4(4) Any party desiring a transcript of the hearing should employ a certified court reporter or obtain agreement of all parties and the board that a record may be made in some other manner.

10.4(5) The parties may appear with or without counsel and counsel are not required to be admitted to the practice of law.

10.4(6) The local authority revoking, suspending or refusing to grant or renew the license shall designate a representative

to appear in its behalf and present evidence and arguments in support of its action.

10.4(7) Each party and any member of the board shall have the opportunity to cross-examine the others' witnesses under oath.

10.4(8) For good cause, the board

may continue hearings beyond the period originally scheduled or recessed. Requests for continuance shall be made to the director of the department in writing at least two days prior to the scheduled hearing date.

[Effective March 15, 1973]

PHARMACY

Pursuant to the authority of section 155.19 of the Code, rules appearing in 1971 IDR, pages 624 and 625, [1973 IDR 675, 676] relating to minimum standards for evaluating practical experience are amended as follows:

[Filed February 13, 1973]

ITEM 1.

3.3(1) is amended by striking lines 11 to 14 and inserting in lieu thereof the words "two years of full-time college enrollment, one year of which must be in a recognized college of pharmacy."

ITEM 2.

3.3(2) is rescinded and the following inserted in lieu thereof. "Internship shall consist of at least 1500 hours that are not concurrent with academic training, except that 400 hours of this requirement may be part of a clinical pharmacy course offered for credit by a recognized college of pharmacy. The exception may apply to include internship credit acquired concurrent with academic training in a pharmacy under the supervision of a preceptor but shall not exceed 10 hours in any one week. With the exception of the 400 hours and the stipulated maximum weekly concurrent period of training, internship shall not be more than 48 hours in any one week."

ITEM 3.

3.3(3) is amended by striking the word "Preceptor" in line one and inserting in lieu thereof the words "Pharmacist-preceptor" or "preceptor";

3.3(3) "a" Line 3, strike the word "two" and insert the word "one".

3.3(3) "e" is amended by inserting at the end after the word "manner" the sentence "The pharmacy in which a preceptor is practicing must maintain and utilize a patient profile or family medication record keeping system."

Amend 3.3(3) by adding a paragraph as follows:

"f. Each preceptor shall attend an intern training program workshop approved by the board at least every two years."

ITEM 4.

3.3(4) is amended by striking the last two sentences.

ITEM 5.

3.5(2) "c" is amended by striking from lines 6 and 7 the words "quarterly during the internship year" and inserting in lieu thereof the words "30 days following each reporting period during the internship experience".

3.5(3) is amended by striking from line 4 the word "employed" and inserting the word "registered".

ITEM 6.

3.6(5) is amended by striking from line 2 the words "two dollars" and inserting the words "five dollars", and lines 5 and 6 are amended by striking the words "PHARMACY PRECEPTOR'S GUIDE" and inserting the words "GUIDE FOR PRECEPTORS AND INTERNS".

3.7(155) is rescinded.

[Effective February 13, 1973]

PROFESSIONAL TEACHING PRACTICES COMMISSION

Pursuant to the authority of section 272A.5 of the Code the following rules are adopted (Chapters 1 to 3).

[Filed July 12, 1973]

CHAPTER 1

GENERAL

1.1(272A) Definition. The Iowa Professional Teaching Practices Commission shall hereinafter be referred to as the commission.

CHAPTER 2

INVESTIGATIVE RULES AND PROCEDURES

2.1(272A) Parties involved. The following definitions of parties involved in an investigation shall apply herein:

1. "Commission" shall mean the Iowa professional teaching practices commission.

2. "Complainant" shall mean any qualified party as defined in 2.4 herein.

3. "Respondent" shall mean any individual(s) who shall be charged in a complaint with a violation of standards of professional ethics and practices.

2.2(272A) Informal procedures. Matters which do not conflict with section 272A.6 may be acted upon without a hearing and may be handled by correspondence.

2.3(272A) Jurisdictional requirements.

2.3(1) The case must relate to alleged violation of standards of professional ethics and practices.

2.3(2) The magnitude of the alleged violation must be adequate to warrant a hearing by the commission.

2.3(3) There must be sufficient evidence to support the complaint.

2.3(4) As an additional factor, it should appear that a reasonable effort has been made to resolve the problem on the local level. However, the absence of such an effort shall not preclude investigation by the commission.

2.4(272A) The complaint.

2.4(1) Who may initiate.

a. Certified personnel or their recognized local or state professional organization.

b. Local boards of education.

c. State board of public instruction.

d. Parents or guardians of students involved in the alleged complaint.

2.4(2) Form and content of the complaint.

a. The complaint shall be in writing and signed by at least one complainant or an authorized representative if the complainant is an organization. (Or an official form may be used. This form may be obtained from the commission upon request.)

b. The complaint shall show venue as "BEFORE THE IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION," and shall be captioned "COMPLAINT."

c. The complaint shall contain the following information:

(1) The full name, address and telephone number of the complainant.

