

Senate Study Bill 2280

Conference Committee Text

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1 1 ARTICLE 1
1 2 GENERAL PROVISIONS
1 3 Section 1. NEW SECTION. 17A.1101 CITATION, STATEMENT OF
1 4 PURPOSE, AND CONSTRUCTION.
1 5 1. This chapter may be cited as the "Iowa Administrative
1 6 Procedure Act".
1 7 2. The purposes of this chapter are the following:
1 8 a. To provide legislative and gubernatorial oversight of
1 9 powers and duties delegated to administrative agencies.
1 10 b. To increase the public accountability of administrative
1 11 agencies.
1 12 c. To simplify government by assuring a uniform minimum
1 13 procedure to which all agencies will be held in the conduct of
1 14 their most important functions.
1 15 d. To increase public access to information about agency
1 16 law and policy.
1 17 e. To increase public participation in the formulation of
1 18 administrative rules and the efficacy and acceptability of
1 19 those rules.
1 20 f. To increase the fairness and efficiency of agencies in
1 21 their conduct of adjudicatory proceedings.
1 22 g. To simplify the process of judicial review of agency
1 23 action as well as to increase its availability and
1 24 effectiveness.
1 25 3. In accomplishing its objectives, the intention of this
1 26 chapter is to strike a fair balance between the need for
1 27 adequate protection of private rights and political control of
1 28 agency processes and the need for efficient, economical, and
1 29 effective government administration.
1 30 4. The coverage and requirements of this chapter shall be
1 31 construed broadly to effectuate the purposes of this chapter
1 32 and any exemptions from its requirements contained in this
1 33 chapter or elsewhere shall be narrowly construed.
1 34 Sec. 2. NEW SECTION. 17A.1102 DEFINITIONS.
1 35 As used in this chapter, unless the context otherwise
2 1 requires:
2 2 1. "Adjudicative proceeding" means the process for
2 3 formulating and issuing an order.
2 4 2. "Agency" means a board, commission, department,
2 5 officer, or other administrative unit of this state, including
2 6 the agency head, and one or more members of the agency head or
2 7 agency employees or other persons directly or indirectly
2 8 purporting to act on behalf or under the authority of the
2 9 agency head. "Agency" does not mean the general assembly or
2 10 any of its components, the judicial department or any of its
2 11 components, the governor, or a political subdivision of the
2 12 state or any of the administrative units of a political
2 13 subdivision, but it does include a board, commission,
2 14 department, officer, or other administrative unit created or
2 15 appointed by joint or concerted action of an agency and one or
2 16 more political subdivisions of the state or any of their
2 17 administrative units. To the extent it purports to exercise
2 18 authority subject to any provision of this chapter, an
2 19 administrative unit otherwise qualifying as an "agency" must
2 20 be treated as a separate agency even if the administrative
2 21 unit is located within or subordinate to another agency.

2 22 3. "Agency action" means any one of the following:
2 23 a. The whole or a part of a rule or an order.
2 24 b. The failure to adopt a rule or issue an order.
2 25 c. An agency's performance of, or failure to perform, any
2 26 other duty, function, or activity, discretionary or otherwise.
2 27 4. "Agency head" means an individual or body of
2 28 individuals in whom the ultimate legal authority of the
2 29 agency, with respect to the matter at issue, is vested by any
2 30 provision of law.
2 31 5. "License" means a franchise, permit, certification,
2 32 approval, registration, charter, or similar form of
2 33 authorization required by law.
2 34 6. "Order" means an agency action of particular
2 35 applicability that determines the legal rights, duties,
3 1 privileges, immunities, or other legal interests of one or
3 2 more specific persons. The term does not include an
3 3 "executive order" issued by the governor pursuant to section
3 4 17A.1104 or 17A.3202.
3 5 7. "Party to agency proceedings" or "party" in context so
3 6 indicating, means any of the following:
3 7 a. A person to whom the agency action is specifically
3 8 directed.
3 9 b. A person named as a party to an agency proceeding or
3 10 allowed to intervene or participate as a party in the
3 11 proceeding.
3 12 8. "Party to judicial review or civil enforcement
3 13 proceeding" or "party" in context so indicating, means any of
3 14 the following:
3 15 a. A person who files a petition for judicial review or
3 16 civil enforcement.
3 17 b. A person named as a party in a proceeding for judicial
3 18 review or civil enforcement or allowed to participate as a
3 19 party in the proceeding.
3 20 9. "Person" means an individual, partnership, corporation,
3 21 association, governmental subdivision or unit thereof, or
3 22 public or private organization or entity of any character, and
3 23 includes another agency.
3 24 10. "Presiding officer" means an individual who presides
3 25 at any stage in an adjudicatory proceeding.
3 26 11. "Provision of law" means the whole or a part of the
3 27 federal or state constitution, or of any federal or state
3 28 statute, court rule, executive order, or rule of an agency.
3 29 12. "Rule" means the whole or a part of an agency
3 30 statement of general applicability that implements,
3 31 interprets, or prescribes law or policy, or the organization,
3 32 procedures, or practice requirements of an agency. The term
3 33 includes the amendment, repeal, or suspension of an existing
3 34 rule. Notwithstanding any other provision of law, "rule"
3 35 includes an executive order or directive of the governor which
4 1 creates an agency or establishes a program or which transfers
4 2 a program between agencies established by statute or rule.
4 3 13. "Rulemaking" means the process for formulating and
4 4 adopting a rule.
4 5 Sec. 3. NEW SECTION. 17A.1103 APPLICABILITY AND RELATION
4 6 TO OTHER LAW.
4 7 1. This chapter applies to all agencies and all
4 8 proceedings not expressly exempted, mentioning this chapter by
4 9 name or number.
4 10 2. This chapter creates only procedural rights and imposes
4 11 only procedural duties. The procedural rights and duties are
4 12 in addition to those created and imposed by other statutes.
4 13 To the extent that any other statute would diminish a right
4 14 created or duty imposed by this chapter, the other statute is
4 15 superseded by this chapter, unless the other statute expressly
4 16 provides otherwise, mentioning this chapter by name or number.
4 17 3. An agency may grant procedural rights to persons in
4 18 addition to those conferred by this chapter as long as rights

4 19 conferred upon other persons by any provision of law are not
4 20 substantially prejudiced.

4 21 Sec. 4. NEW SECTION. 17A.1104 SUSPENSION OF CHAPTER'S
4 22 PROVISIONS WHEN NECESSARY TO AVOID LOSS OF FEDERAL FUNDS OR
4 23 SERVICES.

4 24 1. To the extent necessary to avoid a denial of funds or
4 25 services from the United States which would otherwise be
4 26 available to the state, the governor by executive order may
4 27 suspend, in whole or in part, one or more provisions of this
4 28 chapter. The governor by executive order shall declare the
4 29 termination of a suspension as soon as it is no longer
4 30 necessary to prevent the loss of funds or services from the
4 31 United States.

4 32 2. An executive order issued under subsection 1 is subject
4 33 to the requirements applicable to the adoption and
4 34 effectiveness of a rule.

4 35 3. If any provision of this chapter is suspended pursuant
5 1 to this section, the governor shall promptly report the
5 2 suspension to the general assembly. The report must include
5 3 recommendations concerning any desirable legislation that may
5 4 be necessary to conform this chapter to federal law.

5 5 Sec. 5. NEW SECTION. 17A.1105 WAIVER.

5 6 Except to the extent precluded by another provision of law,
5 7 a person may waive any right conferred upon that person by
5 8 this chapter.

5 9 Sec. 6. NEW SECTION. 17A.1106 INFORMAL SETTLEMENTS.

5 10 Except to the extent precluded by another provision of law,
5 11 informal settlement of matters that may make unnecessary more
5 12 elaborate proceedings under this chapter is encouraged.

5 13 Agencies shall establish by rule specific procedures to
5 14 facilitate informal settlement of matters. This section does
5 15 not require any party or other person to settle a matter
5 16 pursuant to informal procedures.

5 17 Sec. 7. NEW SECTION. 17A.1107 CONVERSION OF PROCEEDINGS.

5 18 1. At any point in an agency proceeding the presiding
5 19 officer or other agency official responsible for the
5 20 proceeding may convert the proceeding to another type of
5 21 agency proceeding provided for by this chapter if the
5 22 conversion is appropriate under the particular circumstances,
5 23 is in the public interest, and does not prejudice the
5 24 substantial rights of any party. If required by any provision
5 25 of law, the presiding officer or other agency official
5 26 responsible for the proceeding shall convert the proceeding to
5 27 another type of agency proceeding provided by this chapter.

5 28 2. A conversion of a proceeding of one type to a
5 29 proceeding of another type may be effected only upon notice to
5 30 all parties to the original proceeding and an opportunity to
5 31 present argument on that issue. An order converting one type
5 32 of proceeding to another type of proceeding is a final order.

5 33 3. If the presiding officer or other agency official
5 34 responsible for the original proceeding would not have
5 35 authority over the new proceeding to which it is to be
6 1 converted, that officer or official, in accordance with agency
6 2 rules, shall secure the appointment of a successor to preside
6 3 over or be responsible for the new proceeding.

6 4 4. To the extent feasible and consistent with the rights
6 5 of parties and the requirements of this chapter pertaining to
6 6 the new proceeding, the record of the original agency
6 7 proceeding must be used in the new agency proceeding.

6 8 5. After a proceeding is converted from one type to
6 9 another, the presiding officer or other agency official
6 10 responsible for the new proceeding shall do all of the
6 11 following:

6 12 a. Give such additional notice to parties or other persons
6 13 as is necessary to satisfy the requirements of this chapter
6 14 pertaining to the new proceeding.

6 15 b. Dispose of the matters involved without further

6 16 proceedings if sufficient proceedings have already been held
6 17 to satisfy the requirements of this chapter pertaining to the
6 18 new proceeding.

6 19 c. Conduct or cause to be conducted any additional
6 20 proceedings necessary to satisfy the requirements of this
6 21 chapter pertaining to the new proceeding.

6 22 6. Each agency shall adopt rules to govern the conversion
6 23 of one type of proceeding to another. The rules must include
6 24 an enumeration of the factors to be considered in determining
6 25 whether and under what circumstances one type of proceeding
6 26 will be converted to another.

6 27 Sec. 8. NEW SECTION. 17A.1108 EFFECTIVE DATE.

6 28 This chapter takes effect on July 1, 1997, and does not
6 29 govern proceedings pending on that date. This chapter governs
6 30 all agency proceedings, and all proceedings for judicial
6 31 review or civil enforcement of agency action, commenced after
6 32 that date. This chapter also governs agency proceedings
6 33 conducted on a remand from a court or another agency after the
6 34 effective date of this chapter.

6 35 ARTICLE 2

7 1 PUBLIC ACCESS TO AGENCY LAW AND POLICY

7 2 Sec. 9. NEW SECTION. 17A.2101 PUBLICATION, COMPILATION,
7 3 INDEXING, AND PUBLIC INSPECTION OF RULES.

7 4 1. The administrative rules editor shall cause the "Iowa
7 5 Administrative Bulletin" to be published in pamphlet or
7 6 electronic form at least every other week containing all of
7 7 the following:

7 8 a. Notices of proposed rule adoption prepared in such a
7 9 manner so that the text of a proposed or adopted rule shows
7 10 the text of any existing rule being changed and the change
7 11 being made.

7 12 b. Newly filed adopted rules prepared so that the text of
7 13 the newly filed adopted rule shows the text of any existing
7 14 rule being changed and the change being made.

7 15 c. All proclamations and executive orders of the governor
7 16 which are general and permanent in nature.

7 17 d. Resolutions nullifying administrative rules passed by
7 18 the general assembly pursuant to article III, section 40 of
7 19 the Constitution of the State of Iowa.

7 20 e. Other materials deemed appropriate for such publication
7 21 by the administrative rules review committee or the
7 22 administrative rules coordinator.

7 23 2. Subject to the direction of the administrative rules
7 24 coordinator, the administrative rules editor shall cause the
7 25 "Iowa Administrative Code" to be compiled, indexed, and
7 26 published in loose-leaf or electronic form containing all
7 27 effective rules of each agency. The administrative rules
7 28 editor shall also cause loose-leaf or electronic supplements
7 29 to the Iowa administrative code to be published on a schedule
7 30 determined by the administrative rules coordinator and the
7 31 administrative rules review committee. Any such loose-leaf
7 32 supplements shall be in a form suitable for insertion in the
7 33 appropriate places in the permanent compilation, and any such
7 34 electronic supplements shall be wholly integrated into the
7 35 text of the permanent compilation. The administrative rules
8 1 coordinator shall devise a uniform numbering system for rules
8 2 and may renumber rules before publication to conform with the
8 3 system.

8 4 3. a. The administrative rules editor may omit from the
8 5 Iowa administrative bulletin or code any proposed or filed
8 6 adopted rule the publication of which would be unduly
8 7 cumbersome, expensive, or otherwise inexpedient, if all of the
8 8 following apply:

8 9 (1) The administrative rules editor and the administrative
8 10 rules coordinator determine that knowledge of the rule is
8 11 likely to be important to only a small class of persons.

8 12 (2) On application to the adopting agency, the proposed or

8 13 adopted rule in printed or electronic form is made available
8 14 at no more than its cost of reproduction.

8 15 (3) The administrative bulletin or code contains a notice
8 16 stating in detail the specific subject matter of the omitted
8 17 proposed or adopted rule and how a copy of the omitted
8 18 material may be obtained.

8 19 b. The administrative rules editor shall omit from the
8 20 Iowa administrative code any rule or portion of a rule
8 21 nullified by the general assembly pursuant to article III,
8 22 section 40 of the Constitution of the State of Iowa, any rule
8 23 or portion of a rule rescinded by the governor pursuant to
8 24 section 17A.3202, and any other rule that is no longer
8 25 effective.

8 26 4. The Iowa administrative bulletin and the Iowa
8 27 administrative code and its supplements shall be made
8 28 available upon request to all persons who subscribe to any of
8 29 them through the state printing division of the department of
8 30 general services. Copies of this code so made available shall
8 31 be kept current by the division.

8 32 Each agency shall also make available for public inspection
8 33 and copying in its principal office those portions of the Iowa
8 34 administrative bulletin and code containing all rules adopted
8 35 or used by the agency in the discharge of its functions, and
9 1 the index to those rules. An agency may satisfy the
9 2 requirements of this paragraph by making available for public
9 3 inspection and copying in its principal office a complete and
9 4 up-to-date set of the administrative bulletin and code.

9 5 5. All expenses incurred by the administrative rules
9 6 editor under this section shall be defrayed under section
9 7 2B.22.

9 8 6. a. The Iowa administrative code shall be cited as
9 9 (agency identification number) IAC, (chapter, rule, subrule,
9 10 lettered paragraph, or numbered subparagraph).

9 11 b. The Iowa administrative bulletin shall be cited as IAB
9 12 (volume), (number), (publication date), (page number), (ARC
9 13 number). "ARC number" means the identification number
9 14 assigned by the administrative rules coordinator to each
9 15 rulemaking document.

9 16 7. Except as otherwise required by law, subsections 1 and
9 17 2 do not apply to rules governed by section 17A.3116, and the
9 18 following provisions apply instead:

9 19 a. Each agency shall maintain an official, current, and
9 20 dated compilation that is indexed by subject, containing, to
9 21 the extent feasible and practicable, all of its rules within
9 22 the scope of section 17A.3116. Each addition to, change in,
9 23 or deletion from this official compilation must also be dated,
9 24 indexed, and a record thereof kept. All portions of the
9 25 compilation must be made available for public inspection and
9 26 copying at no more than the cost of reproduction; however, an
9 27 agency need not make available for public inspection and
9 28 copying those portions containing rules governed by section
9 29 17A.3116, subsection 2, except to the extent that such
9 30 inspection and copying is required by constitution or statute
9 31 or in discovery under the Iowa rules of civil or criminal
9 32 procedure. Certified copies of the full compilation must also
9 33 be furnished to the administrative rules coordinator and
9 34 members of the administrative rules review committee, and be
9 35 kept current by the agency at least every thirty days.

10 1 b. A rule subject to the requirements of this subsection
10 2 shall not be relied on by an agency to the detriment of any
10 3 person who does not have actual, timely knowledge of the
10 4 contents of the rule until the requirements of paragraph "a"
10 5 are satisfied. The burden of proving that knowledge or that
10 6 the failure to include a rule subject to this subsection in
10 7 the required compilation was justified because it was not
10 8 feasible or practicable to do so, is on the agency. This
10 9 provision is inapplicable to the extent necessary to avoid

10 10 imminent peril to the public health, safety, or welfare.

10 11 Sec. 10. NEW SECTION. 17A.2102 PUBLIC INSPECTION AND
10 12 INDEXING OF AGENCY ORDERS.

10 13 1. In addition to other requirements imposed by any
10 14 provision of law, each agency shall make all written final
10 15 orders, including settlement orders, available for public
10 16 inspection and copying at no more than the cost of
10 17 reproduction and index them by name and subject. When the
10 18 agency makes them available for public inspection and copying,
10 19 the agency shall delete from those orders identifying details
10 20 to the extent required by any provision of law or necessary to
10 21 prevent a clearly unwarranted invasion of privacy or release
10 22 of trade secrets. In each case the justification for the
10 23 deletion must be explained in writing and attached to the
10 24 order.

10 25 2. A written final order shall not be relied on as
10 26 precedent by an agency and shall not be invoked by an agency
10 27 for any purpose, to the detriment of any person, until it has
10 28 been made available for public inspection and indexed in the
10 29 manner described in subsection 1. This provision is
10 30 inapplicable to any person who has actual timely knowledge of
10 31 the order. The burden of proving that knowledge is on the
10 32 agency.

10 33 Sec. 11. NEW SECTION. 17A.2103 DECLARATORY ORDERS.

10 34 1. Any person may petition an agency for a declaratory
10 35 order as to the applicability to specified circumstances of a
11 1 statute, rule, or order within the primary jurisdiction of the
11 2 agency. An agency shall issue a declaratory order in response
11 3 to a petition for that order unless the agency determines that
11 4 issuance of the order under the circumstances would be
11 5 contrary to a rule adopted in accordance with subsection 2.
11 6 However, an agency shall not issue a declaratory order that
11 7 would substantially prejudice the rights of a person who would
11 8 be a necessary party and who does not consent in writing to
11 9 the determination of the matter by a declaratory order
11 10 proceeding.

11 11 2. Each agency shall adopt rules that provide for the
11 12 form, contents, and filing of petitions for declaratory
11 13 orders, the procedural rights of persons in relation to the
11 14 petitions, and the disposition of the petitions. The rules
11 15 must describe the classes of circumstances in which the agency
11 16 will not issue a declaratory order and must be consistent with
11 17 the public interest and with the general policy of this
11 18 chapter to facilitate and encourage agency issuance of
11 19 reliable advice.

11 20 3. Within fifteen days after receipt of a petition for a
11 21 declaratory order, an agency shall give notice of the petition
11 22 to all persons to whom notice is required by any provision of
11 23 law and may give notice to any other persons.

11 24 4. Persons who qualify under any applicable provision of
11 25 law as an intervenor and who file timely petitions for
11 26 intervention according to agency rules may intervene in
11 27 proceedings for declaratory orders. Other provisions of
11 28 article 4 of this chapter apply to agency proceedings for
11 29 declaratory orders only to the extent an agency so provides by
11 30 rule or order.

11 31 5. Within thirty days after receipt of a petition for a
11 32 declaratory order an agency, in writing, shall do one of the
11 33 following:

11 34 a. Issue an order declaring the applicability of the
11 35 statute, rule, or order in question to the specified
12 1 circumstances.

12 2 b. Set the matter for specified proceedings.

12 3 c. Agree to issue a declaratory order by a specified time.

12 4 d. Decline to issue a declaratory order, stating the
12 5 reasons for its action.

12 6 6. A copy of all orders issued in response to a petition

12 7 for a declaratory order must be mailed promptly to the
12 8 petitioner and any other parties.

12 9 7. A declaratory order has the same status and binding
12 10 effect as any other order issued in an agency adjudicative
12 11 proceeding. A declaratory order must contain the names of all
12 12 parties to the proceeding on which it is based, the particular
12 13 facts on which it is based, and the reasons for its
12 14 conclusion.

12 15 8. If an agency has not issued a declaratory order within
12 16 sixty days after receipt of a petition therefor, the petition
12 17 is deemed to have been denied.

12 18 Sec. 12. NEW SECTION. 17A.2104 REQUIRED RULEMAKING.

12 19 In addition to other rulemaking requirements imposed by
12 20 law, each agency shall do all of the following:

12 21 1. Adopt as a rule a description of the organization of
12 22 the agency which states the course and method of its
12 23 operations, the administrative subdivisions of the agency and
12 24 the programs implemented by each of them, a statement of the
12 25 mission of the agency and the methods by which and location
12 26 where the public may obtain information or make submissions or
12 27 requests.

12 28 2. Adopt rules of practice setting forth the nature and
12 29 requirements of all formal and informal procedures available
12 30 to the public, including a description of all forms and
12 31 instructions that are to be used by the public in dealing with
12 32 the agency.

12 33 3. As soon as feasible and to the extent practicable,
12 34 adopt rules, in addition to those otherwise required by this
12 35 chapter, embodying appropriate standards, principles, and
13 1 procedural safeguards that the agency will apply to the law it
13 2 administers.

13 3 ARTICLE 3
13 4 RULEMAKING
13 5 PART 1

13 6 ADOPTION AND EFFECTIVENESS OF RULES

13 7 Sec. 13. NEW SECTION. 17A.3101 ADVICE ON POSSIBLE RULES
13 8 BEFORE NOTICE OF PROPOSED RULE ADOPTION.

13 9 1. In addition to seeking information by other methods, an
13 10 agency, before publication of a notice of proposed rule
13 11 adoption under section 17A.3103, may solicit comments from the
13 12 public on a subject matter of possible rulemaking under active
13 13 consideration within the agency by causing notice to be
13 14 published in the administrative bulletin of the subject matter
13 15 and indicating where, when, and how persons may comment.

13 16 2. Each agency head may also appoint formal committees, as
13 17 determined by the agency head, to comment, before publication
13 18 of a notice of proposed rule adoption under section 17A.3103,
13 19 on the subject matter of a possible rulemaking under active
13 20 consideration within the agency. The membership of those
13 21 committees must be published at least annually in the
13 22 administrative bulletin.

13 23 Sec. 14. NEW SECTION. 17A.3102 PUBLIC RULEMAKING DOCKET.

13 24 1. Each agency shall maintain a current, public rulemaking
13 25 docket.

13 26 2. The rulemaking docket must contain a listing of the
13 27 precise subject matter of each possible rule currently under
13 28 active consideration within the agency for proposal under
13 29 section 17A.3103, the name and address of agency personnel
13 30 with whom persons may communicate with respect to the matter,
13 31 and an indication of the present status within the agency of
13 32 that possible rule. For the purposes of this subsection, each
13 33 agency shall define by rule the point at which a "possible
13 34 rule" is "currently under active consideration within the
13 35 agency for proposal under section 17A.3103." Failure to
14 1 include in the docket a possible rule currently under active
14 2 consideration shall not be grounds for the invalidation of
14 3 that rule after it is adopted if the agency can demonstrate

14 4 that its omission was in good faith.

14 5 3. The rulemaking docket must list each pending rulemaking
14 6 proceeding. A rulemaking proceeding is pending from the time
14 7 it is commenced, by publication of a notice of proposed rule
14 8 adoption, to the time it is terminated, by publication of a
14 9 notice of termination or the rule becoming effective. For
14 10 each rulemaking proceeding, the docket must indicate all of
14 11 the following:

14 12 a. The subject matter of the proposed rule.

14 13 b. A citation to all published notices relating to the
14 14 proceeding.

14 15 c. Where written submissions on the proposed rule may be
14 16 inspected.

14 17 d. The time during which written submissions may be made.

14 18 e. The names of persons who have made written requests for
14 19 an opportunity to make oral presentations on the proposed
14 20 rule, where those requests may be inspected, and where and
14 21 when oral presentations may be made.

14 22 f. Whether a written request for the issuance of a
14 23 regulatory analysis of the proposed rule has been filed,
14 24 whether that analysis has been issued, and where the written
14 25 request and analysis may be inspected.

14 26 g. The current status of the proposed rule and any agency
14 27 determinations with respect thereto.

14 28 h. Any known timetable for agency decisions or other
14 29 action in the proceeding.

14 30 i. The date of the rule's adoption.

14 31 j. The date or dates the rule is to be or was considered
14 32 by the Administrative Rules Review Committee and an indication
14 33 of any action taken by that committee on the rule.

14 34 k. The date of the rule's filing, indexing, and
14 35 publication.

15 1 l. When the rule will become effective.

15 2 Sec. 15. NEW SECTION. 17A.3103 NOTICE OF PROPOSED RULE
15 3 ADOPTION.

15 4 1. At least thirty-five days before the adoption of a
15 5 rule, an agency shall cause notice of its contemplated action
15 6 to be published in the administrative bulletin by submitting
15 7 five copies of the proposed rule to the administrative rules
15 8 coordinator, who shall assign an ARC number to each rulemaking
15 9 document and forward three copies to the administrative rules
15 10 editor for publication in the administrative bulletin. The
15 11 notice of proposed rule adoption must include all of the
15 12 following:

15 13 a. A short explanation of the purpose of the proposed
15 14 rule.

15 15 b. The specific legal authority authorizing the proposed
15 16 rule.

15 17 c. Subject to section 17A.2101, subsection 3, the text of
15 18 the proposed rule.

15 19 d. Where, when, and how persons may present their views on
15 20 the proposed rule.

15 21 e. Where, when, and how persons may demand an oral
15 22 proceeding on the proposed rule if the notice does not already
15 23 provide for one.

15 24 2. Within three days after its publication in the
15 25 administrative bulletin, the agency shall cause a copy of the
15 26 notice of proposed rule adoption to be mailed to each person
15 27 who has made a timely request to the agency for a mailed copy
15 28 of the notice. An agency may charge persons for the actual
15 29 cost of providing them with mailed copies. Failure to provide
15 30 copies as provided in this subsection shall not be grounds for
15 31 invalidation of a rule, unless that failure was deliberate on
15 32 the part of the agency or a result of gross negligence.

15 33 3. An agency may publish a notice of proposed rule
15 34 adoption and hold a rulemaking proceeding on the notice after
15 35 the enactment and before the effective date of a statute

16 1 authorizing it to adopt such a rule as long as any rule
16 2 adopted on the basis of that proceeding states that it will
16 3 not become effective until a specified date on or after the
16 4 effective date of the authorizing statute.

16 5 Sec. 16. NEW SECTION. 17A.3104 PUBLIC PARTICIPATION.

16 6 1. For at least twenty days after publication of the
16 7 notice of proposed rule adoption, an agency shall afford
16 8 persons the opportunity to submit in writing, argument, data,
16 9 and views on the proposed rule.

16 10 2. a. An agency shall schedule an oral proceeding on a
16 11 proposed rule if, within twenty days after the published
16 12 notice of proposed rule adoption, a written request for an
16 13 oral proceeding is submitted by the administrative rules
16 14 review committee, the administrative rules coordinator, a
16 15 political subdivision, an agency, or twenty-five persons. At
16 16 that proceeding, persons may present oral argument, data, and
16 17 views on the proposed rule.

16 18 b. An oral proceeding on a proposed rule, if required, may
16 19 not be held earlier than twenty days after notice of its
16 20 location and time is published in the administrative bulletin.

16 21 c. The agency head, a member of the agency head, or
16 22 another person designated by the agency, shall preside at a
16 23 required oral proceeding on a proposed rule. The person
16 24 presiding must have knowledge of the purpose and subject
16 25 matter of the proposed rule. If the agency does not preside,
16 26 the presiding officer shall prepare a memorandum for
16 27 consideration by the agency summarizing the contents of the
16 28 presentations made at the oral proceeding. Oral proceedings
16 29 must be open to the public and be recorded by stenographic or
16 30 other means.

