



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and supersedes Part I of the Iowa Administrative Code Supplement.

The Bulletin contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies [continue to refer to General Information for drafting style and form], all proclamations and executive orders of the Governor which are general and permanent in nature, and other "materials deemed fitting and proper by the Administrative Rules Review Committee."

The Bulletin may also contain economic impact statements to proposed rules and filed emergency rules, objections filed by Administrative Rules Review Committee, Governor or the Attorney General, any delay by the Committee of the effective date of filed rules, regulatory flexibility analyses and agenda for monthly committee meetings.

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

The ARC number which appears before each agency heading is assigned by the Administrative Rules Coordinator for identification purposes and should always be used when referring to this item in correspondence and other communications.

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to Iowa Code section 17A.6. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the administrative rules coordinator and published in the Bulletin.

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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
9	Friday, October 14, 1988	November 2, 1988
10	Friday, October 28, 1988	November 16, 1988
11	Friday, November 11, 1988	November 30, 1988

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly as follows:

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Fourth quarter	April 1, 1989, to June 30, 1989	\$ 40.70 plus \$1.63 sales tax

Single copies may be purchased for \$4.50 plus \$0.18 tax. Back issues may be purchased if the issues are available.

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Prices for the Iowa Administrative Code and its Supplements are as follows:

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**Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515) 281-8796**

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Jan. 8	Jan. 27	Feb. 16	Mar. 2	Mar. 23	Apr. 27	July 25
Jan. 22	Feb. 10	Mar. 1	Mar. 16	Apr. 6	May 11	Aug. 8
Feb. 5	Feb. 24	Mar. 15	Mar. 30	Apr. 20	May 25	Aug. 22
Feb. 19	Mar. 9	Mar. 29	Apr. 13	May 4	June 8	Sep. 5
Mar. 4	Mar. 23	Apr. 12	Apr 27	May 18	June 22	Sep. 19
Mar. 18	Apr. 6	Apr. 26	May 11	June 1	July 6	Oct. 3
Apr. 1	Apr. 20	May 10	May 25	June 15	July 20	Oct. 17
Apr. 15	May 4	May 24	June 8	June 29	Aug. 3	Oct. 31
Apr. 29	May 18	June 7	June 22	July 13	Aug. 17	Nov. 14
May 13	June 1	June 21	July 6	July 27	Aug. 31	Nov. 28
May 27	June 15	July 5	July 20	Aug. 10	Sep. 14	Dec. 12
June 10	June 29	July 19	Aug. 3	Aug. 24	Sep. 28	Dec. 26
June 24	July 13	Aug. 2	Aug. 17	Sep. 7	Oct. 12	Jan. 9 '89
July 8	July 27	Aug. 16	Aug. 31	Sep. 21	Oct. 26	Jan. 23 '89
July 22	Aug. 10	Aug. 30	Sep. 14	Oct. 5	Nov. 9	Feb. 6 '89
Aug. 5	Aug. 24	Sep. 13	Sep. 28	Oct. 19	Nov. 23	Feb. 20 '89
Aug. 19	Sep. 7	Sep. 27	Oct. 12	Nov. 2	Dec. 7	Mar. 6 '89
Sep. 2	Sep. 21	Oct. 11	Oct. 26	Nov. 16	Dec. 21	Mar. 20 '89
Sep. 16	Oct. 5	Oct. 25	Nov. 9	Nov. 30	Jan. 4 '89	Apr. 3 '89
Sep. 30	Oct. 19	Nov. 8	Nov. 23	Dec. 14	Jan. 18 '89	Apr. 17 '89
Oct. 14	Nov. 2	Nov. 22	Dec. 7	Dec. 28	Feb. 1 '89	May 1 '89
Oct. 28	Nov. 16	Dec. 6	Dec. 21	Jan. 11 '89	Feb 15 '89	May 15 '89
Nov. 11	Nov. 30	Dec. 20	Jan. 4 '89	Jan. 25 '89	Mar. 1 '89	May 29 '89
Nov. 25	Dec. 14	Jan. 3 '89	Jan. 18 '89	Feb. 8 '89	Mar. 15 '89	June 12 '89
Dec. 9	Dec. 28	Jan. 17 '89	Feb. 1 '89	Feb. 22 '89	Mar. 29 '89	June 26 '89
Dec. 23	Jan. 11 '89	Jan. 31 '89	Feb. 15 '89	Mar. 8 '89	Apr. 12 '89	July 10 '89

20 days from the publication date is the **minimum** date for a public hearing or cutting off public comment.

35 days from the publication date is the **earliest** possible date for the agency to consider a noticed rule for adoption. It is the regular effective date for an adopted rule.

180 days See 17A.4(1)"b." If the agency does not adopt rules within this time frame, the Notice should be terminated.

NOTICE

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

UNIFORM RULES OF STATE AGENCY PROCEDURE

Governor Terry E. Branstad appointed a nine-member Task Force in the summer of 1985 to draft uniform rules of agency procedure.

On December 5, 1986, the Task Force presented a report to the Governor. The Governor has accepted the Task Force recommendations on agency procedure for rule making which have been printed at the front of the Iowa Administrative Code for adoption by state agencies. [Green Tab — Uniform Rules]

The Administrative Rules Review Committee will hold a special meeting Tuesday, November 15, 1988, 10 a.m. and Wednesday, November 16, 1988, 9 a.m. in Committee Room 24, State Capitol. This meeting will be held in lieu of the statutory date. A supplemental agenda will appear in the November 2, 1988, Iowa Administrative Bulletin. The following rules will be reviewed:

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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
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REVENUE AND FINANCE DEPARTMENT[701]

Administration, determination of a sale and sale price, 11.2, 15.3(3)"a" **ARC 9380** 10/19/88
 Administration, local option sales and service tax, 11.11, 107.9"6" **ARC 9378** 10/19/88
 Sales and use tax on construction activities, local option sales and service tax, 19.2, 107.3(3)"a" **ARC 9381** 10/19/88
 Vehicles subject to registration, 34.1(3), 34.5(10) **ARC 9379** 10/19/88

TRANSPORTATION DEPARTMENT[761]

Traffic safety improvement program, ch 164, filed emergency after notice **ARC 9329** 10/19/88

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b" by allowing the opportunity for oral presentation (hearing) to be held at least twenty days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21] Pseudorabies disease, 64.147 to 64.153 IAB 10/19/88 ARC 9341 (See also ARC 9340 herein)	Auditorium Wallace State Office Bldg. Des Moines, Iowa	November 9, 1988 9 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] Community and rural development loan program, ch 28 IAB 10/19/88 ARC 9367	Conference Room 200 East Grand Ave. Des Moines, Iowa	November 10, 1988 10 a.m.
EDUCATION DEPARTMENT[281] Child development coordinating council, ch 64 IAB 10/5/88 ARC 9317 (See also ARC 9316)	Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 27, 1988 9 a.m. to 12 noon
ENVIRONMENTAL PROTECTION COMMISSION[567] Scope of title — definitions — forms — rules of practice, ch 60; Water quality standards, ch 61 IAB 10/19/88 ARC 9345	Auditorium Elkader Opera House 207 N. Main Elkader, Iowa National Guard Armory 1101 W. Madison Highways 1 and 92 Washington, Iowa Council Chambers City Hall 19 S. Delaware Mason City, Iowa Community Center 530 W. Bluff Cherokee, Iowa Meeting Room Atlantic Municipal Utilities 15 W. Third Atlantic, Iowa Auditorium Wallace State Office Bldg. 900 E. Grand Ave. Des Moines, Iowa Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	November 9, 1988 1 p.m. November 9, 1988 7 p.m. November 10, 1988 1 p.m. November 15, 1988 1 p.m. November 15, 1988 7 p.m. November 16, 1988 1 p.m. November 9, 1988 10 a.m.
Comprehensive plan for solid waste disposal, 101.4 IAB 10/19/88 ARC 9346	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	November 9, 1988 10 a.m.
HUMAN SERVICES DEPARTMENT[441] Standards for individual case management services, ch 24; Standards for the service coordination system, ch 25; State community mental health and mental retardation services fund, ch 32 IAB 9/21/88 ARC 9269 (See also ARC 9268, IAB 9/21/88)	Hoover State Office Bldg. Conference Room — 1st Floor Des Moines, Iowa	November 1, 1988 2 p.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Administration of insulin
by residents in health
care facilities, 57.19(3)"c,"
62.15(3)"d," 63.19(3)"c"
IAB 10/5/88 ARC 9301

(See also 8/24/88 ARC 9117)

Minimum nursing hours per
resident day required in
intermediate care facilities, 58.11(2)"g"
IAB 10/5/88 ARC 9302

Conference Room — 3rd Floor
Lucas State Office Bldg.
Des Moines, Iowa

October 25, 1988
2 p.m.

Conference Room — 3rd Floor
Lucas State Office Bldg.
Des Moines, Iowa

October 25, 1988
2 to 4 p.m.

JOB SERVICE DIVISION[345]

Employer's contribution and charges,
claims and benefits, benefit payment
control; amendments to chs 3,4,5
IAB 10/19/88 ARC 9364

Employer's contribution and
charges, ch 3; Claims and
benefits, ch 4; Benefit payment
control, ch 5; Placement, ch 7;
Public records and fair
information practices, ch 8;
Forms, ch 10
IAB 10/19/88 ARC 9363

Division of Job Service
1000 East Grand Ave.
Des Moines, Iowa

November 9, 1988
9:30 a.m.

Division of Job Service
2508 East 4th St.
Sioux City, Iowa

November 9, 1988
7 p.m.

Division of Job Service
1810 Lower Muscatine Road
Iowa City, Iowa

November 10, 1988
7 p.m.

LABOR SERVICES DIVISION[347]

Construction contractor
registration, 1.3, ch 10
IAB 10/5/88 ARC 9300

Occupational safety and
health rules for general
industry, 10.20
IAB 10/5/88 ARC 9305

Occupational safety and
health for general industry,
10.20
IAB 10/19/88 ARC 9370

Occupational safety and health
rules for construction, 26.1
IAB 10/19/88 ARC 9369

Division of Labor Services
1000 East Grand Ave.
Des Moines, Iowa

October 31, 1988
10 a.m.

(If requested by
October 28, 1988)

Division of Labor Services
1000 East Grand Ave.
Des Moines, Iowa

October 31, 1988
10 a.m.

(If requested by
October 28, 1988)

Division of Labor Services
1000 East Grand Ave.
Des Moines, Iowa

November 14, 1988
10 a.m.

(If requested by
November 11, 1988)

Division of Labor Services
1000 East Grand Ave.
Des Moines, Iowa

November 14, 1988
10 a.m.

(If requested by
November 11, 1988)

NATURAL RESOURCE COMMISSION[571]

Wild turkey spring hunting
regulations, ch 98
IAB 9/21/88 ARC 9282

Conference Room
Fourth Floor
Wallace State Office Bldg.
Des Moines, Iowa

October 19, 1988
10 a.m.

PERSONNEL DEPARTMENT[581]

Pay, performance planning and evaluation,
leave, benefits, amendments to chs 4, 13,
14, 15
IAB 9/21/88 ARC 9252

Director's Conference Room
Grimes State Office Bldg.
Des Moines, Iowa

October 27, 1988
10 a.m.

PUBLIC BROADCASTING DIVISION[225]

Public records and fair
information practices, 3.9 to 3.17
IAB 10/5/88 ARC 9304

McElroy Conference Room
6450 Corporate Drive
Johnston, Iowa

October 25, 1988
9 a.m.

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Public records and fair
information practices, ch 12
IAB 10/5/88 ARC 9323

(See also ARC 9322, IAB 10/5/88)

Merit appeals, ch 11
IAB 10/19/88 ARC 9372

(See ARC 9371, herein)

Hearing Room — 2nd Floor
507 Tenth Street
Des Moines, Iowa

October 26, 1988
11 a.m.

Hearing Room — 2nd Floor
507 Tenth Street
Des Moines, Iowa

November 14, 1988
10 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Immunization — elementary,
secondary schools or child care
centers, amendments to ch 7
IAB 10/19/88 ARC 9335

Conference Room
Third Floor
Lucas State Office Bldg.
Des Moines, Iowa

November 8, 1988
1 p.m.

SCHOOL BUDGET REVIEW COMMITTEE[289]

Public records and fair
information practices, 1.7
IAB 10/5/88 ARC 9320

(See also ARC 9319, IAB 10/5/88)

Board Room
Second Floor
Grimes State Office Bldg.
Des Moines, Iowa

October 25, 1988
9 to 11 a.m.

SOIL CONSERVATION DIVISION[27]

Water quality protection
projects — water protection
fund, ch 21
IAB 10/5/88 ARC 9299

Conference Room
Second Floor North Half
Wallace State Office Bldg.
Des Moines, Iowa

October 25, 1988
1 p.m.

TRANSPORTATION DEPARTMENT[761]

Amendments to chs 4, 13, 20,
421, 450, 451, 602, 615, 620,
640, 910
IAB 9/21/88 ARC 9220

Motor vehicle dealers,
manufacturers and
distributors, 420.1,
420.2(4), 420.3(2),
420.7(2), 420.12
IAB 9/21/88 ARC 9218

Test drive motor truck
or truck tractor with
load, 420.4
IAB 9/21/88 ARC 9219

Department of Transportation
Complex
800 Lincoln Way
Ames, Iowa

November 1, 1988

Department of Transportation
Complex
800 Lincoln Way
Ames, Iowa

November 1, 1988

Department of Transportation
Complex
800 Lincoln Way
Ames, Iowa

November 1, 1988

UTILITIES DIVISION[199]

Deregulation of interLATA
interchange message
telecommunications service,
WATS and private line, and
custom network services
IAB 8/10/88 ARC 9061

Purchased gas adjustment,
19.10, 19.11
IAB 9/21/88 ARC 9289

Customer contribution
fund, 19.14, 20.15
IAB 10/19/88 ARC 9374

Hearing Room
First Floor
Lucas State Office Bldg.
Des Moines, Iowa

October 24, 1988
10 a.m.

Hearing Room
First Floor
Lucas State Office Bldg.
Des Moines, Iowa

October 27, 1988
10 a.m.

Hearing Room
First Floor
Lucas State Office Bldg.
Des Moines, Iowa

November 15, 1988
10 a.m.

AGENCY IDENTIFICATION NUMBERS

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas".

Other agencies are included alphabetically in lowercase type at the left-hand margin, e.g., Beef Industry Council, Iowa [101].

Implementation of reorganization is continuing and the following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

Beef Industry Council, Iowa[101]

BLIND, DEPARTMENT FOR THE[111]

CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Historical Division[223]

Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

High Technology Council[267]

EDUCATION DEPARTMENT[281]

College Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Professional Teaching Practices Commission[287]

School Budget Review Committee[289]

Egg Council[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]

Industrial Services Division[343]

Job Service Division[345]

Labor Services Division[347]

EXECUTIVE COUNCIL[361]

Fair Board[371]

GENERAL SERVICES DEPARTMENT[401]

Health Data Commission[411]

HUMAN RIGHTS DEPARTMENT[421]
Children, Youth, and Families Division[425]
Community Action Agencies Division[427]
Deaf Services, Division of[429]
Persons With Disabilities Division[431]
Spanish-Speaking People Division[433]
Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
Employment Appeal Board[486]
Foster Care Review Board[489]
Racing and Gaming Division[491]

LAW ENFORCEMENT ACADEMY[501]
Livestock Health Advisory Council[521]

MANAGEMENT DEPARTMENT[541]
Appeal Board, State[543]
City Finance Committee[545]
County Finance Committee[547]

NATURAL RESOURCES DEPARTMENT[561]
Energy and Geological Resources[565]
Environmental Protection Commission[567]
Natural Resource Commission[571]
Preserves, State Advisory Board[575]

PERSONNEL DEPARTMENT[581]

PUBLIC DEFENSE DEPARTMENT[601]

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

PUBLIC HEALTH DEPARTMENT[641]
Substance Abuse Commission[643]
Professional Licensure Division[645]
Dental Examiners[650]
Medical Examiners[653]
Nursing Board[655]
Pharmacy Examiners[657]

PUBLIC SAFETY DEPARTMENT[661]

REGENTS BOARD[681]
Archaeologist[685]

REVENUE AND FINANCE DEPARTMENT[701]
Lottery Division[705]

SECRETARY OF STATE[721]
Sheep and Wool Promotion Board, Iowa[741]

TRANSPORTATION DEPARTMENT[761]
Railway Finance Authority, Iowa[765]

TREASURER OF STATE[781]
Uniform State Laws Commission[791]
Veterinary Medicine Board[811]
Voter Registration Commission[821]

ARC 9384
AGRICULTURAL DEVELOPMENT
AUTHORITY[25]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 22.11 and 175.6(14), the Agricultural Development Authority gives Notice of Intended Action to adopt a new Chapter 8, "Public Records and Fair Information Practices," Iowa Administrative Code.

The Agricultural Development Authority is established within the Agriculture and Land Stewardship Department under Iowa Code section 175.3(1). The Authority intends to adopt by cross-reference 21—Chapter 6, "Public Records and Fair Information Practices," to appear as 25—Chapter 8.