(2) The full name, address and telephone number, if known, of the respondent.

(3) A concise statement of the facts which clearly and accurately apprise the respondent of the alleged violation of professional ethics and practices, and shall state relief sought by the complainant.

2.4(3) Required copies—place and time of filing.

a. In addition to the original, a sufficient number of copies of the complaint must be filed to enable service of one copy to each of the respondents and retention of ten copies for use by the commission.

b. The complaint shall be delivered personally or by mail to the chairman of the Iowa Professional Teaching Practices Commission in care of the State Department of Public Instruction, Grimes Office Building in Des Moines. The chairman

shall make recommendations regarding the alleged violation of professional ethics and practices.

c. Timely filing is required in order to insure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

2.4(4) *Amendment or withdrawal of complaint.* A complaint or any specification thereof may be amended or withdrawn by the complainant at any time prior to notification of the respondent, and thereafter at sole discretion of the commission.

2.5(272A) Initial inquiry.

2.5(1) *When instituted.* When a complaint is received by the commission the person about whom the complaint has been filed will be notified of the receipt of the complaint. The initial inquiry of the case may be initiated by the chairman of the commission following the next meeting of the commission.

2.5(2) *Appointment of investigator(s).* The chairman shall appoint two or more commission members to read, and if necessary, to investigate the complaint before the next regular meeting of the commission. It is recommended that these commission members be selected from a geographical area other than the professional residence of the individual or group charged in the complaint.

2.6(272A) Ruling on the initial inquiry.

2.6(1) *Decision of the commission.*

a. *Rejection.* If a determination is made by the commission 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 commission shall be sent to the respondent.

b. *Requirement of further inquiry.* If determination is made by the commission 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 commission to accept the case, a formal hearing shall be conducted in accordance with 2.7(272A) to 2.9(272A) below.

2.7(272A) Service of the complaint and answer.

2.7(1) *Service of the complaint.* The chairman of the commission shall send a letter of notification and a copy of the complaint, with any amendments, to the respondent by certified mail with return receipt. Attached thereto shall be a statement that respondent has the right to appear at a hearing and be heard and to submit an answer of the type specified in 2.7(3) below, that an answer or appearance must be submitted within 20 days after receipt of the complaint, and that failure to do so shall be deemed consent to whatever action the commission deems appropriate. Further, this statement shall notify the respondent that the commission shall determine the date, time, and place of hearing and notify respondent of same upon receipt of the answer.

Whenever the notice of complaint by certified mail with return receipt cannot be delivered to the respondent, because he refuses to receive or receipt for such mail, notice shall be given by publication in a newspaper of general circulation. A copy of all documents or instruments which are pertinent to or the basis of the proceeding, shall be mailed to the last known address of the respondent.

2.7(2) *Form of an appearance.*

a. The appearance shall show venue as "BEFORE THE IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION" and shall be captioned "APPEARANCE."

b. The appearance shall show the following information:

(1) The name, address and telephone number of the respondent.

(2) That the respondent will submit his answer within ten days from the filing of the appearance unless granted an extension by the commission.

c. The commission may, upon good cause shown, grant the respondent additional time in which to file an answer.

2.7(3) Form of answer.

a. The answer shall show venue as "BEFORE THE IOWA PROFESSIONAL TEACHING PRACTICES COMMISSION" and shall be captioned "ANSWER."

b. The answer shall contain the following information:

(1) The name, address and telephone number of the respondent.

(2) Specific statements regarding any or all allegations in the complaint which shall be in the form of denials, explanatory remarks, or statements of mitigating circumstances.

(3) Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

2.8(272A) Action by the commission chairman prior to hearing.

2.8(1) Notice of hearing. The commission chairman shall send a notice of hearing to the complainant and the respondent by certified mail with return receipt. The notice shall contain the following information:

a. The date, time and place of hearing.

b. A statement that the party may be represented by legal counsel at the hearing although the role of said counsel will be limited to advising his client of his rights, to making motions regarding the nature and conduct of the questioning and the procedures followed during the hearing and he may cross-examine witnesses.

c. A statement requesting the respondent, within a period of ten days after receipt of the notice of hearing to:

(1) Acknowledge receipt of the notice of hearing.

(2) State whether or not he will be present at the hearing.

(3) State whether he will require an adjustment of date and time of the hearing, and

(4) Furnish the commission with a list of witnesses he intends to have called.

2.8(2) Filing and serving exhibits prior to hearing. In any proceeding where detailed or complicated exhibits are to be used, the commission chairman may require any party to file and serve copies of such exhibits or other necessary information within a specified time in advance of the hearing in order to enable the other parties and the commission to study same and prepare cross-examination with references thereto.