16 31 d. Each agency shall adopt rules for the conduct of oral
16 32 rulemaking proceedings. Those rules may include provisions
16 33 calculated to prevent undue repetition in the oral
16 34 proceedings.

16 35 Sec. 17. NEW SECTION. 17A.3105 REGULATORY ANALYSIS.

17 1 1. An agency shall issue a regulatory analysis of a
17 2 proposed rule that complies with requirements of subsection 2,
17 3 paragraphs "a" and "b", if, within thirty-five days after the
17 4 published notice of proposed rule adoption, a written request
17 5 for the analysis is submitted to the agency by the
17 6 administrative rules review committee or the administrative
17 7 rules coordinator. An agency shall also issue a regulatory
17 8 analysis of a proposed rule that complies with subsection 2,
17 9 paragraphs "a" and "b", if that rule would have a substantial
17 10 impact on small business and if such a request is submitted to
17 11 the agency within the specified time period by at least
17 12 twenty-five persons signing that request who each qualify as a
17 13 small business or by an organization representing at least
17 14 twenty-five such persons. If a rule has been adopted without
17 15 prior notice and an opportunity for public participation in
17 16 reliance upon section 17A.3108, the written request for the
17 17 analysis may be made within seventy days of publication of
17 18 that rule.

17 19 2. a. Except to the extent that the written request
17 20 expressly waives one or more of the following, the regulatory
17 21 analysis must contain all of the following:

17 22 (1) A description of the classes of persons who probably
17 23 will be affected by the proposed rule, including classes that
17 24 will bear the costs of the proposed rule and classes that will
17 25 benefit from the proposed rule.

17 26 (2) A description of the probable quantitative and
17 27 qualitative impact of the proposed rule, economic or
17 28 otherwise, upon affected classes of persons, including a
17 29 description of the nature and amount of all of the different
17 30 kinds of costs that would be incurred in complying with the
17 31 proposed rule.

17 32 (3) The probable costs to the agency and to any other

17 33 agency of the implementation and enforcement of the proposed
17 34 rule and any anticipated effect on state revenues.

17 35 (4) A comparison of the probable costs and benefits of the
18 1 proposed rule to the probable costs and benefits of inaction.

18 2 (5) A determination of whether there are less costly
18 3 methods or less intrusive methods for achieving the purpose of
18 4 the proposed rule.

18 5 (6) A description of any alternative methods for achieving
18 6 the purpose of the proposed rule that were seriously
18 7 considered by the agency and the reasons why they were
18 8 rejected in favor of the proposed rule.

18 9 b. In the case of a rule that would have a substantial
18 10 impact on small business, the regulatory analysis must also
18 11 contain a discussion of whether it would be feasible and
18 12 practicable to do any of the following to reduce the impact of
18 13 the rule on small business:

18 14 (1) Establish less stringent compliance or reporting
18 15 requirements in the rule for small business.

18 16 (2) Establish less stringent schedules or deadlines in the
18 17 rule for compliance or reporting requirements for small
18 18 business.

18 19 (3) Consolidate or simplify the rule's compliance or
18 20 reporting requirements for small business.

18 21 (4) Establish performance standards to replace design or
18 22 operational standards in the rule for small business.

18 23 (5) Exempt small business from any or all requirements of
18 24 the rule.

18 25 c. The agency shall reduce the impact of the proposed rule
18 26 on small business by using a method discussed in paragraph "b"
18 27 if it finds that the method is legal and feasible in meeting
18 28 the statutory objectives which are the basis of the proposed
18 29 rule.

18 30 3. Each regulatory analysis must include quantifications
18 31 of the data to the extent practicable and must take account of
18 32 both short-term and long-term consequences.

18 33 4. Notwithstanding any other time period specified in this
18 34 chapter, a concise summary of the regulatory analysis must be
18 35 published in the administrative bulletin at least ten days
19 1 before the earliest of the following:

19 2 a. The end of the period during which persons may make
19 3 written submissions on the proposed rule.

19 4 b. The end of the period during which an oral proceeding
19 5 may be requested.

19 6 c. The date of any required oral proceeding on the
19 7 proposed rule.

19 8 In the case of a rule adopted without prior notice and an
19 9 opportunity for public participation in reliance upon section
19 10 17A.3108, the summary must be published within seventy days of
19 11 the request.

19 12 5. The published summary of the regulatory analysis must
19 13 also indicate where persons may obtain copies of the full text
19 14 of the regulatory analysis and where, when, and how persons
19 15 may present their views on the proposed rule and demand an
19 16 oral proceeding thereon if one is not already provided.

19 17 6. If the agency has made a good faith effort to comply
19 18 with the requirements of subsections 1 through 3, the rule may
19 19 not be invalidated on the ground that the contents of the
19 20 regulatory analysis are insufficient or inaccurate.

19 21 7. For the purpose of this section, "small business" means
19 22 any entity including but not limited to an individual,
19 23 partnership, corporation, joint venture, association, or
19 24 cooperative, to which all of the following apply:

19 25 a. It is not an affiliate or subsidiary of an entity
19 26 dominant in its field of operation.

19 27 b. It has either twenty or fewer full-time equivalent
19 28 positions or less than one million dollars in annual gross
19 29 revenues in the preceding fiscal year.

19 30 For purposes of this definition, "dominant in its field of
19 31 operation" means having more than twenty full-time equivalent
19 32 positions and more than one million dollars in annual gross
19 33 revenues, and "affiliate or subsidiary of an entity dominant
19 34 in its field of operation" means an entity which is at least
19 35 twenty percent owned by an entity dominant in its field of
20 1 operation, or by partners, officers, directors, majority
20 2 stockholders, or their equivalent, of an entity dominant in
20 3 that field of operation.

20 4 Sec. 18. NEW SECTION. 17A.3106 TIME AND MANNER OF RULE
20 5 ADOPTION.

20 6 1. An agency shall not adopt a rule until the period for
20 7 making written submissions and oral presentations has expired.

20 8 2. Within one hundred eighty days after the later of the
20 9 publication of the notice of proposed rule adoption, or the
20 10 end of oral proceedings thereon, an agency shall adopt a rule
20 11 pursuant to the rulemaking proceeding or terminate the
20 12 proceeding by publication of a notice to that effect in the
20 13 administrative bulletin.

20 14 3. Before the adoption of a rule, an agency shall consider
20 15 the written submissions, oral submissions or any memorandum
20 16 summarizing oral submissions, and any regulatory analysis,
20 17 provided for by this part.

20 18 4. Within the scope of its delegated authority, an agency
20 19 may use its own experience, technical competence, specialized
20 20 knowledge, and judgment, in the adoption of a rule.

20 21 Sec. 19. NEW SECTION. 17A.3107 VARIANCE BETWEEN ADOPTED
20 22 RULE AND NOTICE OF PROPOSED RULE ADOPTION.

20 23 1. The agency shall not adopt a rule that differs from the
20 24 rule proposed in the notice of proposed rule adoption on which
20 25 the rule is based unless all of the following apply:

20 26 a. The differences are within the scope of the matter
20 27 announced in the notice of proposed rule adoption and are in
20 28 character with the issues raised in that notice.

20 29 b. The differences are a logical outgrowth of the contents
20 30 of that notice of proposed rule adoption and the comments
20 31 submitted in response thereto.

20 32 c. The notice of proposed rule adoption provided fair
20 33 warning that the outcome of that rulemaking proceeding could
20 34 be the rule in question.

20 35 2. In determining whether the notice of proposed rule
21 1 adoption provided fair warning that the outcome of that rule-
21 2 making proceeding could be the rule in question the agency
21 3 shall consider all of the following factors:

21 4 a. The extent to which persons who will be affected by the
21 5 rule should have understood that the rulemaking proceeding on
21 6 which it is based could affect their interests.

21 7 b. The extent to which the subject matter of the rule or
21 8 issues determined by the rule are different from the subject
21 9 matter or issues contained in the notice of proposed rule
21 10 adoption.

21 11 c. The extent to which the effects of the rule differ from
21 12 the effects of the proposed rule contained in the notice of
21 13 proposed rule adoption.

21 14 Sec. 20. NEW SECTION. 17A.3108 GENERAL EXEMPTION FROM
21 15 PUBLIC RULEMAKING PROCEDURES.

21 16 1. To the extent an agency for good cause finds that any
21 17 requirements of sections 17A.3103 through 17A.3107 are
21 18 unnecessary, impracticable, or contrary to the public interest
21 19 in the process of adopting a particular rule, those
21 20 requirements do not apply. The agency shall incorporate the
21 21 required finding and a brief statement of its supporting
21 22 reasons in each rule adopted in reliance upon this subsection.
21 23 An agency shall not rely upon this subsection on the ground
21 24 that it has insufficient time to follow usual procedures to
21 25 adopt a rule, because adoption of the rule is required by a
21 26 statute that became effective only very recently, unless that

21 27 statute also requires the agency to adopt the rule by a
21 28 specified date and it would be impracticable to follow usual
21 29 procedures for adoption of the rule during the period between
21 30 the date of the enactment of the statute and the specified
21 31 date by which the agency must adopt the rule.

21 32 2. In an action contesting a rule adopted under subsection
21 33 1, the burden is upon the agency to demonstrate that any
21 34 omitted requirements of sections 17A.3103 through 17A.3107
21 35 were impracticable, unnecessary, or contrary to the public
22 1 interest in the particular circumstances involved.

22 2 3. Within two years after the effective date of a rule
22 3 adopted under subsection 1, the administrative rules review
22 4 committee or the governor may request the agency to hold a
22 5 rulemaking proceeding thereon according to the requirements of
22 6 sections 17A.3103 through 17A.3107. The request must be in
22 7 writing, filed in the office of the administrative rules
22 8 coordinator, and sent to the agency. The administrative rules
22 9 coordinator shall immediately forward to the administrative
22 10 rules editor a certified copy of the request. Notice of the
22 11 filing of the request must be published in the next issue of
22 12 the administrative bulletin. The rule in question ceases to
22 13 be effective one hundred eighty days after the request is
22 14 filed. However, an agency, after the filing of the request,
22 15 may subsequently adopt an identical rule in a rulemaking
22 16 proceeding conducted pursuant to the requirements of sections
22 17 17A.3103 through 17A.3107.

22 18 Sec. 21. NEW SECTION. 17A.3109 EXEMPTION FOR CERTAIN
22 19 RULES.

22 20 1. An agency need not follow the provisions of sections
22 21 17A.3103 through 17A.3108 in the adoption of a rule that only
22 22 defines the meaning of a statute or other provision of law or
22 23 precedent if the agency does not possess delegated authority
22 24 to bind the courts to any extent with its definition. A rule
22 25 adopted under this subsection must include a statement that it
22 26 was adopted under this subsection when it is published in the
22 27 administrative bulletin, and there must be an indication to
22 28 that effect in a footnote to the rule when it is published in
22 29 the administrative code.

22 30 2. A reviewing court shall determine wholly de novo the
22 31 validity of a rule within the scope of subsection 1 that is
22 32 adopted without complying with the provisions of sections
22 33 17A.3103 through 17A.3108.

22 34 Sec. 22. NEW SECTION. 17A.3110 CONCISE EXPLANATORY
22 35 STATEMENT.

23 1 1. At the time it adopts a rule, an agency shall issue a
23 2 concise explanatory statement containing all of the following:

23 3 a. A summary of the principal reasons urged for and
23 4 against the rule.

23 5 b. The agency's reasons for adopting the rule, including
23 6 the agency's reasons for overruling the considerations urged
23 7 against its adoption.

23 8 c. An indication of any change between the text of the
23 9 proposed rule contained in the published notice of proposed
23 10 rule adoption and the text of the rule as finally adopted,
23 11 with the reasons for any change.

23 12 2. Only the reasons contained in the concise explanatory
23 13 statement may be used by any party as justifications for the
23 14 adoption of the rule in any proceeding in which its validity
23 15 is at issue.

23 16 Sec. 23. NEW SECTION. 17A.3111 CONTENTS, STYLE, AND FORM
23 17 OF RULE.

23 18 1. Each rule adopted by an agency must contain the text of
23 19 the rule and all of the following:

23 20 a. The date the agency adopted the rule.

23 21 b. A concise statement of the purpose of the rule.

23 22 c. A reference to all rules repealed, amended, or
23 23 suspended by the rule.

23 24 d. A reference to the specific statutory or other
23 25 authority authorizing adoption of the rule.

23 26 e. Any findings required by any provisions of law as a
23 27 prerequisite to adoption or effectiveness of the rule.

23 28 f. The effective date of the rule if other than that
23 29 specified in section 17A.3115, subsection 1.

23 30 2. To the extent feasible, each rule should be written in
23 31 clear and concise language understandable to persons who may
23 32 be affected by it.

23 33 3. An agency may incorporate, by reference in its rules
23 34 and without publishing the incorporated matter in full, all or
23 35 any part of a code, standard, rule, or regulation that has
24 1 been adopted by an agency of the United States or of this
24 2 state, another state, or by a nationally recognized
24 3 organization or association, if incorporation of its text in
24 4 agency rules would be unduly cumbersome, expensive, or
24 5 otherwise inexpedient. The reference in the agency rules must
24 6 fully identify the incorporated matter by location, date, and
24 7 otherwise, and must state that the rule does not include any
24 8 later amendments or editions of the incorporated matter. An
24 9 agency may incorporate by reference such matter in its rules
24 10 only if the agency, organization, or association originally
24 11 issuing that matter makes copies of it readily available to
24 12 the public. The rules must state where copies of the
24 13 incorporated matter are available at cost from the agency
24 14 issuing the rule, and where copies are available from the
24 15 agency of the United States, this state, another state, or the
24 16 organization or association originally issuing that matter.
24 17 An agency which adopts standards by reference to another
24 18 publication shall purchase and provide a copy of the
24 19 publication containing the standards to the administrative
24 20 rules coordinator who shall deposit the copy in the state law
24 21 library where it shall be made available for inspection and
24 22 reference. In those cases where the purchase of an additional
24 23 copy would be an unreasonable expense, the administrative
24 24 rules coordinator may waive this requirement if the
24 25 publication can be temporarily and promptly obtained for
24 26 review by the state law library upon request.

24 27 Sec. 24. NEW SECTION. 17A.3112 AGENCY RULEMAKING RECORD.

24 28 1. An agency shall maintain for a period of five years an
24 29 official rulemaking record for each rule it adopts. The
24 30 record and materials incorporated by reference must be
24 31 available for public inspection.

24 32 2. The agency rulemaking record must contain all of the
24 33 following:

24 34 a. Copies of all publications in the administrative
24 35 bulletin with respect to the rule or the proceeding upon which
25 1 the rule is based.

25 2 b. Copies of any portions of the agency's public rule-
25 3 making docket containing entries relating to the rule or the
25 4 proceeding upon which the rule is based.

25 5 c. All written petitions, requests, submissions, and
25 6 comments received by the agency and all other written
25 7 materials that are unprivileged and that are not required by
25 8 statute to be kept confidential that were considered by the
25 9 agency in connection with the formulation, proposal, or
25 10 adoption of the rule or the proceeding upon which the rule is
25 11 based.

25 12 d. Any official transcript of oral presentations made in
25 13 the proceeding upon which the rule is based or, if not
25 14 transcribed, any tape recording or stenographic record of
25 15 those presentations, and any memorandum prepared by a
25 16 presiding officer summarizing the contents of those
25 17 presentations.

25 18 e. A copy of any regulatory analysis prepared for the
25 19 proceeding upon which the rule is based.

25 20 f. A copy of the rule and explanatory statement filed in

25 21 the office of the administrative rules coordinator.

25 22 g. All petitions for exceptions to, amendments of, or
25 23 repeal or suspension of, the rule.

25 24 h. A copy of any request filed pursuant to section
25 25 17A.3108, subsection 3.

25 26 i. A copy of any objection to the rule filed by the
25 27 administrative rules review committee pursuant to section
25 28 17A.3204, subsection 4, and the agency's response.

25 29 j. A copy of any filed executive order with respect to the
25 30 rule.

25 31 3. Upon judicial review, the record required by this
25 32 section constitutes the official agency rulemaking record with
25 33 respect to a rule. Except as provided in section 17A.3110,
25 34 subsection 2, or otherwise required by a provision of law, the
25 35 agency rulemaking record need not constitute the exclusive
26 1 basis for agency action on that rule or for judicial review
26 2 thereof.

26 3 Sec. 25. NEW SECTION. 17A.3113 INVALIDITY OF RULES NOT
26 4 ADOPTED ACCORDING TO CHAPTER - TIME LIMITATIONS.

26 5 1. A rule adopted after the effective date of this Act is
26 6 invalid unless adopted in substantial compliance with the
26 7 provisions of sections 17A.3102 through 17A.3108 and sections
26 8 17A.3110 through 17A.3112.

26 9 2. An action to contest the validity of a rule on the
26 10 grounds of its noncompliance with any provision of sections
26 11 17A.3102 through 17A.3108 or sections 17A.3110 through
26 12 17A.3112 must be commenced within two years after the
26 13 effective date of the rule.

26 14 Sec. 26. NEW SECTION. 17A.3114 FILING OF RULES.

26 15 1. An agency shall file in the office of the
26 16 administrative rules coordinator three certified copies of
26 17 each rule it adopts and all existing rules that have not
26 18 previously been filed. The filing must be done as soon after
26 19 adoption of the rule as is practicable. At the time of
26 20 filing, each adopted rule must have attached to it the
26 21 explanatory statement required by section 17A.3110. The
26 22 administrative rules coordinator shall assign an ARC number to
26 23 each rule and shall affix to each rule and statement a
26 24 certification of the time and date of filing and keep a
26 25 permanent register open to public inspection of all filed
26 26 rules and attached explanatory statements. In filing a rule,
26 27 each agency shall use a standard form prescribed by the
26 28 administrative rules coordinator.

26 29 2. The administrative rules coordinator shall transmit to
26 30 the administrative rules editor, two certified copies of each
26 31 filed rule as soon after its filing as is practicable.

26 32 Sec. 27. NEW SECTION. 17A.3115 EFFECTIVE DATE OF RULES.

26 33 1. Except to the extent subsection 2 provides otherwise,
26 34 each adopted rule becomes effective thirty-five days after the
26 35 later of its filing in the office of the administrative rules
27 1 coordinator or its publication and indexing in the
27 2 administrative bulletin.

27 3 2. a. A rule becomes effective on a date later than that
27 4 established by subsection 1 if a later date is required by
27 5 another statute or specified in the rule.

27 6 b. A rule may become effective immediately upon its filing
27 7 or on any subsequent date earlier than that established by
27 8 subsection 1 if the agency establishes such an effective date
27 9 and finds that one or more of the following applies:

27 10 (1) The earlier effective date is required by
27 11 constitution, statute, or court order.

27 12 (2) The rule only confers a benefit or removes a
27 13 restriction on the public or some segment thereof.

27 14 (3) The rule only delays the effective date of another
27 15 rule that is not yet effective.

27 16 (4) The earlier effective date is necessary to avoid
27 17 immediate danger to the public health, safety, or welfare.

27 18 (5) The rule is wholly ministerial and does not alter the
27 19 existing legal rights of any person.

27 20 c. The finding and a brief statement of the reasons
27 21 therefor required by paragraph "b" must be made a part of the
27 22 rule. In any action contesting the effective date of a rule
27 23 made effective under paragraph "b", the burden is on the
27 24 agency to justify its finding.

27 25 d. Each agency shall make a reasonable effort to make
27 26 known to persons who may be affected by it a rule made
27 27 effective before publication and indexing under this
27 28 subsection.

27 29 3. This section does not relieve an agency from compliance
27 30 with any provision of law requiring that some or all of its
27 31 rules be approved by other designated officials or bodies
27 32 before they become effective.

27 33 Sec. 28. NEW SECTION. 17A.3116 SPECIAL PROVISION FOR
27 34 CERTAIN CLASSES OF RULES.

27 35 Except to the extent otherwise provided by any provision of
28 1 law, sections 17A.3102 through 17A.3115 are inapplicable to
28 2 all of the following:

28 3 1. A rule concerning only the internal management of an
28 4 agency which does not directly and substantially affect the
28 5 procedural or substantive rights or duties of any segment of
28 6 the public.

28 7 2. A rule that establishes criteria or guidelines to be
28 8 used by the staff of an agency in performing audits,
28 9 investigations, or inspections, settling commercial disputes,
28 10 negotiating commercial arrangements, or in the defense,
28 11 prosecution, or settlement of cases, if disclosure of the
28 12 criteria or guidelines would do any of the following:

28 13 a. Enable law violators to avoid detection.

28 14 b. Facilitate disregard of requirements imposed by law.

28 15 c. Give a clearly improper advantage to persons who are in
28 16 an adverse position to the state.

28 17 3. A rule that only establishes specific prices to be
28 18 charged for particular goods or services sold by an agency.

28 19 4. A rule concerning only the physical servicing,
28 20 maintenance, or care of agency owned or operated facilities or
28 21 property.

28 22 5. A rule relating only to the use of a particular
28 23 facility or property owned, operated, or maintained by the
28 24 state or any of its political subdivisions, if the substance
28 25 of the rule is adequately indicated by means of signs or
28 26 signals to persons who use the facility or property.

28 27 6. A rule concerning only inmates of a correctional or
28 28 detention facility, students enrolled in an educational
28 29 institution, or patients admitted to a hospital, if adopted by
28 30 that facility, institution, or hospital.

28 31 7. A form whose contents or substantive requirements are
28 32 prescribed by rule or statute, and instructions for the
28 33 execution or use of the form.

28 34 8. An agency budget.

28 35 9. An opinion of the attorney general.

29 1 10. The terms of a collective bargaining agreement.

29 2 Sec. 29. NEW SECTION. 17A.3117 PETITION FOR ADOPTION OF
29 3 RULE.

29 4 1. Any person may petition an agency requesting the
29 5 adoption of a rule. Each agency shall prescribe by rule the
29 6 form of the petition and the procedure for its submission,
29 7 consideration, and disposition. Within sixty days after
29 8 submission of a petition, the agency shall either deny the
29 9 petition in writing, stating its reasons therefor, initiate
29 10 rulemaking proceedings in accordance with this chapter or if
29 11 otherwise lawful, adopt a rule.

29 12 2. If a person petitions an agency requesting the adoption
29 13 of a rule superseding specified principles of law or policy
29 14 lawfully declared by the agency as the basis for its decisions

29 15 in particular cases, the agency shall initiate rulemaking
29 16 proceedings in accordance with this chapter and adopt such a
29 17 rule unless the agency finds, and incorporates in that finding
29 18 the reasons therefor, that the adoption of such a rule at this
29 19 time is infeasible or that such a rule is impracticable, and
29 20 provides a copy of that finding to the petitioner.

29 21 PART 2

29 22 REVIEW OF AGENCY RULES

29 23 Sec. 30. NEW SECTION. 17A.3201 REVIEW BY AGENCY.

29 24 Within each five-year period an agency shall review each of
29 25 its rules to determine whether each such rule should be
29 26 repealed or amended, or a new rule adopted instead. In
29 27 conducting that review, the agency shall prepare a written
29 28 report summarizing its findings, its supporting reasons, and
29 29 any proposed course of action. The report must include, for
29 30 each such rule, a concise statement of all of the following:

29 31 1. The rule's effectiveness in achieving its objectives,
29 32 including a summary of any available data supporting the
29 33 conclusions reached.

29 34 2. Criticisms of the rule received during the previous
29 35 five years, including a summary of any petitions for waiver of
30 1 the rule tendered to the agency or granted by the agency.

30 2 3. Alternative solutions to the criticisms and the reasons
30 3 they were rejected or the changes made in the rule in response
30 4 to those criticisms and the reasons for the changes.

30 5 A copy of the report must be sent to the administrative
30 6 rules review committee and the administrative rules
30 7 coordinator and be available for public inspection.

30 8 Sec. 31. NEW SECTION. 17A.3202 REVIEW BY GOVERNOR -
30 9 ADMINISTRATIVE RULES COORDINATOR.

30 10 1. To the extent the agency itself would have such
30 11 authority, the governor may rescind or suspend all or a
30 12 severable portion of a rule of an agency. In exercising this
30 13 authority, the governor shall act by an executive order. If
30 14 the rule in question has been effective for more than one
30 15 hundred eighty days, that executive order shall be subject to
30 16 the provisions of sections 17A.3103, 17A.3104, and 17A.3106
30 17 through 17A.3116 applicable to the adoption and effectiveness
30 18 of a rule.

30 19 2. The governor may summarily terminate any pending rule-
30 20 making proceeding by an executive order to that effect,
30 21 stating in the order the reasons for the action. The
30 22 executive order must be filed in the office of the
30 23 administrative rules coordinator, which shall promptly forward
30 24 a certified copy to the agency and the administrative rules
30 25 editor. An executive order terminating a rulemaking
30 26 proceeding becomes effective on the date it is filed and must
30 27 be published in the next issue of the administrative bulletin.

30 28 3. There is created, within the office of the governor, an
30 29 administrative rules coordinator to advise the governor in the
30 30 execution of the authority vested under this article. The
30 31 governor shall appoint the administrative rules coordinator
30 32 who shall serve at the pleasure of the governor.

30 33 Sec. 32. NEW SECTION. 17A.3203 ADMINISTRATIVE RULES
30 34 REVIEW COMMITTEE.

30 35 1. There is created an administrative rules review
31 1 committee. The committee shall be bipartisan and shall be
31 2 composed of the following members:

31 3 a. Five senators appointed by the majority leader of the
31 4 senate.

31 5 b. Five representatives appointed by the speaker of the
31 6 house.

31 7 2. Committee members shall be appointed prior to the
31 8 adjournment of a regular session convened in an odd-numbered
31 9 year. Member's terms of office shall be for four years
31 10 beginning May 1 of the year of appointment. However, a member
31 11 shall serve until a successor is appointed. A vacancy on the

31 12 committee shall be filled by the original appointing authority
31 13 for the remainder of the term. A vacancy shall exist whenever
31 14 a committee member ceases to be a member of the house from
31 15 which the member was appointed.

31 16 3. A committee member shall be paid the per diem specified
31 17 in section 2.10, subsection 6, for each day in attendance and
31 18 shall be reimbursed for actual and necessary expenses. There
31 19 is appropriated from money in the general fund not otherwise
31 20 appropriated an amount sufficient to pay costs incurred under
31 21 this section.

31 22 4. The committee shall choose a chairperson from its
31 23 membership and prescribe its rules of procedure. The
31 24 committee may employ a secretary or may appoint the
31 25 administrative rules editor or a designee to act as secretary.

31 26 5. A regular committee meeting shall be held at the seat
31 27 of government on the second Tuesday of each month. Unless
31 28 impracticable in advance of each such meeting the subject
31 29 matter to be considered shall be published in the Iowa
31 30 administrative bulletin. A special committee meeting may be
31 31 called by the chairperson at any place in the state and at any
31 32 time. Unless impracticable, in advance of each special
31 33 meeting notice of the time and place of such meeting and the
31 34 subject matter to be considered shall be published in the Iowa
31 35 administrative bulletin.

32 1 6. Notwithstanding section 13.7, the committee may employ
32 2 necessary legal and technical staff.

32 3 Sec. 33. NEW SECTION. 17A.3204 REVIEW BY ADMINISTRATIVE
32 4 RULES REVIEW COMMITTEE.

32 5 1. The administrative rules review committee shall
32 6 selectively review possible, proposed, or adopted rules and
32 7 prescribe appropriate committee procedures for that purpose.
32 8 The committee may receive and investigate complaints from
32 9 members of the public with respect to possible, proposed, or
32 10 adopted rules and hold public proceedings on those complaints.

32 11 2. Committee meetings must be open to the public. Subject
32 12 to procedures established by the committee, persons may
32 13 present oral argument, data, or views at those meetings. The
32 14 committee may require a representative of an agency whose
32 15 possible, proposed, or adopted rule is under examination to
32 16 attend a committee meeting and answer relevant questions. The
32 17 committee may also communicate to the agency its comments on
32 18 any possible, proposed, or adopted rule and require the agency
32 19 to respond to them in writing. Unless impracticable, in
32 20 advance of each committee meeting notice of the time and place
32 21 of the meeting and the specific subject matter to be
32 22 considered must be published in the administrative bulletin.