Any interested person may make written suggestions or comments on these proposed rules no later than 1 p.m., November 8, 1988. Written materials should be directed to William H. Greiner, Executive Director, Iowa Agricultural Development Authority, Wallace State Office Building, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code chapters 17A, 22, and 175.

The following new chapter is proposed:

CHAPTER 8

PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES

25—8.1(22) Adopt by reference. The agricultural development authority adopts by reference 21—Chapter 6, Iowa Administrative Code.

25—8.2(22) Custodian of records. The custodian for the records maintained by the agricultural development authority is the executive director.

ARC 9341
AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5(11), 163.1, and 166C.6, the Iowa Department of Agriculture and Land Stewardship proposes to amend Chapter 64, "Infectious and Contagious Diseases," (Aujeszky's Disease segment), Iowa Administrative Code.

These amendments define the requirements for the sale or importation of swine pertinent to enforcement of Iowa Code chapter 166C. These rules will expedite current eradication efforts.

These rules were adopted and filed emergency and are published herein(ARC9340)as interim rules pending this rule-making action. The content of that filing is incorporated here by reference.

Any interested person may make written suggestions or comments on these proposed rules prior to Wednesday, November 9, 1988. Such written materials should be directed to Dale M. Cochran, Secretary of Agriculture, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319. There will be a public hearing on Wednesday, November 9, 1988, at 9 a.m. in the Auditorium of the Henry A. Wallace Building, East Ninth and Grand Avenue, Des Moines, Iowa. Persons may present their views at this hearing either orally or in writing.

These rules are intended to implement Iowa Code chapter 166C.

NOTICE — AGRICULTURAL
CREDIT CORPORATION
MAXIMUM LOAN RATE

In accordance with the provisions of Iowa Code section 535.12, the Superintendent of Banking has determined that the maximum rate of interest that may be charged on loans by Agricultural Credit Corporations as defined in Iowa Code section 535.12, subsection 4, shall be:

December 1, 1986 — December 31, 1986	11.20%
January 1, 1987 — January 31, 1987	10.90%
February 1, 1987 — February 28, 1987	10.90%
March 1, 1987 — March 31, 1987	10.90%
April 1, 1987 — April 30, 1987	10.90%
May 1, 1987 — May 31, 1987	10.90%
June 1, 1987 — June 30, 1987	10.90%
July 1, 1987 — July 31, 1987	10.90%
August 1, 1987 — August 31, 1987	10.90%
September 1, 1987 — September 30, 1987	10.90%
October 1, 1987 — October 31, 1987	10.90%
November 1, 1987 — November 30, 1987	10.90%
December 1, 1987 — December 31, 1987	10.90%
January 1, 1988 — January 31, 1988	10.90%
February 1, 1988 — February 29, 1988	10.90%
March 1, 1988 — March 31, 1988	10.90%
April 1, 1988 — April 30, 1988	10.90%
May 1, 1988 — May 31, 1988	9.75%
June 1, 1988 — June 30, 1988	9.75%
July 1, 1988 — July 31, 1988	9.75%
August 1, 1988 — August 31, 1988	9.75%
September 1, 1988 — September 30, 1988	9.75%
October 1, 1988 — October 31, 1988	10.00%

ARC 9367
ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106 and 1988 Iowa Acts, Senate File 2092, the Iowa Department of Economic Development hereby gives Notice of Intended Action to establish a new Chapter 28, "Community and Rural Development Loan Program," Iowa Administrative Code.

The proposed rules govern the establishment and administration of the Community and Rural Development Loan Program (CORDLAP). The purpose of the new program is to assist communities and rural areas of the state with their development and governmental responsibilities by providing low-interest and no-interest loans for traditional infrastructure, "new" infrastructure, and housing. The Iowa Department of Economic Development was given the responsibility to administer the traditional infrastructure and "new" infrastructure portions. The Iowa Finance Authority will administer the housing component.

The proposed rules outline the basic requirements for the program: eligibility, types of projects allowed, award ceiling, application procedures, rating and ranking methodology, and administrative practices.

Comments are solicited on the proposed structure of the CORDLAP.

A public hearing will be held on November 10, 1988, at 10 a.m. in the main conference room at the Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa, to receive public comments on the proposed rules. Interested persons may submit written or oral comments until November 10, 1988, to: Roselyn Wazny, Iowa Department of Economic Development, Division of Financial Assistance, 200 East Grand Avenue, Des Moines, Iowa 50309. (telephone number: 515/281-3890)

These rules are intended to implement 1988 Iowa Acts, Senate File 2092.

The following new chapter is proposed:

CHAPTER 28
 COMMUNITY AND RURAL DEVELOPMENT
 LOAN PROGRAM

261—28.1(72GA,SF2092) Community and rural development loan program. The program is designed to assist communities and rural areas of the state with their development and governmental responsibilities by providing low-interest and no-interest loans for traditional infrastructure, new infrastructure, and housing.

261—28.2(72GA,SF2092) Definitions. When used in this chapter, unless the context otherwise requires:

"Applicant" means any entity eligible to apply for funds.

"Applications on behalf of" means any application submitted by one eligible applicant requesting funds for one or more other eligible applicants.

"CORDLAP" means community and rural development loan program.

"DED" or "IDED" means the Iowa department of economic development.

"Department" means the Iowa department of economic development.

"Historic site" means any site listed on the National Register of Historic Sites or any other site deemed to have historical significance by the department of cultural affairs, state historical society of Iowa, bureau of historic preservation.

"Joint application" means an application submitted by more than one eligible applicant to complete a single project for the benefit of all those applying.

"Loan" means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award.

"Local effort" means matching contributions provided by private or public sources which are used to directly support the cost of program activities as described in the application.

"New infrastructure" means projects that include, but are not limited to, communication systems; day care; technology transfer adaptation; medical decision-support systems; special transportation services; physical improvements under town square and main street programs; physical improvements to historic, art, and cultural sites and attractions; emergency medical services; and other projects described as general corporate purposes in Iowa Code section 384.24, subsection 4.

"Nonprofit development corporation" means any corporation organized for the purpose of developing businesses, industries and enterprises in the state of Iowa by loaning of money thereto and investing money therein, which is operated on a nonprofit basis. For the purpose of this chapter, a nonprofit development corporation may also include a local development group.

"Political subdivision" means a city, county, township, school district, or other unit of local government.

"Project" means the activity or set of activities proposed by the applicant which will accomplish the stated community development objective and which will require state assistance to accomplish.

"Recipient" means any eligible applicant receiving funds under this program.

"Traditional infrastructure" means projects that include, but are not limited to, sewer, water, roads, bridges, airports, and other projects described as essential corporate purposes in Iowa Code section 384.24, subsection 3.

261—28.3(72GA,SF2092) Allocation of funds.

28.3(1) At least 70 percent of the moneys appropriated to the CORDLAP program by 1988 Iowa Acts, Senate File 2328, section 5, shall be allocated to traditional and new infrastructure projects, including at least 15 percent for new infrastructure category and at least 55 percent for traditional infrastructure.

28.3(2) Small cities set-aside. At least one-third of the moneys allocated to each category shall be set aside for cities with populations of 5000 or less. For purposes of this set-aside, any city located in a county with a population in excess of 300,000 that is contiguous to another municipality in the county and that municipality is contiguous to the largest city in that county shall be considered as having a population in excess of 20,000.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] (cont'd)

28.3(3) Coordination with department of natural resources. The IDED may coordinate with the department of natural resources to assist political subdivisions receiving federal aid for wastewater treatment facilities. However, the IDED shall not allocate more than 50 percent of the available moneys in the traditional infrastructure category for this purpose.

28.3(4) Transfer of funds. Up to \$1 million allocated in 1988 Iowa Acts, Senate File 2328, section 5[99E.3(3)"n"(1)], which are not used or dedicated may be transferred to and used for the purposes of the community economic betterment account, as determined by the department of economic development with one half of the amount transferred on October 1, 1988, and one half of the amount to be transferred on January 15, 1989.

28.3(5) Indebtedness limitations. A city, county, political subdivision, or other municipal corporation shall not be required to issue its bonds to secure loans under the community and rural development loan program. It is the intent of the general assembly that loans received by a city, county, political subdivision, or other municipal corporation under the loan program shall not constitute an indebtedness of that entity within the meaning of any state constitutional provision or statutory limitation.

TRADITIONAL INFRASTRUCTURE PROGRAM

261—28.4(72GA,SF2092) Traditional infrastructure program.

28.4(1) Purpose. The purpose of the traditional infrastructure program is to provide low- and no-interest loans for projects that include, but are not limited to, sewer, water, roads, bridges, airports, and other projects described as essential corporate purposes in Iowa Code section 384.24, subsection 3.

28.4(2) Eligibility. Any city or county in the state of Iowa is eligible to apply for loans in this category.

28.4(3) Applications for assistance—general policies.

a. An applicant may submit as many different applications as it wishes at one time. However, if the department is reviewing two or more applications from one applicant at the same time, it may ask the applicant to rank them in the order preferred by the applicant.

b. No single project may be awarded more than \$500,000 per year.

c. Applications must be seeking funds to improve the physical assets of the traditional infrastructure of the political subdivision in aid of development.

d. Joint applications for two or more eligible applicants will be accepted only in those instances where the most efficient solution to a problem requires mutual action as determined by IDED.

e. The applicant shall provide evidence that the project can be completed with the funds requested.

f. Interest rates charged on a loan may not exceed 5 percent per annum or be less than 0 percent per annum.

g. The department will charge applicants an administration fee not to exceed 1 percent of the principal amount of the loan to be paid as a lump sum or a percent of the interest rate.

28.4(4) Application procedures.

a. Applications will be solicited at least annually at the discretion of the director of the department.

b. Applications shall be submitted to the following address: Division of Financial Assistance, Department of Economic Development, CORDLAP Program, 200 East Grand Avenue, Des Moines, Iowa 50309. Applica-

tion forms and instructions are available at this address or by calling 515/281-3982.

c. Application contents. Required contents of the application will be described within the application package itself. In addition to the application form, the city or county shall submit the following:

(1) A needs assessment study;

(2) A capital improvement program; and

(3) Evidence of matching contribution of at least 25 percent of the total project cost.

d. Each eligible application will be reviewed by the department. The department may request additional information from the applicant or perform other activities to obtain needed information.

e. The department will rate and rank applications according to the criteria described in 28.4(5). The highest ranked projects will be funded, dependent upon availability of funds. The department may negotiate with the applicant concerning dollar amounts and other elements of the application.

f. The department may approve, reject, table or defer action on an application.

28.4(5) Selection criteria.

a. Ranking. In ranking applications for funding, the following criteria shall be considered:

(1) The level of need of the political subdivision;

(2) The impact of the project on the community;

(3) The cost/benefit of the project;

(4) The proportion of local match provided; and

(5) The ability of the applicant to administer the project.

b. Scoring. The criteria noted in 28.4(5)"a" are incorporated into a scoring system with a maximum score of 400 points.

(1) Level of need (financial, service provision, etc.) of the political subdivision, 100 points possible;

(2) Impact of project on the community, 100 points possible;

(3) Cost/benefit of the project, 100 points possible;

(4) Local matching funds, 75 points possible; and

(5) Ability to administer the project, 25 points possible.

NEW INFRASTRUCTURE PROGRAM

261—28.5(72GA,SF2092) New infrastructure program.

28.5(1) Purpose. The purpose of the new infrastructure program is to provide low- and no-interest loans for projects that are services or processes not currently meeting guidelines of standard public works projects. These include, but are not limited to, communication systems; day care; technology transfer adaptation; medical decision-support systems; special transportation services; physical improvement under town square and main street programs; physical improvements to historic, art, and cultural sites and attractions; emergency medical services; and other projects described in Iowa Code section 384.24, subsection 4.

28.5(2) Eligibility. Any political subdivision or nonprofit development corporation in the state of Iowa is eligible to apply for funds in this category.

28.5(3) Applications for assistance.

a. General policies.

(1) An applicant may submit as many different applications as it wishes at one time. However, if the department is reviewing two or more applications from one applicant at the same time, it may ask the applicant to rank them in order preferred by the applicant.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] (cont'd)

(2) No single project may be awarded more than \$150,000 per year.

(3) The applicant must provide evidence that the project can be completed with the funds requested.

(4) Joint applications for two or more eligible applicants will be accepted only in those instances where the most efficient solution to a problem requires mutual action as determined by IDEED.

(5) Interest rates charged on a loan may not exceed 5 percent per annum or be less than 0 percent per annum.

(6) The department will charge applicants an administrative fee not to exceed 1 percent of the principal amount of the loan to be paid as a lump sum or a percent of the interest rate.

b. Application procedures.

(1) Applications will be solicited at least annually at the discretion of the director of the department.

(2) Applications shall be submitted to the following address: Division of Financial Assistance, Department of Economic Development, CORDLAP Program, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address or by calling 515/281-3982.

(3) Application contents. Required contents of the application will be described within the application package itself. In addition to the application form, the city or county shall submit the following:

1. A needs assessment study;
2. A capital improvement program; and
3. Evidence of matching contribution of at least 10 percent of the total project cost.

(4) Each eligible application will be reviewed by the department. The department may request additional information from the applicant or perform other activities to obtain needed information.

(5) The department will rate and rank applications according to criteria in 28.5(4). The highest ranked projects will be funded, dependent upon availability of funds. The department may negotiate with the applicant concerning dollar amounts and other elements of the application.

28.5(4) Selection criteria ranking.

a. Ranking. In ranking applications for funding, at least the following criteria shall be considered:

- (1) Applicant's financial need;
- (2) Cost/benefit of the project;
- (3) Current conditions or situations;
- (4) Percent of private investment or contribution; and
- (5) Ability to administer the project.

b. Scoring. The criteria noted in 28.5(4)"a" are incorporated into a scoring system with a maximum score of 400 points:

- (1) Applicant's financial need, 75 points possible;
 - (2) Cost/benefit of the project, 100 points possible;
 - (3) Current conditions, 100 points possible;
 - (4) Percent of private participation, 100 points possible;
- and
- (5) Ability to administer project, 25 points possible.

261—28.6(72GA,SF2092) Loan administration.

28.6(1) Award process. Applicants for projects under CORDLAP infrastructure programs will be notified, in writing, of the disposition of their application no later than 60 days after the due date.

Successful applicants will enter into a contract with the department which clarifies their responsibilities as a grantee for oversight of the project, reporting to the

department, repayment schedule, and other responsibilities in return for the provision of funds. In addition, successful applicants will be required to attend a half-day training session concerning administration of the loan award.

Certain other activities may be required of the applicant prior to obtaining funds.

28.6(2) Financial management.

a. Audits. All contracts made under the CORDLAP program are subject to audit. Recipients shall be responsible for the procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor. Audits shall be performed in accordance with applicable state and federal laws.

b. Record-keeping and retention requirements.

(1) Financial records, supporting documents, statistical records, and all other records pertinent to the loan program shall be retained by the applicant. All records shall be retained for three years beyond the loan or longer if any litigation is begun or if a claim is initiated involving the loan covered by the record. In these instances, the records will be retained until the litigation or claim has been resolved.

(2) Representatives of the department and the state auditor's office shall have access to all books, accounts, documents, records, and other property belonging to or in use by the applicant or recipient pertaining to the receipt of assistance under this program.

c. Performance reports and reviews.

(1) Applicants will be required to submit quarterly performance reports to the department. The reports will assess the use of funds in accordance with program objectives, the progress of program activities, and compliance with the certifications made in the agreement with the department.

(2) The department may perform any reviews or field inspections it deems necessary to ensure program compliance, including reviews of applicant performance reports. When problems of compliance are noted, the department may require remedial actions to be taken.

d. Remedies for noncompliance. At any time before project closeout, the department may, for cause, find that a recipient is not in compliance with its requirements under this program. At the department's discretion, remedies for noncompliance may include penalties or the return of program funds. Reasons for a finding of noncompliance include, but are not limited to: the recipient's using program funds for activities not described in its application; the recipient's failure to complete approved activities in a timely manner; the applicant's failure to comply with any applicable state rules or federal regulations; or the lack of a continuing capacity of the applicant to carry out the approved program in a timely manner.

261—28.7(72GA,SF2092) Miscellaneous.

28.7(1) Amendments. Any substantive change to a funded CORDLAP project will require a contract amendment. Changes could include contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries. The amendment shall be requested in writing. No amendment will be valid until approved in writing by the department.

28.7(2) Appeals. Appeals will be entertained in instances where it is alleged that staff participated in a decision which was unreasonable, arbitrary, capricious

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or otherwise beyond the authority delegated to the agency. Appeals should be addressed to the director, department of economic development.

28.7(3) Forms. The following forms will be used by the department in the administration of the CORDLAP program:

- a. Application form,
- b. Loan agreement,
- c. Sample loan agreement,
- d. Program budget and schedule,
- e. Quarterly performance report, and
- f. Status of funds report.

These rules are intended to implement 1988 Iowa Acts, Senate File 2092, sections 1 to 5.

ARC 9360**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106 and 1988 Iowa Acts, Senate File 2309, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 57, "Ambassador's Program," Iowa Administrative Code.

The proposed amendments bring the rules into compliance with legislative changes made by 1988 Iowa Acts, Senate File 2309. Outdated references will be rescinded and replaced with the correct current citations. The amendments change the list of authorized program activities in rule 261—57.2(71GA, ch1246) to reflect legislative intent as expressed in Senate File 2309.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on November 22, 1988. Interested persons may submit written or oral comments to: Ambassador Program, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone: (515) 281-7969.