2.9(272A) The hearing.

2.9(1) Opening and closing statements by parties. At the commencement of the hearing, each party, either in person or by counsel shall have the opportunity to present a written and oral opening statement which may summarize that party's position and evidence to be introduced. At the conclusion of the hearing, each party shall, either in person or by counsel, have the opportunity to present both a written and an oral closing statement which may include a summary of the evidence and testimony received.

2.9(2) Introductory statement to witnesses. Before giving testimony, each witness shall be informed of the commission membership present (hearing committee) of the identity of the primary parties or their representatives, and of the fact that all testimony is being recorded.

2.9(3) Scope of hearing. It shall be the obligation and responsibility of the hearing chairman to limit the scope of the investigation and the admission of all evidence to that area of inquiry directly relating to matters raised in the complaint. The hearing of testimony and the pursuance of matters outside the scope of the complaint shall be declared irrelevant and improper.

2.9(4) A record of proceedings. The hearing chairman will insure that a record of the hearing proceedings is maintained by one of the following methods: (a) electronic recording, (b) by a competent stenographer, or (c) by a certified court reporter. However, the cost of preparing a transcript for the complainant or respondent paid by party requesting same.

2.9(5) Form of oath. Whenever an

oath is to be administered in any proceeding conducted by the practices commission, the person taking an oath shall raise his right hand and swear or affirm to the following oath or affirmation: "You do solemnly swear (or affirm) that the testimony (or, evidence) you are about to give in the proceeding now on hearing, shall be the truth, the whole truth, and nothing but the truth."

2.9(6) Admission of evidence.

a. The hearing chairman shall not be bound by the strict rules of evidence prevailing in courts of law or equity. He shall, however, give effect to the rules of privilege recognized by law.

b. The hearing chairman shall have full authority to control the procedures of the hearing, to admit or to exclude testimony of other evidence in his discretion, whether or not admissible in a court and to rule on any and all motions and objections.

c. The hearing chairman, on motion of a party or on his own motion, may call and examine witnesses and introduce documentary or other evidence.

d. The hearing chairman and other members of the hearing committee shall be responsible for examining all witnesses with the right of cross-examination reserved to each party or his counsel. As stated in 2.8(1) "b", the role of legal counsel will be limited to advising his client as to his rights, to making motions regarding the nature and conduct of the questioning and the procedures followed during the hearing, and to cross-examining witnesses within the scope of the direct examination.

e. The hearing chairman shall have the power to entertain motions by any party or member of the hearing committee to amend the complaint.

2.9(7) Offer of copies of exhibits at hearing. Parties shall furnish accurate copies of all documentary evidence offered at the hearing to all members of the hearing committee and to all parties to the proceeding.

2.9(8) Legal counsel. The commission may appoint legal counsel to advise and counsel the hearing chairman in the

performance of his duties under 2.8(272A).

2.9(9) Right of persons to attend hearings. The practices commission, at its discretion, will determine the attendance at the hearing.

2.10(272A) Report and final recommendations.

2.10(1) The decision.

a. The commission shall render a decision in closed session on the basis of a vote of at least five of its members; the final decision shall constitute the official position of the Iowa professional teaching practices commission and shall be entered in the minutes.

b. The ruling of the commission may be one of the following:

(1) That the respondent be exonerated.

(2) That respondent should be warned or reprimanded by the commission.

(3) That a recommendation be made to the state board of educational examiners recommending the holding of a certification, suspension or revocation hearing.

c. If a determination is made to warn and reprimand the respondent, the commission chairman is charged with responsibility of insuring that such action is taken in accordance with the opinion of the commission.

d. The commission chairman shall cause a report of its findings to be submitted to the state board of educational examiners. This report shall contain:

(1) A copy of the complaint

(2) A copy of the respondent's answer

(3) A statement of the facts surrounding the situation

(4) A statement of the commission's findings, and

(5) A statement of conclusions and recommendations.

e. Where the respondent has failed to file an answer or attend the hearing, the report mentioned in paragraph "d" (4) above shall consist of a copy of the complaint, a copy of the respondent's answer if one was filed, and a statement of con-

clusions and recommendations drawn therefrom.

2.10(2) Confidential nature of the report. At no time prior to the commission's formal adoption and release of the report shall any portion of said report be made public or be distributed to any persons other than those parties as named on the formal complaint.

2.10(3) Ex parte communications. No party to a proceeding, or his counsel, or agent, or other representative acting on his behalf, shall communicate ex parte, with any member of the commission or its staff. In the event an ex parte communication is received the person to whom it is directed shall promptly and fully inform the chairman of such communication and the circumstances therefor for the purpose of enabling the commission to take appropriate action.