32 23 3. The committee may recommend enactment of a statute to
32 24 improve the operation of an agency. The committee may also
32 25 recommend that a particular rule be superseded in whole or in
32 26 part by statute. The speaker of the house and the president
32 27 of the senate shall refer those recommendations to the
32 28 appropriate standing committees. This subsection does not
32 29 preclude any committee of the general assembly from reviewing
32 30 a rule on its own motion or recommending that it be superseded
32 31 in whole or in part by statute.

32 32 4. a. If the committee objects to all or some portion of
32 33 a rule because the committee considers it to be beyond the
32 34 procedural or substantive authority delegated to the adopting
32 35 agency, the committee may file that objection in the office of
33 1 the administrative rules coordinator. The filed objection
33 2 must contain a concise statement of the committee's reasons
33 3 for its action.

33 4 b. The administrative rules coordinator shall affix to
33 5 each objection a certification of the date and time of its
33 6 filing and as soon thereafter as practicable shall transmit a
33 7 certified copy thereof to the agency issuing the rule in
33 8 question and the administrative rules editor. The

33 9 administrative rules coordinator shall also maintain a
33 10 permanent register open to public inspection of all objections
33 11 by the committee.

33 12 c. The administrative rules editor shall publish and index
33 13 an objection filed pursuant to this subsection in the next
33 14 issue of the administrative bulletin and indicate its
33 15 existence in a footnote to the rule in question when that rule
33 16 is published in the administrative code. In case of a filed
33 17 objection by the committee to a rule that is subject to the
33 18 requirements of section 17A.2101, subsection 7, the agency
33 19 shall indicate the existence of that objection adjacent to the
33 20 rule in the official compilation referred to in that
33 21 subsection.

33 22 d. Within thirty days after the filing of an objection by
33 23 the committee to a rule, the adopting agency shall respond in
33 24 writing to the committee. After receipt of the response, the
33 25 committee may withdraw or modify its objection.

33 26 e. After the filing of an objection by the committee that
33 27 is not subsequently withdrawn, the burden is upon the agency
33 28 in any proceeding for judicial review or for enforcement of
33 29 the rule to establish that the whole or portion of the rule
33 30 objected to is within the procedural and substantive authority
33 31 delegated to the agency. A court holding a rule in such a
33 32 proceeding to be invalid because it is outside the authority
33 33 delegated to the agency shall render judgment against the
33 34 agency for court costs. Court costs include a reasonable
33 35 attorney's fee and are payable by the treasurer of state from
34 1 the support appropriations of the agency that adopted the
34 2 rule.

34 3 f. The failure of the administrative rules review
34 4 committee to object to a rule is not an implied legislative
34 5 authorization of its procedural or substantive validity.

34 6 5. The committee may recommend to an agency that it adopt
34 7 a rule. The committee may also require an agency to publish
34 8 notice of the committee's recommendation as a proposed rule of
34 9 the agency and to allow public participation thereon,
34 10 according to the provisions of sections 17A.3103 and 17A.3104.
34 11 An agency is not required to adopt the proposed rule.

34 12 6. The committee may, by a two-thirds vote of the
34 13 committee members, delay the effective date of an adopted rule
34 14 that is not yet effective for any period designated by the
34 15 committee that would end no later than the next adjournment of
34 16 a regular session of the general assembly. When the committee
34 17 takes such action the committee shall state the reasons
34 18 therefor. If the general assembly has not disapproved the
34 19 rule by a joint resolution prior to the end of the period
34 20 during which its effectiveness has been delayed by the action
34 21 of the committee, the rule shall become effective. If the
34 22 rule is disapproved by the general assembly during that
34 23 period, the rule shall not become effective and the agency
34 24 shall summarily withdraw the rule.

34 25 7. The committee shall file an annual report with the
34 26 presiding officer of each house and the governor.

34 27 ARTICLE 4

34 28 ADJUDICATIVE PROCEEDINGS

34 29 PART 1

34 30 AVAILABILITY OF ADJUDICATIVE PROCEEDINGS -

34 31 APPLICATIONS - LICENSES - WAIVER OF RULE

34 32 Sec. 34. NEW SECTION. 17A.4101 ADJUDICATIVE PROCEEDINGS
34 33 - WHEN REQUIRED - EXCEPTIONS.

34 34 1. An agency shall conduct an adjudicative proceeding as
34 35 the process for formulating and issuing an order. However, an
35 1 agency need not conduct an adjudicative proceeding if the
35 2 order is a decision to do any of the following:

35 3 a. To issue or not to issue a complaint, summons, or
35 4 similar accusation.

35 5 b. To initiate or not to initiate an investigation,

35 6 prosecution, or other proceeding before the agency, another
35 7 agency, or a court.

35 8 c. Under section 17A.4103, not to conduct an adjudicative
35 9 proceeding.

35 10 This subsection does not preclude an agency from
35 11 establishing, subject to sections 17A.5107 and 17A.5112,
35 12 procedures that must be followed prior to the commencement of
35 13 an adjudicative proceeding, or from issuing an order prior to
35 14 conducting an adjudicative proceeding if any of the following
35 15 apply:

35 16 (1) The person subject to that order may, within a time
35 17 period specified by rule or in the order, file an application
35 18 for an adjudicatory proceeding, that application will
35 19 automatically dissolve the order from the time of its
35 20 issuance, and the substantial rights of the person subject to
35 21 that order are not prejudiced by the order in the interim
35 22 period prior to its automatic dissolution resulting from the
35 23 filing of an application for an adjudicatory proceeding.

35 24 (2) The order was properly issued in accordance with
35 25 section 17A.4501.

35 26 (3) The agency was expressly authorized by statute to
35 27 issue that order prior to conducting an adjudicatory
35 28 proceeding, in which case, the agency must proceed as quickly
35 29 as feasible after its issuance to complete any proceeding that
35 30 would be required if the statute had not authorized such
35 31 action in advance of any adjudicative proceeding.

35 32 2. This article applies to rulemaking proceedings only to
35 33 the extent that another statute expressly so requires.

35 34 Sec. 35. NEW SECTION. 17A.4102 ADJUDICATIVE PROCEEDINGS
35 35 - COMMENCEMENT.

36 1 1. Subject to the requirements of other provisions of law,
36 2 an agency may commence an adjudicative proceeding at any time
36 3 with respect to a matter within the agency's jurisdiction.

36 4 2. An agency shall commence an adjudicative proceeding
36 5 upon the application of any person, unless any of the
36 6 following apply:

36 7 a. The agency lacks jurisdiction of the subject matter.

36 8 b. Resolution of the matter requires the agency to
36 9 exercise discretion within the scope of section 17A.4101,
36 10 subsection 1.

36 11 c. A statute vests the agency with discretion to conduct
36 12 or not to conduct an adjudicative proceeding before issuing an
36 13 order to resolve the matter and, in the exercise of that
36 14 discretion, the agency has determined not to conduct an
36 15 adjudicative proceeding.

36 16 d. Resolution of the matter does not require the agency to
36 17 issue an order that determines the applicant's legal rights,
36 18 duties, privileges, immunities, or other legal interests.

36 19 e. The matter was not timely submitted to the agency
36 20 according to any applicable provision of law.

36 21 f. The matter was not submitted in a form substantially
36 22 complying with any applicable provision of law.

36 23 3. Subject to other provisions of law, each agency may, by
36 24 rule, establish specified time limits for commencing various
36 25 classes of adjudicative proceedings that are within the
36 26 agency's jurisdiction.

36 27 4. An application for an agency to issue an order includes
36 28 an application for the agency to conduct appropriate
36 29 adjudicative proceedings, whether or not the applicant
36 30 expressly requests those proceedings.

36 31 5. An adjudicative proceeding commences when the agency or
36 32 a presiding officer does any of the following:

36 33 a. Notifies a party that a prehearing conference, hearing,
36 34 or other stage of an adjudicative proceeding will be
36 35 conducted.

37 1 b. Begins to take action on a matter that appropriately
37 2 may be determined by an adjudicative proceeding, unless this

37 3 action is one of the following:

37 4 (1) An investigation for the purpose of determining
37 5 whether an adjudicative proceeding should be conducted.

37 6 (2) A decision which, under section 17A.4101, subsection
37 7 1, the agency may make without conducting an adjudicative
37 8 proceeding.

37 9 Sec. 36. NEW SECTION. 17A.4103 DECISION NOT TO CONDUCT
37 10 ADJUDICATIVE PROCEEDING.

37 11 An agency that decides, pursuant to section 17A.4102,
37 12 subsection 2, not to conduct an adjudicative proceeding in
37 13 response to an application, shall furnish the applicant a copy
37 14 of its decision in writing, with a brief statement of the
37 15 agency's reasons and of any administrative review available to
37 16 the applicant.

37 17 Sec. 37. NEW SECTION. 17A.4104 AGENCY ACTION ON
37 18 APPLICATIONS.

37 19 1. Except to the extent that the time limits in this
37 20 subsection are inconsistent with limits established by another
37 21 statute for any stage of the proceedings, an agency shall
37 22 process an application for an order, other than a declaratory
37 23 order, as follows:

37 24 a. Within thirty days after receipt of the application,
37 25 the agency shall examine the application, notify the applicant
37 26 of any apparent errors or omissions, request any additional
37 27 information the agency wishes to obtain and is permitted by
37 28 law to require, and notify the applicant of the name, official
37 29 title, mailing address, and telephone number of any agency
37 30 member or employee who may be contacted regarding the
37 31 application.

37 32 b. Except in situations governed by paragraph "c", within
37 33 ninety days after receipt of the application or of the
37 34 response to a timely request made by the agency pursuant to
37 35 paragraph "a", the agency shall do one of the following:

38 1 (1) Approve or deny the application, in whole or in part,
38 2 on the basis of emergency or summary adjudicative proceedings,
38 3 if those proceedings are available under this chapter for
38 4 disposition of the matter.

38 5 (2) Commence a formal adjudicative hearing or a conference
38 6 adjudicative hearing in accordance with this chapter.

38 7 (3) Dispose of the application in accordance with section
38 8 17A.4103.

38 9 c. If the application pertains to subject matter that is
38 10 not available when the application is filed but may be
38 11 available in the future, including an application for housing
38 12 or employment at a time no vacancy exists, the agency may
38 13 proceed to make a determination of eligibility within the time
38 14 provided in paragraph "b". If the agency determines that the
38 15 applicant is eligible, the agency shall maintain the
38 16 application on the agency's list of eligible applicants as
38 17 provided by law and, upon request, shall notify the applicant
38 18 of the status of the application.

38 19 2. If a timely application has been made for renewal of a
38 20 license with reference to any activity of a continuing nature,
38 21 the existing license does not expire until the agency has
38 22 taken final action upon the application for renewal or, if the
38 23 agency's action is unfavorable, until the last day for seeking
38 24 judicial review of the agency's action or a later date fixed
38 25 by the reviewing court or agency.

38 26 Sec. 38. NEW SECTION. 17A.4105 AGENCY ACTION AGAINST
38 27 LICENSEES.

38 28 An agency shall not revoke, suspend, modify, annul,
38 29 withdraw, or amend a license unless the agency first gives
38 30 notice and an opportunity for an appropriate adjudicative
38 31 proceeding in accordance with this chapter or other statute.
38 32 This section does not preclude an agency from taking immediate
38 33 action to protect the public interest in accordance with
38 34 section 17A.4501 or adopting rules, otherwise within the scope

38 35 of its authority, pertaining to a class of licensees,
39 1 including rules affecting the existing licenses of a class of
39 2 licensees.

39 3 Sec. 39. NEW SECTION. 17A.4106 PETITION FOR WAIVER OF
39 4 RULE.

39 5 1. A person may file a petition with an agency requesting
39 6 a waiver, in whole or in part, of a rule of that agency on the
39 7 ground that the application of the rule to the particular
39 8 circumstances of that person would qualify for a waiver under
39 9 subsection 5. A petition filed under this provision must
39 10 specify the rule in question, the precise scope of the waiver
39 11 requested, the specific facts that would justify a waiver for
39 12 petitioner, and the reasons why the particular application of
39 13 the rule to petitioner for which the waiver is requested would
39 14 qualify for a waiver under subsection 5.

39 15 2. Each agency shall issue rules consistent with this
39 16 section concerning all of the following:

39 17 a. Governing the form, contents, and filing of petitions
39 18 for the waivers of rules.

39 19 b. Specifying the procedural rights of persons in relation
39 20 to such petitions.

39 21 c. Providing for the disposition of those petitions.

39 22 3. Within fifteen days after receipt of a petition for
39 23 waiver of a rule, the agency shall give notice of the petition
39 24 to all persons to whom notice is required by any provision of
39 25 law and may give notice to any other persons. Persons who
39 26 qualify under any applicable provision of law as an intervenor
39 27 and file timely petitions for intervention according to agency
39 28 rules may intervene in proceedings for waivers of a rule.
39 29 Other provisions of this article apply to agency proceedings
39 30 for waivers of a rule only to the extent an agency so provides
39 31 by rule or order.

39 32 4. An order granting or denying such a petition shall be
39 33 in writing and shall contain a statement of the relevant facts
39 34 and reasons supporting that action. An agency shall grant or
39 35 deny such a petition within ninety days of its receipt.

40 1 Failure of an agency to grant or deny such a petition within
40 2 ninety days of its receipt shall be deemed a denial of that
40 3 petition by the agency.

40 4 5. An agency shall issue an order granting a petition for
40 5 a waiver of a rule, in whole or in part, if application of the
40 6 rule to the petitioner on the basis of the particular facts
40 7 specified in the petition would not serve any of the purposes
40 8 of the rule. An agency may issue an order granting a petition
40 9 for waiver of a rule, in whole or in part, if application of
40 10 the rule to the petitioner would result in undue hardship,
40 11 waiver of the rule on the basis of the facts specified in the
40 12 petition would be consistent with the public interest, and
40 13 waiver of the rule as to petitioner would not prejudice the
40 14 substantial rights of any other person. An order granting
40 15 such a petition shall constitute a defense in any subsequent
40 16 proceeding where the applicability of that rule to petitioner
40 17 is at issue if petitioner proves in that subsequent proceeding
40 18 all of the relevant facts pertaining to petitioner upon which
40 19 that waiver order was based and that the particular
40 20 application of the rule at issue was within the scope of the
40 21 waiver order in question.

40 22 6. In an agency proceeding to enforce a rule of that
40 23 agency, a person resisting the enforcement of the rule may
40 24 defend successfully upon a demonstration that application of
40 25 the rule to the person would not serve any of the purposes of
40 26 the rule.

40 27 7. An agency may, on its own motion, waive the application
40 28 of one or more of its rules, in whole or in part, to a
40 29 specified person on the ground that the relevant facts
40 30 pertaining to that person would qualify that person for a
40 31 waiver under the provisions of subsection 5, by rendering an

40 32 order containing the facts and reasons justifying that waiver.
40 33 8. Any order issued under this section shall be
40 34 transmitted to petitioner or to the person as to whom the
40 35 waiver order pertains within seven days of its rendition.
41 1 9. An agency shall maintain a file for each of its rules
41 2 for which a waiver order has been issued containing all orders
41 3 waiving the application to any person of that rule.

41 4 PART 2

41 5 FORMAL ADJUDICATIVE HEARING

41 6 Sec. 40. NEW SECTION. 17A.4201 APPLICABILITY.

41 7 An adjudicative proceeding is governed by this part, except
41 8 as otherwise provided by any of the following:

41 9 1. A statute other than this chapter.

41 10 2. A rule that adopts the procedures for the conference
41 11 adjudicative hearing or summary adjudicative proceeding in
41 12 accordance with the standards provided in this chapter for
41 13 those proceedings.

41 14 3. Section 17A.4501 pertaining to emergency adjudicative
41 15 proceedings.

41 16 4. Section 17A.2103 pertaining to declaratory proceedings.

41 17 5. Section 17A.4106 pertaining to petitions for waiver of
41 18 rules.

41 19 Sec. 41. NEW SECTION. 17A.4202 PRESIDING OFFICER,
41 20 DISQUALIFICATION, SUBSTITUTION.

41 21 1. a. If the agency or an officer of the agency under
41 22 whose authority the adjudicative proceeding is to take place
41 23 is a named party to that proceeding or a real party in
41 24 interest to that proceeding, in the discretion of the agency
41 25 head, the presiding officer may be either the agency head, one
41 26 or more members of the agency head, or one or more
41 27 administrative law judges assigned by the office of
41 28 administrative hearings in accordance with the provisions of
41 29 section 17A.4301. However, the agency head shall designate as
41 30 the presiding officer an administrative law judge assigned by
41 31 the office of administrative hearings in accordance with the
41 32 provisions of section 17A.4301 if any person to whom the
41 33 agency action is specifically directed timely requests an
41 34 administrative law judge to preside at the proceeding.

41 35 b. If the agency or an officer of the agency under whose
42 1 authority the adjudicative proceeding is to take place is not
42 2 a named party to that proceeding or a real party in interest
42 3 to that proceeding, in the discretion of the agency head, the
42 4 presiding officer may be either the agency head, one or more
42 5 members of the agency head, an administrative law judge
42 6 assigned by the office of administrative hearings in
42 7 accordance with the provisions of section 17A.4301, or any
42 8 other person designated as a presiding officer by the agency
42 9 head. Any other person designated as a presiding officer by
42 10 the agency head may be employed by and officed in the agency
42 11 for which that person acts as a presiding officer, but such a
42 12 person shall not perform duties inconsistent with that
42 13 person's duties and responsibilities as a presiding officer
42 14 and shall be governed by the merit system provisions of
42 15 chapter 19A.

42 16 2. Any person serving or designated to serve alone or with
42 17 others as a presiding officer is subject to disqualification
42 18 for bias, prejudice, interest, or any other cause provided in
42 19 this chapter or for which a judge is or may be disqualified.

42 20 3. Any party may timely request the disqualification of a
42 21 person after receipt of notice indicating that the person will
42 22 preside or upon discovering facts establishing grounds for
42 23 disqualification, whichever is later.

42 24 4. A person whose disqualification is requested shall
42 25 determine whether to grant the request, stating facts and
42 26 reasons for the determination.

42 27 5. If a substitute is required for a person who is
42 28 disqualified or becomes unavailable for any other reason, the

42 29 substitute must be appointed by either of the following:
42 30 a. The governor, if the disqualified or unavailable person
42 31 is an elected official.
42 32 b. The appointing authority, if the disqualified or
42 33 unavailable person is an appointed official.
42 34 6. Any action taken by a duly-appointed substitute for a
42 35 disqualified or unavailable person is as effective as if taken
43 1 by the latter.

43 2 Sec. 42. NEW SECTION. 17A.4203 REPRESENTATION.

43 3 1. Any party may participate in the hearing in person or,
43 4 if the party is a corporation or other artificial person, by a
43 5 duly authorized representative.

43 6 2. Whether or not participating in person, any party may
43 7 be advised and represented at the party's own expense by
43 8 counsel or, if permitted by any provision of law, other
43 9 representative.

43 10 3. Any party may designate in writing with an agency an
43 11 authorized representative to act on behalf of that party in a
43 12 particular proceeding. An attorney licensed to practice in
43 13 this state who files an appearance or a pleading with an
43 14 agency on behalf of a party shall be deemed to be the
43 15 designated authorized representative of the party in that
43 16 proceeding. If an authorized representative has been
43 17 designated, notice to a party required under this article must
43 18 be satisfied by providing the notice to that representative.

43 19 Sec. 43. NEW SECTION. 17A.4204 PREHEARING CONFERENCE -
43 20 AVAILABILITY - NOTICE.

43 21 The presiding officer designated to conduct the hearing may
43 22 determine, subject to the agency's rules, whether a pre-
43 23 hearing conference will be conducted. If the conference is
43 24 conducted the following apply:

43 25 1. The presiding officer shall promptly notify the agency
43 26 of the determination that a prehearing conference will be
43 27 conducted. If the presiding officer decides that another
43 28 presiding officer should conduct that conference, the agency
43 29 shall assign or request the office of administrative hearings
43 30 to assign a presiding officer for the prehearing conference,
43 31 exercising the same discretion as is provided by section
43 32 17A.4202 concerning the selection of a presiding officer for a
43 33 hearing.

43 34 2. The presiding officer for the prehearing conference
43 35 shall set the time and place of the conference and give
44 1 reasonable and timely written notice to all parties and to all
44 2 persons who have filed written petitions to intervene in the
44 3 matter. The agency shall also give such notice to other
44 4 persons entitled to notice under any provision of law.

44 5 3. The notice must include all of the following:

44 6 a. The names of all parties, and the mailing addresses of
44 7 all parties or the names and mailing addresses of their
44 8 designated representatives, and the names and mailing
44 9 addresses of all other persons to whom notice is being given
44 10 by the presiding officer.

44 11 b. The name, official title, mailing address, and
44 12 telephone number of any counsel or employee who has been
44 13 designated to appear for the agency.

44 14 c. The official file or other reference number, the name
44 15 of the proceeding, and a general description of the subject
44 16 matter.

44 17 d. A statement of the time, place, and nature of the
44 18 prehearing conference.

44 19 e. A statement of the legal authority and jurisdiction
44 20 under which the prehearing conference and the hearing are to
44 21 be held.

44 22 f. The name, official title, mailing address and telephone
44 23 number of the presiding officer for the prehearing conference.

44 24 g. A statement that at the prehearing conference the
44 25 proceeding, without further notice, may be converted into a

44 26 conference adjudicative hearing or a summary adjudicative
44 27 proceeding for disposition of the matter as provided by this
44 28 chapter.

44 29 h. A statement that a party who fails to attend or
44 30 participate in a prehearing conference, hearing, or other
44 31 stage of an adjudicative proceeding may be held in default
44 32 under this chapter.

44 33 4. The notice may include a statement that each party must
44 34 bring to the prehearing conference specified listed materials
44 35 or information, as determined by the presiding officer, and
45 1 that a failure to do so, without good cause, will preclude
45 2 that party from subsequently introducing those materials or
45 3 that information in the proceeding. The notice may also
45 4 include any other matters that the presiding officer considers
45 5 desirable to expedite the proceedings.

45 6 Sec. 44. NEW SECTION. 17A.4205 PREHEARING CONFERENCE -
45 7 PROCEDURE AND PREHEARING ORDER.

45 8 1. The presiding officer may conduct all or part of the
45 9 prehearing conference by telephone, videoconference, or other
45 10 electronic means if each participant in the conference has an
45 11 opportunity to participate in, to hear, and, if technically
45 12 feasible, to see the entire proceeding while it is taking
45 13 place.

45 14 2. The presiding officer shall conduct the prehearing
45 15 conference, as may be appropriate, to deal with such matters
45 16 as conversion of the proceeding to another type of proceeding,
45 17 exploration of settlement possibilities, waivers of any rights
45 18 conferred upon a party by this chapter that are relevant to
45 19 the proceeding, preparation of stipulations on any relevant
45 20 matter, clarification of issues, rulings on identity and
45 21 limitation of the number of witnesses, objections to proffers
45 22 of evidence, determination of the extent to which evidence
45 23 will be presented in written form, and the extent to which
45 24 telephone, videoconference, or other electronic means will be
45 25 used as a substitute for proceedings in person, order of
45 26 presentation of evidence and cross-examination, rulings
45 27 regarding issuance of subpoenas, discovery orders and
45 28 protective orders, and such other matters as will promote the
45 29 orderly and prompt conduct of the hearing. The presiding
45 30 officer shall issue a prehearing order incorporating the
45 31 matters determined at the prehearing conference and may
45 32 deviate from that order at the hearing only with the consent
45 33 of all parties or for good cause.

45 34 3. If a prehearing conference is not held, the presiding
45 35 officer for the hearing may issue a prehearing order, based on
46 1 the pleadings, to regulate the conduct of the proceedings.

46 2 Sec. 45. NEW SECTION. 17A.4206 NOTICE OF HEARING.

46 3 1. The presiding officer for the hearing, or another
46 4 person authorized to do so by rule of the agency, shall set
46 5 the time and place of the hearing and give reasonable and
46 6 timely written notice to all parties and to all persons who
46 7 have filed written petitions to intervene in the matter.

46 8 2. The notice must include a copy of any prehearing order
46 9 rendered in the matter unless the parties and persons who have
46 10 filed written petitions to intervene have already been
46 11 furnished with a copy of such an order.

46 12 3. To the extent not included in a prehearing order
46 13 accompanying it, the notice must include all of the following:

46 14 a. The names of all parties, and the mailing addresses of
46 15 all parties or the names and mailing addresses of their
46 16 designated representatives, and the names and mailing
46 17 addresses of all other persons to whom notice is being given.

46 18 b. The name, official title, mailing address and telephone
46 19 number of any counsel or employee who has been designated to
46 20 appear for the agency.

46 21 c. The official file or other reference number, the name
46 22 of the proceeding, and a general description of the subject

46 23 matter.

46 24 d. A statement of the time, place, and nature of the
46 25 hearing.

46 26 e. A statement of the legal authority and jurisdiction
46 27 under which the hearing is to be held.

46 28 f. The name, official title, mailing address, and
46 29 telephone number of the presiding officer.

46 30 g. To the extent known to the person giving notice, a
46 31 statement of the issues involved and of the matters asserted
46 32 by the parties.

46 33 h. A statement that a party who fails to attend or
46 34 participate in a prehearing conference, hearing, or other
46 35 stage of an adjudicative proceeding may be held in default
47 1 under this chapter.

47 2 4. The notice may include any other matters the presiding
47 3 officer considers desirable to expedite the proceedings.

47 4 5. The agency shall give notice to persons entitled to
47 5 notice under any provision of law who have not been given
47 6 notice by the presiding officer. Notice under this subsection
47 7 may include all types of information provided in subsections 1
47 8 through 4 or may consist of a brief statement indicating the
47 9 subject matter, parties, time, place, and nature of the
47 10 hearing, manner in which copies of the notice to the parties
47 11 may be inspected and copied, and name and telephone number of
47 12 the presiding officer.

47 13 Sec. 46. NEW SECTION. 17A.4207 PLEADINGS, BRIEFS,
47 14 MOTIONS, SERVICE.

47 15 1. The presiding officer, at appropriate stages of the
47 16 proceedings, shall give all parties full opportunity to file
47 17 pleadings, motions, and objections.

47 18 2. The presiding officer, at appropriate stages of the
47 19 proceedings, may give all parties full opportunity to file
47 20 briefs, proposed findings of fact and conclusions of law, and
47 21 proposed initial or final orders.

47 22 3. A party shall serve copies of any filed item on all
47 23 parties, by mail or any other means prescribed by agency rule.

47 24 Sec. 47. NEW SECTION. 17A.4208 DEFAULT.

47 25 1. If a party fails to attend or participate in a pre-
47 26 hearing conference, hearing, or other stage of an adjudicative
47 27 proceeding, the presiding officer may serve by certified mail
47 28 all parties written notice of a proposed default order,
47 29 including a statement of the grounds.

47 30 2. Within fifteen days or such longer period specified by
47 31 rule after the mailing by certified mail of a proposed default
47 32 order, the party against whom it was issued may file a written
47 33 motion requesting that the proposed default order be vacated
47 34 and stating the grounds relied upon. A proposed default order
47 35 may be vacated for any reason specified in the rules of civil
48 1 procedure or for any other reason specified by agency rule.

48 2 During the time within which a party may file a written motion
48 3 under this subsection, the presiding officer may adjourn the
48 4 proceedings or conduct them without the participation of the
48 5 party against whom a proposed default order was issued, having
48 6 due regard for the interests of justice and the orderly and
48 7 prompt conduct of the proceedings.

48 8 3. The presiding officer shall either issue or vacate the
48 9 default order promptly after expiration of the time within
48 10 which the party may file a written motion under subsection 2.