These rules are intended to implement 1988 Iowa Acts, Senate File 2309, section 10.

The following amendments are proposed:

ITEM 1. Amend rule 261—57.1(71GA, ch1246) as follows:

261—57.1(71GA, ch1246 72GA, SF2309) Program established. Pursuant to the authority of 1986 Iowa Acts, chapter 1246, division I, section 1(4), the department of economic development ~~was~~ is authorized to develop a comprehensive national and international state marketing program known as the Iowa ambassador's program. Funds appropriated for this program are matched with private sources to implement a statewide initiative.

ITEM 2. Amend rule 261—57.2(71GA, ch1246) as follows:

261—57.2(71GA, ch1246 72GA, SF2309) Activities. Funds available shall be utilized for activities that include, but are not limited to the following:

1. Development of a trade network,
2. National and international marketing research,
3. 1. Business recruitment,
4. 2. Utilization of national advertising features,
5. 3. A toll-free number,
6. 4. Billboards,
7. 5. Displays in key business locations,
8. 6. A direct marketing program,
9. 7. A "trade and marketing institute," and
10. 8. An "invest in Iowa" program.

ITEM 3. Amend rule 261—57.3(71GA, ch1246) as follows:

261—57.3 (71 GA, ch 1246 72 GA, SF 2309) Private participation.

57.3(1) Match. Funds appropriated for the ambassador's program shall be matched on a dollar-for-dollar basis with capital provided by private sources and shall be expended to attract private capital to be used to fund activities described in rule 261—57.2 (71 GA, ch 1246 72 GA, SF 2309). In-kind contributions from the private sector may be considered as a portion of the dollar-for-dollar match. As used in this subrule "capital" is defined as cash or contributions that can readily be assessed a fair market value. An "in-kind" match is a noncash contribution which is used to directly support the activities of the ambassador program.

57.3(2) No change.

57.3(3) Contracting and coordinating. The department will secure the necessary participation from groups and organizations most appropriate for any particular function. The department will give attention to using a portion of these funds to ~~contract~~ and coordinate with international programs at Iowa colleges and universities to develop a network of trade contacts overseas through the use of alumni from Iowa colleges and universities.

ARC 9342**EDUCATION DEPARTMENT[281]****Notice Terminated**

Pursuant to the authority of Iowa Code section 259A.5, the Iowa Department of Education is terminating an amendment to 670—Chapter 8, [renumbered as 281—Ch 32 IAB 9/7/88] "High School Equivalency Diploma," Iowa Administrative Code.

This amendment will provide raising the state standard for obtaining an Iowa High School Equivalency Diploma from a minimum standard score of 35 on each test and an average standard score of 45 on all five tests of the GED battery to a minimum standard score of 40 on each test and an average standard score of 45 on all five tests of the GED battery.

Notice of Intended Action was published in the September 7, 1988, Iowa Administrative Bulletin as **ARC 9189**.

This termination notice is deemed necessary based on the input received by the Department recommending that any action to change the GED standard score requirement for the high school equivalency diploma be delayed until the results are available from the planned norming study.

ARC 9383**EDUCATION DEPARTMENT[281]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby amends Notice of Intended Action to adopt Chapter 102, "Procedures for Charging and Investigating Incidents of Abuse of Students by School Employees," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 7, 1988, as **ARC 9187**.

This amendment extends the time for written and oral comments to October 28, 1988, so that there is time for mailing copies of the proposed rules and receiving comments throughout the state.

These rules are intended to implement Iowa Code section 280.17.

ARC 9345**ENVIRONMENTAL PROTECTION COMMISSION [567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"6".

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission for the Department of Natural Resources gives Notice of Intended Action to amend Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," and Chapter 61, "Water Quality Standards," Iowa Administrative Code.

As required by the U.S. Environmental Protection Agency (EPA), water quality standards are periodically reviewed for technical accuracy, incorporation of current scientific data and consistency with the EPA guidelines and requirements. The Department is proposing the following amendments as the result of this review.

New definitions are added to rule 60.2 for water contact recreational canoeing, mixing zone, zone of initial dilution, four-day, three-year low stream flow, minimum flow, crossover point, intermittent watercourses, losing stream, acute toxicity, and chronic toxicity. The definition for secondary contact is amended to explain that secondary contact includes users that do not enter the water body while on a boating activity. The definitions for "high quality waters" and "high quality resource waters" are deleted from 60.2.

In subrule 61.2(1), an additional resource document from EPA is added as a reference for application of narrative standards. Subrule 61.2(2)"b" is amended to delete the list of 49 high quality waters and extends protection to all water bodies where the water quality significantly exceeds the levels necessary to protect existing uses. This amendment was requested by EPA and is a minimum requirement of the federal regulations.

Subrule 61.2(2)"c" is amended to conform to EPA regulations. EPA regulations establish three tiers of waters. The highest classification pertains to water bodies where no degradation at all is allowed and where more stringent standards than those applied to other antidegradation waters may be applied. Presently, West Lake Okoboji falls within this class. The format of this subrule is changed to allow for the addition of other water bodies that may fall within this category. Subrule 61.2(2)"d" is amended to specifically cite a rule reference. Subrule 61.2(2)"f" is amended to delete the specific list of water bodies protected and to refer to the warm waters listed in subrule 61.3(5)"e." Subrule 61.2(2)"g" is revised to reflect changes in definitions for different types of water bodies.

Subrule 61.2(4) is rescinded and replaced by a new subrule. As recommended by the EPA, this subrule attempts to better define the term mixing zones. Additionally, the subrule sets forth more detailed procedures for calculating the dimensions of the mixing zone and zone of initial dilution. Reference to the four-day, three-year low flow, newly defined in 60.2, is made in determining the width and length of the mixing zone. The four-day, three-year low flow is also used to determine the stream flow to be used to establish effluent limits to assure compliance with the mixing zone criteria.

Subrule 61.2(5) concerning the implementation strategy has been amended. The revised rule requires the numerical criteria in the water quality standards to be met when the flow of the receiving stream meets or exceeds the four-day, three-year low flow. The standard in the previous rule for the flow of the receiving stream was the average seven-day low flow that occurs once in ten years. The subrule continues to allow for waivers of the low-flow requirement and establishment of a minimum flow with the added condition that the continued maintenance of beneficial uses of the receiving waters will be assured. The amendment further provides that toxic conditions will not be allowed to occur in the receiving waters outside the mixing zone. This subrule is proposed following EPA guidelines.

Subrule 61.2(5)"c" has been revised. The word "standards" has been replaced by the word "criteria" throughout this subrule. The revision provides that evaluations for site-specific criteria must be conducted using scientifically accepted procedures approved by the Department. EPA must review and approve site-specific criteria.

Existing subrule 61.3(1) is renumbered as 61.3(2) and replaced by new subrule 61.3(1) which pertains to surface water classification. This classification defines general use and designated use segments. Definitions are included for the following designated uses: primary contact recreation, Class A; cold-water aquatic life, Class B(CW); high quality resource warm-water, Class B(HQ); significant resource warm-water, Class B(WW); limited resource warm-water, Class B(LR); lakes and wetlands, Class B(LW); and drinking water supply, Class C. This subrule results from EPA recommendations.

Subrule 61.3(1) is renumbered as 61.3(2) and revised to reflect the definitions added for general use, designated use, and acutely toxic. This subrule is revised to specifically prohibit new wastewater discharges on watercourses that directly or indirectly enter sinkholes or losing stream segments.

Subrules 61.3(2) to 61.3(4) are rescinded and replaced by subrule 61.3(3). This subrule pertains to specific water

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quality criteria for Class A, Class B and Class C waters. The subrule includes tables setting forth criteria for chemical constituents, dissolved oxygen, and ammonia for the various classifications of water bodies. Fourteen new toxics were added to the table of chemical constituents. New pH and temperature variables are used for establishing ammonia levels for various water bodies. This subrule follows U.S. EPA guidelines.

The referenced document in subrule 61.2(5), "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, will be modified to reflect these proposed rule changes. The document changes should be completed near the projected adoption date for these water quality rule changes. Formal rule-making procedures including public hearing will be completed independently for the changes to the referenced document.

Any interested person may submit written suggestions or comments on the proposed rule changes through November 28, 1988. Such written materials should be directed to Ralph Turkle, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034. Persons who have questions may contact Ralph Turkle at (515)281-7025. Persons are also invited to present oral or written comments at public hearings which will be held on November 9, 1988, at 1 p.m. in the auditorium of the Elkader Opera House, 207 North Main, Elkader, Iowa; on November 9, 1988, at 7 p.m. in the National Guard Armory, 1101 West Madison (Junction of Hwy. 1 and 92), Washington, Iowa; on November 10, 1988, at 1 p.m. in the Council Chambers at the City Hall, 19 South Delaware, Mason City, Iowa; on November 15, 1988 at 1 p.m. in the Community Center, 530 West Bluff, Cherokee, Iowa; on November 15, 1988, at 7 p.m. in the Atlantic Municipal Utilities meeting room, 15 West Third, Atlantic, Iowa; on November 16, 1988, at 1 p.m. in the auditorium of the Wallace State Office Building, 900 East Grand, Des Moines, Iowa.

These rules may have an impact upon small businesses.

Copies of these proposed rules may be obtained from Sarah Detmer, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034.

These rules are intended to implement Iowa Code chapter 455B, Division III, Part I.

ITEM 1. Amend rule 60.2(455B) by deleting the definitions for "high-quality waters" and "high-quality resource waters," revising the definition for "secondary contact" to read as follows:

"Secondary contact" means any recreational or other water use in which contact with the water is either incidental or accidental and in which the probability of ingesting appreciable quantities of water is minimal, such as fishing, commercial and recreational boating and any limited contact incidental to shoreline activity. *This would include users who do not swim or float in the water body while on a boating activity.*

Further amend rule 60.2(455B) by adding the following new definitions in alphabetical order:

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

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

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

"Four-day, three-year low stream flow" means the lowest average stream flow which would statistically occur for four consecutive days once every three years.

"Intermittent watercourses" means watercourses which contain flow associated with rainfall/runoff events and which periodically go dry even in pooled areas.

"Losing streams" means streams which lose 30 percent or more of their flow during the four-day, three-year low stream flow periods to cracks and crevices of rock formations, sand and gravel deposits, or sinkholes in the streambed.

"Minimum flow" means that established stream flow in lieu of the four-day, three-year low stream flow to which the provisions of 567—Chapter 61 apply.

"Mixing zone" means a delineated portion of a stream or river in which wastewater discharges will be allowed to combine and disperse into the water body. The chronic criteria of subrule 61.3(3) will apply at the downstream edge of this zone.

"Water contact recreational canoeing" means the type of activities associated with canoeing outings in which primary contact with the water does occur. This would include users who swim or float in the water body while on a canoeing outing.

"Zone of initial dilution" means a delineated portion of a mixing zone in which wastewater discharges will be allowed to rapidly combine and begin dispersing into the water body. The acute criteria of subrule 61.3(3) will apply at the downstream edge of this zone.

ITEM 2. Amend subrule 61.2(1), second unnumbered paragraph, as follows:

Certain of the criteria are in narrative form without numeric limitations. In applying such narrative standards, decisions will be based on the U.S. Environmental Protection Agency's methodology described in "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses," 1985 and on the rationale contained in "Quality Criteria for Water," published by the U.S. Environmental Protection Agency (1977), as updated by supplemental Section 304 (of the Act) Ambient Water Quality Criteria documents.

ITEM 3. Amend subrule 61.2(2), paragraph "b," by deleting the list of 49 water bodies entirely and by amending the first paragraph as follows:

b. *Chemical integrity: Those existing high-quality waters, named below, For those water bodies where water quality significantly exceeds levels necessary to protect existing uses that water quality will be maintained at or above existing quality, except when, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planned process, it is determined by the Environmental Protection Commission after public hearing that there is need to allow a lower the chemical quality because of necessary and justifiable economic and or social development in the area. In allowing such degradation or lowered chemical quality, the state shall assure ensure adequate chemical quality to fully protect existing uses.*

ITEM 4. Amend subrule 61.2(2), paragraph "c," as follows:

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c. It is intended that rules defining facility design criteria, discharge limitations, and other restrictions will be adopted by the commission for specific application to antidegradation waters. West Lake Okoboji is an outstanding Iowa lake, and standards *Standards* and restrictions more stringent than those applied to other antidegradation waters may be applied by the commission to West Lake Okoboji those waters listed below when it is determined through broadly based public participation that such more stringent standards and restrictions are justified necessary to fully maintain water quality at existing levels.

West Lake Okoboji in Dickinson County.

ITEM 5. Amend subrule 61.2(2), paragraph "d," as follows:

d. The Mississippi River and the Missouri River do not meet existing high quality waters the criteria of 61.2(2)"c" but nevertheless constitute waters of exceptional state and national significance. Water quality management regulatory actions affecting them will be directed toward water quality improvement commensurate with the exceptional value of the resource.

ITEM 6. Amend subrule 61.2(2), paragraph "f," introductory paragraph, as follows and delete the list of 43 water bodies:

f. *Physical and biological integrity:* Water quality management regulatory actions affecting the waters designated as high-quality resource waters warm water, listed below in subrule 61.3(5)"e", will be directed at water quality improvement commensurate with the exceptional value of the resource and at preserving and enhancing not only the chemical but also the physical and biological integrity of these waters. *This involves the protection of such features of the water body as channel alignment, bed characteristics, water velocity, aquatic habitat, and the type, distribution and abundance of existing aquatic species.*

ITEM 7. Amend the first unlettered paragraph of subrule 61.2(2), paragraph "g," as follows:

For those waters of the state designed as high quality cold water aquatic life or high quality resource warm waters and the Mississippi and Missouri Rivers, any proposed activity that will adversely impact the existing physical, chemical or biological integrity of that water will not be consistent with Iowa's water quality standards. Mitigation will not be allowed except in highly unusual situations where no other project alternatives exist. In these cases, full mitigation must be provided by the applicant and approved by the department.

ITEM 8. Rescind subrule 61.2(4) and insert the following in lieu thereof:

61.2(4) Regulatory mixing zones. Mixing zones are recognized as being necessary for the initial assimilation of point source discharges which have received the required degree of treatment or control. Mixing zones shall not be used for, or considered as, a substitute for minimum treatment technology required by subrule 61.2(3). The objective of establishing mixing zones is to provide a means of control over the placement and emission of point source discharges so as to minimize environmental impacts. Waters within a mixing zone shall meet the general water quality criteria of subrule 61.3(2). Waters at and beyond mixing zone boundaries shall meet all applicable standards and the chronic criteria of subrule 61.3(3) Table 1 for that particular

water body or segment. A zone of initial dilution may be established within the mixing zone beyond which the applicable standards and the acute criteria of subrule 61.3(3) will be met.

a. Due to extreme variations in wastewater and receiving water characteristics, spatial dimensions of mixing zones shall be defined on a site-specific basis. These rules are not intended to define each individual mixing zone, but will set maximum limits which will satisfy most biological, chemical, physical and radiological considerations in defining a particular mixing zone.

b. The dimensions of the mixing zone and the zone of initial dilution will be calculated using the following factors:

(1) The width of a mixing zone may not exceed the following percentages of the stream width during the four-day, three-year low stream flow as measured at the point of discharge:

1. Twenty-five percent for interior streams and rivers, and the Big Sioux and Des Moines Rivers.

2. Ten percent for the Mississippi and Missouri Rivers. The stream width will be measured perpendicular to the basic direction of stream flow from the edge of water from one bank to the edge of water of the opposite bank. This measurement will include only the distance of continuous water surface. The width of side channels, cutoffs or other flowage ways will not be included as the stream width.

(2) The length of the mixing zone below the point of discharge shall be set by the most restrictive of the following:

1. A distance equivalent to the product of seven times the width of the stream during the four-day, three-year low flow.

2. The distance to the juncture of two perennial streams.

3. The distance to a public water supply intake.

4. The distance to the upstream limits of a heavily used recreational area.

5. The distance to the middle of a crossover point in a stream where the main current flows from one bank across to the opposite bank.

6. The distance to another mixing zone.

(3) The width and length of the zone of initial dilution may not exceed 10 percent of the width and length of the mixing zone.

c. The stream flow used in determining effluent limits to assure compliance with the mixing zone criteria may not exceed the following percentages of the four-day, three-year low stream flow as measured at the point of discharge:

(1) Twenty-five percent for interior streams and rivers, and the Big Sioux and Des Moines Rivers.

(2) Ten percent for the Mississippi and Missouri Rivers. The stream flow used in determining effluent limits to assure compliance with the zone of initial dilution criteria may not exceed 10 percent of the calculated flow associated with the mixing zone.

d. The following exceptions apply to the mixing zone requirements:

(1) No mixing zone or zone of initial dilution will be allowed for waters designated as lakes or wetlands.

(2) No zone of initial dilution will be allowed in waters designated as cold water.

e. Temperature changes within mixing zones established for heat dissipation will not exceed the temperature criteria in subrule 61.3(3)"b"(5).