CHAPTER 3

CRITERIA OF PROFESSIONAL PRACTICES

3.1(272A) Contractual and other legal obligations.

3.1(1) Statutory provisions.

a. The commission recognizes the need for all members of the profession to be cognizant of the statutes of the State of Iowa which deal with contractual and other legal obligations. A violation of any of the school laws of Iowa constitutes a violation of the criteria of the Iowa professional teaching practices commission.

b. The commission recognizes its responsibility to investigate cases which involve contractual violations and obligations and make recommendations to the state board of educational examiners as provided for in chapter 272A.6 of the Code.

3.1(2) Written contracts. The commission recognizes the need for a common basis upon which teachers and boards of education may agree. The effectiveness of a written contract will be dependent upon mutual confidence and good faith in which both parties enter into and agree. Boards of education have final authority and

responsibility to enter into written contractual agreement.

3.2(272A) Competent performance of all members of the teaching profession.

3.2(1) Guidelines. Competence is assumed. It rests with the complainant to furnish evidence of alleged incompetence. Because there is a great divergence among groups of people as to what constitutes competence in education, the following guidelines are suggested:

a. The guiding of educational activities must be recognized as basic. Therefore, these activities require a degree of competence in developing, evaluating and applying educational activities in the variety of situations confronting the educator.

b. In order to help the pupil become as effective an individual as possible the educator must have the competency to deal effectively with individuals and groups.

c. Within any local system competence involves program building directed toward three important educational functions: (1) To provide an articulated series of educational experiences leading to desired objectives, (2) to provide an effective environment for developing the skills and attitudes needed for effective citizenship and for meeting developmental needs, and (3) to provide for liaison with the public on purposes and programs in education.

d. The individual's effectiveness as a member of the profession calls for competence in three general areas of professional behavior: (1) Personal relationships, (2) professional growth, and (3) effectiveness in dealing with problems of the profession.

3.3(272A) Ethical practice toward other members of the profession, parents, students and the community.

3.3(1) Principle I—commitment to the student. The educator measures his success by the progress of each student toward realization of his potential as a worthy and effective citizen. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formula-

tion of worthy goals. In fulfilling his obligation to the student, the educator:

a. Shall not without just cause restrain the student from independent action in his pursuit of learning, and shall not without just cause deny the student access to varying points of view.

b. Shall not deliberately suppress or distort subject matter for which he bears responsibility.

c. Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.

d. Shall conduct professional business in such a way that he does not expose the student to unnecessary embarrassment or disparagement.

e. Shall not on the ground of race, color, creed, age, sex, physical or mental handicap, marital status, or national origin exclude any student from participation in or deny him benefits under any program, nor grant any discriminatory consideration or advantage.

f. Shall not use professional relationships with students for private advantage.

g. Shall keep in confidence information that has been obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.

h. Shall not tutor for remuneration students assigned to his classes, unless no other qualified teacher is reasonably available.

3.3(2) Principle II—commitment to the public. The educator believes that patriotism in its highest form requires dedication to the principles of our democratic heritage. He shares with all other citizens the responsibility for the development of sound public policy and assumes full political and citizenship responsibilities. The educator bears particular responsibility for the development of policy relating to the extension of educational opportunities for all and for interpreting educational programs and policies to the public. In fulfilling his obligation to the public, the educator:

a. Shall not misrepresent an institution or organization with which he is

affiliated, and shall take adequate precautions to distinguish between his personal and institutional or organizational views.

b. Shall not knowingly distort or misrepresent the facts concerning educational matters in direct and indirect public expressions.

c. Shall not interfere with a colleague's exercise of political and citizenship rights and responsibilities.

d. Shall not use institutional privileges for monetary private gain or to promote political candidates or partisan political activities.

e. Shall accept no gratuities, gifts, or favors that might impair or appear to impair professional judgment, nor offer any favor, service, or thing of value to obtain special advantage.

3.3(3) Principle III—commitment to the profession. The educator believes that the quality of the services of the education profession directly influences the nation and its citizens. He therefore exerts every effort to raise professional standards, to improve his service, to promote a climate in which the exercise of professional judgment is encouraged, and to achieve conditions which attract persons worthy of the trust to careers in education. In fulfilling his obligation to the profession, the educator:

a. Shall not discriminate on the ground of race, sex, age, physical handicap, marital status, color, creed or national origin for membership in the profession, nor interfere with the participation or non-participation of colleagues in the affairs of their professional association.

b. Shall accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities.

c. Shall not use coercive means or promise special treatment in order to influence professional decisions of colleagues.

d. Shall withhold and safeguard information acquired about colleagues in the course of employment, unless disclosure serves professional purposes.

e. Shall not refuse to participate in a professional inquiry when requested by the commission.

f. Shall provide upon the request of the aggrieved party a written statement of specific reason for recommendations that lead to the denial of increments, significant changes in employment, or termination of employment.

g. Shall not misrepresent his professional qualifications.

h. Shall not knowingly distort evaluations of colleagues.