48 11 4. After issuing a default order, the presiding officer
48 12 shall conduct any further proceedings necessary to complete
48 13 the adjudication without the participation of the party in
48 14 default and shall determine all issues in the adjudication,
48 15 including those affecting the defaulting party.

48 16 Sec. 48. NEW SECTION. 17A.4209 INTERVENTION.

48 17 1. The presiding officer shall grant a petition for
48 18 intervention if all of the following apply:

48 19 a. The petition is submitted in writing to the presiding

48 20 officer, with copies mailed to all parties named in the
48 21 presiding officer's notice of the hearing, at least twenty
48 22 days before the hearing.

48 23 b. The petition states facts demonstrating that the
48 24 petitioner's legal rights, duties, privileges, immunities, or
48 25 other legal interests may be substantially affected by the
48 26 proceeding or that the petitioner qualifies as an intervenor
48 27 under any provision of law.

48 28 c. The presiding officer determines that the interests of
48 29 justice and the orderly and prompt conduct of the proceedings
48 30 will not be impaired by allowing the intervention.

48 31 2. The presiding officer may grant a petition for
48 32 intervention at any time, upon determining that the
48 33 intervention sought is in the interests of justice and will
48 34 not impair the orderly and prompt conduct of the proceedings.

48 35 3. If a petitioner qualifies for intervention, the
49 1 presiding officer may impose conditions upon the intervenor's
49 2 participation in the proceedings, either at the time that
49 3 intervention is granted or at any subsequent time. Conditions
49 4 may include any or all of the following:

49 5 a. Limiting the intervenor's participation to designated
49 6 issues in which the intervenor has a particular interest
49 7 demonstrated by the petition.

49 8 b. Limiting the intervenor's use of discovery, cross-
49 9 examination, and other procedures so as to promote the orderly
49 10 and prompt conduct of the proceedings.

49 11 c. Requiring two or more intervenors to combine their
49 12 presentations of evidence and argument, cross-examination,
49 13 discovery, and other participation in the proceedings.

49 14 4. The presiding officer shall issue an order granting or
49 15 denying each pending petition for intervention, specifying any
49 16 conditions, and briefly stating the reasons for the order.

49 17 The presiding officer may modify the order at any time,
49 18 stating the reasons for the modification. The presiding
49 19 officer shall promptly give notice of an order granting,
49 20 denying, or modifying intervention to the petitioner for
49 21 intervention and to all parties.

49 22 Sec. 49. NEW SECTION. 17A.4210 SUBPOENAS, DISCOVERY, AND
49 23 PROTECTIVE ORDERS.

49 24 1. Discovery procedures applicable to civil actions are
49 25 available to all parties in accordance with the rules of civil
49 26 procedure. Upon notice to all parties, the presiding officer
49 27 at the request of any party shall, and upon the presiding
49 28 officer's own motion may, administer oaths and issue
49 29 subpoenas, discovery orders, and protective orders, in
49 30 accordance with the rules of civil procedure.

49 31 2. Any party or person to whom the subpoena or similar
49 32 process is directed may object to the issuance of the subpoena
49 33 or process. The presiding officer and any reviewing district
49 34 court shall sustain the subpoena or similar process only to
49 35 the extent that it is found to be in accordance with the law
50 1 applicable to the issuance of subpoenas or discovery in civil
50 2 actions.

50 3 3. Subpoenas and orders issued under this section may be
50 4 enforced pursuant to article 5, part 2, of this chapter on
50 5 civil enforcement of agency action.

50 6 4. An agency that relies on a witness in an adjudicative
50 7 proceeding, whether or not an agency employee, who has made
50 8 prior statements or reports with respect to the subject matter
50 9 of the witness' testimony, shall, on request, make such
50 10 statements or reports available prior to hearing to parties
50 11 for use on cross-examination, unless those statements or
50 12 reports are otherwise expressly exempt from disclosure by
50 13 constitution or statute. Identifiable agency records that are
50 14 relevant to disputed material facts involved in an
50 15 adjudicative proceeding, shall, upon request, promptly be made
50 16 available to a party unless the requested records are

50 17 expressly exempt from disclosure by constitution or statute.
50 18 5. Unless provided otherwise by any applicable provision
50 19 of law, an agency authorized to issue an investigatory
50 20 subpoena for the purpose of determining whether to commence an
50 21 adjudicatory proceeding may do so only after giving notice of
50 22 the proposed issuance of the subpoena and an opportunity to
50 23 contest its issuance to the persons who are the subject of the
50 24 agency investigation. However, an agency may omit such notice
50 25 and opportunity if it obtains an order from a district court
50 26 approving that omission because of any of the following:

50 27 a. The whereabouts of the persons who are the subject of
50 28 the agency investigation are unknown and could not be
50 29 ascertained with reasonable efforts.

50 30 b. Such notice to the persons who are the subject of the
50 31 agency investigation would seriously interfere with the
50 32 agency's ability to obtain the evidence necessary to perform
50 33 its law enforcement responsibilities.

50 34 c. Such notice would result in imminent peril to the
50 35 health, safety, or welfare of any person or persons.

51 1 Sec. 50. NEW SECTION. 17A.4211 PROCEDURE AT HEARING.

51 2 At a hearing, all of the following apply:

51 3 1. The presiding officer shall regulate the course of the
51 4 proceedings in conformity with any prehearing order.

51 5 2. To the extent necessary for full disclosure of all
51 6 relevant facts and issues, the presiding officer shall afford
51 7 to all parties the opportunity to respond, present evidence
51 8 and argument, conduct cross-examination, and submit rebuttal
51 9 evidence, except as restricted by a limited grant of
51 10 intervention or by the prehearing order.

51 11 3. The presiding officer may conduct all or part of the
51 12 hearing by telephone, videoconference, or other electronic
51 13 means, if each participant in the hearing has an opportunity
51 14 to participate in, to hear, and, if technically feasible, to
51 15 see the entire proceeding while it is taking place.

51 16 4. The presiding officer shall cause the hearing to be
51 17 recorded at the agency's expense. The agency is not required,
51 18 at its expense, to prepare a transcript, unless required to do
51 19 so by a provision of law. Any party, at the party's expense,
51 20 may cause a reporter approved by the agency to prepare a
51 21 transcript from the agency's record, or cause additional
51 22 recordings to be made during the hearing if the making of the
51 23 additional recordings does not cause distraction or
51 24 disruption. The recording or stenographic notes of oral
51 25 proceedings or the transcription thereof shall be filed with
51 26 and maintained by the agency for at least five years from the
51 27 date of the final decision in that case.

51 28 5. The hearing is open to public observation, except for
51 29 the parts that the presiding officer states to be closed
51 30 pursuant to a provision of law expressly authorizing closure.
51 31 To the extent that a hearing is conducted by telephone, video-
51 32 conference, or other electronic means, and is not closed, the
51 33 availability of public observation is satisfied by giving
51 34 members of the public an opportunity to observe and hear that
51 35 communication at the location of any one of the participants,
52 1 as designated by the presiding officer, or if that is not
52 2 feasible, at reasonable times, to hear or inspect the agency's
52 3 record, and to inspect any transcript obtained by the agency.

52 4 Sec. 51. NEW SECTION. 17A.4212 EVIDENCE - OFFICIAL
52 5 NOTICE.

52 6 1. Upon proper objection, the presiding officer shall
52 7 exclude evidence that is irrelevant, immaterial, unduly
52 8 repetitious, or excludable on constitutional or statutory
52 9 grounds or on the basis of evidentiary privilege recognized in
52 10 the courts of this state. In the absence of proper objection,
52 11 the presiding officer may exclude objectionable evidence after
52 12 notifying the parties of an intention to do so and providing
52 13 the parties with an opportunity to object to that exclusion.

52 14 Evidence shall not be excluded solely because it is hearsay.

52 15 2. All testimony of parties and witnesses must be made
52 16 under oath or affirmation.

52 17 3. Any part of the evidence may be received in written
52 18 form if doing so will expedite the hearing without substantial
52 19 prejudice to the interests of any party.

52 20 4. Documentary evidence may be received in the form of a
52 21 copy or excerpt. Upon request, parties must be given an
52 22 opportunity to compare the copy with the original if
52 23 available.

52 24 5. Official notice may be taken of any fact that could be
52 25 judicially noticed in the courts of this state, the record of
52 26 other proceedings before the agency, technical or scientific
52 27 matters within the agency's specialized knowledge, and codes
52 28 or standards that have been adopted by an agency of the United
52 29 States, of this state, or of another state, or by a nationally
52 30 recognized organization or association. Parties must be
52 31 notified before or during the hearing, or before the issuance
52 32 of any initial or final order that is based in whole or in
52 33 part on facts or material noticed, of the specific facts or
52 34 material noticed and the source thereof, including any staff
52 35 memoranda and data, and be afforded an opportunity to contest
53 1 and rebut the facts or material so noticed. However, if the
53 2 required notification of the parties is infeasible or
53 3 impracticable prior to the issuance of such an initial or
53 4 final order, the notification may first occur in that order
53 5 itself, as long as the parties are afforded, through the
53 6 granting of a motion for reconsideration timely filed with the
53 7 presiding officer, an opportunity, after the order is
53 8 rendered, to contest and rebut the facts or material so
53 9 noticed before that order becomes final.

53 10 Sec. 52. NEW SECTION. 17A.4213 EX PARTE COMMUNICATIONS.

53 11 1. Except as provided in subsection 2, or unless required
53 12 for the disposition of ex parte matters specifically
53 13 authorized by statute, a presiding officer serving in an
53 14 adjudicative proceeding shall not communicate, directly or
53 15 indirectly, regarding any issue in the proceeding other than
53 16 inquiries about scheduling, while the proceeding is pending,
53 17 with any party, with any person who has a direct or indirect
53 18 interest in the outcome of the proceeding, or with any person
53 19 who presided at a previous stage of the proceeding, without
53 20 notice and opportunity for all parties to participate in the
53 21 communication.

53 22 2. A member of a multi-member panel of presiding officers
53 23 may communicate with other members of the panel regarding a
53 24 matter pending before the panel, and any presiding officer may
53 25 receive aid from staff assistants if the assistants do not
53 26 receive ex parte communications of a type that the presiding
53 27 officer would be prohibited from receiving or that furnish,
53 28 augment, diminish, or modify the evidence in the record.

53 29 3. Unless required for the disposition of ex parte matters
53 30 specifically authorized by statute, a party to an adjudicative
53 31 proceeding, and a person who has a direct or indirect interest
53 32 in the outcome of the proceeding or who presided at a previous
53 33 stage of the proceeding, shall not communicate, directly or
53 34 indirectly, in connection with any issue in that proceeding
53 35 other than inquiries about scheduling, while the proceeding is
54 1 pending, with any person serving as presiding officer, without
54 2 notice and opportunity for all parties to participate in the
54 3 communication.

54 4 4. If, before serving as presiding officer in an
54 5 adjudicative proceeding, a person receives an ex parte
54 6 communication of a type that could not properly be received
54 7 while serving, the person, promptly after starting to serve,
54 8 shall disclose the communication in the manner prescribed in
54 9 subsection 5.

54 10 5. A presiding officer who receives an ex parte

54 11 communication in violation of this section shall place on the
54 12 record of the pending matter all written communications
54 13 received, all written responses to the communications, and a
54 14 memorandum stating the substance of all oral and other
54 15 communications received, all responses made, and the identity
54 16 of each person from whom the presiding officer received an ex
54 17 parte communication, and shall advise all parties that these
54 18 matters have been placed on the record. Any party desiring to
54 19 rebut the ex parte communication must be allowed to do so,
54 20 upon requesting the opportunity for rebuttal within ten days
54 21 after notice of the communication.

54 22 6. When necessary to eliminate the effect of an ex parte
54 23 communication received in violation of this section, a
54 24 presiding officer who receives the communication shall be
54 25 disqualified and the portions of the record pertaining to the
54 26 communication shall be sealed by protective order.

54 27 7. The agency and any party may report any violation of
54 28 this section to appropriate authorities for any disciplinary
54 29 proceedings provided by law. In addition, each agency by rule
54 30 may provide for appropriate sanctions, including default,
54 31 suspending or revoking a privilege to practice before the
54 32 agency, and for censuring, suspending, or dismissing agency
54 33 personnel, for any violations of this section.

54 34 8. In a proceeding for judicial review, the burden shall
54 35 be on the party seeking to uphold the validity of an order to
55 1 demonstrate that any violation of subsections 1 through 5
55 2 relating to the issuance of that order did not prejudice the
55 3 substantial rights of the party seeking its invalidation.

55 4 Sec. 53. NEW SECTION. 17A.4214 SEPARATION OF FUNCTIONS.

55 5 1. A person who has served personally as an investigator,
55 6 prosecutor, or advocate in an adjudicative proceeding or in
55 7 its pre-adjudicative stage shall not serve as presiding
55 8 officer or assist or advise a presiding officer in the same
55 9 proceeding.

55 10 2. A person who is subject to the authority, direction, or
55 11 discretion of one who has served personally as an
55 12 investigator, prosecutor, or advocate in an adjudicative
55 13 proceeding or in its pre-adjudicative stage shall not serve as
55 14 presiding officer or assist or advise a presiding officer in
55 15 the same proceeding.

55 16 3. A person who has participated in a determination of
55 17 probable cause or other equivalent preliminary determination
55 18 as to the sufficiency of the evidence to support the facts
55 19 alleged by any party in an adjudicative proceeding shall not
55 20 serve as presiding officer or assist or advise a presiding
55 21 officer in the same proceeding.

55 22 4. A person may serve as presiding officer at successive
55 23 stages of the same adjudicative proceeding, unless a party
55 24 demonstrates grounds for disqualification in accordance with
55 25 this section or section 17A.4202.

55 26 5. In a proceeding for judicial review, the burden shall
55 27 be on the party seeking to uphold the validity of an order to
55 28 demonstrate that any violation of this section relating to the
55 29 issuance of that order did not prejudice the substantial
55 30 rights of the party seeking its invalidation.

55 31 Sec. 54. NEW SECTION. 17A.4215 FINAL ORDER - INITIAL
55 32 ORDER.

55 33 1. If the presiding officer is the agency head, the
55 34 presiding officer shall render a final order.

55 35 2. If the presiding officer is not the agency head, the
56 1 presiding officer shall render an initial order, which becomes
56 2 a final order unless reviewed in accordance with section
56 3 17A.4216.

56 4 3. A final order and an initial order must include the
56 5 date of its rendition and, separately stated, findings of
56 6 fact, conclusions of law, and policy reasons for the decision
56 7 if it is an exercise of the agency's discretion, for all

56 8 aspects of the order, including the remedy prescribed and, if
56 9 applicable, the action taken on a petition for stay of
56 10 effectiveness. The order must include an explanation of why
56 11 the evidence in the record supports each finding of fact and
56 12 why the evidence in the record that is contrary to a finding
56 13 does not preclude it. Findings of fact, if set forth in
56 14 language that is no more than mere repetition or paraphrase of
56 15 the relevant provision of law, must also be accompanied by a
56 16 concise and explicit statement of each of the underlying facts
56 17 in the record that support those findings. Each conclusion of
56 18 law must be supported by cited authority or by a reasoned
56 19 explanation. If a party has submitted proposed findings of
56 20 fact, conclusions of law, or policy reasons, the order must
56 21 include a ruling on the proposed findings. The order must
56 22 also include a statement of the available procedures and time
56 23 limits for seeking reconsideration or other administrative
56 24 relief from that final or initial order. An initial order
56 25 must include a statement of any circumstances under which the
56 26 initial order, without further notice, may become a final
56 27 order.

56 28 4. Findings of fact must be based exclusively upon the
56 29 evidence of record in the adjudicative proceeding and on
56 30 matters officially noticed in that proceeding. Findings must
56 31 be based upon the kind of evidence on which reasonably prudent
56 32 persons are accustomed to rely in the conduct of their serious
56 33 affairs and may be based upon such evidence even if it would
56 34 be inadmissible in a civil trial. The presiding officer's
56 35 experience, technical competence, and specialized knowledge
57 1 may be utilized in evaluating evidence, but only in accordance
57 2 with section 17A.4212, subsection 5. Unless provided
57 3 otherwise by another provision of law, findings of fact shall
57 4 be based upon a preponderance of the evidence and the burden
57 5 of proof shall be on the proponent of the agency action
57 6 requested.

57 7 5. If a person serving or designated to serve as presiding
57 8 officer becomes unavailable, for any reason, before rendition
57 9 of the final order or initial order, a substitute presiding
57 10 officer must be appointed as provided in section 17A.4202.
57 11 The substitute presiding officer shall use any existing record
57 12 and may conduct any further proceedings appropriate in the
57 13 interests of justice; but if demeanor of witnesses is a
57 14 substantial factor and the original presiding officer is
57 15 unavailable the portions of the hearing involving demeanor
57 16 heard by the original presiding officer shall be heard again
57 17 by the new presiding officer.

57 18 6. The presiding officer may allow the parties a
57 19 designated amount of time after conclusion of the hearing for
57 20 the submission of proposed findings.

57 21 7. A final order or initial order must be rendered in
57 22 writing within ninety days after conclusion of the hearing or
57 23 after submission of proposed findings in accordance with
57 24 subsection 6 unless this period is waived, extended with the
57 25 written consent of all parties, or extended for good cause
57 26 shown.

57 27 8. The presiding officer shall cause copies of the final
57 28 order or initial order to be mailed or otherwise delivered to
57 29 each party within two working days from the time the order is
57 30 rendered.

57 31 Sec. 55. NEW SECTION. 17A.4216 REVIEW OF INITIAL ORDER
57 32 - EXCEPTIONS TO REVIEWABILITY.

57 33 1. The agency head, upon its own motion may, and upon
57 34 appeal by any party shall, review an initial order, except to
57 35 the extent that any of the following apply:

58 1 a. A provision of law precludes or limits agency review of
58 2 the initial order.

58 3 b. The agency head, in the exercise of discretion
58 4 conferred by a provision of law, does any of the following:

58 5 (1) Determines to review some but not all issues, or not
58 6 to exercise any review.

58 7 (2) Delegates its authority to review the initial order to
58 8 one or more persons.

58 9 (3) Authorizes one or more persons to review the initial
58 10 order, subject to further review by the agency head.

58 11 2. A petition for appeal from an initial order must be
58 12 filed with the agency head, or with any person designated for
58 13 this purpose by rule of the agency, within twenty days after
58 14 rendition of the initial order or within such longer time
58 15 period, not to exceed thirty days, as established by rule of
58 16 the agency. If the agency head on its own motion decides to
58 17 review an initial order, the agency head shall give written
58 18 notice of its intention to review the initial order within
58 19 twenty days after its rendition. The time period for a party
58 20 to file a petition for appeal or for the agency head to give
58 21 notice of its intention to review an initial order on the
58 22 agency head's own motion is tolled by the submission of a
58 23 timely petition for reconsideration of the initial order
58 24 pursuant to section 17A.4218, and a new time period starts to
58 25 run upon disposition of the petition for reconsideration. If
58 26 an initial order is subject both to a timely petition for
58 27 reconsideration and to a petition for appeal or to review by
58 28 the agency head on its own motion, the petition for
58 29 reconsideration must be disposed of first, unless the agency
58 30 head determines that action on the petition for
58 31 reconsideration has been unreasonably delayed.

58 32 3. The petition for appeal must state its basis. If the
58 33 agency head on its own motion gives notice of its intent to
58 34 review an initial order, the agency head shall identify the
58 35 issues that it intends to review.

59 1 4. The presiding officer for the review of an initial
59 2 order shall exercise all the decision-making power that the
59 3 presiding officer would have had to render a final order had
59 4 the presiding officer presided over the hearing, except to the
59 5 extent that the issues subject to review are limited by a
59 6 provision of law or by the presiding officer upon notice to
59 7 all parties.

59 8 5. The presiding officer shall afford each party an
59 9 opportunity to present briefs and may afford each party an
59 10 opportunity to present oral argument.

59 11 6. Before rendering a final order, the presiding officer
59 12 may cause a transcript to be prepared, at the agency's
59 13 expense, of such portions of the proceeding under review as
59 14 the presiding officer considers necessary.

59 15 7. The presiding officer may render a final order
59 16 disposing of the proceeding or may remand the matter for
59 17 further proceedings with instructions to the person who
59 18 rendered the initial order. Upon remanding a matter, the
59 19 presiding officer may order such temporary relief as is
59 20 authorized and appropriate.

59 21 8. A final order or an order remanding the matter for
59 22 further proceedings must be rendered in writing within sixty
59 23 days after receipt of briefs and oral argument unless that
59 24 period is waived, extended with the written consent of all
59 25 parties, extended for good cause shown, or extended by rule
59 26 for that class of cases for an additional period of not longer
59 27 than thirty days.

59 28 9. A final order or an order remanding the matter for
59 29 further proceedings under this section must identify any
59 30 difference between this order and the initial order and must
59 31 include, or incorporate by express reference to the initial
59 32 order, all the matters required by section 17A.4215,
59 33 subsection 3.

59 34 10. The presiding officer shall cause copies of the final
59 35 order or order remanding the matter for further proceedings to
60 1 be mailed or otherwise delivered to each party within two

60 2 working days from the time the order is rendered.

60 3 Sec. 56. NEW SECTION. 17A.4217 STAY.

60 4 A party may submit to the presiding officer a petition for
60 5 stay of effectiveness of an initial or final order within
60 6 twenty days after its rendition unless otherwise provided by
60 7 statute or stated in the initial or final order. The
60 8 presiding officer may take action on the petition for stay,
60 9 either before or after the effective date of the initial or
60 10 final order. A petition for a stay is deemed to have been
60 11 denied if the presiding officer does not dispose of it within
60 12 ten days after the filing of the petition.

60 13 Sec. 57. NEW SECTION. 17A.4218 RECONSIDERATION.

60 14 Unless otherwise provided by statute or rule the following
60 15 apply:

60 16 1. Any party, within twenty days after rendition of an
60 17 initial or final order, may file a petition for
60 18 reconsideration of that order, stating the specific grounds
60 19 upon which relief is requested. The filing of the petition is
60 20 not a prerequisite for seeking administrative or judicial
60 21 review. A copy of the application for reconsideration shall
60 22 be timely mailed by the presiding officer to all parties of
60 23 record not joining in the application.

60 24 2. The petition must be disposed of by the same person or
60 25 persons who rendered the initial or final order, if available.

60 26 3. The presiding officer shall render a written order
60 27 denying the petition, or granting the petition and dissolving
60 28 or modifying the initial or final order, or setting the matter
60 29 for further proceedings. The petition may be granted, in
60 30 whole or in part, only if the presiding officer states, in the
60 31 written order, findings of fact, conclusions of law, and
60 32 policy reasons for the decision if it is an exercise of the
60 33 agency's discretion, to justify the order. The petition is
60 34 deemed to have been denied if the presiding officer does not
60 35 dispose of it within twenty days after the filing of the
61 1 petition.

61 2 Sec. 58. NEW SECTION. 17A.4219 REVIEW BY SUPERIOR
61 3 AGENCY.

61 4 If, pursuant to statute, an agency may review the final
61 5 order of another agency, the review is deemed to be a
61 6 continuous proceeding as if before a single agency. The final
61 7 order of the first agency is treated as an initial order and
61 8 the second agency functions as though it were reviewing an
61 9 initial order in accordance with section 17A.4216.

61 10 Sec. 59. NEW SECTION. 17A.4220 EFFECTIVENESS OF ORDERS.

61 11 1. Unless a later date is stated in a final order or a
61 12 stay is granted, a final order is effective twenty days after
61 13 rendition, except for any of the following:

61 14 a. A party shall not be required to comply with a final
61 15 order unless the party has been served with or has actual
61 16 knowledge of the final order.

61 17 b. A final order shall not be invoked for any purpose
61 18 against any person unless the agency has made the final order
61 19 available for public inspection and copying or the person has
61 20 actual knowledge of the final order.

61 21 c. A final order may become effective on a specified date
61 22 stated in the order that is earlier than twenty days after its
61 23 rendition if any of the following exist:

61 24 (1) Another statute authorizes the agency to set an
61 25 earlier effective date for that order.

61 26 (2) The order only confers a benefit or relieves a
61 27 restriction on the parties other than the agency issuing the
61 28 order.

61 29 (3) The earlier effective date is necessary to avoid an
61 30 immediate danger to the public health, safety, or welfare.

61 31 2. Unless a later date is stated in an initial order or a
61 32 stay is granted, the time when an initial order becomes a
61 33 final order in accordance with section 17A.4215 is determined

61 34 as follows:

61 35 a. When the initial order is rendered, if administrative
62 1 review is unavailable.

62 2 b. When the agency head renders an order stating, after a
62 3 petition for appeal has been filed, that review will not be
62 4 exercised, if discretion is available to make a determination
62 5 to this effect.

62 6 c. Twenty days after rendition of the initial order, if no
62 7 party has filed a petition for appeal and the agency head has
62 8 not given written notice of its intention to exercise review.

62 9 3. Unless a later date is stated in an initial order or a
62 10 stay is granted, an initial order that becomes a final order
62 11 in accordance with subsection 2 and section 17A.4215 is
62 12 effective twenty days after becoming a final order, except for
62 13 any of the following:

62 14 a. A party shall not be required to comply with the final
62 15 order unless the party has been served with or has actual
62 16 knowledge of the initial order or of an order stating that
62 17 review will not be exercised.

62 18 b. An initial order shall not be invoked for any purpose
62 19 against any person unless the agency has made the initial
62 20 order available for public inspection and copying or the
62 21 person has actual knowledge of the initial order or of an
62 22 order stating that review will not be exercised.

62 23 c. An initial order that becomes a final order may become
62 24 effective on a specified date stated in the order that is
62 25 earlier than twenty days after it becomes a final order if it
62 26 satisfies the requirements of subsection 1, paragraph "a",
62 27 "b", or "c".

62 28 4. This section does not preclude an agency from taking
62 29 immediate action to protect the public interest in accordance
62 30 with section 17A.4501.

62 31 Sec. 60. NEW SECTION. 17A.4221 AGENCY RECORD.

62 32 1. An agency shall maintain an official record of each
62 33 adjudicative proceeding under this part.

62 34 2. The agency record consists only of all of the
62 35 following:

63 1 a. Notices of all proceedings.

63 2 b. Any prehearing order.

63 3 c. Any motions, pleadings, briefs, petitions, requests,
63 4 and intermediate rulings.

63 5 d. Evidence received or considered.

63 6 e. A statement of matters officially noticed.

63 7 f. Proffers of proof and objections and rulings thereon.

63 8 g. Proposed findings, requested orders, and exceptions.

63 9 h. The record prepared for the presiding officer at the
63 10 hearing, together with any transcript of all or part of the
63 11 hearing considered before final disposition of the proceeding.

63 12 i. Any final order, initial order, or order on
63 13 reconsideration.

63 14 j. Staff memoranda or data submitted to the presiding
63 15 officer, unless prepared and submitted by personal assistants
63 16 and not inconsistent with section 17A.4213, subsection 2.

63 17 k. Matters placed on the record after an ex parte
63 18 communication.

63 19 3. Except to the extent that this chapter or another
63 20 statute provides otherwise, the agency record constitutes the
63 21 exclusive basis for agency action in adjudicative proceedings
63 22 under this part and for judicial review thereof.

63 23 PART 3

63 24 OFFICE OF ADMINISTRATIVE HEARINGS

63 25 Sec. 61. NEW SECTION. 17A.4301 OFFICE OF ADMINISTRATIVE
63 26 HEARINGS - CREATION, POWERS, DUTIES.

63 27 1. An independent office of administrative hearings is
63 28 created to be headed by a director appointed by the governor
63 29 and confirmed by the senate. The director serves at the
63 30 pleasure of the governor.