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f. The appropriateness of establishing a mixing zone where a substance discharged is bioaccumulative, persistent, carcinogenic, mutagenic, or teratogenic will be carefully evaluated. In such cases, effects such as potential groundwater contamination, sediment deposition, fish attraction, bioaccumulation in aquatic life, bioconcentration in the food chain, and known or predicted safe exposure levels shall be considered.

ITEM 9. Amend subrule 61.2(5), introductory paragraph, as follows:

61.2(5) Implementation strategy. *Numerical criteria specified in these* These water quality standards shall be met at all times when the flow of the receiving stream equals or exceeds the ~~average seven-day four-day, three-year low flow which occurs once in ten years.~~ Exceptions may be made for intermittent or low flow streams: ~~Where intermittent or low-flow streams are classified as for Class B aquatic life protection significant resource warm waters or limited resource warm waters. For these waters,~~ the department may waive the ~~seven-day, ten-year four-day, three-year low-flow requirement~~ and establish a minimum flow in lieu thereof. Such waiver shall be granted only when it has been determined that the aquatic resources of the receiving waters are of no significance at flows less than the established minimum, *and that the continued maintenance of the beneficial uses of the receiving waters will be assured. In no event will toxic conditions be allowed to occur in the receiving waters outside of mixing zones established pursuant to subrule 61.2(4).* The policy for granting waivers is described in the "Supporting Document for Iowa Water Quality Management Plans" (Iowa Department of Water, Air and Waste Management, Chapter IV, July 1976, as revised on October 16, 1984). (Copies are available upon request to the Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319-0034. Copy also on file with the Iowa Administrative Rules Coordinator.)

All minimum flows established under the provisions of this subrule will be published annually by the department.

ITEM 10. Amend subrule 61.2(5), paragraph "c," as follows:

c. Site-specific water quality ~~standards criteria~~ may be allowed in lieu of the ~~water quality standards referenced in specific numerical criteria listed in Tables 1 and 3 of this chapter~~ if adequate documentation is provided to show that ~~site specific the proposed criteria~~ will protect all existing or potential uses of the surface water. Site-specific water quality ~~standards criteria~~ may be appropriate where:

(1) The types of organisms differ significantly from those used in setting the statewide ~~standards criteria~~, or;

(2) The chemical characteristics of the surface water such as pH, temperature, and hardness differ significantly from the characteristics of the ~~water~~ used in setting the statewide ~~standard criteria~~.

Development of site-specific criteria shall include an evaluation of the chemical and biological characteristics of the water resource and an evaluation of the impact of the discharge. All evaluations *for site-specific criteria modification* must be coordinated *through the department*, and be conducted using *scientifically accepted procedures approved by the department*. Any site-specific criterion developed under the provisions of this subrule is subject to the review and approval of the U.S. Environmental

Protection Agency. All criteria approved under the provisions of this subrule will be published periodically by the department, and performed with prior consent and approval of the department using scientifically accepted procedures. Guidelines for establishing site-specific water quality criteria can be found in "Water Quality Standards Handbook," published by the U.S. Environmental Protection Agency, December 1983.

ITEM 11. Renumber the existing subrule 61.3(1) as 61.3(2) and add the following language as subrule 61.3(1):

61.3(1) Surface water classification. All waters of the state are classified for protection of beneficial uses. These classified waters include general use segments and designated use segments.

a. General use segments. These are intermittent watercourses and those watercourses which typically flow only for short periods of time following precipitation in the immediate locality or as a result of discharges from wastewater treatment facilities, and whose channels are normally above the water table. These waters do not support a viable aquatic community of significance during low flow, and do not maintain pooled conditions during periods of no flow.

However, during periods when sufficient flow exists in the intermittent watercourses to support various uses, the general use segments are to be protected for livestock and wildlife watering, noncontact recreation, crop irrigation, and industrial, agricultural, domestic and other incidental water withdrawal uses. The aquatic life existing within these watercourses during elevated flows will be protected from acutely toxic conditions.

b. Designated use segments. These are natural water bodies which maintain flow throughout the year, or contain sufficient pooled areas during intermittent flow periods to maintain a viable aquatic community of significance.

Designated use waters are to be protected for all uses of general use segments in addition to the specific uses assigned. Designated use segments include:

(1) Primary contact recreation (Class "A"). Waters in which recreational or other uses may result in prolonged and intimate contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not be limited to, swimming, diving, water skiing, and water contact recreational canoeing.

(2) Cold water aquatic life (Class "B(CW)"). Waters in which the temperature, flow, and other habitat characteristics are suitable for the maintenance of a wide variety of cold water species, including nonreproducing populations of trout and associated aquatic communities.

(3) High quality resource warm water (Class "B(HQ)"). Waters of substantial recreational or ecological significance which possess unusual, outstanding or unique physical, chemical, or biological characteristics which enhance the beneficial uses and warrant special protection.

(4) Significant resource warm water (Class "B(WW)"). Waters in which temperature, flow and other habitat characteristics are suitable for the maintenance of a wide variety of reproducing populations of warm water fish and associated aquatic communities, including sensitive species.

(5) Limited resource warm water (Class "B(LR)"). Waters in which flow or other physical characteristics limit the ability of the water body to maintain a balanced

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warm water community. Such waters support only populations composed of species able to survive and reproduce in a wide range of physical and chemical conditions, and are not generally harvested for human consumption.

(6) Lakes and wetlands (Class "B(LW)"). These are artificial and natural impoundments with hydraulic retention times and other physical and chemical characteristics suitable to maintain a balanced community normally associated with lake-like conditions.

(7) Drinking water supply (Class "C"). Waters which are used as a raw water source of potable water supply.

ITEM 12. Amend renumbered subrule 61.3(2), introductory paragraph, and paragraphs "d" and "h," as follows:

61.3(2) General water quality criteria. The following criteria are applicable to all surface waters including those which have been designated as Class "A," "B," or "C" general use and designated use waters, at all places and at all times to protect livestock and wildlife watering, aquatic life, noncontact recreation, crop irrigation, and industrial, domestic, agricultural and other incidental water withdrawal uses not protected by Class A, B, or C criteria in this rule the specific numerical criteria of subrule 61.3(4).

d. Such waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic or harmful to human, animal, or plant life.

h. Water which enters a sinkhole or losing stream segment shall not exceed a fecal coliform content of 200 organisms/100ml, except when the waters are materially affected by surface runoff; but in no case shall fecal coliform levels downstream from an existing discharge which may contain pathogens to humans be more than 200 organisms/100ml higher than the background level upstream from the discharge. No new wastewater discharges will be allowed on watercourses which directly or indirectly enter sinkholes or losing stream segments.

ITEM 13. Rescind subrules 61.3(2) to 61.3(4) and insert the following in lieu thereof:

61.3(3) Specific water quality criteria.

a. Class "A" waters. Waters which are designated as Class "A" in subrule 61.3(5) are to be protected for primary contact recreation. The general criteria of subrule 61.3(2) and the following specific criteria apply to all Class "A" waters.

(1) From April 1 through October 31, the fecal coliform content shall not exceed 200 organisms/100ml, except when the waters are materially affected by surface runoff; but in no case shall fecal coliform levels downstream from a discharge which may contain pathogens to humans be more than 200 organisms/100ml higher than the background level upstream from the discharge.

(2) The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of a waste discharge shall not exceed 0.5 pH units.

b. Class "B" waters. All waters which are designated as Class B(CW), B(WW), B(LR), or B(LW) are to be protected for wildlife, fish, aquatic and semiaquatic life, and secondary contact water uses. The following criteria shall apply to all Class "B" waters designated in subrule 61.3(5).

(1) Dissolved oxygen. Dissolved oxygen shall not be less than the values shown in Table 2 of this subrule.

(2) pH. The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of a waste discharge shall not exceed 0.5 pH units.

(3) General chemical constituents. The specific numerical criteria shown in Tables 1, 2, and 3 of this subrule apply to all waters designated in subrule 61.3(5). The sole determinant of compliance with these criteria will be established by the department on a case-by-case basis. Effluent monitoring or in-stream monitoring, or both, will be the required approach to determine compliance.

1. The acute criteria represent the level of protection necessary to prevent acute toxicity to aquatic life. Excursions above the acute criteria will be allowed only inside the zone of initial dilution for a short-term period.

2. The chronic criteria represent the level of protection necessary to prevent chronic toxicity to aquatic life. Excursions above the chronic criteria will be allowed only inside of mixing zones or only for short-term periods outside of mixing zones; however, these excursions cannot exceed the acute criteria shown in Tables 1 and 3. The chronic criteria will be met as short-term average conditions at all times the flow equals or exceeds either the four-day, three-year flow or any site specific low flow established under the provisions of subrule 61.2(5).

(4) The waters shall contain no substances in concentrations which will make fish or shellfish inedible due to undesirable tastes or cause a hazard to humans after consumption.

(5) Temperature.

1. No heat shall be added to interior streams or the Big Sioux River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the stream temperature above 32°C.

2. No heat shall be added to streams designated as cold water fisheries that would cause an increase of more than 2°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the stream temperature above 20°C.

3. No heat shall be added to lakes and reservoirs that would cause an increase of more than 2°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the temperature of the lake or reservoirs above 32°C.

4. No heat shall be added to the Missouri River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added that would raise the stream temperature above 32°C.

5. No heat shall be added to the Mississippi River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In addition, the water temperature at representative locations in the Mississippi River shall not exceed the maximum limits in the table below during more than 1 percent of the hours in the 12-month period ending with any month. Moreover, at no time shall the water temperature at such locations exceed the maximum limits in the table below by more than 2°C.

Zone II—Iowa-Minnesota state line to the northern Illinois border (Mile Point 1534.6)

Zone III—Northern Illinois border (Mile Point 1534.6) to Iowa-Missouri state line.

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

Month	Zone II	Zone III
January	4°C	7°C
February	4°C	7°C
March	12°C	14°C
April	18°C	20°C
May	24°C	26°C
June	29°C	29°C
July	29°C	30°C
August	29°C	30°C
September	28°C	29°C
October	23°C	24°C
November	14°C	18°C
December	9°C	11°C

c. Class "C" waters. Waters which are designated as Class "C" are to be protected as a raw water source of potable water supply. The following criteria shall apply to all Class "C" waters designated in subrule 61.3(5).

(1) Radioactive substances.

1. The combined radium-226 and radium-228 shall not exceed 5 picocuries per liter at the point of withdrawal.

2. Gross alpha particle activity (including radium-226 but excluding radon and uranium) shall not exceed 15 picocuries per liter at the point of withdrawal.

3. The average annual concentration at the point of withdrawal of beta particle and photon radioactivity from man-made radionuclides other than tritium and strontium-90 shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

4. The average annual concentration of tritium shall not exceed 20,000 picocuries per liter at the point of withdrawal; the average annual concentration of strontium-90 shall not exceed 8 picocuries per liter at the point of withdrawal.

(2) All substances toxic or detrimental to humans or detrimental to treatment process shall be limited to nontoxic or nondetrimental concentrations in the surface water.

(3) The pH shall not be less than 6.5 nor greater than 9.0.

TABLE 1: Criteria For Chemical Constituents
(all values as micrograms per liter unless noted otherwise).

Parameter		Use designations				
		B(CW)	B(WW)	B(LR)	B(LW)	C
Arsenic (III)	Chronic	200	200	1000	200	--
	Acute	360	360	1800	360	50
Barium	Acute	--	--	--	--	1000
Benzene	Acute	--	--	--	--	5
Cadmium	Chronic	1	15	25	1	--
	Acute	4	75	100	4	10
Carbon Tetra- chloride	Acute	--	--	--	--	5
Chloride	Acute	--	--	--	--	250*
Chlordane	Chronic	.004	.004	.15	.004	--
	Acute	2.5	2.5	2.5	2.5	--
Chromium (VI)	Chronic	40	40	200	10	--
	Acute	60	60	300	15	50
Copper	Chronic	20	35	55	10	--
	Acute	30	60	90	20	1000
Cyanide	Chronic	5	10	10	10	--
	Acute	20	45	45	45	20
para-Dichloro- benzene	Acute	--	--	--	--	7.5
1,2-Dichloro- ethane	Acute	--	--	--	--	5

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

TABLE 1: Criteria For Chemical Constituents (cont'd)
 (all values as micrograms per liter unless noted otherwise).

1,1-Dichloro-ethylene	Acute	--	--	--	--	7
Fluoride	Acute	--	--	--	--	2000
Lead	Chronic	3	30	80	3	--
	Acute	80	200	750	80	50
Mercury (II)	Chronic	.05	.05	.25	.05	--
	Acute	6.5	6.5	10	2.5	2
Nitrate as NO3	Acute	--	--	--	--	45*
Nickel	Chronic	350	650	750	150	--
	Acute	3250	5800	7000	1400	--
Polychlorinated Biphenyls (PCBs)	Chronic	.014	.014	1	.014	--
	Acute	2	2	2	2	--
Polynuclear Aromatic Hydro-Carbons (PAHs)	Chronic	.03	.03	3	.03	--
	Acute	30	30	30	30	--
Phenols	Chronic	50	50	50	50	--
	Acute	1000	2500	2500	1000	50
Selenium (VI)	Chronic	10	125	125	70	--
	Acute	15	175	175	100	10
Silver	Chronic	2.5	8.5	8.5	.35	--
	Acute	30	100	100	4	50
Toluene	Chronic	50	50	150	50	--
	Acute	2500	2500	7500	2500	--
Total Residual Chlorine (TRC)	Chronic	10	20	25	10	--
	Acute	35	35	40	20	--
1,1,1-Trichloro-ethane	Acute	--	--	--	--	200
Trichloroethylene (TCE)	Chronic	80	80	80	80	--
	Acute	4000	4000	4000	4000	5
Vinyl Chloride	Acute	--	--	--	--	2
Zinc	Chronic	200	450	2000	100	--
	Acute	220	500	2200	110	1000

*expressed as milligrams/liter

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

TABLE 2: Criteria For Dissolved Oxygen

	B(CW)	B(WW)	B(LR)	B(LW)
Minimum value for at least 16 hours of every 24-hour period	7.0	5.0	5.0	5.0*
Minimum value at any time during every 24-hour period	5.0	5.0	4.0	5.0*

*applies only to the upper layer of stratification in lakes

TABLE 3a: Criteria For Ammonia — Cold Water Streams

Temp.		pH										
		7.0	7.2	7.4	7.6	7.8	8.0	8.2	8.4	8.6	8.8	9.0
5.0	Acute	21.7	18.7	15.2	11.8	8.7	6.2	3.9	2.5	1.6	1.0	.7
	Chronic	4.3	3.7	3.0	2.4	1.7	1.2	0.8	0.5	.3	.2	.1
10.0	Acute	20.6	17.7	14.5	11.2	8.3	5.9	3.8	2.4	1.6	1.0	.7
	Chronic	4.1	3.5	2.9	2.2	1.7	1.2	0.8	0.5	.3	.2	.1
15.0	Acute	19.8	17.0	13.9	10.8	8.0	5.7	3.7	2.4	1.5	1.0	.7
	Chronic	4.0	3.4	2.8	2.2	1.6	1.1	0.7	0.5	.3	.2	.1
20.0	Acute	19.3	16.6	13.6	10.6	7.9	5.6	3.6	2.4	1.5	1.0	.7
	Chronic	3.9	3.3	2.7	2.1	1.6	1.1	0.7	0.5	.3	.2	.1
25.0	Acute	13.5	11.6	9.5	7.4	5.5	4.0	2.6	1.7	1.2	.8	.6
	Chronic	2.7	2.3	1.9	1.5	1.1	0.8	0.5	0.3	.2	.2	.1
30.0	Acute	9.6	8.2	6.8	5.3	4.0	2.9	1.9	1.3	.9	.6	.5
	Chronic	1.9	1.6	1.4	1.1	0.8	0.6	0.4	0.3	.2	.1	.1

TABLE 3b: Criteria For Ammonia — Warm Water Streams and Lakes

Temp.		pH										
		7.0	7.2	7.4	7.6	7.8	8.0	8.2	8.4	8.6	8.8	9.0
5.0	Acute	37.4	32.1	26.2	20.3	15.0	10.6	6.8	4.3	2.8	1.8	1.2
	Chronic	7.5	6.4	5.2	4.1	3.0	2.1	1.4	0.9	.6	.4	.2
10.0	Acute	35.5	30.5	24.9	19.3	14.3	10.1	6.5	4.1	2.7	1.8	1.2
	Chronic	7.1	6.1	5.0	3.9	2.9	2.0	1.3	0.8	.5	.4	.2
15.0	Acute	34.1	29.3	24.0	18.6	13.8	9.8	6.3	4.1	2.7	1.8	1.2
	Chronic	6.8	5.9	4.8	3.7	2.8	2.0	1.3	0.8	.5	.4	.2
20.0	Acute	33.3	28.6	23.4	18.2	13.5	9.7	6.2	4.1	2.7	1.8	1.2
	Chronic	6.7	5.7	4.7	3.6	2.7	1.9	1.2	0.8	.5	.4	.2
25.0	Acute	32.9	28.3	23.2	18.1	13.5	9.7	6.3	4.2	2.7	1.8	1.2
	Chronic	6.6	5.7	4.6	3.6	2.7	1.9	1.3	0.8	.5	.4	.2
30.0	Acute	16.5	14.2	11.7	9.1	6.8	5.0	3.3	2.2	1.5	1.1	.8
	Chronic	3.3	2.8	2.3	1.8	1.4	1.0	0.7	0.4	.3	.2	.2

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

TABLE 3c: Criteria For Ammonia — Limited Resource Streams

Temp.		pH										
		7.0	7.2	7.4	7.6	7.8	8.0	8.2	8.4	8.6	8.8	9.0
5.0	Acute	54.6	46.8	38.2	29.6	21.9	15.5	9.9	6.3	4.0	2.6	1.7
	Chronic	10.9	9.4	7.6	5.9	4.4	3.1	2.0	1.3	.8	.5	.3
10.0	Acute	51.8	44.4	36.3	28.2	20.3	14.8	9.4	6.1	3.9	2.6	1.7
	Chronic	10.4	8.9	7.3	5.6	4.2	3.0	1.9	1.2	.8	.5	.3
15.0	Acute	49.8	42.8	35.0	27.2	20.1	14.3	9.2	5.9	3.9	2.6	1.8
	Chronic	10.0	8.6	7.0	5.4	4.0	2.9	1.8	1.2	.8	.5	.4
20.0	Acute	48.6	41.7	34.2	26.6	19.7	14.1	9.1	6.0	4.0	2.7	1.9
	Chronic	9.7	8.3	6.8	5.3	3.9	2.8	1.8	1.2	.8	.5	.4
25.0	Acute	48.0	41.3	33.8	26.4	19.7	14.2	9.2	6.1	4.0	2.7	1.9
	Chronic	9.6	8.3	6.8	5.3	3.9	2.8	1.8	1.2	.8	.5	.4
30.0	Acute	24.1	20.7	17.0	13.3	10.0	7.2	4.8	3.2	2.2	1.6	1.2
	Chronic	4.8	4.1	3.4	2.7	2.0	1.4	1.0	0.6	.4	.3	.2

ARC 9346

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.304, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 101, "General Requirements Relating to Solid Waste Disposal," Iowa Administrative Code.