3.3(4) Principle IV—commitment to professional employment practices. The educator regards the employment agreement as a pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. He believes that sound professional personnel relationships with governing boards are built upon personal integrity, dignity, and mutual respect. The administrator discourages the practice of the profession by unqualified persons. In fulfilling his obligation to professional employment practices, the educator:

a. Shall apply for, accept, offer, or assign a position or responsibility on the basis of professional preparation and legal qualifications.

b. The educator should recognize salary schedules and the salary clause of individual teacher's contract as a binding document on both parties. The educator should not in any way violate the terms of the contract.

c. Shall not knowingly withhold information regarding a position from an applicant or misrepresent an assignment or conditions of employment.

d. Shall give prompt notice to the employing agency of any change in avail-

ability of service, and the employing agent shall give prompt notice of change in availability or nature of a position.

e. Shall adhere to the terms of a contract or appointment, unless these terms have been legally terminated, falsely represented, or substantially altered by unilateral action of the employing agency.

f. Shall not delegate assigned tasks to unqualified personnel.

g. Shall use time or funds granted for the purpose for which they were intended.

3.3(5) Principle V—commitment of commission members and staff. The commission members and staff will be independent and impartial and not use the public office for private gain. In fulfilling his obligation the commission employees will not:

a. Receive any remuneration for his services, other than that payable by law.

b. Solicit, accept, or agree to accept any gifts, loans, gratuities, discounts, favors, hospitalities or services from anyone with vested interests.

c. Disclose confidential information garnered from his official duties.

d. Solicit, accept or agree to accept compensation contingent upon commission actions.

e. Hold positions, perform duties, or engage in activities not compatible with his official capacity.

These rules are intended to implement chapter 272A of the Code.

[Effective July 12, 1973]

PUBLIC SAFETY

Pursuant to the authority of section 321.238(1) of the Code, the department of public safety rules covering motor vehicle inspection as they appear in the July, 1972, I.D.R. Supplement on pages 124 to 130 are amended as follows:

[Filed February 23, 1973]

ITEM 1. Chapter 2 [Chapter 22, Title III, 1973 I.D.R.], is amended:

2.6(321) is amended by striking all of 2.6(2), paragraph "b", subparagraph (5) and renumbering subparagraph (6) as (5).

ITEM 2. Chapter 4 [Chapter 24, Title III, 1973, I.D.R.], is amended as follows:

4.2(3), is amended to read as follows: "The inspection record form must be completed in triplicate. The original and the pink copy are to remain with the inspected

motor vehicle. The yellow copy must be retained as a garage record and kept on

file at the inspection station for a period of three years."

[Effective March 26, 1973]

PUBLIC SAFETY DEPARTMENT

(continued)

Pursuant to the provisions of section 321.210 of the Code, the Department of Public Safety hereby adopts the following rules for the suspension of an individual's operators license and driving privileges. Said rules will follow Chapter 13.17(5), found on page 792 of the Iowa Departmental Rules 1973.

[Filed July 2, 1973]

CHAPTER 13

DRIVERS' LICENSES

13.18(321) Suspension of license. The department of public safety may suspend:

13.18(1) Upon receipt of information showing that charges have been filed against a person for an offense for which, upon conviction, mandatory revocation of the license is required under 321.209, subsections 1, 2, 3, 4, 5, and 8. A suspension under this subsection shall be for a period equal to the minimum period of revocation which would be required upon conviction for the offense. Such suspension shall be terminated upon notification to the department of final disposition of the charge.

13.18(2) When the department's records show that such person is an habitually reckless or negligent driver of a motor vehicle ("habitually reckless or negligent" shall mean one who has accumulated a combination of three or more violations and contributable accidents or three or more contributable accidents within a 12-month period). A suspension under this subrule shall be for a period of at least 30 days and not to exceed one year.

13.18(3) When the department's records show that such person is an habitual violator of the traffic laws ("habitual violator" shall mean one who has accumulated three or more convictions of moving traffic law violations committed within a 12-month period). A suspension under this subrule shall be for a period of 60 days.