63 31 2. The office shall employ administrative law judges as
63 32 necessary to conduct proceedings required by this chapter or
63 33 any other provision of law. Administrative law judges
63 34 employed by the office shall not perform duties inconsistent
63 35 with their duties and responsibilities as administrative law
64 1 judges and shall not be located in offices within the agencies
64 2 for which they act as presiding officers. Administrative law
64 3 judges shall be covered by the merit system provisions of
64 4 chapter 19A. Subject to the approval of the department of
64 5 personnel, the office shall, insofar as practicable, provide
64 6 for different classes of administrative law judges with
64 7 different salary scales. The office shall also facilitate,
64 8 insofar as practicable, specialization by its administrative
64 9 law judges so that particular judges may become expert in
64 10 presiding over cases in particular agencies.

64 11 3. If the office cannot furnish one of its administrative
64 12 law judges in response to an agency request, the director
64 13 shall designate in writing a full-time employee of an agency
64 14 other than the requesting agency to serve as administrative
64 15 law judge for the proceeding, but only with the consent of the
64 16 employing agency. The designee must possess the same
64 17 qualifications required of administrative law judges employed
64 18 by the office.

64 19 4. The director may furnish administrative law judges on a
64 20 contract basis to any governmental entity to conduct any
64 21 proceeding not subject to this chapter.

64 22 5. After the effective date of this Act, a person shall
64 23 not be newly employed by the office as an administrative law
64 24 judge to preside over formal adjudicative hearings unless that
64 25 person has a license to practice law in this state.

64 26 6. The office shall adopt rules pursuant to this chapter
64 27 to do all of the following:

64 28 a. To establish qualifications for administrative law
64 29 judges employed by the office, and, subject to the approval of
64 30 the department of personnel, procedures by which candidates
64 31 for a position as an administrative law judge in the office
64 32 will be considered for employment and the manner in which
64 33 public notice of vacancies for positions as administrative
64 34 law judges in the office will be given.

64 35 b. To establish procedures for agencies to request and for
65 1 the director to assign administrative law judges employed by
65 2 the office; however, an agency shall not select or reject any
65 3 individual administrative law judge for any proceeding except
65 4 in accordance with this chapter.

65 5 c. To establish procedures and adopt forms, consistent
65 6 with this chapter and other provisions of law, to govern
65 7 administrative law judges employed by the office, but any
65 8 rules adopted under this paragraph shall be applicable to a
65 9 particular adjudicatory proceeding only to the extent that
65 10 they are not inconsistent with the rules of the agency under
65 11 whose authority that proceeding is conducted.

65 12 d. To establish standards and procedures for the
65 13 evaluation, training, promotion, and discipline by the office
65 14 of administrative law judges employed by the office.

65 15 e. To establish, consistent with the provisions of this
65 16 chapter, a code of administrative judicial conduct that is
65 17 similar in function and substantially equivalent to the Iowa
65 18 code of judicial conduct, to govern the actions of all persons
65 19 who act as presiding officers under the authority of section
65 20 17A.4202, subsection 1.

65 21 f. To facilitate the performance of the responsibilities
65 22 conferred upon the office by this chapter.

65 23 7. The director may do all of the following:

65 24 a. Maintain a staff of reporters and other personnel.

65 25 b. Administer the provisions of this section and rules
65 26 adopted under its authority.

65 27 8. The office may charge agencies for services rendered

65 28 and the payment received shall be considered repayment
65 29 receipts as defined in section 8.2.

65 30

PART 4

65 31 CONFERENCE ADJUDICATIVE HEARING

65 32 Sec. 62. NEW SECTION. 17A.4401 CONFERENCE ADJUDICATIVE
65 33 HEARING - APPLICABILITY.

65 34 A conference adjudicative hearing may be used if its use in
65 35 the circumstances does not violate any provision of law and
66 1 the matter is entirely within one or more categories for which
66 2 the agency by rule has adopted this part. However, those
66 3 categories may include only the following:

66 4 1. A matter in which there is no disputed issue of
66 5 material fact.

66 6 2. A matter in which there is a disputed issue of material
66 7 fact, if the matter involves one or more of the following:

66 8 a. A monetary amount of not more than one thousand
66 9 dollars. In determining whether a matter involves only a
66 10 monetary amount of one thousand dollars or less, a presumption
66 11 arises that, if a claimant prevails on the merits, the
66 12 claimant will subsequently be qualified for and entitled to
66 13 the amount of any periodic payments claimed for the maximum
66 14 period allowed by law and that claimant may aggregate the
66 15 amount of those subsequent payments for purposes of
66 16 determining the monetary amount involved in the matter at
66 17 issue.

66 18 b. A disciplinary sanction against an inmate.

66 19 c. A disciplinary sanction against a student which does
66 20 not involve expulsion or suspension for more than ten days
66 21 from an educational institution.

66 22 d. A disciplinary sanction against a public employee which
66 23 does not involve discharge or suspension for more than ten
66 24 days from employment.

66 25 e. A disciplinary sanction against a licensee which does
66 26 not involve revocation, suspension, annulment, withdrawal, or
66 27 amendment of a license, or a reprimand or warning against an
66 28 occupational or professional licensee which may reasonably be
66 29 deemed to affect the economic or professional status or
66 30 reputation of that licensee.

66 31 Sec. 63. NEW SECTION. 17A.4402 CONFERENCE ADJUDICATIVE
66 32 HEARING - PROCEDURES.

66 33 The procedures of this chapter pertaining to formal
66 34 adjudicative hearings apply to a conference adjudicative
66 35 hearing, except to the following extent:

67 1 1. If a matter is initiated as a conference adjudicative
67 2 hearing, a prehearing conference shall not be held.

67 3 2. The provisions of section 17A.4210 do not apply to
67 4 conference adjudicative hearings insofar as those provisions
67 5 authorize the issuance and enforcement of subpoenas and
67 6 discovery orders, but do apply to conference adjudicative
67 7 hearings insofar as those provisions authorize the presiding
67 8 officer to issue protective orders at the request of any party
67 9 or upon the presiding officer's motion.

67 10 3. Section 17A.4211, subsections 1 and 2, do not apply
67 11 except for the following:

67 12 a. The presiding officer shall regulate the course of the
67 13 proceedings.

67 14 b. Only the parties may testify and present written
67 15 exhibits.

67 16 c. The parties may offer comments on the issues and cross
67 17 examine each other with respect to any factual disputes.

67 18 4. The provisions of section 17A.4215, subsection 4,
67 19 requiring findings of fact to be based exclusively on the
67 20 evidence of record and on matters officially noticed, and
67 21 section 17A.4221 do not apply; instead, the provisions of
67 22 section 17A.4506 apply.

67 23 Sec. 64. NEW SECTION. 17A.4403 CONFERENCE ADJUDICATIVE
67 24 HEARING - PROPOSED PROOF.

67 25 1. If the presiding officer has reason to believe that
67 26 material facts are in dispute, the presiding officer may
67 27 require any party to state the identity of the witnesses or
67 28 other sources through whom the party would propose to present
67 29 proof if the proceeding were converted to a formal
67 30 adjudicative hearing, but if disclosure of any fact,
67 31 allegation, or source is privileged or expressly prohibited by
67 32 any provision of law, the presiding officer may require the
67 33 party to indicate that confidential facts, allegations, or
67 34 sources are involved, but not to disclose the confidential
67 35 facts, allegations, or sources.

68 1 2. If a party has reason to believe that essential facts
68 2 must be obtained in order to permit an adequate presentation
68 3 of the case, the party may inform the presiding officer
68 4 regarding the general nature of the facts and the sources from
68 5 which the party would propose to obtain those facts if the
68 6 proceeding were converted to a formal adjudicative hearing.

68 7 PART 5

68 8 EMERGENCY AND SUMMARY ADJUDICATIVE PROCEEDINGS

68 9 Sec. 65. NEW SECTION. 17A.4501 EMERGENCY ADJUDICATIVE
68 10 PROCEEDINGS.

68 11 1. An agency may use emergency adjudicative proceedings in
68 12 a situation involving an immediate danger to the public
68 13 health, safety, or welfare requiring immediate agency action.

68 14 2. The agency may take only such action as is necessary to
68 15 prevent or avoid the immediate danger to the public health,
68 16 safety, or welfare that justifies use of emergency
68 17 adjudication.

68 18 3. The agency shall render an order, including a brief
68 19 statement of findings of fact, conclusions of law, and policy
68 20 reasons for the decision if it is an exercise of the agency's
68 21 discretion, to justify the determination of an immediate
68 22 danger and the agency's decision to take the specific action.

68 23 4. The agency shall give such notice as is practicable to
68 24 persons who are required to comply with the order. The order
68 25 is effective when rendered.

68 26 5. After issuing an order pursuant to this section, the
68 27 agency shall proceed as quickly as feasible to complete any
68 28 proceedings that would be required if the matter did not
68 29 involve an immediate danger.

68 30 6. The agency record consists of any documents regarding
68 31 the matter that were considered or prepared by the agency.
68 32 The agency shall maintain these documents as its official
68 33 record.

68 34 7. Unless otherwise required by a provision of law, the
68 35 agency record need not constitute the exclusive basis for
69 1 agency action in emergency adjudicative proceedings or for
69 2 judicial review thereof.

69 3 Sec. 66. NEW SECTION. 17A.4502 SUMMARY ADJUDICATIVE
69 4 PROCEEDINGS - APPLICABILITY.

69 5 An agency may use summary adjudicative proceedings if all
69 6 of the following apply:

69 7 1. The use of those proceedings in the circumstances does
69 8 not violate any provision of law.

69 9 2. The protection of the public interest does not require
69 10 the agency to give notice and an opportunity to participate to
69 11 persons other than the parties.

69 12 3. The matter is entirely within one or more categories
69 13 for which the agency by rule has adopted this section and
69 14 sections 17A.4503 to 17A.4506; however, those categories may
69 15 include only the following:

69 16 a. A monetary amount of not more than one hundred dollars.

69 17 b. A reprimand, warning, disciplinary report, or other
69 18 purely verbal sanction without continuing impact against an
69 19 inmate, student, or public employee.

69 20 c. The denial of an application after the applicant has
69 21 abandoned the application.

69 22 d. The denial of an application for admission to an
69 23 educational institution or for employment by an agency.
69 24 e. The denial, in whole or in part, of an application if
69 25 the applicant has an opportunity for administrative review in
69 26 accordance with section 17A.4504.

69 27 f. A matter that is resolved on the sole basis of
69 28 inspections, examinations, or tests.

69 29 g. The acquisition, leasing, or disposal of property or
69 30 the procurement of goods or services by contract.

69 31 Sec. 67. NEW SECTION. 17A.4503 SUMMARY ADJUDICATIVE
69 32 PROCEEDINGS - PROCEDURES.

69 33 1. The agency head, one or more members of the agency
69 34 head, one or more administrative law judges assigned by the
69 35 office of administrative hearings in accordance with section
70 1 17A.4301, or, unless prohibited by law, one or more other
70 2 persons designated by the agency head in the discretion of the
70 3 agency head, may be the presiding officer. Unless prohibited
70 4 by law, a person exercising authority over the matter is the
70 5 presiding officer.

70 6 2. If the proceeding involves a monetary matter or a
70 7 reprimand, warning, disciplinary report, or other sanction,
70 8 all of the following apply:

70 9 a. The presiding officer, before taking action, shall give
70 10 each party an opportunity to be informed of the agency's view
70 11 of the matter and to explain the party's view of the matter.

70 12 b. The presiding officer, at the time any unfavorable
70 13 action is taken, shall give each party a brief statement of
70 14 the reasons for the action.

70 15 3. An order rendered in a proceeding that involves a
70 16 monetary matter must be in writing. An order in any other
70 17 summary adjudicative proceeding may be oral or written.

70 18 4. The agency, by reasonable means, shall furnish to each
70 19 party notification of the order in a summary adjudicative
70 20 proceeding. Notification must at least include a statement of
70 21 the agency's action.

70 22 Sec. 68. NEW SECTION. 17A.4504 ADMINISTRATIVE REVIEW OF
70 23 SUMMARY ADJUDICATIVE PROCEEDINGS - APPLICABILITY.

70 24 Except to the extent prohibited by any provision of law, an
70 25 agency, on its own motion, may conduct an administrative
70 26 review of an order resulting from summary adjudicative
70 27 proceedings, and shall conduct this review upon the written or
70 28 oral request of a party if the agency receives the request
70 29 within ten days after furnishing notification under section
70 30 17A.4503, subsection 4.

70 31 Sec. 69. NEW SECTION. 17A.4505 ADMINISTRATIVE REVIEW OF
70 32 SUMMARY ADJUDICATIVE PROCEEDINGS - PROCEDURES.

70 33 Unless otherwise provided by statute:

70 34 1. An agency need not furnish notification of the pendency
70 35 of administrative review to any person who did not request the
71 1 review, but the agency shall not take any action on review
71 2 less favorable to any party than the original order without
71 3 giving that party notice and an opportunity to explain that
71 4 party's view of the matter.

71 5 2. The reviewing officer, in the discretion of the agency
71 6 head, may be any person who could have presided at the summary
71 7 adjudicative proceeding, but the reviewing officer must be one
71 8 who is authorized to grant appropriate relief upon review.

71 9 3. The reviewing officer shall give each party an
71 10 opportunity to explain the party's view of the matter unless
71 11 the party's view is apparent from the written materials in the
71 12 file submitted to the reviewing officer. The reviewing
71 13 officer shall make any inquiries necessary to ascertain
71 14 whether the proceeding must be converted to a conference
71 15 adjudicative hearing or a formal adjudicative hearing.

71 16 4. The reviewing officer may render an order disposing of
71 17 the proceeding in any manner that was available to the
71 18 presiding officer at the summary adjudicative proceeding or

71 19 the reviewing officer may remand the matter for further
71 20 proceedings, with or without conversion to a conference
71 21 adjudicative hearing or a formal adjudicative hearing.
71 22 5. If the order under review is or should have been in
71 23 writing, the order on review must be in writing, including a
71 24 brief statement of findings of fact, conclusions of law, and
71 25 policy reasons for the decision if it is an exercise of the
71 26 agency's discretion, to justify the order, and a notice of any
71 27 further available administrative review.
71 28 6. A request for administrative review is deemed to have
71 29 been denied if the reviewing officer does not dispose of the
71 30 matter or remand it for further proceedings within twenty days
71 31 after the request is submitted.

71 32 PART 6

71 33 CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDING RECORDS

71 34 Sec. 70. NEW SECTION. 17A.4601 AGENCY RECORD OF
71 35 CONFERENCE AND SUMMARY ADJUDICATIVE PROCEEDINGS AND
72 1 ADMINISTRATIVE REVIEW.

72 2 1. The agency record consists of any documents regarding
72 3 the matter that were submitted by a party to, or were
72 4 considered or prepared by the presiding officer for, that
72 5 conference or summary adjudicative proceeding or by the
72 6 presiding or reviewing officer for any subsequent agency
72 7 review. The agency shall maintain these documents as its
72 8 official record.

72 9 2. Unless otherwise required by a provision of law, the
72 10 agency record need not constitute the exclusive basis for
72 11 agency action in conference or summary adjudicative
72 12 proceedings or for judicial review thereof.

72 13 ARTICLE 5

72 14 JUDICIAL REVIEW AND CIVIL ENFORCEMENT

72 15 PART 1

72 16 JUDICIAL REVIEW

72 17 Sec. 71. NEW SECTION. 17A.5101 EXCLUSIVITY OF JUDICIAL
72 18 REVIEW PROVISIONS - RELATIONSHIP BETWEEN JUDICIAL REVIEW
72 19 PROVISIONS OF THIS CHAPTER AND ANCILLARY PROCEDURAL
72 20 REQUIREMENTS OF OTHER LAW AND SUPERIOR JUDICIAL REMEDIES.

72 21 Except as expressly provided otherwise by another statute
72 22 referring to this chapter by name or number, this chapter
72 23 establishes the exclusive means of judicial review of agency
72 24 action, except for any of the following:

72 25 1. The provisions of this chapter for judicial review do
72 26 not apply to litigation in which the sole issue is a claim for
72 27 money damages or compensation and the agency whose action is
72 28 at issue does not have statutory authority to determine the
72 29 claim.

72 30 2. Ancillary procedural matters, including intervention,
72 31 class actions, consolidation, joinder, severance, transfer,
72 32 protective orders, and other relief from disclosure of
72 33 privileged or confidential material, are governed, to the
72 34 extent not inconsistent with this chapter, by other applicable
72 35 law.

73 1 3. If the relief available under other sections of this
73 2 chapter is not equal or substantially equivalent to the relief
73 3 otherwise available under law, the relief otherwise available
73 4 and the related procedures supersede and supplement this
73 5 chapter to the extent necessary for their effectuation. The
73 6 applicable provisions of this chapter and other law must be
73 7 combined to govern a single proceeding or, if the court
73 8 orders, two or more separate proceedings, with or without
73 9 transfer to other courts, but no type of relief may be sought
73 10 in a combined proceeding after expiration of the time limit
73 11 for doing so.

73 12 Sec. 72. NEW SECTION. 17A.5102 FINAL AGENCY ACTION
73 13 REVIEWABLE.

73 14 1. A person who qualifies under this chapter regarding
73 15 standing in section 17A.5106, exhaustion of administrative

73 16 remedies in section 17A.5107, and time for filing the petition
73 17 for review in section 17A.5108, and other applicable
73 18 provisions of law regarding bond, compliance, and other
73 19 preconditions is entitled to judicial review of final agency
73 20 action, whether or not the person has sought judicial review
73 21 of any related nonfinal agency action.

73 22 2. For purposes of this section and section 17A.5103:

73 23 a. "Final agency action" means the whole or a part of any
73 24 agency action other than nonfinal agency action.

73 25 b. "Nonfinal agency action" means the whole or a part of
73 26 an agency determination, investigation, proceeding, hearing,
73 27 conference, or other process that the agency intends or is
73 28 reasonably believed to intend to be preliminary, preparatory,
73 29 procedural, or intermediate with regard to subsequent agency
73 30 action of that agency or another agency.

73 31 Sec. 73. NEW SECTION. 17A.5103 NONFINAL AGENCY ACTION
73 32 REVIEWABLE.

73 33 A person is entitled to judicial review of nonfinal agency
73 34 action only if all of the following apply:

73 35 1. It appears likely that the person will qualify under
74 1 section 17A.5102 for judicial review of the related final
74 2 agency action.

74 3 2. Postponement of judicial review would result in an
74 4 inadequate remedy or irreparable harm disproportionate to the
74 5 public benefit derived from postponement.

74 6 Sec. 74. NEW SECTION. 17A.5104 JURISDICTION - VENUE.

74 7 1. The district court shall conduct judicial review.

74 8 2. Venue shall be in the Polk county district court or the
74 9 district court for the county in which the petitioner resides
74 10 or has its principal place of business. When a proceeding for
74 11 judicial review has been commenced, a court may, in the
74 12 interest of justice, transfer the proceeding to the district
74 13 court for another county.

74 14 Sec. 75. NEW SECTION. 17A.5105 FORM OF ACTION - SERVICE
74 15 - CONTENTS OF PETITION.

74 16 Judicial review is initiated by filing a petition for
74 17 review in the appropriate district court. A petition may seek
74 18 any type of relief available under section 17A.5101,
74 19 subsection 3, and section 17A.5117.

74 20 Sec. 76. NEW SECTION. 17A.5106 STANDING.

74 21 1. The following persons have standing to obtain judicial
74 22 review of final or nonfinal agency action:

74 23 a. A person to whom the agency action is specifically
74 24 directed.

74 25 b. A person who was a party to the agency proceedings that
74 26 led to the agency action.

74 27 c. If the challenged agency action is a rule, a person
74 28 subject to that rule.

74 29 d. A person eligible for standing under another provision
74 30 of law.

74 31 e. A person otherwise aggrieved or adversely affected by
74 32 the agency action. For purposes of this paragraph, a person
74 33 does not have standing as one otherwise aggrieved or adversely
74 34 affected unless all of the following apply:

74 35 (1) The agency action has prejudiced or is likely to
75 1 prejudice that person.

75 2 (2) That person's asserted interests are among those that
75 3 the agency was required by law to consider when it engaged in
75 4 the agency action challenged.

75 5 (3) A judgment in favor of that person would substantially
75 6 eliminate or redress the prejudice to that person caused or
75 7 likely to be caused by the agency action.

75 8 2. The administrative rules review committee of the
75 9 general assembly, which is required to exercise general and
75 10 continuing oversight over administrative rules, may petition
75 11 for judicial review of any rule.

75 12 Sec. 77. NEW SECTION. 17A.5107 EXHAUSTION OF

75 13 ADMINISTRATIVE REMEDIES.

75 14 A person may file a petition for judicial review under this
75 15 chapter only after exhausting all administrative remedies
75 16 available within the agency whose action is being challenged
75 17 and within any other agency authorized to exercise
75 18 administrative review, except for any of the following:

75 19 1. A petitioner for judicial review of a rule need not
75 20 have participated in the rulemaking proceeding upon which that
75 21 rule is based, or have petitioned for its amendment or repeal.

75 22 2. A petitioner for judicial review need not exhaust
75 23 administrative remedies to the extent that this chapter or any
75 24 other statute states that exhaustion is not required.

75 25 3. The court may relieve a petitioner of the requirement
75 26 to exhaust any or all administrative remedies, to the extent
75 27 that the administrative remedies are inadequate, or requiring
75 28 their exhaustion would result in irreparable harm
75 29 disproportionate to the public benefit derived from requiring
75 30 exhaustion.

75 31 Sec. 78. NEW SECTION. 17A.5108 TIME FOR FILING PETITION
75 32 FOR REVIEW.

75 33 Subject to other requirements of this chapter or of another
75 34 statute:

75 35 1. A petition for judicial review of a rule may be filed
76 1 at any time, except as limited by section 17A.3113, subsection
76 2 2.

76 3 2. A petition for judicial review of an order is not
76 4 timely unless filed within thirty days after rendition of the
76 5 order, but the time is extended during the pendency of the
76 6 petitioner's timely attempts to exhaust administrative
76 7 remedies, if the attempts are not clearly frivolous or
76 8 repetitious.

76 9 3. A petition for judicial review of agency action other
76 10 than a rule or order is not timely unless filed within thirty
76 11 days after the agency action, but the time is extended if any
76 12 of the following apply:

76 13 a. During the pendency of the petitioner's timely attempts
76 14 to exhaust administrative remedies, if the attempts are not
76 15 clearly frivolous or repetitious.

76 16 b. During any period that the petitioner did not know and
76 17 was under no duty to discover, or did not know and was under a
76 18 duty to discover but could not reasonably have discovered,
76 19 that the agency had taken the action or that the agency action
76 20 had a sufficient effect to confer standing upon the petitioner
76 21 to obtain judicial review under this chapter.

76 22 Sec. 79. NEW SECTION. 17A.5109 PETITION FOR REVIEW -
76 23 FILING AND CONTENTS.

76 24 1. A petition for review must be filed with the clerk of
76 25 the district court and must name the agency as respondent.

76 26 2. A petition for review must set forth all of the
76 27 following:

76 28 a. The name and mailing address of the petitioner.

76 29 b. The name and mailing address of the agency whose action
76 30 is at issue.

76 31 c. Identification of the specific agency action at issue,
76 32 together with a duplicate copy, summary, or brief description
76 33 of the agency action.

76 34 d. Identification of persons who were parties in any
76 35 adjudicative proceedings that led to the agency action.

77 1 e. Facts to demonstrate that the petitioner is entitled to
77 2 obtain judicial review.

77 3 f. Facts on which venue is based.

77 4 g. The specific grounds on which relief is sought and the
77 5 petitioner's reasons for believing that relief should be
77 6 granted.

77 7 h. A request for relief, specifying the type and extent of
77 8 relief requested.

77 9 A petition for review that is in substantial compliance

77 10 with the requirements of this subsection shall not be
77 11 dismissed solely for failure to satisfy its requirements.

77 12 Sec. 80. NEW SECTION. 17A.5110 PETITION FOR REVIEW -
77 13 SERVICE AND NOTIFICATION - NOTICE OF INTERVENTION.

77 14 1. Within ten days after the filing of a petition for
77 15 judicial review of agency action, the petitioner shall serve a
77 16 file stamped copy of the petition upon the agency in the
77 17 manner provided by the rules of civil procedure for the
77 18 personal service of an original notice or shall mail a file
77 19 stamped copy of the petition to the agency by restricted
77 20 certified mail.

77 21 2. Within ten days after the filing of a petition for
77 22 judicial review of agency action in an adjudicative
77 23 proceeding, the petitioner shall also give notice of the
77 24 petition for review to each other party of record in that
77 25 adjudicative proceeding either by serving a file stamped copy
77 26 of the petition upon that party in the manner provided by the
77 27 rules of civil procedure for the personal service of an
77 28 original notice or by restricted certified mail.

77 29 3. The personal service or mailing required by this
77 30 section shall be jurisdictional and may be made on the party
77 31 or the party's attorney of record in the proceeding before the
77 32 agency. A mailing shall be addressed to the parties or their
77 33 attorneys of record at their last known mailing address.
77 34 Proof of mailing shall be by the return receipt from the
77 35 restricted certified mail.

78 1 4. Any party of record in an adjudicative proceeding
78 2 before an agency who wishes to intervene and participate in
78 3 the judicial review proceeding must file an appearance in the
78 4 court indicating that intention within forty-five days from
78 5 the date the petition is filed.

78 6 Sec. 81. NEW SECTION. 17A.5111 STAY AND OTHER TEMPORARY
78 7 REMEDIES PENDING FINAL DISPOSITION.

78 8 1. Unless precluded by law, the agency may grant a stay on
78 9 appropriate terms or other temporary remedies during the
78 10 pendency of judicial review.

78 11 2. A party may file a motion in the reviewing court,
78 12 during the pendency of judicial review, seeking interlocutory
78 13 review of the agency's action on an application for stay or
78 14 other temporary remedies.

78 15 3. If the agency has found that its action on an
78 16 application for stay or other temporary remedies is justified
78 17 to protect against a substantial threat to the public health,
78 18 safety, or welfare, the court may grant relief only upon a
78 19 finding that all of the following apply:

78 20 a. The applicant is likely to prevail when the court
78 21 finally disposes of the matter.

78 22 b. Without relief the applicant will suffer irreparable
78 23 injury.

78 24 c. The grant of relief to the applicant will not
78 25 substantially harm other parties to the proceedings.

78 26 d. The type of threat to the public health, safety, or
78 27 welfare relied on by the agency is not sufficiently serious to
78 28 justify the agency's action in the circumstances.

78 29 4. If subsection 3 does not apply, the court shall grant
78 30 relief if it finds that the agency's action on the application
78 31 for stay or other temporary remedies was unreasonable in the
78 32 circumstances.

78 33 5. If the court determines that relief should be granted
78 34 from the agency's action on an application for stay or other
78 35 temporary remedies, the court may remand the matter to the
79 1 agency with directions to deny a stay, to grant a stay on
79 2 appropriate terms, or to grant other temporary remedies, or
79 3 the court may issue an order denying a stay, granting a stay
79 4 on appropriate terms, or granting other temporary remedies.

79 5 Sec. 82. NEW SECTION. 17A.5112 LIMITATION ON NEW ISSUES.

79 6 A person may obtain judicial review of an issue that was

79 7 not raised before the agency, only to the extent of any of the
79 8 following:

79 9 1. The agency did not have authority to grant an adequate
79 10 remedy based on a determination of the issue involved because
79 11 the issue or remedy was not within the jurisdiction of the
79 12 agency.

79 13 2. The person did not know and was under no duty to
79 14 discover, or did not know and was under a duty to discover but
79 15 could not reasonably have discovered, facts giving rise to the
79 16 issue.

79 17 3. The agency action subject to judicial review is a rule
79 18 and the person is challenging only the validity of that rule
79 19 and has not been a party in adjudicative proceedings which
79 20 provided an adequate opportunity to raise the issue.

79 21 4. The agency action subject to judicial review is an
79 22 order and the person was not notified of the adjudicative
79 23 proceeding in compliance with any provision of law or was
79 24 notified but was not permitted to participate in that
79 25 adjudicative proceeding.