This action replaces existing rule 101.4(455B), "Details of Management Plan Proposals," with a new rule 101.4(455B), "Comprehensive Plans." 1987 Iowa Acts, chapter 225, the "Groundwater Protection Act," among other things substantially amended the planning requirements for solid waste sanitary disposal projects. The planning required by Iowa Code section 455B.306 is now called a "Comprehensive Plan" and must address specific areas, including planning to implement the solid waste management hierarchy of 1987 Iowa Code supplement section 455B.301A, closure and postclosure, leachate control, financial planning, and emergency response and remedial action. This rule-making action amends existing rules and addresses those portions of the comprehensive planning requirements related to the solid waste management hierarchy (part I). Rule making

on the remaining aspects of the plan will be initiated in the future.

This proposed rule provides the criteria by which the Department will approve or disapprove Comprehensive Plans, Part I. Comprehensive plans are required before or at the time of application for and renewal of a sanitary disposal project permit. The rule adopts by reference a guidance document which supplements or clarifies the criteria. The guidance document has been prepared by the Department in cooperation with an advisory group composed of representatives from landfill and recycling operations, regional planning agencies, local governments and other interested parties. Comments are also solicited on the contents of the guidelines. Specific items which are covered in the guidelines which the Department is interested in getting comments on are: the interpretation of volume reduction, the use of a conservation credit in performing a cost analysis, and the methods for estimating waste stream composition.

Any interested person may make written suggestions or comments on these proposed rules prior to November 19, 1988. Such written materials should be directed to the Waste Management Authority Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. Persons who wish to convey their views orally should contact the Division at (515)281-8263. In addition, there will be a public hearing on November 9, 1988, at 10 a.m. in the Fourth Floor Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing.

This rule is intended to implement the provisions of 1987 Iowa Code supplement sections 455B.301A and 455B.306.

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

Rescind rule 101.4(455B) and insert the following in lieu thereof:

567—101.4(455B) Comprehensive plans. Cities, counties and private agencies operating or planning to operate a sanitary disposal project after July 1, 1988, shall file a comprehensive plan with the director either prior to or at the time of application for issuance, renewal or reissuance of a sanitary disposal project permit. The plan shall be updated and refiled with the department every three years or at the time of each subsequent application for issuance, renewal, or reissuance of a sanitary disposal project permit. The department shall act to coordinate and expedite planning activities for multicounty areas where feasible.

101.4(1) Comprehensive planning goal. The goal of a comprehensive plan submitted according to subrules 101.4(2) and 101.4(3) is the development of a specific plan and schedule for implementing technically and economically feasible solid waste management methods that will prevent or minimize adverse environmental impact.

101.4(2) Content of a comprehensive plan. In fulfillment of the requirements of 1987 Iowa Code supplement sections 455B.306(3) and 455B.301A, a comprehensive plan or revision to a comprehensive plan shall include the following information:

a. A description of the planning area and the public and private agencies involved, including a description of each agency's role in managing solid waste generated in the area,

b. A description of past local and regional planning activities,

c. A description of the current and projected 20-year waste composition and waste generation rates, including a listing of industrial and commercial generators in the area,

d. A description of the existing waste management system, its capacity, disposal costs per ton, and projected 20-year disposal costs,

e. An analysis of alternative waste management systems according to the state's waste management hierarchy,

f. A description of the proposed waste management system for the planning area based upon the results of the alternatives analysis,

g. In the case of a sanitary landfill, a specific plan and schedule for fully implementing the comprehensive plan no later than July 1, 1997, and

h. A description of the methods of financing to be used.

A guidance document describing in more detail the content of a comprehensive plan, part I, is available from the records center of the department at (515)281-8860. The document title is "Guidelines for Solid Waste Comprehensive Plans, Part I: Waste Management Alternatives," July 1, 1988.

101.4(3) Alternatives analysis.

a. Alternative solid waste management systems shall be evaluated according to the following waste management hierarchy, listed in descending order of preference:

1. Volume reduction at the source,
2. Recycling and reuse,
3. Combustion with energy recovery,
4. Combustion for volume reduction,
5. Landfilling.

b. A complete analysis of alternatives shall include at a minimum:

(1) The development of or participation in a public education program to reduce the volume of solid waste

generated by residents, farms, businesses, and industries,

(2) An examination of the following waste items for their existing and potential recyclability, including an identification of available markets: motor oil, tires, car batteries, nickel chrome and mercury batteries, plastics, newspapers, corrugated cardboard, textiles, office paper, construction materials, aluminum and steel cans, colored and clear glass, yard clippings, animal wastes and other organic wastes,

(3) Consideration of an organic municipal waste composting program either at the source or at a central processing facility (at a minimum this program should include yard waste composting),

(4) Investigation of market potential for energy recovery from waste incineration, including the implementation of waste reduction, reuse and recycling prior to combustion,

(5) Description of expected environmental impacts from the alternative waste management systems including any negative impacts on water, groundwater, air quality, plant life, animal life, and human health,

(6) Inclusion of established and anticipated regulatory requirements regarding the future siting, operation, closure and postclosure of solid waste facilities, and

(7) Completion of the cost analysis worksheets contained in the "Guidelines For Solid Waste Comprehensive Plans, Part I: Waste Management Alternatives." This document is available upon request from the department.

101.4(4) Plan review. A plan submitted according to subrules 101.4(2) and 101.4(3) shall be reviewed by the department for its accuracy, completeness, and appropriateness of baseline data and alternatives analysis, for the environmental and economic feasibility of selected waste management systems, for the plan's adherence to the state's waste management hierarchy, for compliance with statutory deadlines, and for the agency's commitment to public education and adequate financing. The director may reject, suggest modification, or approve a plan based upon these criteria.

ARC 9347

**ENVIRONMENTAL PROTECTION
COMMISSION[567]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.304 and 1987 Iowa Code supplement section 455E.9, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 209, "Solid Waste Grants," Iowa Administrative Code.

This amendment changes the name of the chapter and adds an eligibility criterion regarding a proposed demonstration project's impact on solid waste comprehensive planning. These changes are necessary to coordinate two different grant programs — demonstra-

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

tion projects and comprehensive plans — and to coordinate and facilitate comprehensive solid waste management planning in Iowa.

Any interested person may make written suggestions or comments on these proposed rules prior to November 9, 1988. Such written materials should be directed to the Waste Management Authority Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. Persons who wish to convey their views orally should contact the Division at (515)281-8263.

This rule is intended to implement the provisions of 1987 Iowa Code supplement sections 455B.301A, 455B.311, and 455E.11.

ITEM 1. Amend the title of 567—Chapter 209 as follows:

CHAPTER 209

GRANTS FOR SOLID WASTES GRANTS
DEMONSTRATION PROJECTS

ITEM 2. Amend rule 209.7(455B,455E) by adding a new paragraph 7 and a new unnumbered paragraph as follows:

7. Consistency with local and regional solid waste planning efforts.

If a project is not a part of a comprehensive plan required under 455B.306, the department may request a letter explaining how this project will or will not potentially impact the comprehensive planning process and, if there is an impact, the department may request a schedule for including the project in the appropriate comprehensive plan or plans.

ARC 9361

HIGH TECHNOLOGY COUNCIL,
IOWA[485]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 28.51, the Iowa High Technology Council hereby gives Notice of Intended Action to amend and transfer administrative rules from 485—Chapters 1 to 5 to 267—Chapters 1 to 5, Iowa Administrative Code.

The Iowa High Technology Council intends to amend and transfer their rules to reflect statutory changes that have occurred since the existing rules were adopted. The rules are updated by these amendments to properly reflect the duties and responsibilities of the High Technology Council. Obsolete Code references are deleted and replaced with the appropriate citations. Old address and telephone references are removed and replaced with current information.

Any interested person may make written suggestions or comments on the proposed rules on or before November 8, 1988. Written comments should be addressed to: Doug Getter, Domestic Marketing Bureau,

Iowa High Technology Council, 200 East Grand Avenue, Des Moines, Iowa 50309.

These rules are intended to implement Iowa Code sections 28.51 to 28.60.

The following rules are proposed:

ITEM 1. Transfer 485—Chapters 1 to 5 to 267—Chapters 1 to 5, Iowa Administrative Code.

ITEM 2. Amend all transferred rules by deleting "(70GA,ch207)" following each rule and inserting "(28)" as the correct Iowa Code reference.

ITEM 3. Amend the following definitions in renumbered rule 1.2(28) as follows:

"Commission" "Department" means the Iowa development department of economic development commission created by Iowa Code section 28.1 15.1.

"Grant proposal" means the written document submitted to the council department as part of the application for funding.

Further amend renumbered rule 2.1(28) by rescinding the definitions of "Eligible applicant" and "Eligible project."

ITEM 4. Rescind subrules 1.3(1) and 1.3(2) and renumber the remaining subrules.

ITEM 5. Amend subrule 1.3(3) as follows:

~~1.3(3)~~ 1.3(1) Annual report. The council shall submit a report to the governor and the general assembly on or before ~~September~~ November 1 of each calendar year outlining all grants awarded by the council during the previous fiscal year. The report shall include an analysis of how the grants meet the purposes of 1983 Iowa Acts, chapter 207, section 36, Iowa Code sections 28.51 to 28.60, reports on projects completed during the fiscal year, and status reports on current projects.

ITEM 6. Amend rule 485—2.1(70GA,ch207) as follows:
~~485—2.1(70GA,ch207)~~ 267—2.1(28) Organization. The Iowa high technology council is a separate distinct entity of the state of Iowa; however, it is administratively integrated into the Iowa development commission department of economic development for staff support and assistance.

ITEM 7. Amend rule 485—2.3(70GA,ch207) as follows:
~~485—2.3(70GA,ch207)~~ 267—2.3(28) Location and method of obtaining information. For administrative purposes the council is located in the offices of the commission department at 600 East Court Avenue, Suite A, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone 515/281-3925 3036. The official mailing address for the council shall be David H. Swanson, Chairperson, Iowa High Technology Council, 205 Engineering Annex, Iowa State University, Ames, Iowa 50011, 515/294-3420. Requests for information or assistance may be made to the chairperson department personally, by telephone, mail or any other medium available, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, excluding state and university holidays. Special arrangements for accessibility to the council at other times may be provided as needed.

ITEM 8. Amend rule 485—2.5(70GA,ch207) as follows:
~~485—2.5(70GA,ch207)~~ 267—2.5(28) Minutes. Minutes of council meetings are prepared and are available at the office of the commission or the office of the chairperson department for inspection during normal

HIGH TECHNOLOGY COUNCIL, IOWA[485] (cont'd)

business hours. Copies may be obtained without charge by contacting the commission or the chairperson department.

ITEM 9. Rescind rules 485—3.1(70GA, ch207) through 485—3.5(70GA, ch207) and renumber the remaining rules as 267—3.1(28) and 267—3.2(28).

ITEM 10. Insert the following introductory paragraph prior to renumbered rule 267—3.1(28):

Prior to July 1, 1986, the Iowa high technology council had statutory authority to award grant funds to eligible applicants. After that date the role of the council was modified and it no longer had final decision-making authority over grant awards. The rules in this chapter are retained for the administration of grants awarded by the council prior to July 1, 1986.

ITEM 11. Rescind Chapter 4, "Technology Transfer," and reserve the chapter number for future use.

ARC 9376

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," and Chapter 80, "Procedure and Method of Payment," appearing in the Iowa Administrative Code.

The Omnibus Reconciliation Act of 1987, Public Law 100-203, amends the Social Security Act by adding Section 1611(e)(1)(G) which requires that when a person who receives Supplemental Security Income (SSI) or State Supplementary Assistance (SSA) administered by the Social Security Administration enters a hospital, intermediate care facility or skilled nursing facility and a doctor certifies that the person's stay is not likely to exceed three months, that person shall continue to receive the full SSI or SSA to maintain the home. The Social Security Administration will determine whether to continue benefits.

The Omnibus Reconciliation Act of 1987 and the Medicare and Medicaid Patient and Program Protection Act of 1987 also amend Section 1902(o) of the Social Security Act to require that SSI and SSA received pursuant to Section 1611(e)(1)(G) be disregarded in determining client participation for persons in medical institutions.

This amendment also corrects an oversight. Public Law 100-203 also mandated that the monthly personal needs allowance of Medicaid recipients in intermediate care facilities (ICFs), intermediate care facilities for the mentally retarded (ICF/MRs), skilled nursing facilities (SNF), and those receiving inpatient psychiatric services be increased from \$25 to \$30 effective July 1, 1988. The Department adopted rules implementing this change.

(See ARC 8709 in the May 18, 1988, Iowa Administrative Bulletin.) However, the reference giving the personal needs allowance for skilled nursing facilities was overlooked because of its placement in the rules. This amendment deletes that reference and adds a new subrule under rule 441—75.5(249A) listing the personal needs allowance for persons in ICFs, ICF/MRs, and SNFs.

Consideration will be given to all written data, views, and arguments thereto, received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before November 9, 1988.

These rules are intended to implement Iowa Code section 249A.4.

The following amendments are proposed:

ITEM 1. Amend subrule 75.5(5) and add a new subrule 75.5(6) as follows:

75.5(5) Persons who are eligible for supplemental security income (SSI) and who are either substantially gainfully employed or who enter a medical institution and expect to return home within three months. Persons who receive SSI and who are substantially gainfully employed as determined by the Social Security Administration shall have the SSI and any mandatory state supplementary assistance payment exempt from countable income for the two full months after entry to a medical institution. Persons who enter a medical institution who have SSI or federally administered state supplementary assistance payments (SSA) continued for three months by the Social Security Administration because it is expected they will return home within three months shall have the SSI and SSA payments exempt from countable income.

75.5(6) Personal needs allowance. Persons in intermediate care facilities, intermediate care facilities for the mentally retarded, and skilled nursing facilities and those receiving inpatient psychiatric services shall retain \$30 per month of their income for a personal needs allowance.

ITEM 2. Rescind and reserve subrule 80.5(3), paragraph "b."

ARC 9377

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," and Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

Currently it is possible for a skilled nursing facility to be certified for Medicaid but not for Medicare. There

HUMAN SERVICES DEPARTMENT[441] (cont'd)

is no difference in the criteria which facilities must meet. All Medicaid-certified skilled nursing facilities are certified for Medicare at the present time except one which does not serve Medicare recipients.

This amendment requires skilled nursing facilities which serve persons who are eligible for both Medicare and Medicaid to participate in the Medicare program. Facilities must certify a sufficient number of beds to permit Medicare-eligible persons to exhaust Medicare benefits before using Medicaid. It is anticipated that there will be new skilled nursing facilities added to the Medicare program over the next year because of the change in criteria for determining the medical necessity for care. Medicare coverage policies are also being liberalized. Effective January 1, 1989, the prior hospitalization requirement is being eliminated, 150 days will be covered instead of 100, and coinsurance will be applied to the first eight days of care rather than the last 80 days.

This rule will ensure that Medicare funding is used prior to Medicaid funding.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before November 9, 1988.

These rules are intended to implement Iowa Code section 249A.4.