13.18(4) When the department's records show that such person is incompetent to drive a motor vehicle. An "incompetent" as used in this subrule shall include the following:

a. Any person convicted of two moving traffic law violations committed within the 12-month period following the reinstatement of his driving privilege after suspension as an habitual violator.

b. Any person convicted of six or more moving traffic law violations committed within a period of three years.

c. Any person convicted of an offense of OMVUI in Iowa, if said person has, within the prior three years, been convicted of OMVUI in Iowa and if said person had, as a result of said prior conviction, attended or been ordered to attend an OMVUI school as provided in Chapter 321B, 1973 Code of Iowa.

d. Any person who has been involved in a motor vehicle accident when the department's records indicate that such person contributed to said accident and if said person, according to the department's records, has previously been considered to have contributed to at least two motor vehicle accidents within a period of one year, and who has been subjected to the department's driver improvement action as a result of said prior accidents. "Contributed" shall mean that the records of the department indicate that the subject in question committed some act or failed to do that which would reasonably be expected of a driver when such action or failure to perform appears to have been a cause of the accident.

e. Any person who shall not be licensed under the authority of section 321.177, subsections 4, 5, 6, and 7, of the Code.

A suspension under this rule for incompetence shall be for an indefinite period but shall be terminated upon receipt by the department of satisfactory evidence that

the licensee has been restored to competency. However, an indefinite suspension of an incompetent as defined in 13.18(4), paragraphs "a", "b", "c" or "d" shall not be subject to review until after two years.

13.18(5) When the department's records show that such person has permitted an unlawful use of a driver's license. A suspension under this subrule shall be for a period of 30 days.

13.18(6) When the department's records show that such person has committed an offense in another state which if committed in this state would be grounds for suspension or revocation. A suspension under this subrule shall be for a period equal to the suspension which would be imposed if the violation had occurred in this state.

13.18(7) When the department's records show that such person has committed a serious violation of the motor vehicle laws of this state. "Serious violation" shall include the following:

a. Any conviction for a moving traffic law violation when such record of conviction is accompanied by a written report from the arresting officer or the court indicating that the violation was considered unusually serious. A suspension under this subrule shall be for a period of not less than 60 days and not more than one year.

b. Any conviction for a moving traffic law violation when such conviction resulted from the person so convicted having been involved in a fatal motor vehicle accident and when the records show that said person committed some act or failed to do that which would reasonably be expected of a driver when such action or failure to perform appears to have been a cause of the accident. A suspension under this subrule shall be for a period of not less than 120 days and not more than one year.

c. A written report from a peace officer or court stating a properly identified person has driven a motor vehicle in such a manner as to have indicated a wanton or willful disregard for the safety of other persons and that said peace officer states that continued operation of a motor vehicle by said person poses an immediate threat to the public health and welfare. A suspension under this subrule shall be for a period

of not less than 30 days and not more than one year.

d. Any conviction for speeding when the record shows the speed to have exceeded 20 mph over the legal limit. Suspensions based on speed alone shall be in accordance with the following schedule:

21 mph over the legal limit, not less than 30 days nor more than one year; 22 mph over the legal limit, not less than 32 days nor more than one year; 23 mph over the legal limit, not less than 34 days nor more than one year; 24 mph over the legal limit, not less than 36 days nor more than one year; 25 mph over the legal limit, not less than 40 days nor more than one year; 26 mph over the legal limit, not less than 45 days nor more than one year; 27 mph over the legal limit, not less than 50 days nor more than one year; 28 mph over the legal limit, not less than 55 days nor more than one year; 29 mph over the legal limit, not less than 60 days nor more than one year; 30 mph over the legal limit, not less than 70 days nor more than one year; 31 mph over the legal limit, not less than 80 days nor more than one year; 32 mph over the legal limit, not less than 90 days nor more than one year; 33 mph over the legal limit, not less than 100 days nor more than one year; 34 mph over the legal limit, not less than 110 days nor more than one year; 35 mph over the legal limit, not less than 120 days nor more than one year; 36 mph over the legal limit, not less than 130 days nor more than one year; 37 mph over the legal limit, not less than 140 days nor more than one year; 38 mph over the legal limit, not less than 150 days nor more than one year; 39 mph over the legal limit, not less than 160 days nor more than one year; 40 mph over the legal limit, not less than 170 days nor more than one year; 41 mph or more over the legal speed limit, not less than 183 days nor more than one year.

13.18(8) In lieu of a suspension under section 321.210 of the Code, the department may permit the licensee to retain the driving privilege on a probationary basis subject to such restrictions as the department deems appropriate. A violation of such probation shall result in suspension as provided in the appropriate subrule above.

These rules shall become effective on July 1, 1973 for the period ending August 31, 1973.

REGENTS BOARD

Pursuant to the authority of section 262.9 of the Code, rules of the Board of Regents appearing in 1973 IDR, pages 856 and 857, reflecting the age of majority are hereby amended.

[Filed May 16, 1973]

ITEM 1 Subrule 1.4(2), line 4, is amended by striking the figure "19" in two places and inserting in lieu thereof the figure "18".

ITEM 2 Subrule 1.4(4) is amended by striking the catchwords and inserting in lieu

thereof the words "*Students over 18 years of age and married students under 18 years of age*".