79 26 5. The interests of justice would be served by judicial
79 27 resolution of an issue arising from any of the following:

79 28 a. A change in controlling law occurring after the agency
79 29 action.

79 30 b. Agency action occurring after the person exhausted the
79 31 last feasible opportunity for seeking relief from the agency.

79 32 Sec. 83. NEW SECTION. 17A.5113 JUDICIAL REVIEW OF FACTS
79 33 CONFINED TO RECORD FOR JUDICIAL REVIEW AND ADDITIONAL EVIDENCE
79 34 TAKEN PURSUANT TO THIS CHAPTER.

79 35 Judicial review of disputed issues of fact must be confined
80 1 to the agency record for judicial review as defined in this
80 2 chapter, supplemented by additional evidence taken pursuant to
80 3 this chapter.

80 4 Sec. 84. NEW SECTION. 17A.5114 NEW EVIDENCE TAKEN BY
80 5 COURT OR AGENCY BEFORE FINAL DISPOSITION.

80 6 1. The court may receive evidence, in addition to that
80 7 contained in the agency record for judicial review, only if it
80 8 relates to the validity of the agency action at the time it
80 9 was taken and is needed to decide disputed issues regarding
80 10 any of the following:

80 11 a. Improper constitution as a decision-making body, or
80 12 improper motive or grounds for disqualification, of those
80 13 taking the agency action.

80 14 b. Unlawfulness of procedure or of decision-making
80 15 process.

80 16 c. Any material fact that was not required by provision of
80 17 law to be determined exclusively on an agency record of a type
80 18 reasonably suitable for judicial review.

80 19 2. The court may remand a matter to the agency, before
80 20 final disposition of a petition for review, with directions
80 21 that the agency conduct fact-finding and other proceedings the
80 22 court considers necessary and that the agency take such
80 23 further action on the basis thereof as the court directs, if
80 24 any of the following apply:

80 25 a. The agency was required by this chapter or any other
80 26 provision of law to base its action exclusively on a record of
80 27 a type reasonably suitable for judicial review, but the agency
80 28 failed to prepare or preserve an adequate record.

80 29 b. The court finds that all of the following apply:

80 30 (1) New evidence has become available that relates to the
80 31 validity of the agency action at the time it was taken, that
80 32 one or more of the parties did not know and was under no duty
80 33 to discover, or did not know and was under a duty to discover
80 34 but could not reasonably have discovered, until after the
80 35 agency action.

81 1 (2) The interests of justice would be served by remand to
81 2 the agency.

81 3 c. The agency improperly excluded or omitted evidence from

81 4 the record.

81 5 d. A relevant provision of law changed after the agency
81 6 action and the court determines that the new provision may
81 7 control the outcome.

81 8 Sec. 85. NEW SECTION. 17A.5115 AGENCY RECORD FOR
81 9 JUDICIAL REVIEW - CONTENTS, PREPARATION, TRANSMITTAL, COST.

81 10 1. Within thirty days after service of the petition, or
81 11 within further time allowed by the court or by other provision
81 12 of law, the agency shall transmit to the court the original or
81 13 a certified copy of the agency record for judicial review of
81 14 the agency action, consisting of any agency documents
81 15 expressing the agency action, other documents identified by
81 16 the agency as having been considered by it before its action
81 17 and used as a basis for its action, and any other material
81 18 described in this chapter as the agency record for the type of
81 19 agency action at issue, subject to the provisions of this
81 20 section.

81 21 2. If part of the record has been preserved without a
81 22 transcript, the agency shall prepare a transcript for
81 23 inclusion in the record transmitted to the court, except for
81 24 portions that the parties stipulate to omit in accordance with
81 25 subsection 4.

81 26 3. The agency may charge the petitioner with the
81 27 reasonable cost of preparing any necessary copies and
81 28 transcripts for transmittal to the court. A failure by the
81 29 petitioner to pay any of this cost to the agency does not
81 30 relieve the agency from the responsibility for timely
81 31 preparation of the record and transmittal to the court.

81 32 4. By stipulation of all parties to the review
81 33 proceedings, the record may be shortened, summarized, or
81 34 organized.

81 35 5. The court may tax the cost of preparing transcripts and
82 1 copies for the record in accordance with any of the following:

82 2 a. Against a party who unreasonably refuses to stipulate
82 3 to shorten, summarize, or organize the record.

82 4 b. As provided by section 17A.5117.

82 5 c. In accordance with any other provision of law.

82 6 6. Additions to the record pursuant to section 17A.5114
82 7 must be made as ordered by the court.

82 8 7. The court may require or permit subsequent corrections
82 9 or additions to the record.

82 10 Sec. 86. NEW SECTION. 17A.5116 SCOPE OF REVIEW -
82 11 GROUNDS FOR INVALIDITY.

82 12 1. Except to the extent that this chapter provides
82 13 otherwise, in suits for judicial review of agency action all
82 14 of the following apply:

82 15 a. The burden of demonstrating the required prejudice and
82 16 the invalidity of agency action is on the party asserting
82 17 invalidity.

82 18 b. The validity of agency action must be determined in
82 19 accordance with the standards of review provided in this
82 20 section, as applied to the agency action at the time that
82 21 action was taken.

82 22 2. The court shall make a separate and distinct ruling on
82 23 each material issue on which the court's decision is based.

82 24 3. The court shall grant relief from agency action if it
82 25 determines that substantial rights of the person seeking
82 26 judicial relief have been prejudiced because the agency action
82 27 is any of the following:

82 28 a. Unconstitutional on its face or as applied or is based
82 29 upon a provision of law that is unconstitutional on its face
82 30 or as applied.

82 31 b. Beyond the authority conferred upon the agency by any
82 32 provision of law or in violation of any provision of law.

82 33 c. Based upon an erroneous interpretation of a provision
82 34 of law whose interpretation has not clearly been delegated to
82 35 the discretion of the agency.

83 1 d. Based upon a procedure or decision-making process
83 2 prohibited by law or was taken without following the
83 3 prescribed procedure or decision-making process.

83 4 e. The product of decision making undertaken by persons
83 5 who were improperly constituted as a decision-making body,
83 6 were motivated by an improper purpose, or were subject to
83 7 disqualification.

83 8 f. Based upon a determination of fact clearly delegated to
83 9 the discretion of the agency that is not supported by
83 10 substantial evidence in the record before the court when that
83 11 record is viewed as a whole. For purposes of this paragraph
83 12 the following terms have the following meanings:

83 13 (1) "Substantial evidence" means the quantity and quality
83 14 of evidence that would be deemed sufficient by a neutral,
83 15 detached, and reasonable person, to establish the fact at
83 16 issue when the consequences resulting from the establishment
83 17 of that fact are understood to be serious and of great
83 18 importance.

83 19 (2) "Record before the court" means the agency record for
83 20 judicial review, as defined by this chapter, supplemented by
83 21 any additional evidence received by the court under the
83 22 provisions of this chapter.

83 23 (3) "When that record is viewed as a whole" means that the
83 24 adequacy of the evidence in the record before the court to
83 25 support a particular finding of fact must be judged in light
83 26 of all the relevant evidence in the record that detracts from
83 27 that finding as well as all of the relevant evidence that
83 28 supports it, including any determinations of veracity by the
83 29 presiding officer who personally observed the demeanor of the
83 30 witnesses and the agency's explanation of why the evidence in
83 31 the record supports its finding of fact and why the evidence
83 32 in the record that is contrary to its finding does not
83 33 preclude that finding.

83 34 g. Action other than a rule that is inconsistent with a
83 35 rule of the agency.

84 1 h. Action other than a rule that is inconsistent with the
84 2 agency's prior practice or precedents, unless the agency has
84 3 justified that inconsistency by stating credible reasons
84 4 sufficient to indicate a fair and rational basis for the
84 5 inconsistency.

84 6 i. The product of reasoning that is so illogical as to
84 7 render it wholly irrational.

84 8 j. The product of a decision-making process in which the
84 9 agency did not consider a relevant and important matter
84 10 relating to the propriety or desirability of the action in
84 11 question that a rational decision maker in similar
84 12 circumstances would have considered prior to taking that
84 13 action.

84 14 k. Not required by law and its negative impact on the
84 15 private rights affected is so grossly disproportionate to the
84 16 benefits accruing to the public interest from that action that
84 17 it must necessarily be deemed to lack any foundation in
84 18 rational agency policy.

84 19 l. Based upon an irrational, illogical, or wholly
84 20 unjustifiable interpretation of a provision of law whose
84 21 interpretation has clearly been delegated to the discretion of
84 22 the agency.

84 23 m. Based upon an irrational, illogical, or wholly
84 24 unjustifiable application of law to fact that has clearly been
84 25 delegated to the discretion of the agency.

84 26 n. Otherwise unreasonable, arbitrary, capricious, or an
84 27 abuse of discretion.

84 28 In making the determinations required by this subsection,
84 29 the court is not required to give any deference to the view of
84 30 the agency with respect to whether particular matters have
84 31 been delegated to the discretion of the agency and with
84 32 respect to the validity of agency action relating to matters

84 33 that have not been delegated to the discretion of the agency.
84 34 However, the court must give appropriate deference to the view
84 35 of the agency with respect to the validity of agency action
85 1 relating to matters that have been delegated to the discretion
85 2 of the agency.

85 3 Sec. 87. NEW SECTION. 17A.5117 TYPE OF RELIEF.

85 4 1. The court may award damages or compensation only to the
85 5 extent expressly authorized by another provision of law.

85 6 2. The court may grant other appropriate relief, whether
85 7 mandatory, injunctive, or declaratory; preliminary or final;
85 8 temporary or permanent; equitable or legal. In granting
85 9 relief, the court may order agency action required by law,
85 10 order agency exercise of discretion required by law, set aside
85 11 or modify agency action, enjoin or stay the effectiveness of
85 12 agency action, remand the matter for further proceedings,
85 13 render a declaratory judgment, or take any other action that
85 14 is authorized and appropriate.

85 15 3. The court may also grant necessary ancillary relief to
85 16 redress the effects of agency action wrongfully taken or
85 17 withheld, including the taxation of costs, but the court may
85 18 award attorney's fees or witness fees only to the extent
85 19 expressly authorized by other law.

85 20 4. If the court sets aside or modifies agency action or
85 21 remands the matter to the agency for further proceedings, the
85 22 court may make any interlocutory order it finds necessary to
85 23 preserve the interests of the parties and the public pending
85 24 further proceedings or agency action.

85 25 Sec. 88. NEW SECTION. 17A.5118 REVIEW BY HIGHER COURT.

85 26 Final decisions of the district court on petitions for
85 27 review of agency action are reviewable by appeal to the
85 28 supreme court as in other civil cases although the appeal may
85 29 be taken regardless of the amount involved. On appeal, the
85 30 supreme court, or court of appeals if the case is referred by
85 31 the supreme court to the court of appeals, shall reverse,
85 32 modify, or vacate the decision of the district court only if
85 33 the reviewing court determines that the district court applied
85 34 an incorrect legal standard or unreasonably applied a correct
85 35 legal standard.

86 1 PART 2

86 2 CIVIL ENFORCEMENT

86 3 Sec. 89. NEW SECTION. 17A.5201 PETITION BY AGENCY FOR
86 4 CIVIL ENFORCEMENT OF RULE OR ORDER.

86 5 1. In addition to other remedies provided by law, an
86 6 agency may seek enforcement of its rule or order by filing a
86 7 petition for civil enforcement in the district court.

86 8 2. The petition must name, as defendants, each alleged
86 9 violator against whom the agency seeks to obtain civil
86 10 enforcement.

86 11 3. Venue shall be in the district court for the county in
86 12 which defendant resides or has its principal place of
86 13 business, or with the consent of the defendant, in the Polk
86 14 County district court. When a proceeding for enforcement has
86 15 been commenced, the court may, in the interest of justice,
86 16 transfer the proceeding to a district court for another
86 17 county.

86 18 4. A petition for civil enforcement filed by an agency may
86 19 request, and the court may grant, declaratory relief,
86 20 temporary or permanent injunctive relief, any other civil
86 21 remedy provided by law, or any combination of the foregoing.

86 22 Sec. 90. NEW SECTION. 17A.5202 PETITION BY QUALIFIED
86 23 PERSON FOR CIVIL ENFORCEMENT OF AGENCY'S ORDER.

86 24 1. Any person who would qualify under this chapter as
86 25 having standing to obtain judicial review of an agency's
86 26 failure to enforce its order may file a petition for civil
86 27 enforcement of that order, but the action shall not be
86 28 commenced until or under any of the following circumstances:

86 29 a. Until at least sixty days after the petitioner has

86 30 given notice of the alleged violation and of the petitioner's
86 31 intent to seek civil enforcement to the agency head concerned,
86 32 to the attorney general, and to each alleged violator against
86 33 whom the petitioner seeks civil enforcement.

86 34 b. If the agency has filed and is diligently prosecuting a
86 35 petition for civil enforcement of the same order against the
87 1 same defendant.

87 2 c. If a petition for review of the same order has been
87 3 filed and is pending in court.

87 4 2. The petition must name, as defendants, the agency whose
87 5 order is sought to be enforced and each alleged violator
87 6 against whom the petitioner seeks civil enforcement.

87 7 3. The agency whose order is sought to be enforced may
87 8 move to dismiss on the grounds that the petition fails to
87 9 qualify under this section or that enforcement would be
87 10 contrary to the policy of the agency. The court shall grant
87 11 the motion to dismiss unless the petitioner demonstrates that
87 12 the petition qualifies under this section and the agency's
87 13 failure to enforce its order is based on an exercise of
87 14 discretion that is improper on one or more of the grounds
87 15 provided in section 17A.5116, subsection 3, paragraph "h".

87 16 4. Except to the extent expressly authorized by any
87 17 provision of law, a petition for civil enforcement filed under
87 18 this section shall not request, and the court shall not grant,
87 19 any monetary payment apart from taxable costs.

87 20 Sec. 91. NEW SECTION. 17A.5203 DEFENSES - LIMITATION ON
87 21 NEW ISSUES AND NEW EVIDENCE.

87 22 A defendant may assert, in a proceeding for civil
87 23 enforcement any of the following:

87 24 1. That the rule or order sought to be enforced is invalid
87 25 on any of the grounds stated in section 17A.5116. If that
87 26 defense is raised, the court may consider issues and receive
87 27 evidence only within the limitations provided by sections
87 28 17A.5112, 17A.5113, and 17A.5114.

87 29 2. Any of the following defenses on which the court, to
87 30 the extent necessary for the determination of the matter, may
87 31 consider new issues or take new evidence:

87 32 a. The rule or order does not apply to the party.

87 33 b. The party has not violated the rule or order.

87 34 c. The party has violated the rule or order but has
87 35 subsequently complied, but a party who establishes this
88 1 defense is not necessarily relieved from any sanction provided
88 2 by law for past violations.

88 3 d. Any other defense allowed by law.

88 4 Sec. 92. NEW SECTION. 17A.5204 INCORPORATION OF CERTAIN
88 5 PROVISIONS ON JUDICIAL REVIEW.

88 6 Proceedings for civil enforcement are governed by section
88 7 17A.5101, subsection 2, and section 17A.5115 concerning
88 8 judicial review, as modified where necessary to adapt them to
88 9 those proceedings.

88 10 Sec. 93. NEW SECTION. 17A.5205 REVIEW BY HIGHER COURT.

88 11 Final decisions of the district court on petitions for
88 12 civil enforcement of agency action are reviewable by appeal to
88 13 the supreme court as in other civil cases, although the appeal
88 14 may be taken regardless of the amount involved. On appeal,
88 15 the supreme court, or court of appeals if the case is referred
88 16 by the supreme court to the court of appeals, shall reverse,
88 17 modify, or vacate the decision of the district court only if
88 18 the reviewing court determines that the district court applied
88 19 an incorrect legal standard or unreasonably applied a correct
88 20 legal standard.

88 21 Sec. 94. Section [2B.17](#), subsection 4, Code 1995, is
88 22 amended to read as follows:

88 23 4. The Iowa administrative code and the Iowa
88 24 administrative bulletin shall be cited as provided in section

88 25

~~17A.6~~

~~17A.2101.~~

88 26 Sec. 95. Section [2C.9](#), subsection 1, Code 1995, is amended
88 27 to read as follows:

88 28 1. Investigate, on complaint or on the citizens' aide's
88 29 own motion, any administrative action of any agency, without
88 30 regard to the finality of the administrative action, except
88 31 that the citizens' aide shall not investigate the complaint of
88 32 an employee of an agency in regard to that employee's
88 33 employment relationship with the agency. A communication or
88 34 receipt of information made pursuant to the powers prescribed
88 35 in this chapter shall not be considered an ex parte
89 1 communication as described in the provisions of section

~~17A.17~~

~~-~~

89 2 [17A.4213](#).

89 3 Sec. 96. Section [10A.601](#), subsection 7, Code 1995, is
89 4 amended to read as follows:

89 5 7. An application for

~~rehearing~~

~~- reconsideration~~ before the

89 6 appeal board shall be filed pursuant to section

~~17A.16~~

~~-~~

89 7 [17A.4218](#), unless otherwise provided in chapter 19A, 80, 88,
89 8 89A, 91C, 96, or 97B. A petition for judicial review of a
89 9 decision of the appeal board shall be filed pursuant to
89 10

~~section 17A.19~~

~~- the provisions for judicial review in chapter~~

89 11 [17A, article 5](#). The appeal board may be represented in any
89 12 such judicial review by an attorney who is a regular salaried
89 13 employee of the appeal board or who has been designated by the
89 14 appeal board for that purpose, or at the appeal board's
89 15 request, by the attorney general. Notwithstanding the
89 16 petitioner's residency requirement in section

~~17A.19,~~

~~-~~

89 17

~~subsection 2~~

~~- 17A.5104~~, a petition for judicial review may be

89 18 filed in the district court of the county in which the
89 19 petitioner was last employed or resides, provided that if the
89 20 petitioner does not reside in this state, the action shall be
89 21 brought in the district court of Polk county, Iowa, and any
89 22 other party to the proceeding before the appeal board shall be
89 23 named in the petition. Notwithstanding the thirty-day
89 24 requirement in section

~~17A.19, subsection 6~~

~~- 17A.5115~~, the

89 25 appeal board shall, within sixty days after filing of the
89 26 petition for judicial review or within a longer period of time
89 27 allowed by the court, transmit to the reviewing court the
89 28 original or a certified copy of the entire records of a
89 29 contested case. The appeal board may also certify to the
89 30 court, questions of law involved in any decision by the appeal
89 31 board. Petitions for judicial review and the questions so
89 32 certified shall be given precedence over all other civil cases
89 33 except cases arising under the workers' compensation law of
89 34 this state. No bond shall be required for entering an appeal

89 35 from any final order, judgment, or decree of the district
90 1 court to the supreme court.
90 2 Sec. 97. Section [21.6](#), subsection 1, Code 1995, is amended
90 3 to read as follows:
90 4 1. The remedies provided by this section against state
90 5 governmental bodies shall be in addition to those provided by
90 6 section

~~17A.19~~

- [17A.5117](#). Any aggrieved person, taxpayer to,
90 7 or citizen of, the state of Iowa, or the attorney general or
90 8 county attorney, may seek judicial enforcement of the
90 9 requirements of this chapter. Suits to enforce this chapter
90 10 shall be brought in the district court for the county in which
90 11 the governmental body has its principal place of business.
90 12 Sec. 98. Section 22.7, subsection 15, Code Supplement
90 13 1995, is amended to read as follows:
90 14 15. Information concerning the procedures to be used to
90 15 control disturbances at adult correctional institutions. Such
90 16 information shall also be exempt from public inspection under
90 17

~~section 17A.3~~

- [sections 17A.2101 and 17A.2102](#). As used in this
90 18 subsection disturbance means a riot or a condition that can
90 19 reasonably be expected to cause a riot.
90 20 Sec. 99. Section 22.8, subsection 4, paragraph f, Code
90 21 1995, is amended to read as follows:
90 22 f. The rights and remedies provided by this section are in
90 23 addition to any rights and remedies provided by

~~section 17A.19~~

- [chapter 17A, article 5](#).
90 24 [chapter 17A, article 5](#).
90 25 Sec. 100. Section [22.9](#), unnumbered paragraph 2, Code 1995,
90 26 is amended to read as follows:
90 27 An agency within the meaning of section

~~17A.2, subsection 1~~

- [17A.1102](#) shall adopt as a rule, in each situation where this
90 28 [17A.1102](#) shall adopt as a rule, in each situation where this
90 29 section is believed applicable, its determination identifying
90 30 those particular provisions of this chapter that must be
90 31 waived in the circumstances to prevent the denial of federal
90 32 funds, services, or information.
90 33 Sec. 101. Section [22.10](#), subsection 1, Code 1995, is
90 34 amended to read as follows:
90 35 1. The rights and remedies provided by this section are in
91 1 addition to any rights and remedies provided by

~~section 17A.19~~

- [chapter 17A, article 5](#). Any aggrieved person, any taxpayer to
91 2 [chapter 17A, article 5](#). Any aggrieved person, any taxpayer to
91 3 or citizen of the state of Iowa, or the attorney general or
91 4 any county attorney, may seek judicial enforcement of the
91 5 requirements of this chapter in an action brought against the
91 6 lawful custodian and any other persons who would be
91 7 appropriate defendants under the circumstances. Suits to
91 8 enforce this chapter shall be brought in the district court
91 9 for the county in which the lawful custodian has its principal
91 10 place of business.
91 11 Sec. 102. Section 68B.2, subsection 13, paragraph b,
91 12 subparagraph (8), Code 1995, is amended to read as follows:
91 13 (8) Persons whose activities are limited to submitting
91 14 data, views, or arguments in writing, or requesting an
91 15 opportunity to make an oral presentation under section

~~17A.4,~~

91 16

~~subsection 1~~

~~17A.3104.~~

91 17 Sec. 103. Section [68B.31](#), subsection 8, Code 1995, is
91 18 amended to read as follows:

91 19 8. If a hearing on the complaint is ordered the ethics
91 20 committee shall receive all admissible evidence, determine any
91 21 factual or legal issues presented during the hearing, and make
91 22 findings of fact based upon evidence received. Hearings shall
91 23 be conducted in the manner prescribed for adjudicative
91 24 proceedings in

~~section 17A.12~~

~~chapter 17A, article 4.~~ The

91 25 rules of evidence applicable under section

~~17A.14~~

~~17A.4212~~

91 26 shall also apply in hearings before the ethics committee.
91 27 Clear and convincing evidence shall be required to support a
91 28 finding that the member of the general assembly or lobbyist
91 29 before the general assembly has committed a violation of this
91 30 chapter. parties to a complaint may, subject to the approval
91 31 of the ethics committee, negotiate for settlement of disputes
91 32 that are before the ethics committee. Terms of any negotiated
91 33 settlements shall be publicly recorded. If a complaint is
91 34 filed or initiated less than ninety days before the election
91 35 for a state office, for which the person named in the
92 1 complaint is the incumbent officeholder, the ethics committee
92 2 shall, if possible, set the hearing at the earliest available
92 3 date so as to allow the issue to be resolved before the
92 4 election. An extension of time for a hearing may be granted
92 5 when both parties mutually agree on an alternate date for the
92 6 hearing. The ethics committee shall make every effort to hear
92 7 all ethics complaints within three months of the date that the
92 8 complaints are filed. However, after three months from the
92 9 date of the filing of the complaint, extensions of time for
92 10 purposes of preparing for hearing may only be granted by the
92 11 ethics committee when the party charged in the complaint with
92 12 the ethics violation consents to an extension. If the party
92 13 charged does not consent to an extension, the ethics committee
92 14 shall not grant any extensions of time for preparation prior
92 15 to hearing. All complaints alleging a violation of this
92 16 chapter or the code of ethics shall be heard within nine
92 17 months of the filing of the complaint. Final dispositions of
92 18 violations, which the ethics committee has found to have been
92 19 established by clear and convincing evidence, shall be made
92 20 within thirty days of the conclusion of the hearing on the
92 21 complaint.

92 22 Sec. 104. Section [68B.34](#), Code 1995, is amended to read as
92 23 follows:

92 24 68B.34 INVESTIGATION BY INDEPENDENT SPECIAL COUNSEL -
92 25 PROBABLE CAUSE.

92 26 The purpose of an investigation by the independent special
92 27 counsel is to determine whether there is probable cause to
92 28 proceed with an adjudicatory hearing on the matter. In
92 29 conducting investigations and holding hearings, the
92 30 independent special counsel may require by subpoena the
92 31 attendance and testimony of witnesses and may subpoena books,
92 32 papers, records, and any other real evidence relating to the
92 33 matter before the independent special counsel. The
92 34 independent special counsel shall have the additional
92 35 authority provided in section

~~17A.13~~

- 17A.4210. If the

93 1 independent special counsel determines at any stage in the
93 2 proceedings that take place prior to hearing that the
93 3 complaint is without merit, the independent special counsel
93 4 shall report that determination to the appropriate ethics
93 5 committee and the complaint shall be dismissed and the
93 6 complainant and the party charged shall be notified. If,
93 7 after investigation, the independent special counsel
93 8 determines evidence exists which, if proven, would support a
93 9 finding of a violation of this chapter, a finding of probable
93 10 cause shall be made and reported to the ethics committee, and
93 11 a hearing shall be ordered by the ethics committee as provided
93 12 in section 68B.31. Independent special counsel investigations
93 13 are not meetings of a governmental body within the meaning of
93 14 chapter 21, and records and information obtained by
93 15 independent special counsel during investigations are
93 16 confidential until disclosed to a legislative ethics committee
93 17 under section 68B.31.

93 18 Sec. 105. Section 80A.17, subsection 1, unnumbered
93 19 paragraphs 2 and 3, Code 1995, are amended to read as follows:
93 20 Pursuant to section

~~17A.19, subsection 6~~

- 17A.5115, the

93 21 department, upon an appeal by the licensee of the decision by
93 22 the department shall transmit the entire record of the
93 23 contested case to the reviewing court.
93 24 Notwithstanding section

~~17A.19, subsection 6~~

- 17A.5115, if a

93 25 waiver of privilege has been involuntary and evidence has been
93 26 received at a disciplinary hearing, the court shall order
93 27 withheld the identity of the individual whose privilege was
93 28 waived.

93 29 Sec. 106. Section 86.17, subsection 1, Code 1995, is
93 30 amended to read as follows:

93 31 1. A deputy industrial commissioner may preside over any
93 32

~~contested case~~

- adjudicative proceeding brought under this

93 33 chapter, or chapter 85 or 85A in the manner provided by
93 34 chapter 17A. The deputy commissioner or the commissioner may
93 35 make such inquiries and investigation in

~~contested case~~

-
94 1 adjudicative proceedings as shall be deemed necessary,
94 2 consistent with the provisions of section

~~17A.17~~

- 17A.4213.

94 3 Sec. 107. Section 86.19, subsection 2, Code 1995, is
94 4 amended to read as follows:
94 5 2. Notwithstanding the requirements of section

~~17A.12~~

-
94 6 17A.4211, subsection

~~7~~

- 4, a certified shorthand reporter,
94 7 appointed by the presiding officer in

~~a contested case~~

- an

94 8 adjudicative proceeding or by the industrial commissioner in
94 9 an appeal proceeding, may maintain and thus have the
94 10 responsibility for the recording or stenographic notes for the
94 11 period required by section

~~17A.12~~

- 17A.4211, subsection

~~7~~

- 4.

94 12 Sec. 108. Section 86.24, subsections 2 and 3, Code 1995,
94 13 are amended to read as follows:
94 14 2. In addition to the provisions of

~~section 17A.15~~

-

94 15 sections 17A.4215 and 17A.4216, the industrial commissioner
94 16 may affirm, modify, or reverse the decision of a deputy
94 17 commissioner or the commissioner may remand the decision to
94 18 the deputy commissioner for further proceedings.
94 19 3. In addition to the provisions of

~~section 17A.15~~

-

94 20 sections 17A.4215 and 17A.4216, the industrial commissioner,
94 21 on appeal, may limit the presentation of evidence as provided
94 22 by rule.