The following amendments are proposed:

ITEM 1. Amend rule 441—77.12(249A) as follows:

441—77.12(249A) Skilled nursing homes. Nursing homes and hospitals or distinct parts thereof currently licensed as skilled nursing homes by the department of inspections and appeals are eligible to participate in the Medicaid program providing these facilities meet all of the conditions of participation as skilled nursing facilities in the Medicare program (Title XVIII of the Social Security Act). Facilities shall enter into a written agreement with the department, Form 470-0396, Agreement for Skilled Nursing Facility Participation in the Medicaid Program.

Skilled nursing homes in other states are also eligible if they participate in the Medicaid program in that state.

Facilities which serve persons who are eligible for both Medicare and Medicaid are required to participate in the Medicare program. Facilities must certify a sufficient number of beds to permit Medicare-eligible persons to exhaust Medicare benefits before using Medicaid. The claim of a person who is eligible for Medicare but who does not exhaust these benefits will be denied.

Skilled facilities that wish to participate in the Medicaid program, but not in the Medicare program, shall contact the department of inspections and appeals which will provide the facility with an application form. The department of inspections and appeals reviews all facilities and notifies the department whether certification is approved or denied. Facilities are resurveyed to ascertain continued compliance. The facility will be notified by the department of inspections and appeals of the decision following a resurvey. A finding and certification that the facility is no longer in compliance shall terminate eligibility for participation in the Medicaid program through a decertification action by the department.

A facility may appeal a decertification action according to subrule 81.13(28).

ITEM 2. Rescind and reserve subrule 78.12(1), paragraph "b."

ARC 9363**JOB SERVICE DIVISION[345]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 96.11, the Commissioner of the Division of Job Service hereby amends Notice of Intended Action relating to Chapter 3, "Employer's Contribution and Charges," Chapter 4, "Claims and Benefits," Chapter 5, "Benefit Payment Control," Chapter 7, "Placement," Chapter 8, "Public Records and Fair Information Practices," Chapter 10, "Forms," Iowa Administrative Code. The substance of these rules was previously submitted as Noticed rules, **ARC 9128**, published in the Iowa Administrative Bulletin on August 24, 1988.

The purpose of this Notice is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

Interested persons, governmental agencies, and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m., November 10, 1988, to Paul H. Moran, Department of Employment Services, Division of Job Service, 1000 East Grand Avenue, Des Moines, Iowa 50319.

Two public hearings will be held as follows:

7 p.m., Wednesday, November 9, 1988
Job Service of Iowa
2508 East 4th St.
Sioux City, Iowa

7 p.m., Thursday, November 10, 1988
Job Service of Iowa
1810 Lower Muscatine Road
Iowa City, Iowa

The proposed amendments are subject to revision after the Department considers all written and oral presentations. Persons who want to convey their views orally should contact Mr. Paul H. Moran at (515)281-4986 at the Des Moines address given above.

ARC 9364**JOB SERVICE DIVISION[345]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 96.11, the Commissioner of the Division of Job Service hereby gives Notice of Intended Action to amend Chapter 3, "Employer's Contribution and Charges," Chapter 4, "Claims and Benefits," and Chapter 5, "Benefit Payment Control," Iowa Administrative Code.

JOB SERVICE DIVISION[345] (cont'd)

Subrule 3.53(1), paragraph "b," is amended to allow an employer to appeal the employer's contribution rate if the employer is anticipating that the payments of benefits to an individual which are charged to employer will be reversed thus affecting one of the elements of experience upon which the contribution rate is based. This subrule also requires the division to issue a refund to the employer of any overpayment of contributions resulting from the recomputation of the employer's contribution rate due to the reversal.

Rule 4.12 is rescinded in accordance with 1987 Iowa Acts, chapter 222, sections 3, 8 and 9, which means that an individual does not have to wait one week to receive unemployment benefits on all new claims for unemployment benefits filed following the calendar week ending on January 2, 1988.

Rule 4.18 is amended as it deals with claimant earnings that must be rounded to the nearest dollar when reporting earnings and prior to computing underpayments/overpayments.

Subrule 5.7(6), paragraph "g," is amended as the tolerance for establishing an overpayment has been raised from \$18 to \$25, because the cost of processing an overpayment (which does not include the cost of recovery) should not exceed the \$33.98 cost of setting up the overpayment.

Interested persons, governmental agencies and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m., November 9, 1988, to Paul H. Moran, Department of Employment Services, Division of Job Service, 1000 East Grand Avenue, Des Moines, Iowa 50319. A public hearing will be held at 9:30 a.m., November 9, 1988, at the above address. The proposed amendments are subject to revision after the Department considers all written and oral presentations. Persons who want to convey their views orally should contact Mr. Moran at (515)281-4986 or at the above address.

These rules are intended to implement Iowa Code sections 96.3(7); 96.5(5); 96.7(3)"e," as amended by 1987 Iowa Acts, chapter 222, section 4; 96.14(5); 96.19(9)"b"; and 1987 Iowa Acts, chapter 222, sections 3, 8 and 9.

ITEM 1. Amend subrule 3.53(1), paragraph "b," as follows:

b. The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed. However, the rate will not become final and the appeal may be reopened by the employer, in writing upon receipt of a decision reversing the allowance of benefits or relieving the employer of charges provided that the request to reopen the appeal is submitted within 30 days of the date of the next rate notice following the date of the decision. The charges will be removed from the computation of the original rate and a corrected rate notice will be issued. A refund of any overpayment of contributions and interest paid by the employer as a result of the recomputation of the rate will be issued, subject to the three-year statute of limitations set out in Iowa Code section 96.14(5). The employer may designate within the letter reopening the appeal that the overpayment is to be left in the account as a voluntary contribution to reduce future rates in lieu of the refund.

ITEM 2. Rescind rule 4.12(96) in its entirety.

ITEM 3. Amend rule 4.18(96) as follows:

345—4.18(96) Wage-earnings limitations. A claimant *An individual* who is partially unemployed may earn weekly; ~~at odd jobs~~; a sum equal to the ~~claimant's~~ *individual's* weekly benefit amount plus fifteen dollars (\$15) before being disqualified for excessive earnings. If such ~~claimant individual~~ *individual* earns ~~at odd jobs~~ less than the ~~claimant's individual's~~ *individual's* weekly benefit amount plus fifteen dollars (\$15), the formula for wage deduction shall be a sum equal to the ~~claimant's individual's~~ *individual's* weekly benefit amount less that part of the wages, payable to the ~~claimant individual~~ *individual* with respect to that week ~~and rounded to the nearest dollar~~, in excess of one-fourth of the ~~claimant's individual's~~ *individual's* weekly benefit amount.

ITEM 4. Amend subrule 5.7(6), paragraph "g," as follows:

g. Overpayments of ~~eighteen dollars (\$18)~~ *twenty-five dollars (\$25)* or less will not be set up against future benefits because the administrative cost would exceed the overpayment.

ARC 9370

LABOR SERVICES DIVISION[347]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to adopt an amendment to rule 347—10.20(88) relating to occupational safety and health rules for general industry. The amendment relates to changes to occupational exposure to asbestos and corrections.

In compliance with Iowa Code section 88.5(1)"b," a public hearing will be held on November 14, 1988, at 10 a.m. in the office of the Department of Employment Services, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa, if requested in writing by November 11, 1988. Requests for a hearing shall be submitted to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than November 14, 1988, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The agency has determined that this Notice of Intended Action may have an impact on small business. The agency has considered the factors listed in Iowa Code section 17A.31. The agency will issue a regulatory flexibility analysis as provided in Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than November 10, 1988, to the Deputy Labor Commissioner, Division of Labor Services,

LABOR SERVICES DIVISION[347] (cont'd)

1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

This amendment is intended to implement Iowa Code chapter 88.

Amend rule 347—10.20(88) by inserting at the end thereof:

53 Fed. Reg. 35625 (September 14, 1988)

53 Fed. Reg. 37080 (September 23, 1988)

These rules are intended to implement Iowa Code section 88.5.

marked no later than November 10, 1988, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

This amendment is intended to implement Iowa Code chapter 88.

Amend rule 347—26.1(88) by inserting at the end thereof:

53 Fed. Reg. 35627 (September 14, 1988)

53 Fed. Reg. 35953 (September 15, 1988)

53 Fed. Reg. 36009 (September 16, 1988)

53 Fed. Reg. 37080 (September 23, 1988)

These rules are intended to implement Iowa Code section 88.5.

ARC 9369**LABOR SERVICES DIVISION[347]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to adopt an amendment to rule 347—26.1(88) relating to occupational safety and health rules for construction. The amendment relates to occupational exposure to asbestos and minor corrections to previous federal standards on cranes and derricks, power actuated tools, and exposure to asbestos.

In compliance with Iowa Code section 88.5(1)"b," a public hearing will be held on November 14, 1988, at 10 a.m. in the office of the Department of Employment Services, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa, if requested in writing by November 11, 1988. Requests for a hearing shall be submitted to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than November 14, 1988, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The agency has determined that this Notice of Intended Action may have an impact on small business. The agency has considered the factors listed in Iowa Code section 17A.31. The agency will issue a regulatory flexibility analysis as provided in Iowa Code section 17A.31 if a written request is filed by delivery or by mailing post-

ARC 9372**PUBLIC EMPLOYMENT RELATIONS BOARD[621]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 11, "Merit Appeals," Iowa Administrative Code.

These rule amendments were also emergency adopted and are published herein as **ARC 9371**. The purpose of this Notice is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written suggestions or comments on these proposed rules prior to November 10, 1988. Such written materials should be directed to the Chairperson, Public Employment Relations Board, 507 Tenth Street, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Chairperson, Public Employment Relations Board, at (515) 281-4414 or in the agency offices at 507 Tenth Street, Des Moines, Iowa. There also will be a public hearing on Monday, November 14, 1988, at 10 a.m. in the agency's hearing room located on the second floor at 507 Tenth Street, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentation at the public hearing should contact the chairperson of the Public Employment Relations Board at least one day prior to the date of the public hearing.

ARC 9335

PUBLIC HEALTH
DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 139.9, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 7, "Immunization of Persons Attending Elementary or Secondary Schools or Licensed Child-Care Centers," Iowa Administrative Code.

These amendments will:

1. Allow a registered nurse working in a doctor's office to sign certificates of immunization and provisional certificates of immunization,
2. Clarify the definitions of "elementary school" and "licensed child-care center," and
3. Make several other minor editorial changes for purposes of clarification.

The Iowa Department of Public Health will hold a public hearing on Tuesday, November 8, 1988, at 1 p.m., in the Third Floor Conference Room, Lucas State Office Building, Des Moines, Iowa 50319-0075. Any oral or written comments must be received on or before November 8, 1988. Comments should be addressed to Mike Guely, Iowa Department of Public Health, Division of Disease Prevention, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 139.9.

The following amendments are proposed:

ITEM 1. Amend the following definitions found in rule 641—7.1(139) as follows:

"Elementary school" means ~~prekindergarten and~~ kindergarten, if provided, and grades one through eight or grades one through six when grades seven and eight are included in a secondary school.

"Licensed child-care center" means a facility licensed by the state department of human services to provide child day care for seven or more children *or a prekindergarten or preschool learning center operated by local school districts, area educational agencies, or colleges or universities.*

ITEM 2. Amend subrule 7.3(1) as follows:

7.3(1) A medical exemption may be granted to an applicant when, in the doctor's opinion, the required immunizations would be injurious to the health and well-being of the applicant or any member of the applicant's family or household. A medical exemption may apply to all the required immunizations. A waiver to a specific vaccine due to an age restriction or medical contraindication shall be indicated on the certificate of immunization. A certificate of immunization exemption for medical reasons is valid only when signed by a doctor. If, in the opinion of the doctor issuing the medical exemption, the exemption should be terminated or reviewed at a future date, an expiration date shall be

applied to recorded on the certificate of immunization exemption.

ITEM 3. Amend subrule 7.5(1) as follows:

7.5(1) Applicants, or their parents or guardians, shall submit a valid Iowa department of public health certificate of immunization to the admitting official of the school or licensed child-care center in which the applicant wishes to enroll. To be valid the certificate shall be signed by a doctor, or a physician's assistant, or a registered nurse in an attending doctor's office, or a nurse practitioner, or a county public health nurse, or a school nurse, or an official of a local health department. The judgment of the adequacy of the applicant's immunization history should be based on records kept by the person signing the certificate of immunization or personal knowledge of the applicant's immunization history, or comparable immunization records from another person or agency, or an international certificate of vaccination, or the applicant's personal health records. If personal health records are used to make the judgment, the records shall provide the types of immunizations received, and the dates, and the sources of the immunizations. Persons validating the certificates of immunization are not held responsible for the accuracy of the information used to validate the certificates of immunization if the information is from sources other than their own records or personal knowledge.

ITEM 4. Amend subrule 7.5(2) as follows:

7.5(2) Persons wishing to enroll who do not have a valid Iowa department of public health certificate of immunization available to submit to the admitting official shall be referred to a doctor, or a physician's assistant, or a registered nurse in an attending doctor's office, or a nurse practitioner, or a county public health nurse, or a school nurse, or an official of a local health department to obtain a valid certificate.

ITEM 5. Amend subrule 7.6(1) as follows:

7.6(1) Applicants who have begun but not completed the required immunizations may be granted provisional enrollment. To qualify for provisional enrollment, applicants shall have received at least one dose of each of the required vaccines or be a transfer student from another school system. Applicants shall submit a valid Iowa department of public health provisional certificate of immunization to the admitting official of the school ~~or~~ licensed child-care center in which the applicant wishes to be provisionally enrolled. To be valid, the certificate shall be signed by a doctor, or a physician's assistant, or a registered nurse in an attending doctor's office, or a nurse practitioner, or a county public health nurse, or a school nurse, or an official of a local health department. Persons validating the provisional certificates of immunization are not held responsible for the accuracy of the information used to validate the provisional certificate of immunization if the information is from sources other than their own records or personal knowledge.

a. Any person wishing to be provisionally enrolled who does not have a valid Iowa department of public health provisional certificate of immunization to submit to the admitting official shall be referred to a doctor, or a physician's assistant, or a registered nurse in an attending doctor's office, or a nurse practitioner, or a county public health nurse, or a school nurse, or an official of a local health department to obtain a valid certificate.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

b. Reserved.

ITEM 6. Amend subrule 7.6(3) as follows:

7.6(3) The applicant or parent or guardian shall assure ensure that the applicant receive the necessary immunizations during the provisional enrollment period and submits shall submit a certificate of immunization to the admitting official by the end of the provisional enrollment period.

ITEM 7. Amend subrule 7.7(1), introductory paragraph, as follows:

7.7(1) It shall be the duty of the admitting official of a licensed child-care center or elementary or secondary school to assure ensure that the admitting official has a valid Iowa department of public health certificate of immunization, certificate of immunization exemption, or provisional certificate of immunization on file for each child enrolled. The admitting official shall assure ensure that the certificate has been properly completed, including date and includes dates of immunization, and sources of immunization, and validated validation by the appropriate party.

ITEM 8. Amend rule 641—7.9(139) as follows:

641—7.9(139) Compliance. Applicants not presenting proper evidence of immunization, or exemption, are not entitled to enrollment in a licensed child-care center or elementary or secondary school under the provisions of this law Iowa Code section 139.9. It shall be the duty of the admitting official to deny enrollment to any applicant who does not submit proper evidence of immunization according to rule 7.5(139) and to exclude a provisionally enrolled applicant in accordance with rule 7.6(139).

ARC 9365

SECRETARY OF STATE[721]

Notice Terminated

Pursuant to the authority of Iowa Code sections 17A.3“b,” and 47.1, the Secretary of State hereby gives Notice to terminate amendments to Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code, published in the Iowa Administrative Bulletin, July 27, 1988, as ARC 9012.

The purpose of the proposed rule was to provide voters and other interested persons with the opportunity to review the summaries to be printed on the ballots for the proposed constitutional amendments that are to be voted upon at the November 8, 1988, General Election, as required by 721—21.2(3), Iowa Administrative Code.

The period for comments has passed and no adverse comments were received from the public. The Secretary of State finds that no benefit would be achieved by adopting this as a permanent part of the Iowa Administrative Code, since the purpose of soliciting comments has been accomplished. The rule-making process with regard to ARC 9012 is therefore terminated.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 453.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Edward L. Tubbs, and Auditor of State Richard D. Johnson have established the following rates of interest for public obligations and special assessments. The usury rate for October is 11.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

- 74A.2 Unpaid Warrants Minimum 7.5%
- 64A.4 Special Assessments Maximum 12.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective September 29, 1988, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7 - 31 days Minimum 6.80%
- 32 - 89 days Minimum 6.90%
- 90 - 179 days Minimum 7.20%
- 180 - 364 days Minimum 7.40%
- One year Minimum 7.40%
- Two years Minimum 8.30%

These are minimum rates only. The one year and less are six-tenths of a percent below average rates. Public body treasurers and their deputies may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 9375
UTILITIES DIVISION [199]
Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4 and 476.2, the Utilities Board (Board) gives Notice that on September 29, 1988, the Board issued an order in Docket No. RMU-88-19, In Re: Division Organization and Operation, "Order Commencing Rule Making." The Board is proposing to amend rules 1.4(17A,474) and 1.5(17A,474), and to rescind rule 1.6(474) relating to the duties and internal organizational structure of the Utilities Division.