Further amend said rule by striking from lines 2, 3, 16, and 17 the figure "19" and inserting in lieu thereof the figure "18".

ITEM 3 Subrule 1.4(5), line 5, is amended by striking the figure "19" and inserting in lieu thereof the figure "18".

[Effective July 1, 1973]

SOCIAL SERVICES DEPARTMENT

Pursuant to the authority of section 249A.4 of the Code rules appearing in 1971 IDR, pages 943 relating to Medical Assistance (Chapter 3) is amended by adding the following new rule.

[Filed June 21, 1973]

3.13(249A) Hearing aid dealers. Hearing aid dealers are eligible to participate if

it is established that they provide quality merchandise and service. This determination is made by the Department of Social Services based on information submitted by the hearing aid dealer himself, reports from county departments of social services, and a recommendation from the state hearing aid advisory committee.

[Effective June 21, 1973]

SOCIAL SERVICES DEPARTMENT

(continued)

Pursuant to authority in chapters 217 and 249A, 1973 Code of Iowa, for payment of services to recipients of public assistance in intermediate and basic nursing home facilities licensed pursuant to Chapter 135C, 1973 Code of Iowa, the following rules and regulations are promulgated.

[Filed June 21, 1973]

TITLE XIX

MEDICAL ASSISTANCE

CHAPTER 7

INTERMEDIATE AND BASIC
NURSING HOMES

7.1(249A) Conditions of eligibility. Medical assistance recipients may be admitted to an intermediate or basic nursing home only upon certification by a licensed physician that a health need for such admission exists in a facility currently licensed by the department of health pursuant to chapter 135C of the Code. The health care of

the recipient must continue under the supervision of a physician. This requirement shall not be used to limit the recipient's freedom of choice of physician.

7.2(249A) Duration of care. Care in an intermediate or basic nursing home shall be provided to recipients as long as a health need for such care exists. This need must be recertified by the attending physician at least once each calendar quarter during his visit to the recipient.

7.3(249A) Conditions of participation for intermediate and basic nursing homes. In order to participate in the program, intermediate and basic nursing homes must agree to abide by the rules and regulations set forth herein and by the rules and regulations of the state health department pursuant to their type of facility. (Chapter 135C, Code of Iowa). They must enter into a contractual agreement with the state department of social services which sets forth the terms under which they will participate in the program.

7.4(249A) Procedure and method of payment.

7.4(1) Authorization. Payment for care in an intermediate or basic nursing home shall not be made without prior authorization by the state department of social services. Such authorization will be issued when the department concurs with the request for care.

7.4(2) Basis of payment. Payments to intermediate and basic nursing homes will be on a cost related basis. Per diem rates will be established for each nursing home participating in the program. These rates will be based on the facility's costs during the most recent six-month accounting period. The rate of reimbursement will be subject to a maximum rate established by the state department of social services for each type of facility. The rate of payment may be negotiated with homes out of the state of Iowa who do not submit cost reports, but such rate shall never exceed the established maximum rate.

7.4(3) Method of payment. Intermediate and basic nursing homes participating in the program will submit a bill for the total number of patient days of care provided during each month. The bill must be submitted on the turnaround billing form supplied to the nursing home each month by the department. The nursing home must submit the bill to the state department of social services on or before the fifth working day of the month following the month in which the service was provided. When the bill is not received by the fifth working day of the month, payment will not be made that month, and the bill must be resubmitted the next month. The department of social services will process the bill and issue payment on or before the fifteenth working day of the month, subject to reimbursement for overpayments resulting from an audit or any cause. Payment received from the state department of social services will constitute total payment and no additional charges shall be made to the recipient above the level of his financial participation.

7.4(4) Recipient's financial participation. Vendor payments for nursing home care are made to supplement the recipient's income. The recipient retains an amount

for personal needs established by the department and the balance of his income is applied to the cost of nursing home care. The state payment to the nursing home will be decreased by the amount of the recipient's financial participation. Collection of the recipient's share of the costs is a matter between the recipient and the nursing home. When the nursing home administrator handles the personal needs funds of a recipient, such funds must be kept separate and apart from operating funds in an account designated as "patient trust funds account" which is subject to audit by representatives of the state department of social services. A ledger sheet must be kept for each recipient, documented by receipts for all purchases. Cash disbursements shall not be made to anyone other than the recipient or persons designated by him.

7.5(249A) Other policies relating to intermediate and basic nursing homes.

7.5(1) Utilization review. Each intermediate and basic nursing home shall have in effect a utilization review plan, meeting the requirements for such plans in Title XVIII of the Social Security Act. This utilization review must assure that required health services are provided and that only required services are being received by recipients of medical assistance and that the cost of such services is not in excess of that charged the general public or persons receiving assistance under similar circumstances. The nursing home must make all necessary records, as determined by the department of social services, available to representatives authorized by the state department of social services for the purpose of determination of compliance with this regulation and pertinent laws, regulations and charges.