94 23 Sec. 109. Section 86.42, Code 1995, is amended to read as
94 24 follows:

94 25 86.42 JUDGMENT BY DISTRICT COURT ON AWARD.

94 26 Any party in interest may present a certified copy of an
94 27 order or decision of the commissioner, from which a timely
94 28 petition for judicial review has not been filed or if judicial
94 29 review has been filed, which has not had execution or
94 30 enforcement stayed as provided in section

~~17A.19, subsection 5~~

-

94 31 17A.5111, or an order or decision of a deputy commissioner
94 32 from which a timely appeal has not been taken within the
94 33 agency and which has become final by the passage of time as
94 34 provided by rule and section

~~17A.15~~

- 17A.4220, or an agreement

94 35 for settlement approved by the commissioner, and all papers in
95 1 connection therewith, to the district court where judicial
95 2 review of the agency action may be commenced. The court shall
95 3 render a decree or judgment and cause the clerk to notify the
95 4 parties. The decree or judgment, in the absence of a petition
95 5 for judicial review or if judicial review has been commenced,
95 6 in the absence of a stay of execution or enforcement of the
95 7 decision or order of the industrial commissioner, or in the
95 8 absence of an act of any party which prevents a decision of a
95 9 deputy industrial commissioner from becoming final, has the
95 10 same effect and in all proceedings in relation thereto is the
95 11 same as though rendered in a suit duly heard and determined by
95 12 the court.

95 13 Sec. 110. Section 99A.6, unnumbered paragraph 2, Code
95 14 1995, is amended to read as follows:

95 15 Judicial review of actions of the issuing authorities may
95 16 be sought in accordance with the terms of the Iowa
95 17 administrative procedure Act. Municipalities acting as
95 18 issuing authorities shall be deemed state agencies solely for
95 19 the purposes of bringing their actions under this chapter
95 20 within the terms

~~of section 17A.19~~

~~for judicial review in~~

95 21 chapter 17A, article 5. If the licensee has not filed a
95 22 petition for judicial review in district court, revocation
95 23 shall date from the thirty-first day following the date of the
95 24 order of the issuing authority. If the licensee has filed a
95 25 petition for judicial review, revocation shall date from the
95 26 thirty-first day following entry of the order of the district
95 27 court, if action by the district court is adverse to the
95 28 licensee.

95 29 Sec. 111. Section 123.37, unnumbered paragraph 2, Code
95 30 1995, is amended to read as follows:

95 31 The administrator may compromise and settle doubtful and
95 32 disputed claims for taxes imposed under this chapter or for
95 33 taxes of doubtful collectibility, notwithstanding section
95 34 7D.9. The administrator may enter into informal settlements
95 35 as permitted pursuant to section

~~17A.10~~

~~17A.1106, to~~

96 1 compromise and settle doubtful and disputed claims for taxes
96 2 imposed under this chapter. The administrator may make a
96 3 claim under a licensee's or permittee's penal bond for taxes
96 4 of doubtful collectibility. Whenever a compromise or
96 5 settlement is made, the administrator shall make a complete
96 6 record of the case showing the tax assessed, reports and
96 7 audits, if any, the licensee's or permittee's grounds for
96 8 dispute or contest, together with all evidence of the dispute
96 9 or contest, and the amounts, conditions, and settlement or
96 10 compromise of the dispute or contest.

96 11 Sec. 112. Section 135.70, Code 1995, is amended to read as
96 12 follows:

96 13 135.70 APPEAL OF CERTIFICATE OF NEED DECISIONS.

96 14 The council's decision on an application for certificate of
96 15 need, when announced pursuant to section 135.69, is a final
96 16 decision. Any dissatisfied party who is an affected person
96 17 with respect to the application, and who participated or
96 18 sought unsuccessfully to participate in the formal review
96 19 procedure prescribed by section 135.66, may request a
96 20

~~rehearing~~

~~reconsideration~~ in accordance with

~~chapter 17A~~

96 21 section 17A.4218 and rules of the department. If a

~~rehearing~~

96 22 reconsideration is not requested or an affected party remains
96 23 dissatisfied after the request for

~~rehearing~~

~~reconsideration,~~

96 24 an appeal may be taken in the manner provided by chapter 17A.
96 25 Notwithstanding the Iowa administrative procedure Act, chapter
96 26 17A, a request for

~~rehearing~~

~~reconsideration~~ is not required,

96 27 prior to

~~appeal under section 17A.19~~

~~the filing of a petition~~

96 28 for judicial review as provided in chapter 17A, article 5.

96 29 Sec. 113. Section 135C.2, subsection 3, paragraph d, Code
96 30 Supplement 1995, is amended to read as follows:

96 31 d. Notwithstanding the limitations set out in this
96 32 subsection regarding rules for intermediate care facilities
96 33 for the mentally retarded, the department shall consider the
96 34 federal interpretive guidelines issued by the federal health
96 35 care financing administration when interpreting the
97 1 department's rules for intermediate care facilities for the
97 2 mentally retarded. This use of the guidelines is not subject
97 3 to the rulemaking provisions of sections

~~17A.4 and 17A.5~~

97 4 ~~chapter 17A, article 3~~, but the guidelines shall be published
97 5 in the Iowa administrative bulletin and the Iowa
97 6 administrative code.

97 7 Sec. 114. Section 139C.2, subsection 3, Code 1995, is
97 8 amended to read as follows:

97 9 3. The department shall establish an expert review panel
97 10 to determine on a case-by-case basis under what circumstances,
97 11 if any, a health care provider determined to be infected with
97 12 HIV or HBV practicing outside the hospital setting or referred
97 13 to the panel by a hospital, may perform exposure-prone
97 14 procedures. If a health care provider determined to be
97 15 infected with HIV or HBV does not comply with the
97 16 determination of the expert review panel, the panel shall
97 17 report the noncompliance to the examining board with
97 18 jurisdiction over the health care provider. A determination
97 19 of an expert review panel pursuant to this section is a final
97 20 agency action

~~appealable~~

~~subject to judicial review~~ pursuant
97 21 to

~~section 17A.19~~

~~chapter 17A, article 5.~~

97 22 Sec. 115. Section 147A.5, subsection 3, Code Supplement
97 23 1995, is amended to read as follows:

97 24 3. The department may deny an application for
97 25 authorization, or may place on probation, suspend, or revoke
97 26 existing authorization if the department finds reason to
97 27 believe the program has not been or will not be operated in
97 28 compliance with this subchapter and the rules adopted pursuant
97 29 to this subchapter, or that there is insufficient assurance of
97 30 adequate protection for the public. The denial or period of
97 31 probation, suspension, or revocation shall be effected and
97 32 judicial review may be

~~appealed~~

~~sought~~ as provided

~~by section~~

97 33

~~17A.12~~

~~for adjudicative proceedings under chapter 17A, article~~
97 34 5.

97 35 Sec. 116. Section 147A.7, subsection 2, Code Supplement
98 1 1995, is amended to read as follows:

98 2 2. If clinical issues are involved, the matter shall be
98 3 referred to the board for completion of the investigation and
98 4 the conduct of any disciplinary proceeding pursuant to chapter
98 5 17A. The findings of the board shall be the final decision
98 6 for purposes of section

~~17A.15~~

- 17A.4215 and shall be enforced

98 7 by the department.

98 8 Sec. 117. Section 148C.6A, Code 1995, is amended to read

98 9 as follows:

98 10 148C.6A APPEAL TO BOARD OF MEDICAL EXAMINERS IN CONTESTED

98 11 CASES INVOLVING DISCIPLINE.

98 12 Pursuant to section

~~17A.15~~

- 17A.4219, a decision of the

98 13 board in

~~a contested case~~

- an adjudicative proceeding involving

98 14 discipline of a person licensed as a physician assistant may
98 15 be appealed to the board of medical examiners.

98 16 Sec. 118. Section 161A.4, subsection 1, unnumbered

98 17 paragraph 1, Code 1995, is amended to read as follows:

98 18 The soil conservation division is established within the

98 19 department to perform the functions conferred upon it in

98 20 chapters 161A through 161C, 207, 208, 467B, and 467C. The

98 21 division shall be administered in accordance with the policies

98 22 of the state soil conservation committee, which shall advise

98 23 the division and which shall approve administrative rules

98 24 proposed by the division for the administration of chapters

98 25 161A through 161C, 161E, 161F, 207, and 208 before the rules

98 26 are adopted pursuant to section

~~17A.5~~

- 17A.3115. If a

98 27 difference exists between the committee and secretary

98 28 regarding the content of a proposed rule, the secretary shall

98 29 notify the chairperson of the committee of the difference

98 30 within thirty days from the committee's action on the rule.

98 31 The secretary and the committee shall meet to resolve the

98 32 difference within thirty days after the secretary provides the

98 33 committee with notice of the difference.

98 34 Sec. 119. Section 163.30, subsection 3, unnumbered

98 35 paragraph 3, Code 1995, is amended to read as follows:

99 1 A permittee shall not represent more than one dealer.

99 2 Failure of a licensee or permittee to comply with this chapter

99 3 or a rule made pursuant to this chapter is cause for

99 4 revocation by the secretary of the permit or license after

99 5 notice to the alleged offender and the holding of a hearing by

99 6 the secretary. Rules shall be made in accordance with chapter

99 7 17A. A rule, the violation of which is made the basis for

99 8 revocation, except temporary emergency rules, shall first have

99 9 been approved after public hearing as provided in section

99 10

~~17A.4~~

- 17A.3104 after giving twenty days' notice of the hearing

99 11 as follows:

99 12 Sec. 120. Section 169.5, subsection 9, paragraph e, Code

99 13 1995, is amended to read as follows:

99 14 e. Hold hearings on all matters properly brought before

99 15 the board and administer oaths, receive evidence, make the

99 16 necessary determinations, and enter orders consistent with the

99 17 findings. The board may require by subpoena the attendance

99 18 and testimony of witnesses and the production of papers,

99 19 records, or other documentary evidence and commission

99 20 depositions. An administrative law judge may be appointed

99 21 pursuant to

~~section 17A.11, subsection 3~~

- chapter 17A, article

99 22 4, to perform those functions which properly repose in an
99 23 administrative law judge.
99 24 Sec. 121. Section 169.5, subsection 9, paragraph i, Code
99 25 1995, is amended to read as follows:
99 26 i. Adopt, amend, or repeal rules relating to the standards
99 27 of conduct for, testing of, and revocation or suspension of
99 28 certificates issued to veterinary assistants. However, a
99 29 certificate shall not be suspended or revoked by less than a
99 30 two-thirds vote of the entire board in a proceeding conducted
99 31 in compliance with

~~section 17A.12~~

~~chapter 17A, article 4.~~

99 32 Sec. 122. Section 169.15, Code 1995, is amended to read as
99 33 follows:

99 34 169.15 APPEAL.

99 35 Any party aggrieved by a decision of the board may

~~appeal~~

100 1

~~the matter to the district court~~

~~petition for judicial review~~

100 2 as provided in

~~section 17A.19~~

~~chapter 17A, article 5.~~

100 3 Sec. 123. Section 172D.1, subsection 14, Code Supplement
100 4 1995, is amended to read as follows:

100 5 14. "Rule of the department" means a rule as defined in
100 6 section

~~17A.2~~

~~17A.1102~~ which materially affects the operation

100 7 of a feedlot and which has been adopted by the department. The
100 8 term includes a rule which was in effect prior to July 1,
100 9 1975. Except as specifically provided in section 172D.3,
100 10 subsection 2, paragraph "b", subparagraph (5) and paragraph
100 11 "c", subparagraph (5) nothing in this chapter shall be deemed
100 12 to empower the department to make any rule.

100 13 Sec. 124. Section 200.3, subsection 20, Code 1995, is
100 14 amended to read as follows:

100 15 20. "Rule" means a rule as defined in section

~~17A.2~~

100 16 17A.1102 which materially affects the operation of an
100 17 anhydrous ammonia plant. The term includes a rule which was
100 18 in effect prior to July 1, 1984.

100 19 Sec. 125. Section 203C.10, unnumbered paragraph 2, Code
100 20 1995, is amended to read as follows:

100 21 If upon the filing of the information or complaint the
100 22 department finds that the licensee has failed to meet the
100 23 warehouse operator's obligation or otherwise has violated or
100 24 failed to comply with the provisions of this chapter or any
100 25 rule

~~promulgated~~

~~adopted~~ under this chapter, and if the

100 26 department finds that the public health, safety or welfare
100 27 imperatively requires emergency action, then the department
100 28 without hearing may order a summary suspension of the license
100 29 in the manner provided in section

~~17A.18~~

~~17A.4105.~~ When so

100 30 ordered, a copy of the order of suspension shall be served
100 31 upon the licensee at the time the information or complaint is
100 32 served as provided in this section.
100 33 Sec. 126. Section [207.14](#), subsection 2, unnumbered
100 34 paragraph 2, Code 1995, is amended to read as follows:
100 35 If upon expiration of the time as fixed the administrator
101 1 finds in writing that the violation has not been abated, the
101 2 administrator, notwithstanding

~~section 17A.18~~

~~sections~~

101 3 [17A.4105](#) and [17A.4501](#), shall immediately order a cessation of
101 4 coal mining and reclamation operations relating to the
101 5 violation until the order is modified, vacated, or terminated
101 6 by the administrator pursuant to procedures outlined in this
101 7 section. In the order of cessation issued by the
101 8 administrator under this subsection, the administrator shall
101 9 include the steps necessary to abate the violation in the most
101 10 expeditious manner possible.

101 11 Sec. 127. Section [207.15](#), subsection 5, unnumbered
101 12 paragraph 2, Code 1995, is amended to read as follows:

101 13 Notwithstanding section

~~17A.20~~

~~17A.5118, an appeal bond~~

101 14 shall be required for an appeal of a judgment assessing a
101 15 civil penalty.

101 16 Sec. 128. Section 216.15, subsection 3, paragraph b, Code
101 17 Supplement 1995, is amended to read as follows:

101 18 b. For purposes of this chapter, an administrative law
101 19 judge issuing a determination of probable cause or no probable
101 20 cause under this section is exempt from

~~section 17A.17~~

~~sections 17A.4213 and 17A.4214.~~

101 22 Sec. 129. Section 216.17, subsection 1, unnumbered
101 23 paragraphs 2 and 3, Code 1995, are amended to read as follows:

101 24 For purposes of the time limit for filing a petition for
101 25 judicial review under the Iowa administrative procedure Act,
101 26 specified by section

~~17A.19~~

~~17A.5108, the issuance of a final~~

101 27 decision of the commission under this chapter occurs on the
101 28 date notice of the decision is mailed by certified mail, to
101 29 the parties.

101 30 Notwithstanding the time limit provided in section

~~17A.19,~~

101 31

~~subsection 3~~

~~17A.5108, a petition for judicial review of no-~~

101 32 probable-cause decisions and other final agency actions which
101 33 are not of general applicability must be filed within thirty
101 34 days of the issuance of the final agency action.

101 35 Sec. 130. Section [216.17](#), subsection 6, Code 1995, is
102 1 amended to read as follows:

102 2 6. In the enforcement proceeding the court shall determine
102 3 its order on the same basis as it would in a proceeding
102 4 reviewing commission action under section

~~17A.19, subsection 8~~

102 5 [17A.5117](#).

102 6 Sec. 131. Section [217.30](#), subsection 8, Code 1995, is
102 7 amended to read as follows:
102 8 8. The provisions of this section shall take precedence
102 9 over section

~~17A.12~~

~~- 17A.4211, subsection~~

~~7~~

~~- 4.~~

102 10 Sec. 132. Section [225C.29](#), Code 1995, is amended to read
102 11 as follows:

102 12 225C.29 COMPLIANCE.

102 13 Except for a violation of section 225C.28B, subsection 2,
102 14 the sole remedy for violation of a rule adopted by the
102 15 commission to implement sections 225C.25 through 225C.28B
102 16 shall be by a proceeding for compliance initiated by request
102 17 to the division pursuant to chapter 17A. Any decision of the
102 18 division shall be in accordance with due process of law and is
102 19 subject to

~~appeal to the Iowa district court~~

~~- judicial review~~

102 20 pursuant to

~~sections 17A.19 and 17A.20~~

~~- chapter 17A, article 5,~~

102 21 ~~and appeal pursuant to section 17A.5118~~ by any aggrieved
102 22 party. Either the division or a party in interest may apply
102 23 to the Iowa district court for an order to enforce the
102 24 decision of the division. Any rules adopted by the commission
102 25 to implement sections 225C.25 through 225C.28B do not create
102 26 any right, entitlement, property or liberty right or interest,
102 27 or private cause of action for damages against the state or a
102 28 political subdivision of the state or for which the state or a
102 29 political subdivision of the state would be responsible. Any
102 30 violation of section 225C.28B, subsection 2, shall solely be
102 31 subject to the enforcement by the commissioner of insurance
102 32 and penalties granted by chapter 507B for a violation of
102 33 section 507B.4, subsection 7.

102 34 Sec. 133. Section [229.23](#), subsection 3, Code 1995, is
102 35 amended to read as follows:

103 1 3. In addition to protection of the person's
103 2 constitutional rights, enjoyment of other legal, medical,
103 3 religious, social, political, personal and working rights and
103 4 privileges which the person would enjoy if the person were not
103 5 so hospitalized or detained, so far as is possible consistent
103 6 with effective treatment of that person and of the other
103 7 patients of the hospital. If the patient's rights are
103 8 restricted, the physician's direction to that effect shall be
103 9 noted on the patient's record. The department of human
103 10 services shall, in accordance with chapter 17A establish rules
103 11 setting forth the specific rights and privileges to which
103 12 persons so hospitalized or detained are entitled under this
103 13 section

~~, and the exceptions provided by section 17A.2,~~

103 14

~~subsection 10, paragraphs "a" and "k", shall not be applicable~~

103 15

~~to the rules so established~~

~~-~~. The patient or the patient's

103 16 next of kin or friend shall be advised of these rules and be

103 17 provided a written copy upon the patient's admission to or
103 18 arrival at the hospital.
103 19 Sec. 134. Section 249A.3, subsection 11, paragraph b, Code
103 20 Supplement 1995, is amended to read as follows:
103 21 b. The department shall exercise the option provided in 42
103 22 U.S.C. } 1396p(c) to provide a period of ineligibility for
103 23 medical assistance due to a transfer of assets by a
103 24 noninstitutionalized individual or the spouse of a
103 25 noninstitutionalized individual. For noninstitutionalized
103 26 individuals, the number of months of ineligibility shall be
103 27 equal to the total, cumulative uncompensated value of all
103 28 assets transferred by the individual or the individual's
103 29 spouse on or after the look-back date specified in 42 U.S.C. }
103 30 1396p(c)(1)(B)(i), divided by the average monthly cost to a
103 31 private patient for nursing facility services in Iowa at the
103 32 time of application. The services for which
103 33 noninstitutionalized individuals shall be made ineligible
103 34 shall include any long-term care services for which medical
103 35 assistance is otherwise available. Notwithstanding

~~section~~

104 1

~~17A.4~~

~~sections 17A.3103 through 17A.3107, the department may~~
104 2 adopt rules providing a period of ineligibility for medical
104 3 assistance due to a transfer of assets by a
104 4 noninstitutionalized individual or the spouse of a
104 5 noninstitutionalized individual without notice of opportunity
104 6 for public comment, to be effective immediately upon filing
104 7 under section

~~17A.5~~

~~17A.3115, subsection 2, paragraph "b",~~
104 8 subparagraph (1).
104 9 Sec. 135. Section 252.27, unnumbered paragraph 2, Code
104 10 1995, is amended to read as follows:
104 11 The board shall record its proceedings relating to the
104 12 provision of assistance to specific persons under this
104 13 chapter. A person who is aggrieved by a decision of the board
104 14 may

~~appeal~~

~~seek judicial review of the decision as if it were~~
104 15

~~a contested case~~

~~an adjudicative proceeding before an agency~~
104 16 and as if the person had exhausted administrative remedies in
104 17 accordance with the procedures and standards

~~in section~~

104 18

~~17A.19, subsections 2 to 8 except paragraphs "b" and "c" of~~

104 19

~~subsection 8, and section 17A.20~~

~~for judicial review in~~
104 20 ~~chapter 17A, article 5, except for section 17A.5116,~~
104 21 ~~subsection 3, paragraphs "b" and "g", and for appeal in~~
104 22 ~~section 17A.5118.~~

104 23 Sec. 136. Section 252J.8, subsection 4, paragraph d, Code
104 24 Supplement 1995, is amended to read as follows:

104 25 d. If the licensing authority's rules and procedures
104 26 conflict with the additional requirements of this section, the
104 27 requirements of this section shall apply. Notwithstanding
104 28 section

~~17A.18~~

- ~~17A.4105~~, the obligor does not have a right to
104 29 a hearing before the licensing authority to contest the
104 30 authority's actions under this chapter but may request a court
104 31 hearing pursuant to section 252J.9 within thirty days of the
104 32 provision of notice under this section.

104 33 Sec. 137. Section 256B.6, unnumbered paragraph 3, Code
104 34 1995, is amended to read as follows:

104 35 Notwithstanding

~~section 17A.11~~

- ~~chapter 17A, article 4~~, the

105 1 state board of education shall adopt rules for the appointment
105 2 of an impartial administrative law judge for special education
105 3 appeals. The rules shall comply with federal statutes and
105 4 regulations.

105 5 Sec. 138. Section 261B.3, unnumbered paragraph 2, Code
105 6 1995, is amended to read as follows:

105 7 The secretary may request additional information as
105 8 necessary to enable the secretary to determine the accuracy
105 9 and completeness of the information contained in the
105 10 registration application. If the secretary believes that
105 11 false, misleading, or incomplete information has been
105 12 submitted in connection with an application for registration,
105 13 the secretary may deny registration. The secretary shall
105 14 conduct a hearing on the denial if a hearing is requested by a
105 15 school. The secretary may withhold a certificate of
105 16 registration pending the outcome of the hearing. Upon a
105 17 finding after the hearing that information contained in the
105 18 registration application is false, misleading, or incomplete,
105 19 the secretary shall deny a certificate of registration to the
105 20 school. The decision of the secretary is subject to judicial
105 21 review in accordance with

~~section 17A.19~~

- ~~chapter 17A, article~~

105 22 5.

105 23 Sec. 139. Section 262.69, unnumbered paragraph 3, Code
105 24 1995, is amended to read as follows:

105 25 Notwithstanding the provisions of chapter 17A, a proceeding
105 26 conducted by the state board of regents or an institution
105 27 governed by the state board of regents to determine the
105 28 validity of an assessment of a violation of traffic control
105 29 and parking rules is not

~~a contested case~~

- ~~an adjudicative~~

105 30 proceeding as defined in section

~~17A.2, subsection 5~~

- ~~17A.1102~~.

105 31 Sec. 140. Section 267.6, Code 1995, is amended to read as
105 32 follows:

105 33 267.6 IOWA ADMINISTRATIVE PROCEDURE ACT.

105 34 The provisions of chapter 17A shall not apply to the
105 35 council or any actions taken by it, except that any

106 1 recommendations adopted by the council pursuant to section

106 2 267.5, subsection 3, and any rules adopted by the council

106 3 shall be adopted, amended, or repealed only after compliance

106 4 with the provisions of

~~sections 17A.4, 17A.5, and 17A.6~~

-
106 5 chapter 17A, article 3.
106 6 Sec. 141. Section 272C.6, subsection 4, unnumbered
106 7 paragraphs 2 and 3, Code 1995, are amended to read as follows:
106 8 Pursuant to the provisions of section

~~17A.19, subsection 6~~

-
106 9 17A.5115, a licensing board upon

~~an appeal~~

- seeking of judicial

106 10 review by the licensee of the decision by the licensing board,
106 11 shall transmit the entire record of the

~~contested case~~

-
106 12 adjudicative proceeding to the reviewing court.

106 13 Notwithstanding the provisions of section

~~17A.19,~~

-
106 14

~~subsection 6~~

- 17A.5115, if a waiver of privilege has been

106 15 involuntary and evidence has been received at a disciplinary
106 16 hearing, the court shall order withheld the identity of the
106 17 individual whose privilege was waived.

106 18 Sec. 142. Section 316.9, subsection 4, Code 1995, is
106 19 amended to read as follows:

106 20 4. A person aggrieved by a determination as to eligibility
106 21 for assistance or a payment authorized by this chapter, or the
106 22 amount of a payment, upon application may have the matter
106 23 reviewed. Rules governing reviews shall provide for a prompt
106 24 one-step uncomplicated fact-finding process. Such a review is
106 25 an appeal of an agency action as defined in section

~~17A.2,~~

-
106 26

~~subsection 2~~

- 17A.1102, and is not

~~a contested case~~

- an

106 27 adjudicative proceeding. The decision rendered shall be the
106 28 displacing agency's final agency action.

106 29 Sec. 143. Section 321.52, subsection 3, unnumbered
106 30 paragraph 2, Code Supplement 1995, is amended to read as
106 31 follows:

106 32 However, upon application the department upon a showing of
106 33 good cause may issue a certificate of title after the
106 34 fourteen-day period for a junked vehicle for which a junking
106 35 certificate has been issued. For purposes of this subsection,
107 1 "good cause" means that the junking certificate was obtained
107 2 by mistake or inadvertence. If a person's application to the
107 3 department is denied, the person may make application for a
107 4 certificate of title under the bonding procedure as provided
107 5 in section 321.24, if the vehicle qualifies as an antique
107 6 vehicle under section 321.115, subsection 1, or the person may
107 7 seek judicial review as provided under

~~sections 17A.19 and~~

-
107 8

~~17A.20~~

~~chapter 17A, article 5, and appellate review under~~

107 9 ~~section 17A.5118.~~

107 10 Sec. 144. Section [321.253A](#), subsection 1, Code 1995, is
107 11 amended to read as follows:

107 12 1. The department shall place and maintain directional
107 13 signs upon primary highways which provide information about
107 14 historic sites which are located on land owned or managed by
107 15 an agency as defined in section

~~17A.2~~

~~17A.1102.~~ The signs

107 16 shall conform to the manual of uniform traffic devices.
107 17 However, the directional signs are not subject to requirements
107 18 applicable to tourist-oriented directional signs.

107 19 Sec. 145. Section 321.556, subsections 1 and 2, Code
107 20 Supplement 1995, are amended to read as follows:

107 21 1. If, upon review of the record of convictions of any
107 22 person, the department determines that the person appears to
107 23 be a habitual offender, the department shall immediately
107 24 notify the person in writing and afford the licensee an
107 25 opportunity for a hearing. The notice shall direct the person
107 26 named in the notice to appear for hearing and show cause why
107 27 the person should not be barred from operating a motor vehicle
107 28 on the highways of this state. The notice shall meet the
107 29 requirements of section

~~17A.12~~

~~17A.4206~~ and shall be served in

107 30 the manner provided in that section. Service of notice on any
107 31 nonresident of this state may be made in the same manner as
107 32 provided in sections 321.498 through 321.506. A peace officer
107 33 stopping a person for whom a notice to appear for hearing has
107 34 been issued under the provisions of this section may
107 35 personally serve the notice upon forms approved by the
108 1 department to satisfy the notice requirements of this section.
108 2 A peace officer may confiscate the motor vehicle license of a
108 3 person if the license has been revoked or has been suspended
108 4 subsequent to a hearing and the person has not forwarded the
108 5 motor vehicle license to the department as required.

108 6 2. The hearing shall be conducted as provided

~~in section~~

108 7

~~17A.12~~

~~for an adjudicative proceeding in chapter 17A, article~~

108 8 ~~4~~, before the department in the county where the alleged
108 9 events occurred, unless the director and the person agree that
108 10 the hearing may be held in some other county, or the hearing
108 11 may be held by telephone conference at the discretion of the
108 12 agency conducting the hearing. The hearing shall be recorded
108 13 and its scope shall be limited to the issue of whether the
108 14 person notified is a habitual offender.