Currently, rule 1.4(17A,474) does not include the duties of the Board with regard to the certification of electric power generators pursuant to Iowa Code chapter 476A. Rule 1.4(17A,474) also fails to reference the Board's duties with regard to pipeline safety pursuant to Iowa Code chapter 479. Therefore, the Board proposes to amend rule 1.4(17A,474) to reflect the Board's statutory duties.

The Board also proposes to amend rule 1.5(17A,474) which describes the internal organization of the Utilities Division. Current rule 1.5(17A,474) does not accurately reflect the Division's organizational structure. The proposed rules describe the bureaus within the Division and provide a general description of the duties performed by each bureau.

Any person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before November 8, 1988, by filing the original and ten copies in a form substantially complying with subrule 2.2(2). All communications shall clearly indicate the author's name and the docket in which the comment is submitted. All communications should be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 1. Amend rule 1.4(17A,474) as follows:

199—1.4(17A,474) Duties of the board. The utilities board regulates electric, gas, telephone, telegraph, and water utilities; and pipelines and underground gas storage. The board regulates the rates and services of public utilities pursuant to Iowa Code chapter 476; *certification of electric power generators pursuant to chapter 476A*; construction and safety of electric transmission lines pursuant to chapter 478; and *pipelines pipeline safety* and underground gas storage pursuant to ~~chapter~~ *chapters 479 and 479A.*

ITEM 2. Rescind rule 1.5(17A,474) and insert in lieu thereof the following:

199—1.5(17A,474,476) Organization. The utilities division consists of: the three-member board, the office

of executive secretary, the office of general counsel, and the technical and administrative staff which includes:

1. The bureau of rate and safety evaluation.
2. The public information/consumer services bureau.
3. The conservation, auditing, and research bureau.
4. The board members' staff bureau.

1.5(1) The board. The three-member board is the policy-making body for the utilities division. The chairperson serves as the administrator of the utilities division. As administrator, the chairperson is responsible for all administrative functions and decisions.

1.5(2) The office of executive secretary. The executive secretary is appointed by the board and is its chief operating officer. The executive secretary is also the custodian of the board seal and all board records. The executive secretary or secretary's designee is responsible for attesting the signatures of the board members and placing the seal on original board orders. The secretary or the secretary's designee is responsible for certifying official copies of board documents. The executive secretary shall also be responsible for establishing procedures for the examination of board records by the general public pursuant to the provisions of Iowa Code section 22.11 and for providing for the enforcement of those procedures.

1.5(3) General counsel. The duties of the general counsel are prescribed by Iowa Code section 474.10. The general counsel acts as attorney for, and legal advisor of the board and its staff and represents the board in all actions instituted in a state or federal court challenging the validity of any rule, regulation or order of the board.

1.5(4) The bureau of rate and safety evaluation. This bureau is responsible for the administrative and technical work with respect to the regulation of public utilities, pipelines, and underground gas storage within the jurisdiction of the board. The bureau of rate and safety evaluation provides analysis and advises the board on matters of rates, tariffs, licensing, service quality, and safety of regulated public utilities.

1.5(5) The public information/consumer services bureau. This bureau assists customers in resolving utility problems. The bureau monitors customer service policies and practices, provides information to the public, and advises the board on issues of public concern.

1.5(6) The conservation, auditing, and research bureau. This bureau is responsible for assisting the board in the continued development of energy conservation activities, for advising the board on matters of accounting, management performance, least cost alternatives, and for conducting research on public utility matters as desired by the board.

1.5(7) The board members' staff bureau. This bureau is responsible for providing technical advice and analysis to the board members with respect to rate regulation of public utilities. The bureau provides administrative support and organization for transacting business before the board.

ITEM 3. Rescind rule 199—1.6(474).

ARC 9373**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code section 17A.4, the Utilities Board (Board) gives Notice that on September 30, 1988, the Board issued an order in Docket No. RMU-88-17, In Re: Notice To Transportation Customers, "Order Commencing Rule Making." The Board is proposing to add a new subrule 19.13(6).

The natural gas industry has seen significant changes in recent years. One of the principal changes has been the 1985 Federal Energy Regulatory Commission's (FERC) decision which has led to interstate gas pipelines providing open transportation services to their customers, the local distribution companies (LDCs), including the Iowa gas utilities. The practical effect of FERC's decision has been to bring competition to the natural gas industry by permitting LDCs to purchase natural gas either from their pipeline supplier or on the "spot market" and, in turn, have their pipeline supplier transport that gas to the LDCs.

In 1986 the Utilities Board adopted its own rules requiring Iowa gas utilities to provide their customers similar open access transportation services. Rule 19.13(476) permits customers to purchase their own gas supplies and contract with the pipeline and the Iowa gas utility for only the cost of transporting that gas. The customers in Iowa with the practical ability to take advantage of the Board's transportation rules are typically large manufacturers, health care and educational institutions and governments.

There is the opportunity for substantial savings to those customers who are able to purchase their own gas supplies. These potential savings, however, are accompanied by greater risks than the risks facing customers who stay with and continue to purchase natural gas from their LDC. The Board believes customers should be apprised of these risks before deciding to purchase their own gas.

The new subrule requires gas utilities to provide written disclosures of the risks associated with the transportation to customers seeking to transport their own gas. The subrule provides that the written notice may be in any form chosen by the gas utility and shall be filed with the Board. The subrule additionally requires written acknowledgment by the end user that it has received notice of the risks and accepts the risks.

The written notice should include the disclosure that if the customer is unable in the future to secure its own gas supplies, the gas utility may not have firm gas supply available and has no obligation to provide gas if supply is unavailable to the LDC. The utility should apprise the end user of how it will price gas if the utility has gas to sell. The notice should identify all situations in which the customer may incur penalties imposed by the gas utility. The notice should also outline any administrative costs associated with reconnecting to firm supply and the cost of reconnection. In effect, the notice should

include all potential risks to which the customer may have exposure.

Any interested person may file a written statement of position pertaining to the proposed amendment. The statement must be filed on or before November 11, 1988, by filing an original and ten copies in a form substantially complying with subrule 2.2(2). All communications shall clearly indicate the author's name and the docket in which the comment is submitted. All communications shall be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

Add new subrule 19.13(6) as follows:

19.13(6) Written notice of risks. The end user shall be notified in writing of the risks associated with transporting gas. These risks include, but are not limited to, the risk that the utility may not have firm gas available for sale to the end user if the end user is unable to secure gas, the possibility of penalties, the administrative cost or cost of reconnection the end user will incur if the end user seeks firm status, and notice of how gas will be priced if the utility has gas available to serve a transportation customer. The notice may be through a contract provision, addendum to the contract or separate written instrument. The end user must acknowledge in writing that it has been made aware of the risks and accepts the risks. The notice and the acknowledgment shall be filed with the board within 30 days of execution.

ARC 9374**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code section 17A.4, the Utilities Board gives Notice that on September 29, 1988, the Utilities Board (Board) issued an order in Docket No. RMU-88-20, In Re: Customer Contribution Fund, "Order Commencing Rule Making." The Utilities Board is proposing new rules 19.14(72GA, HF683) and 20.15(72GA, HF683) relating to plans for the creation of customer contribution funds, customer notification procedures, and annual reports.

The proposed rules are promulgated in response to 1988 Iowa Acts, House File 683, which directs the Board to adopt rules to direct all public utilities in the establishment of customer contribution funds. The funds are to be established by the utilities for the purpose of receiving contributions to assist the utility's low-income customers with weatherization and to supplement the energy assistance received under the federal low-income heating energy assistance program.

UTILITIES DIVISION[199] (cont'd)

Any interested person may file a written statement of position pertaining to the proposed rules. The statement must be filed on or before November 8, 1988, by filing the original and ten copies in a form substantially complying with subrule 2.2(2). All communications shall clearly indicate the author's name and the docket in which the comment is submitted. All communications should be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319. An oral presentation is scheduled on November 15, 1988, at 10 a.m. in the First Floor Hearing Room of the Lucas State Office Building, Des Moines, Iowa, for the purpose of receiving oral comments.

ITEM 1. Add new rule 19.14(72GA, HF683) as follows:

199—19.14(72GA, HF683) Customer contribution fund.

19.14(1) Applicability and purpose. This rule applies to each gas public utility, as defined in Iowa Code sections 476.1 and 476.1B. Each utility shall develop a program plan to assist the utility's low-income customers with weatherization and to supplement assistance received under the federal low-income heating energy assistance program for the payment of winter heating bills. The program shall be implemented on or before February 20, 1989.

19.14(2) Program plan. On or before January 18, 1989, each utility shall file with the utilities board a detailed description of its program plan. At a minimum, the plan shall include the following information:

a. A list of the members of the board or committee established to determine the appropriate distribution of the funds collected. The list shall include the organization each member represents;

b. A sample of the customer notification with a description of the method and frequency of its distribution;

c. A sample of the authorization form provided to customers;

d. The anticipated date of implementation.

Program plans not in compliance with the foregoing specifications shall be rejected.

19.14(3) Notification. Each utility shall mail or deliver to all customers a written notice of the customer contribution fund. The written notice shall be issued at least twice a year and upon commencement of service to new customers. At a minimum, the notice shall include:

a. A description of the availability and the purpose of the fund;

b. A customer authorization form. This form must include a monthly billing option and any other methods of contribution.

19.14(4) Methods of contribution. The utility shall provide for contributions as monthly pledges, as well as one-time or periodic contributions. Each utility may allow persons or organizations to contribute matching funds.

19.14(5) Annual report. On or before September 30 of each year, each utility shall file with the board a report of all the customer contribution fund activity for the previous fiscal year beginning July 1 and ending June 30. The report shall be in a form provided by the board

and shall contain an accounting of the total revenues collected and all distributions of the fund. The utility shall report all utility expenses directly related to the customer contribution fund. These may include costs of billings, notices to customers, financial record keeping and other administrative expenses.

ITEM 2. Add new rule 20.15(72GA, HF683) as follows:

199—20.15(72GA, HF683) Customer contribution fund.

20.15(1) Applicability and purpose. This rule applies to each electric public utility, as defined in Iowa Code sections 476.1, 476.1A, and 476.1B. Each utility shall develop a program plan to assist the utility's low-income customers with weatherization and to supplement assistance received under the federal low-income heating energy assistance program for the payment of winter heating bills. The program shall be implemented on or before February 20, 1989.

20.15(2) Program plan. On or before January 18, 1989, each utility shall file with the utilities board a detailed description of its proposed program plan. At a minimum, the plan shall include the following information:

a. A list of the members of the board or committee established to determine the appropriate distribution of the funds collected. The list shall include the organization each member represents;

b. A sample of the customer notification with a description of the method and frequency of its distribution;

c. A sample of the authorization form provided to customers;

d. The anticipated date of implementation.

Program plans not in compliance with the foregoing specifications shall be rejected.

20.15(3) Notification. Each utility shall mail or deliver to all customers a written notice of the customer contribution fund. The written notice shall be issued at least twice a year and upon commencement of service to new customers. At a minimum, the notice shall include:

a. A description of the availability and the purpose of the fund;

b. A customer authorization form. This form must include a monthly billing option and any other methods of contribution.

20.15(4) Methods of contribution. The utility shall provide for contributions as monthly pledges, as well as one-time or periodic contributions. Each utility may allow persons or organizations to contribute matching funds to the fund.

20.15(5) Annual report. On or before September 30 of each year, each utility shall file with the board a report of all activity of the customer contribution fund for the previous fiscal year beginning July 1 and ending June 30. The report shall be in a form provided by the board and shall contain an accounting of the total revenues collected and all distributions of the fund. The utility shall report all utility expenses directly related to the customer contribution fund. These may include costs of billings, notices to customers, financial record keeping and other administrative expenses.

ARC 9382**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 159.5(11), the Iowa Department of Agriculture and Land Stewardship emergency adopts the following new Chapter 15, entitled "Pilot Lamb and Wool Management Education Project," Iowa Administrative Code.

These rules establish a framework for the establishment of pilot education projects at area schools to educate Iowa lamb and wool producers in production and marketing of lamb and wool.

The Department finds, pursuant to Iowa Code section 17A.4(2), that notice and public participation are impracticable because a delay in adopting the rules would make it impossible to meet the statutory timetable for implementing the pilot projects.

The Department finds, pursuant to Iowa Code section 17A.5(2) "b"(2) that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective upon filing, because it confers a benefit upon the public by creating pilot projects with accompanying grants to educate Iowa lamb and wool producers in production and marketing of lamb and wool. In addition, the authorizing legislation, 1988 Iowa Acts, Senate File 2328, establishes a timetable for distributing grants. This timetable cannot be met without emergency rules.

These rules became effective upon filing September 30, 1988.

These rules are intended to implement 1988 Iowa Acts, Senate File 2328, section 5(3,m) and Iowa Code section 159.5(12).

CHAPTER 15**PILOT LAMB AND WOOL MANAGEMENT
EDUCATION PROJECT****21—15.1(72GA,SF2328) Program description and administration.**

15.1(1) This program is intended to initiate pilot education projects at area schools to educate Iowa lamb and wool producers in production and marketing of lamb and wool. The program is also intended to increase lamb and wool production in the state. The department of agriculture and land stewardship will provide grant money specifically appropriated by the legislature to area schools for pilot lamb and wool producer education projects.

15.1(2) The program shall be administered by the secretary or by the secretary's designee.

21—15.2(72GA,SF2328) Definitions.

"Application" means a request for program grant funds, including required forms and attachments, if any.

"Area school" means an area vocational school or area community college established under Iowa Code section 280A.2.

"Department" means the Iowa department of agriculture and land stewardship, established pursuant to Iowa Code chapter 159.

"Grant" means funds received in 1988 through the Pilot Lamb and Wool Management Education Project created by 1988 Iowa Acts, Senate File 2328, section 5(3), paragraph m, subparagraph (1).

"Grant agreement" means the contract between the department and the grantee.

"Grant agreement contents" means the conditions which the grantee agrees to perform as described in the application proposal in return for a grant received under the program.

"Grantee" means the person who receives a grant under the program.

"Member-producer" means a producer enrolled in lamb and wool education project.

"Producer" means a person actively engaged or seeking to become actively engaged in lamb or wool production.

"Program" means the pilot lamb and wool education project.

"Request for proposals" means the notification prepared by the department and forwarded to eligible applicants for participation in the program.

"Secretary" means the secretary of agriculture as defined by Iowa Code section 159.1(1).

21—15.3(72GA,SF2328) Application. The secretary will prepare requests for proposals, including instructions, and make available to eligible applicants information and necessary forms regarding the completion and submission of applications for grants under the program.

15.3(1) Deadline for submission. Applications must be postmarked by December 1, 1988, to be considered.

15.3(2) Eligibility. Eligible applicants under the program shall be one or more area schools established under Iowa law within the state of Iowa.

15.3(3) Priority. All applications submitted under the program received on or before the deadline for receipt of applications shall be considered for a grant under the program.

21—15.4(72GA,SF2328) Waiver. The secretary may waive or vary particular provisions of these rules to conform with changes in state or federal laws that would affect the program.

21—15.5(72GA,SF2328) Ranking and evaluation criteria. The highest possible score is 100 points. The evaluation shall include the following categories or ranking and evaluating factors:

15.5(1) The work plan (plan of action). Maximum 30 points. The work plan should include the overall plan or strategy for the project including project goals, specific time/task plan, and applicant's capability to assist Iowa lamb and wool producers with production and marketing. Applicant should demonstrate area and producers to be served, facilities, staff and their availability to the member-producer, and how project will coordinate activity with other private and public agencies. Work plan should show how member-producers will be served, types of marketing plan used, requirements of the member-producers and how project will be evaluated.

15.5(2) Detailed budget. Maximum 30 points. The budget should include personnel, fringe benefits, travel, equipment and supplies, and assistance received from other sources.

15.5(3) Area support. Maximum 30 points. The following factors will be considered:

- a. Area support for the project from producer groups in the area.
- b. Number of sheep and producers in the area.
- c. The number of prospective member-producers.

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

ARC 9340

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency

d. The area's new or expanded lamb and wool production facilities.

e. The increase in area sheep numbers.

f. Area support of school's facilities available and support staff and ability of area school to continue the project after funding expires.

15.5(4) Rationale for the project. Maximum 10 points. Rationale should clearly define the need for the project, and the specific geographical area of the state which the proposal will encompass. Consideration should be given to whether this project will conflict with any other similar programs or projects in the area.

21—15.6(72GA,SF2328) Awarding of grants and noncompliance.

15.6(1) The department will award grants to the highest scoring applicants within six weeks following the application deadline. Highest possible score, 100 points. All applicants submitting applications will be notified in writing regarding the dispositions of their application. The amount and number of grants awarded will be determined by the secretary, based on the availability of funds for the program.

15.6(2) If the department finds that a grantee is not in compliance with the requirements under this program, the grantee will be required to refund to the department all disallowed costs. Reasons for a finding of noncompliance include, but are not limited to, the following: a grantee's using program funds for unauthorized activities, failure to complete approved activities in a timely manner, failure to comply with applicable laws and regulations of the grant agreement, or the grantee lacks the capacity to carry out the purposes of the program.