7.5(2) Resident care review. Each intermediate and basic nursing home must allow the state department of social services to make resident care reviews of each patient covered under the medical assistance program, including an evaluation of the patient's need for intermediate or basic nursing care. The intermediate and basic nursing homes must make available to personnel authorized by the state department of social services all records necessary

to allow them to complete a resident care review of medical assistance patients.

7.5(3) Disciplinary action against intermediate and basic nursing homes. The department of social services reserves the right to remove from participation in the program any nursing home in violation of the department's requirements for participation. The following practices are among those considered as just cause for removal from participation in the program, although reasons for removal are not limited to these practices alone.

a. Failure to be licensed by the department of health pursuant to chapter 135C, 1973 Code of Iowa, or a violation of said chapter or regulations pursuant thereto or pursuant to chapter 100, 1973 Code of Iowa.

b. Billing for services not provided or services different from those actually supplied.

c. Refusal to comply with the department's rules governing participation in the program or those of the department of health or fire marshal relating to such facilities.

d. Provision of services in an amount in excess of that medically necessary for the proper treatment of the patient.

e. Practices which result in abuse, neglect, or exploitation relating to care and treatment of recipients as determined by the commissioner of the department of social services or his designee or abuse of the program in the interest of the state of Iowa, or failure to report information of suspected abuses or leading to verification of such.

7.5(4) Appeals by intermediate and basic nursing homes. If at any time an intermediate or basic nursing home disagrees with an action of the state department of social services, it may file an appeal. On receipt of the appeal, a hearing will be arranged before the hearing officer of the department of social services. At the time of the hearing, the nursing home may present such material and relevant evidence as it desires. Following the hearing, a decision will be rendered by the commissioner of the department of social services and such decision shall be final.

[Effective June 21, 1973]

SOCIAL SERVICES DEPARTMENT

(continued)

Pursuant to the authority of section 241A.4 of the Code the rules appearing in the IDR July 1972 supplement, pages 143 to 145, and amended August 30, 1972 relating to aid to disabled persons (chapter 34) are amended as follows:

[Filed June 21, 1973]

Subrule 34.1(1) is amended by inserting at the end thereof the words "When a parent receives aid to disabled persons and his minor children living with him receive aid to dependent children, the resource limitations for both eligible groups shall be combined in one total to establish the limitations for the family. When the value of any resource

is exempt in part, that portion of the value which exceeds the exemption shall be considered in computing whether the property is within the reserve defined in paragraph 'e'."

Further amend said subrule by striking all of paragraph "c" and inserting in lieu thereof the words "An equity not to exceed a value of \$2,500 in an automobile or automobiles."

Further amend said subrule by adding paragraph "f". A prior arrangement for funeral expenses in an amount not to exceed \$750.

[Effective June 21, 1973]

SOCIAL SERVICES DEPARTMENT

(continued)

Pursuant to the authority of section 239.18 of the Code the rules filed August 30, 1972, and amended November 20, 1972,

relating to aid to dependent children (Chapter 44) are amended as follows.

[Filed June 21, 1973]

ITEM 1. Subrule 44.1(1) is amended by inserting at the end thereof the words "When a parent receives aid to disabled persons and his minor children living with him receive aid to dependent children, the resource limitations for both eligible groups shall be combined into one total to establish the limitations for the family."

ITEM 2. Amend said chapter by inserting the following new rule.

44.12(239) Work or training registration. Each member of the eligible group, or each person for whom income is diverted, must register for work or training unless the county determines he is exempt.

44.12(1) The following persons are exempt from registration.

a. A child who is under the age of 16 or between the ages of 16 and 21 and attending school full time.

b. A person over the age of 65 or who is prevented from engaging in employment or training because of a temporary or permanent medically determinable physical or mental impairment.

c. A person who lives so far away from any work incentive program project that he cannot effectively participate.

d. A person required in the household on a substantially continuous basis be-

cause of a medically determinable condition of another member of the household.

e. A mother or other eligible caretaker relative of a child under the age of six who is caring for the child.

f. A mother or other female caretaker of a child, where the father or another male relative in the home is required to be registered.

44.12(2) Any person who is determined exempt may volunteer for registration.

44.12(3) Refusal to register. The needs of any mandatory registrant who refuses to register shall be excluded from the assistance grant.

44.12(4) Refusal to participate. When the department of labor determines that a mandatory registrant refuses to participate in training or accept a bona fide offer of employment without good cause, the county shall initiate a 60-day counseling period. If the individual is still unwilling to participate, his needs shall not be paid in the assistance grant, and if such individual is the payee the county shall appoint a protective payee or establish a vendor payment arrangement.

[Effective June 21, 1973]