108 15 Sec. 146. Section [321.560](#), Code Supplement 1995, is
108 16 amended to read as follows:

108 17 321.560 PERIOD OF REVOCATION.

108 18 A license to operate a motor vehicle in this state shall
108 19 not be issued to any person declared to be a habitual offender
108 20 under section 321.555, subsection 1, for a period of not less
108 21 than two years nor more than six years from the date of the
108 22 final decision of the department under section

~~17A.19~~

~~17A.4215~~

108 23 or the date on which the district court upholds the final
108 24 decision of the department, whichever occurs later. However,
108 25 a temporary restricted license may be issued to a person
108 26 declared to be a habitual offender under section 321.555,
108 27 subsection 1, paragraph "c", pursuant to section 321.215,
108 28 subsection 2. A license to operate a motor vehicle in this
108 29 state shall not be issued to any person declared to be a
108 30 habitual offender under section 321.555, subsection 2, for a
108 31 period of one year from the date of the final decision of the
108 32 department under section

~~17A.19~~

- 17A.4215 or the date on which
108 33 the district court upholds the final decision of the
108 34 department, whichever occurs later. The department shall
108 35 adopt rules under chapter 17A which establish a point system
109 1 which shall be used to determine the period for which a person
109 2 who is declared to be a habitual offender under section
109 3 321.555, subsection 1, shall not be issued a license.
109 4 Sec. 147. Section 368.22, unnumbered paragraph 4, and
109 5 subsections 1, 2, and 3, Code 1995, are amended to read as
109 6 follows:
109 7 The judicial review provisions of this section and chapter
109 8 17A, article 5, shall be the exclusive means by which a person
109 9 or party who is aggrieved or adversely affected by agency
109 10 action may seek judicial review of that agency action. The
109 11 court's review on appeal of a decision is limited to questions
109 12 relating to jurisdiction, regularity of proceedings, and
109 13 whether the decision appealed from is arbitrary, unreasonable,
109 14 or without substantial supporting evidence. The court may
109 15 reverse and remand a decision of the board or a committee,
109 16 with appropriate directions. The following

~~portions of~~

109 17

~~section 17A.19~~

- provisions of chapter 17A are not applicable to
109 18 this chapter:
109 19 1.

~~The part of subsection 2 which relates to where~~

109 20

~~proceedings for judicial review shall be instituted.~~

- Section

109 21 17A.5104, subsection 2.

109 22 2.

~~Subsection 5.~~

- Section 17A.5111.

109 23 3.

~~Subsection 8.~~

- Section 17A.5116.

109 24 4. Section 17A.5117.

109 25 Sec. 148. Section 421.17, subsection 20, unnumbered
109 26 paragraph 2, Code Supplement 1995, is amended to read as
109 27 follows:

109 28 The provisions of

~~sections 17A.10 to 17A.18~~

- chapter 17A,

109 29 article 4, relating to

~~contested cases~~

~~adjudicative~~

109 30 proceedings shall not apply to any matters involving the
109 31 equalization of valuations of classes of property as
109 32 authorized by this chapter and chapter 441. This exemption
109 33 shall not apply to a hearing before the state board of tax
109 34 review.

109 35 Sec. 149. Section 422.21, unnumbered paragraph 5, Code
110 1 1995, is amended to read as follows:

110 2 The director shall determine for the 1989 and each
110 3 subsequent calendar year the annual and cumulative inflation
110 4 factors for each calendar year to be applied to tax years
110 5 beginning on or after January 1 of that calendar year. The
110 6 director shall compute the new dollar amounts as specified to
110 7 be adjusted in section 422.5 by the latest cumulative
110 8 inflation factor and round off the result to the nearest one
110 9 dollar. The annual and cumulative inflation factors
110 10 determined by the director are not rules as defined in section
110 11

~~17A.2, subsection 10~~

~~17A.1102.~~ The director shall determine

110 12 for the 1990 calendar year and each subsequent calendar year
110 13 the annual and cumulative standard deduction factors to be
110 14 applied to tax years beginning on or after January 1 of that
110 15 calendar year. The director shall compute the new dollar
110 16 amounts of the standard deductions specified in section 422.9,
110 17 subsection 1, by the latest cumulative standard deduction
110 18 factor and round off the result to the nearest ten dollars.
110 19 The annual and cumulative standard deduction factors
110 20 determined by the director are not rules as defined in section
110 21

~~17A.2, subsection 10~~

~~17A.1102.~~

110 22 Sec. 150. Section 422.53, subsection 5, Code Supplement
110 23 1995, is amended to read as follows:

110 24 5. If the holder of a permit fails to comply with any of
110 25 the provisions of this division or any order or rule of the
110 26 department adopted under this division or is substantially
110 27 delinquent in the payment of a tax administered by the
110 28 department or the interest or penalty on the tax, or if the
110 29 person is a corporation and if any officer having a
110 30 substantial legal or equitable interest in the ownership of
110 31 the corporation owes any delinquent tax of the permit-holding
110 32 corporation, or interest or penalty on the tax, administered
110 33 by the department, the director may revoke the permit. The
110 34 director shall send notice by mail to a permit holder
110 35 informing that person of the director's intent to revoke the
111 1 permit and of the permit holder's right to a hearing on the
111 2 matter. If the permit holder petitions the director for a
111 3 hearing on the proposed revocation, after giving ten days'
111 4 notice of the time and place of the hearing in accordance with
111 5 section

~~17A.18, subsection 3~~

~~17A.4105,~~ the matter may be heard

111 6 and a decision rendered. The director may restore permits
111 7 after revocation. The director shall adopt rules setting
111 8 forth the period of time a retailer must wait before a permit
111 9 may be restored or a new permit may be issued. The waiting
111 10 period shall not exceed ninety days from the date of the
111 11 revocation of the permit.

111 12 Sec. 151. Section 424.5, subsection 6, Code 1995, is
111 13 amended to read as follows:

111 14 6. To revoke a permit the director shall serve notice as
111 15 required by section

~~17A.18~~

- 17A.4105 to the permit holder

111 16 informing that person of the director's intent to revoke the
111 17 permit and of the permit holder's right to a hearing on the
111 18 matter. If the permit holder petitions the director for a
111 19 hearing on the proposed revocation, after giving ten days'
111 20 notice of the time and place of the hearing in accordance with
111 21 section

~~17A.18, subsection 3~~

- 17A.4105, the matter may be heard

111 22 and a decision rendered. The director may restore permits
111 23 after revocation. The director shall adopt rules setting
111 24 forth the period of time a depositor must wait before a permit
111 25 may be restored or a new permit may be issued. The waiting
111 26 period shall not exceed ninety days from the date of the
111 27 revocation of the permit.

111 28 Sec. 152. Section 441.21, subsection 11, Code Supplement
111 29 1995, is amended to read as follows:

111 30 11. The percentage of actual value computed by the
111 31 director for agricultural property, residential property,
111 32 commercial property, industrial property and property valued
111 33 by the department of revenue and finance pursuant to chapters
111 34 428, 433, 434, 436, 437, and 438 and used to determine
111 35 assessed values of those classes of property does not
112 1 constitute a rule as defined in section

~~17A.2, subsection 10~~

112 2 17A.1102.

112 3 Sec. 153. Section 441.49, unnumbered paragraph 7, Code
112 4 1995, is amended to read as follows:

112 5 Tentative and final equalization orders issued by the
112 6 director of revenue and finance are not rules as defined in
112 7 section

~~17A.2, subsection 7~~

- 17A.1102.

112 8 Sec. 154. Section 455B.105, subsection 9, Code 1995, is
112 9 amended to read as follows:

112 10 9. Upon request of at least four members of the commission
112 11 before adopting or modifying a rule, the director shall
112 12 prepare and publish with the notice required under section
112 13

~~17A.4~~

- 17A.3103, subsection 1,

~~paragraph "a",~~

- a comprehensive

112 14 estimate of the economic impact of the proposed rule or
112 15 modification.

112 16 Sec. 155. Section 455B.446, subsection 4, Code 1995, is
112 17 amended to read as follows:

112 18 4. Notice of the hearing in the form provided in section
112 19

~~17A.12, subsection 2,~~

- 17A.4206 shall be published in a

112 20 newspaper of general circulation in each city and county in
112 21 which the proposed site is located once a week for two
112 22 consecutive weeks with the second publication being at least
112 23 twenty days prior to the date of the hearing.

112 24 Sec. 156. Section 455G.4, subsection 3, paragraph b, Code
112 25 1995, is amended by striking the paragraph.

112 26 Sec. 157. Section 476.6, subsection 19, paragraph a, Code

112 27 1995, is amended to read as follows:

112 28 a. The board shall conduct

~~contested case~~

~~adjudicative~~

112 29 proceedings for review of energy efficiency plans and budgets
112 30 filed by rate-regulated gas or electric utilities. The board
112 31 may approve, reject, or modify the plans and budgets.
112 32 Notwithstanding the provisions of section

~~17A.19, subsection 5~~

112 33 17A.5111, in an application for judicial review of the board's
112 34 decision concerning a utility's energy efficiency plan or
112 35 budget, the reviewing court shall not order a stay. Whenever
113 1 a request to modify an approved plan or budget is filed
113 2 subsequently by the office of consumer advocate or a rate-
113 3 regulated gas or electric public utility, the board shall
113 4 promptly initiate a formal proceeding if the board determines
113 5 that any reasonable ground exists for investigating the
113 6 request. The formal proceeding may be initiated at any time
113 7 by the board on its own motion. Implementation of board
113 8 approved plans or budgets shall be considered continuous in
113 9 nature and shall be subject to investigation at any time by
113 10 the board or the office of the consumer advocate.

113 11 Sec. 158. Section 476A.1, subsection 1, Code 1995, is
113 12 amended to read as follows:

113 13 1. "Agency" means an agency as defined in section

~~17A.2,~~

113 14

~~subsection 1~~

~~17A.1102.~~

113 15 Sec. 159. Section 476A.4, subsection 3, Code 1995, is
113 16 amended to read as follows:

113 17 3. Notice of the proceeding in the form provided in
113 18 section

~~17A.12, subsection 2,~~

~~17A.4206~~ shall be published in a
113 19 newspaper of general circulation in each county in which the
113 20 proposed site is located once a week for two consecutive weeks
113 21 with the second publication being at least twenty days prior
113 22 to the date of the hearing. The board shall be responsible for
113 23 publication and delivery of notices required by this section.

113 24 Sec. 160. Section 479.29, subsection 1, Code Supplement
113 25 1995, is amended to read as follows:

113 26 1. The board shall, pursuant to chapter 17A, adopt rules
113 27 establishing standards for the protection of underground
113 28 improvements during the construction of pipelines, to protect
113 29 soil conservation and drainage structures from being
113 30 permanently damaged by pipeline construction and for the
113 31 restoration of agricultural lands after pipeline construction.
113 32 To ensure that all interested persons are informed of this
113 33 rulemaking procedure and are afforded a right to participate,
113 34 the board shall schedule an opportunity for oral presentations
113 35 on the proposed rulemaking, and, in addition to the
114 1 requirements of

~~section 17A.4~~

~~sections 17A.3103 and 17A.3104,~~

114 2 shall distribute copies of the notice of intended action and
114 3 opportunity for oral presentations to each county board of
114 4 supervisors. Any county board of supervisors may, under the
114 5 provisions of chapter 17A, and subsequent to the rulemaking

114 6 proceedings, petition under those provisions for additional
114 7 rulemaking to establish standards to protect soil conservation
114 8 practices, structures and drainage structures within that
114 9 county. Upon the request of the petitioning county the board
114 10 shall schedule a hearing to consider the merits of the
114 11 petition. Rules adopted under this section shall not apply
114 12 within the boundaries of a city, unless the land is used for
114 13 agricultural purposes.

114 14 Sec. 161. Section 479A.14, subsection 1, Code Supplement
114 15 1995, is amended to read as follows:

114 16 1. The board shall adopt rules establishing standards to
114 17 protect underground improvements during the construction of
114 18 pipelines, to protect soil conservation and drainage
114 19 structures from being permanently damaged by pipeline
114 20 construction, and for the restoration of agricultural lands
114 21 after pipeline construction. To ensure that all interested
114 22 persons are informed of this rulemaking procedure and are
114 23 afforded a right to participate, the board shall schedule an
114 24 opportunity for oral presentations on the proposed rulemaking
114 25 and, in addition to the requirements of

~~section 17A.4~~

~~sections~~

114 26 17A.3103 and 17A.3104, shall distribute copies of the notice
114 27 of intended action and opportunity for oral presentations to
114 28 each county board of supervisors. A county board of
114 29 supervisors may, under chapter 17A and subsequent to the
114 30 rulemaking proceedings, petition for additional rulemaking to
114 31 establish standards to protect soil conservation practices,
114 32 structures, and drainage structures within that county. Upon
114 33 the request of the petitioning county, the board shall
114 34 schedule a hearing to consider the merits of the petition.
114 35 Rules adopted under this section do not apply within the
115 1 boundaries of a city, unless the land is used for agricultural
115 2 purposes.

115 3 Sec. 162. Section 479B.20, subsection 1, Code Supplement
115 4 1995, is amended to read as follows:

115 5 1. The board, pursuant to chapter 17A, shall adopt rules
115 6 establishing standards for the protection of underground
115 7 improvements during the construction of pipelines or
115 8 underground storage facilities, to protect soil conservation
115 9 and drainage structures from being permanently damaged by
115 10 construction of the pipeline or underground storage facility,
115 11 and for the restoration of agricultural lands after pipeline
115 12 or underground storage facility construction. To ensure that
115 13 all interested persons are informed of this rulemaking
115 14 procedure and are afforded a right to participate, the board
115 15 shall schedule an opportunity for oral presentations on the
115 16 proposed rulemaking, and, in addition to the requirements of
115 17

~~section 17A.4~~

~~sections 17A.3103 and 17A.3104~~, shall distribute

115 18 copies of the notice of intended action and opportunity for
115 19 oral presentations to each county board of supervisors. Any
115 20 county board of supervisors may, under the provisions of
115 21 chapter 17A, and subsequent to the rulemaking proceedings,
115 22 petition under those provisions for additional rulemaking to
115 23 establish standards to protect soil conservation practices,
115 24 structures, and drainage structures within that county. Upon
115 25 the request of the petitioning county, the board shall
115 26 schedule a hearing to consider the merits of the petition.
115 27 Rules adopted under this section shall not apply within the
115 28 boundaries of a city unless the land is used for agricultural
115 29 purposes.

115 30 Sec. 163. Section 514B.4A, subsection 2, Code 1995, is
115 31 amended to read as follows:

115 32 2. Rules proposed by the commissioner for adoption for the
115 33 direct provision of health care services by a health
115 34 maintenance organization, shall be forwarded by the
115 35 commissioner to the director of public health for review,
116 1 comment, and recommendation, prior to submission to the
116 2 administrative rules coordinator pursuant to section

~~17A.4~~

116 3 17A.3103.

116 4 Sec. 164. Section 519A.4, subsection 1, Code 1995, is
116 5 amended to read as follows:

116 6 1. The association shall submit a plan of operation to the
116 7 commissioner, together with any amendments necessary or
116 8 suitable to assure the fair, reasonable, and equitable
116 9 administration of the association consistent with sections
116 10 519A.2 to 519A.13. The plan of operation and any amendments
116 11 thereto shall become effective only after

~~promulgation~~

116 12 adoption of the plan or amendment by the commissioner as a
116 13 rule pursuant to

~~section 17A.4~~

~~chapter 17A, article 3:~~

116 14 Provided that the initial plan may in the discretion of the
116 15 commissioner become effective immediately upon filing with the
116 16 secretary of state pursuant to section

~~17A.5~~

~~17A.3115,~~

116 17 subsection 2, paragraph "b", subparagraph (1).

116 18 Sec. 165. Section 524.228, subsection 4, Code 1995, is
116 19 amended to read as follows:

116 20 4. A hearing provided for in this section shall be
116 21 presided over by an administrative law judge appointed in
116 22 accordance with

~~section 17A.11~~

~~chapter 17A, article 4. The~~

116 23 hearing shall be private, unless the superintendent determines
116 24 after full consideration of the views of the party afforded
116 25 the hearing, that a public hearing is necessary to protect the
116 26 public interest. After the hearing, and within thirty days
116 27 after the case has been submitted for decision, the
116 28 superintendent shall review the proposed order of the
116 29 administrative law judge and render a final decision,
116 30 including findings of fact upon which the decision is
116 31 predicated, and issue and serve upon each party to the
116 32 proceeding an order consistent with this section.

116 33 Sec. 166. Section 533.6A, subsection 4, Code 1995, is
116 34 amended to read as follows:

116 35 4. A hearing provided for in this section shall be
117 1 presided over by an administrative law judge appointed in
117 2 accordance with

~~section 17A.11~~

~~chapter 17A, article 4. The~~

117 3 hearing shall be private, unless the superintendent determines
117 4 after full consideration of the views of the party afforded
117 5 the hearing, that a public hearing is necessary to protect the
117 6 public interest. After the hearing, and within thirty days
117 7 after the case has been submitted for decision, the
117 8 superintendent shall review the proposed order of the
117 9 administrative law judge and render a final decision,
117 10 including findings of fact upon which the decision is

117 11 predicated, and issue and serve upon each party to the
117 12 proceeding an order consistent with this section.
117 13 Sec. 167. Section 534.405, unnumbered paragraph 7, Code
117 14 1995, is amended to read as follows:
117 15 Actions taken by the superintendent under this section are
117 16 not subject to section

~~17A.18, subsection 3~~
~~- 17A.4105.~~

117 17 Sec. 168. Section [535B.7](#), subsection 2, unnumbered
117 18 paragraph 1, Code 1995, is amended to read as follows:
117 19 The administrator may order an emergency suspension of a
117 20 licensee's license pursuant to section

~~17A.18, subsection 3~~

117 21 [17A.4501](#). A written order containing the facts or conduct
117 22 which warrants the emergency action shall be timely sent to
117 23 the licensee by restricted certified mail. Upon issuance of
117 24 the suspension order, the licensee must also be notified of
117 25 the right to an evidentiary hearing. A suspension proceeding
117 26 shall be promptly instituted and determined.
117 27 Sec. 169. Section [904.602](#), subsection 9, unnumbered
117 28 paragraph 2, Code 1995, is amended to read as follows:
117 29 These records are exempt from the public inspection
117 30 requirements in

~~section 17A.3~~
~~- sections 17A.2101, 17A.2102, and~~
117 31

~~section~~
~~- 22.2.~~

117 32 Sec. 170. Section [906.3](#), Code 1995, is amended to read as
117 33 follows:
117 34 906.3 DUTIES OF PAROLE BOARD.
117 35 The board of parole shall adopt rules regarding a system of
118 1 paroles from correctional institutions, and shall direct,
118 2 control, and supervise the administration of the system of
118 3 paroles. The board of parole shall consult with the director
118 4 of the department of corrections on rules regarding a system
118 5 of work release and shall assist in the direction, control,
118 6 and supervision of the work release system. The board shall
118 7 determine which of those persons who have been committed to
118 8 the custody of the director of the Iowa department of
118 9 corrections, by reason of their conviction of a public
118 10 offense, shall be released on parole or work release. The
118 11 grant or denial of parole or work release is not

~~a contested~~

118 12

~~case~~
~~- an adjudicative proceeding as defined in section~~

~~17A.2~~

118 13 [17A.1102](#).
118 14 Sec. 171. REPEAL.
118 15 1. Sections 17A.1 through 17A.5, 17A.7, and 17A.9 through
118 16 17A.33, Code 1995, are repealed.
118 17 2. Sections 17A.6 and 17A.8, Code Supplement 1995, are
118 18 repealed.

118 19 EXPLANATION
118 20 This bill repeals the current Iowa Administrative Procedure
118 21 Act under chapter 17A and replaces it with a new Iowa

118 22 Administrative Procedure Act. The new Act is based in part on
118 23 the 1981 Model State Administrative Procedures Act of the
118 24 national conference of commissioners on uniform state laws.
118 25 Like the current chapter 17A, the proposed new Act applies to
118 26 all state agencies and covers four main subjects: 1) public
118 27 access to agency law and policy; 2) agency rulemaking
118 28 procedure and the review of agency rules; 3) agency
118 29 adjudication; and 4) the judicial review of agency action.

118 30 The bill makes several changes from current law.

118 31 First, the bill imposes several new or additional
118 32 requirements concerning public access to agency law. New
118 33 section 17A.2101 requires each agency to compile, index, and
118 34 make available to the public, with some minor exceptions, all
118 35 agency policies of general applicability that are not required
119 1 to be published.

119 2 The bill also makes several changes concerning the adoption
119 3 and effectiveness of rules. The bill requires all agencies,
119 4 as soon as feasible and to the extent practicable, to make
119 5 their law through rules adopted after public rulemaking
119 6 proceedings in which all interested persons may participate
119 7 and which are subject to legislative and gubernatorial review.

119 8 The bill also requires each agency to maintain an up-to-date
119 9 public rulemaking docket containing all rules proposed by that
119 10 agency and in process and all rules currently under active
119 11 consideration within that agency for future proposal. New
119 12 section 17A.3105 requires an agency to prepare, in specified
119 13 circumstances, a detailed, structured, regulatory (cost-

119 14 benefit) analysis for a proposed rule that is available to the
119 15 general public. New section 17A.3107 specifies when a
119 16 variance between the text of a proposed rule and the text of
119 17 the adopted rule based on that proposed rule is sufficiently
119 18 substantial so that the agency must hold additional public
119 19 proceedings before it can adopt the rule. New section
119 20 17A.3109 authorizes agencies to omit usual rulemaking
119 21 procedures for wholly interpretive rules only if the rules
119 22 issued in reliance on that exemption are subject to de novo
119 23 judicial review for their correctness. Section 17A.3110
119 24 requires an explanatory statement for each adopted rule and
119 25 makes the reasons contained in that statement the sole basis
119 26 on which the agency may defend the legality of that rule.

119 27 Section 17A.3111 specifies the required contents, style, and
119 28 form for all adopted rules. Section 17A.3112 requires the
119 29 creation of a detailed public agency rulemaking record for
119 30 each adopted rule. Section 17A.3117 requires agencies, after
119 31 a petition therefor, to adopt, as soon as feasible and to the
119 32 extent practicable, a rule subject to public rulemaking
119 33 procedures superseding specified principles of law or policy
119 34 lawfully declared in individual cases.

119 35 Section 17A.3201 requires each agency to engage in a
120 1 formal, systematic, and periodic review of its rules to
120 2 facilitate the elimination or amendment of its unnecessary
120 3 rules. Sections 17A.3202 through 17A.3204 provide for the
120 4 powers of the governor and the administrative rules review
120 5 committee of the general assembly in reviewing agency rules.

120 6 Section 17A.4106 requires the waiver in individual cases of
120 7 a particular rule that is overbroad because its application in
120 8 those cases would not in actual practice serve any of the
120 9 purposes of the rule and authorizes the waiver of a particular
120 10 rule in individual cases where its application would cause
120 11 undue hardship, its waiver is consistent with the public
120 12 interest, and would not prejudice the rights of any other
120 13 person.

120 14 The bill also provides for the adjudicative process to be
120 15 applied in various situations. The bill replaces the current
120 16 reference to contested case proceedings with adjudicative
120 17 proceedings. The bill provides that the product of agency
120 18 adjudication (an "order") that is subject to the provisions of

120 19 the Act includes all agency action of particular applicability
120 20 defining the legal rights, duties, or privileges, of specified
120 21 persons. The bill requires agencies, with only few
120 22 exceptions, to conduct adjudicatory proceedings before issuing
120 23 an "order" and that agencies shall conduct a "formal
120 24 adjudicative hearing" as the process for issuing an order,
120 25 unless another statutory provision or a rule authorized by
120 26 this Act provides otherwise, and specifies all of the elements
120 27 of such a proceeding. Sections 17A.4204 and 17A.4205 provide
120 28 for and regulate prehearing conferences in formal adjudicative
120 29 hearings. Sections 17A.4206 through 17A.4208 provide for the
120 30 specificity of the notice, pleadings, and default requirements
120 31 applicable to formal adjudicative hearings. Section 17A.4209
120 32 provides for and regulates intervention in formal adjudicative
120 33 hearings. Section 17A.4210 requires notice to persons who are
120 34 the subject of an agency investigation of any subpoenas
120 35 related to that investigation that are directed at third
121 1 persons. Section 17A.4213 also imposes ex parte
121 2 communications prohibitions in formal adjudicative hearings
121 3 and additional remedies for their violation. Section 17A.4214
121 4 provides for separation of functions requirements and remedies
121 5 for their violation in formal adjudicative hearings, including
121 6 entirely new prohibitions on the combination of investigative
121 7 and subsequent decision-making functions and probable cause
121 8 finding and subsequent decision-making functions. Section
121 9 17A.4215 provides for the required contents of agency orders
121 10 and the burden of proof in formal adjudicative hearings.
121 11 Section 17A.4220 establishes an effective date for
121 12 adjudicatory orders in formal adjudicative hearings.
121 13 Section 17A.4301 establishes a wholly separate and
121 14 independent office of administrative hearings to house and
121 15 provide rules governing administrative law judges (ALJ)
121 16 including rules imposing on all persons who act as presiding
121 17 officers a code of administrative judicial conduct that is
121 18 similar to the Iowa code of judicial conduct; that section
121 19 also requires all newly hired ALJs who preside over formal
121 20 adjudicative hearings to be admitted to the bar of this state.
121 21 Sections 17A.4401 to 17A.4403 create and regulate a
121 22 conference adjudicative hearing of less formality, complexity,
121 23 and cost, than a formal adjudicative hearing, and establish
121 24 guidelines prescribing the precise and limited circumstances
121 25 in which agencies may use a conference adjudicative hearing.
121 26 The bill also creates and regulates very informal, summary,
121 27 low-cost adjudicative proceedings, called emergency and
121 28 summary adjudicative proceedings, and prescribes the limited
121 29 circumstances in which agencies may use those proceedings.
121 30 The bill also makes provision for the judicial review of
121 31 agency action. Section 17A.5102 statutorily defines the
121 32 distinction between "final" and "nonfinal" agency actions
121 33 which are subject to different requirements for judicial
121 34 review. Section 17A.5103 increases the grounds upon which
121 35 nonfinal agency action is reviewable. Section 17A.5106
122 1 confers standing to seek judicial review on specified classes
122 2 of persons and also lists three elements that must be
122 3 satisfied to qualify for standing under the "aggrieved and
122 4 adversely affected" standard. Section 17A.5107 increases the
122 5 grounds justifying a failure to exhaust administrative
122 6 remedies prior to filing a suit for judicial review of agency
122 7 action. Section 17A.5108 specifies in detail the time
122 8 requirements for review of various types of agency action.
122 9 Section 17A.5111 specifies a standard for the issuance by the
122 10 reviewing court of a stay of agency action pending judicial
122 11 review and clarifies the right of an agency to grant a stay
122 12 after a judicial review proceeding has commenced. Section
122 13 17A.5112 indicates the circumstances in which judicial review
122 14 may be obtained of issues that were not previously raised
122 15 before the agency. Section 17A.5114 specifies the

122 16 circumstances in which new evidence may be taken by the court
122 17 reviewing the agency action and in which that court may remand
122 18 the matter to the agency for the taking of additional
122 19 evidence. Section 17A.5116 greatly elaborates and increases
122 20 the specificity of the standards for judicial review,
122 21 expressly indicates when a reviewing court may and when it may
122 22 not substitute its judgment de novo for that of the agency,
122 23 and expressly prescribes the burden of persuasion with respect
122 24 to those standards. Section 17A.5117 provides for the various
122 25 types of relief available in proceedings for judicial review.
122 26 Section 17A.5118 codifies the appropriate standard for Iowa
122 27 supreme court review of a district court decision reviewing
122 28 agency action.
122 29 Additional conforming amendments to the Code may be
122 30 necessary to fully implement this bill.
122 31 LSB 3885SC 76
122 32 ec/jw/5