21—15.7(72GA,SF2328) Forms. The following forms will be used by the department in the administration of the program:

1. Request for Proposals.
2. Grant Application Cover Sheet.
3. Grant Agreement.

21—15.8(72GA,SF2328) Progress report. The department may, from time to time, require as a condition for participation in the program that the grantee submit written statements describing progress being made with the project.

21—15.9(72GA,SF2328) Project completion date. The project completion date established for the program is December 30, 1990. However, the secretary may, at the secretary's discretion, extend the project completion date for projects that may require a longer period to adequately complete the study and pilot projects.

These rules are intended to implement 1988 Iowa Acts, Senate File 2328, section 5(3,m) and Iowa Code section 159.5(12).

[Filed emergency 9/30/88, effective 9/30/88]

[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

Pursuant to the authority of Iowa Code sections 159.5(11), 163.1, and 166C.6, the Iowa Department of Agriculture and Land Stewardship amends Chapter 64, "Infectious and Contagious Diseases," (Aujeszky's Disease segment), Iowa Administrative Code.

These amendments define the requirements for the sale or importation of swine pertinent to enforcement of Iowa Code chapter 166C. These rules will expedite current eradication efforts.

The Department finds, pursuant to Iowa Code section 17A.5(2), that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective September 29, 1988, because they confer a benefit upon the public by providing rules necessary to obtain federal funds for pseudorabies eradication and by protecting areas in which pseudorabies eradication efforts have commenced.

The Department finds, pursuant to Iowa Code section 17A.4(2), that notice and public participation are impracticable because a delay in adopting the rules will jeopardize federal funding for pseudorabies eradication and jeopardize pseudorabies eradication efforts already undertaken. The Department is simultaneously submitting a Notice of Intended Action, published herein as **ARC 9341**. Opportunities for public comment are provided under that procedure.

These rules became effective on September 29, 1988.

These rules are intended to implement Iowa Code chapter 166C.

The following amendments are adopted:

ITEM 1. Amend rule **21—64.147(163,166C)** as follows: Amend the definition of "Approved premises" as follows:

"Approved Pseudorabies-approved premises" means a dry lot facility located in an area with confirmed cases of Aujeszky's pseudorabies disease infection, and which is authorized by the department to receive, hold or feed out reactors infected animals, exposed animals or swine of unknown status. These premises and all swine on the premises shall be considered under quarantine except for movement to slaughter or, by permit from the department, to another pseudorabies-approved premises.

Amend the definition of "Aujeszky's approved established herd" as follows:

"Aujeszky's approved established herd" "Qualified pseudorabies negative herd" means a herd in which 100 percent of all stock breeding swine six months of age or over had an initial negative Aujeszky's pseudorabies disease test; and in which every three months thereafter, an alternating quarter 25 percent or 14 head, whichever is greater, of the herd, or 10 percent every month, upon retesting had a negative Aujeszky's pseudorabies disease test. All breeding swine shall be tested in herds of fewer than 14 breeding swine.

Amend the definition of "Aujeszky's disease test" as follows:

"Aujeszky's Approved pseudorabies disease test" means either a Serum Neutralization (SN), or Virus Isolation

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

Test or *ELISA Test* or other tests as approved by the department; and performed by a laboratory approved by the department.

Rescind the definition of "Pseudorabies controlled vaccinated herd" and insert the following:

"Pseudorabies controlled vaccinated herd" means a herd which has met the requirements for a qualified pseudorabies negative herd and then has been vaccinated with an approved immunization product within 15 days of the initial negative pseudorabies disease test.

Rescind the definition of "Reactor" in its entirety.

Further amend rule 21—64.147(163,166C) by adding in alphabetical sequence the following new definitions:

"Differentiable test" means a laboratory serologic procedure approved by the department capable of recognizing and distinguishing between vaccine-exposed and field pseudorabies virus-exposed animals.

"Infected animal" means an animal showing a positive reaction to an approved pseudorabies disease test.

"Infected herd" means a herd which contains at least one animal showing a positive reaction to an approved pseudorabies disease test.

"Positive reaction" means a reaction to an approved test at a level considered diagnostic of pseudorabies infection.

"Pseudorabies disease program area" means a geographic area designated by the department pursuant to rule 21—64.153(166C) as an area to be given priority in the assignment of program-funded eradication activity. Herd testing and swine movement within and into this area are designed to evaluate all herds within the area and to achieve pseudorabies eradication within the area.

"Pseudorabies monitored herd" means a herd of swine which has been determined to be not infected with pseudorabies virus according to statistical sampling within the last 12 months.

"Reaction" means a positive result determined by an approved laboratory procedure designed to discover and recognize pseudorabies virus infection or a nondifferentiable vaccinated animal.

"Statistical sampling" means a test based on at least a 90 percent probability of detecting at least a 10 percent incidence of positive reaction within the herd.

ITEM 2. Rescind rules 21—64.148(163,166C) to 21—64.153(166C) in their entirety and insert in lieu thereof the following:

21—64.148(163,166C) Pseudorabies tests and reports.

64.148(1) Samples are to be collected by or under the direction of a licensed veterinarian. Breeding swine sampled shall be identified with numbered metal ear tags available through the department. Ear notches, or other numbered identification approved by the department, may be used at the herd owner's expense.

64.148(2) Test forms must be filled out and results reported to the department within 14 days after completion of the tests. Copies will be made available to the veterinarian and, through the veterinarian, to the herd owner.

21—64.149(163,166C) Approval of qualified pseudorabies negative herd. The owner or veterinarian shall make a request to the department for approval or reapproval of a qualified pseudorabies negative herd when the required tests are completed. Upon satisfactory

proof that all requirements have been met, a certificate of approval shall be issued to the herd owner.

64.149(1) Initial approval. To qualify for initial approval, all the breeding swine six months of age or over must have a negative pseudorabies disease test. If the herd has had an infected animal, in order to approve or reapprove, the infected animals must be disposed of, and the breeding herd have one negative test at least 30 days after removal of any infected animals, followed by a negative test of 25 percent or 14 head, whichever is greater, of the breeding herd at least 60 days later.

64.149(2) Reapproval. Initial approval shall expire 90 days from date of issue and reapproval shall be based on a test conducted from 80 to 105 days after the last approval date and receipt by the department of proof that 25 percent or 14 head, whichever is greater, of the breeding swine herd or 10 percent every month, on retesting, had a negative pseudorabies disease test. All breeding swine shall be tested in herds of fewer than 14 breeding swine.

64.149(3) Additions to qualified pseudorabies negative herds. Additions may be made to qualified pseudorabies negative herds if the animals to be added are from another qualified pseudorabies herd, or are negative animals tested within 30 days from a herd not under quarantine. All additions to the herd, unless from a qualified pseudorabies negative herd, shall be kept in isolation and retested on the farm of destination after 30 days.

21—64.150(163,166C) Shipment of breeding swine and feeder pigs.

64.150(1) Intrastate and interstate shipment of feeder pigs. All imported feeder pigs shall: (1) originate from a qualified pseudorabies negative herd, (2) originate from a pseudorabies monitored herd, (3) have individually been tested negative within the past 30 days, (4) originate from a pseudorabies controlled vaccinated herd, or (5) originate from a low incidence or pseudorabies free area that the department has determined, based upon epidemiological studies and information. All imported feeder pigs shall be quarantined until tested negative or moved to slaughter.

All feeder pigs moved within Iowa shall be quarantined until tested negative or moved to slaughter. However, pigs from a qualified pseudorabies negative herd, a pseudorabies monitored herd, a pseudorabies controlled vaccinated herd, or tested negative within the past 30 days, shall be quarantined for 30 days.

Native Iowa swine moved from farm to farm within Iowa are exempt from identification requirements if the seller and purchaser sign a statement providing that feeder pigs will not be commingled for a period of 30 days and such fact is stated on the health certificate. However, they must comply with rule 21—66.11(163,172B), "Movement of livestock within the state."

64.150(2) Intrastate and interstate shipment of breeding swine. Any of the following may be sold as breeding swine: (1) animals from a qualified pseudorabies negative herd, (2) negative animals, tested within the past 30 days, from a herd not under quarantine, or (3) animals from a pseudorabies controlled vaccinated herd.

64.150(3) Swine moving through concentration points. Swine qualified to sell as breeding animals and feeder pigs not subject to quarantine until slaughter shall be

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

kept separate and apart from other classes of swine, whenever they are in concentration points, and they shall be handled in a manner to preserve identity and prevent exposure to pseudorabies.

21—64.151(163,166C) Quarantines.

64.151(1) Except for sales to slaughter or to pseudorabies-approved premises, owners of animals tested for pseudorabies shall hold the entire herd on the premises until results are determined. Herds determined to be infected after adoption of these rules shall be quarantined. However, movement to slaughter or to approved premises shall not be considered a violation of quarantine.

64.151(2) The quarantine may be released under any of the following circumstances:

a. All infected and exposed swine have gone to slaughter and the premises has been adequately cleaned and disinfected.

b. The herd has passed one negative test of the complete breeding herd at least 30 days after removal of infected animals, followed by a negative test of 25 percent or 14 head, whichever is greater, of the breeding swine, at least 60 days later; or a negative test on the herd tested by statistical sampling at least 60 days later.

c. Quarantined vaccinated herds may be released if both of the following apply:

(1) Results of statistical sampling of progeny, at least four months of age, representing the entire herd are negative on two successive tests at least 90 days apart; and

(2) Statistical sampling tests of breeding herd did not reveal any infected animals on two successive tests at least 90 days apart.

d. Quarantine release procedures, as may be proposed in Program Standards for Pseudorabies Eradication, may be adopted in Iowa whenever such Program Standards are approved and adopted by the U.S. Department of Agriculture.

21—64.152(163,166C) Pseudorabies immunization products.

64.152(1) The use, sale, distribution or offer to sell or distribute any pseudorabies immunization product within the state is prohibited subject to the following exceptions:

a. For the purpose of product research or testing, the secretary will issue a permit, upon application, to a biological laboratory, government authority or manufacturer of biological products if the secretary concludes that such use will not be detrimental to the state pseudorabies disease program.

b. Only licensed accredited veterinarians may buy and use or dispense any department-approved immunization product. All such use must be reported by the veterinarian to the department together with the name and address of the owner and the number of doses used. This report will not be valid unless signed by the owner of the swine or the owner's representative. The swine must be identified as pseudorabies vaccinated animals. Reports must be mailed immediately to the animal industry office.

64.152(2) The vaccinated animals in any herd will be quarantined and may move to slaughter subject to the following exceptions: Vaccinated animals may move directly to a known infected or vaccinated herd provided a permit is obtained from the department for such movement. Progeny of vaccinated animals will not be

under quarantine if, after weaning, they are maintained separate and apart from the breeding herd and test negative. Vaccinated animals may be released from vaccination quarantine provided they originate from a nonquarantined herd that has not had any clinical symptoms of pseudorabies for the 12 months prior to initiation of vaccination. These animals will be allowed to move intrastate provided they have been vaccinated for over two weeks and not over six months. They will move on a health certificate showing the vaccination status and accompanied by the owner's statement that there have been no apparent symptoms of pseudorabies in the herd for the past 12 months.

64.152(3) Animals vaccinated with a vaccine which has a differentiable test must test negative to field strains of pseudorabies virus as determined by a complementary differentiable serologic test to be classified as a noninfected animal.

64.152(4) The status of a pseudorabies controlled vaccinated herd is maintained by an approved pseudorabies test of a number of progeny over four months of age equal to at least 25 percent or 14 head, whichever is greater, of the breeding herd every 80 to 105 days, or 10 percent every 30 days. All additions to the herd must either be from a herd not under quarantine and tested negative within 30 days to an approved pseudorabies test, or originate from a qualified pseudorabies negative herd, and be vaccinated for pseudorabies within 15 days after the test and added to the herd not more than 30 days after the test.

21—64.153(166C) Pseudorabies disease program areas. The department may establish pseudorabies disease program areas within Iowa.

64.153(1) Pseudorabies disease program areas as designated by the Iowa department of agriculture and land stewardship: counties of Fayette, Grundy, Hardin, Marshall, O'Brien, Story, Tama, and Washington.

Whenever the department determines a majority of herds within these pseudorabies disease program areas have been tested and reveal a noninfection rate of 90 percent or greater, then:

a. Breeding swine moved within or into these areas shall be animals originating from a qualified pseudorabies negative herd, a controlled vaccinated herd, or tested negative within the past 30 days from a herd not under quarantine.

b. Feeder swine moved within or into these areas shall be animals originating from a qualified pseudorabies negative herd, originating from a pseudorabies monitored herd, feeder swine individually testing negative within the past 30 days, originating from a pseudorabies controlled vaccinated herd, or originating from a low incidence or pseudorabies free area that the department has determined, based on epidemiological studies and information.

c. Six months after the determination by the department, all swine herds within these areas must be at least a pseudorabies monitored herd or initiate an approved herd plan for cleanup.

64.153(2) Pending availability of funds, program testing will be provided to all feeder pig producers for one monitor test.

64.153(3) All cooperators will permit sufficient swine in their herds to be tested at program expense to determine the health status of the herd prior to the start of the program and at intervals during the course of the program as deemed necessary by the department.

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

64.153(4) Tests may not result in quarantine action if the owner agrees to implement an approved herd plan for cleanup, unless the test results are being utilized for regulatory or certification purposes, or there is evidence of clinical pseudorabies disease on the farm.

64.153(5) The cost of the program, testing and vaccination, may be provided for by federal or state funds, or a combination of both. No indemnities will be paid for condemned animals.

64.153(6) In the event federal or state funds are not available, producers may continue the program at their own expense under state supervision.

64.153(7) The department may establish pseudorabies disease program areas within Iowa. The area involved in the pseudorabies disease program shall be designated at least 90 days prior to the start of the program and all livestock producers in the area shall receive a prior written notice of the program. For an area to be acceptable for a pseudorabies disease program, at least 75 percent of all swine producers residing within the area must sign a cooperative agreement with the state to participate in the program and the cooperators must represent at least 90 percent of the swine produced within the area.

These rules are intended to implement Iowa Code section 166C.3.

[Filed emergency 9/29/88, effective 9/29/88]
[Published 10/19/88]

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ARC 9362**CORRECTIONS DEPARTMENT[291]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 246.105, the Iowa Department of Corrections hereby adopts by emergency procedures an amendment to rule 291—20.6(218).

This rule establishes standards and procedures for inmate access to publications. There are general revisions as well as a specific revision of 20.6(4)"b." This revision is a result of the case of Dawson versus Scurr, Civil No. 81-373-D in the U.S. District Court, Southern District of Iowa, Central Division, regarding sexually explicit publications. The Department finds pursuant to Iowa Code section 17A.4(2) that notice and public participation are impracticable because the District Court ruling became effective immediately which is the basis for this rule.

The Department finds that, pursuant to Iowa Code section 17A.5(2)"b"(2), this rule confers a benefit on the public because it restricts the kinds of sexually explicit material which can be distributed to inmates.

This rule is intended to implement Iowa Code chapters 246 and 728.

This rule shall become effective September 30, 1988.
Amend rule 291—20.6(218) as follows:

291—20.6(218)(246) Publications. The institution shall allow inmates access to publications when consistent with

institutional goals of maintaining internal order, *safety*, security, and rehabilitation.

20.6(1) Publications include periodicals, newspapers, books, and other printed matter. ~~Approved~~ All publications shall be *unused* and sent directly from a reputable publishing firm or book store which does mail order business. Any exceptions must be authorized by the warden or superintendent. No ~~publication publisher~~ shall be denied approval solely on the basis of its appeal to a particular ethnic, racial, religious, or political group. *The quantity of printed materials, as with other personal property, will be controlled for safety and security reasons.*

20.6(2) All publications *not on the approved list* shall be ~~approved or denied approval~~ *reviewed* by a publication review committee *for approval or denial*.

a. The committee shall be appointed by the director, department of corrections, and shall include a person with broad exposure to various publications, and two representatives of correctional institutions.

b. The committee shall fairly review all types of publications to be received by inmates in accordance with these rules.

20.6(3) The following procedures shall be used when reviewing a publication not on the approved list:

a. The committee shall approve or deny ~~approval~~ *publications* within 15 working days of receipt of the publication.

b. When ~~approval~~ *a publication* is denied, the committee shall send a written notice to the inmate, stating the publication involved, the reason for denial, and the inmate's available appeal process.

c. The inmate shall have five days to notify the designated institution staff where to send the material at the inmate's expense *or notify the institution that the decision is being appealed to the director*.

d. A list of approved publications shall be maintained.

e. A publication that has been denied may be reviewed upon request by an inmate after one year from the date of denial.

f. The inmate shall send a request for review to the Deputy Director for Institutions, Department of Corrections, Jewett Building, Des Moines, Iowa 50309. It is the responsibility of the inmate to pay for said publication.

20.6(4) Approval of the publication may be denied when *it the publication* presents danger to the security or order of an institution or is detrimental to the rehabilitation of the inmates. Authorized reasons for making such a finding are that the publication:

a. Is likely to be disruptive or produce violence.

b. Contains material portraying bestiality, sadomasochism, child nudity, or child sexual activity, or photographic portrayal of fellatio, cunnilingus, masturbation, ejaculation, sexual intercourse, or male erection.

b. Contains material which:

(1) Involves sadomasochistic abuse, excretory function, or bestiality which the average adult taking the material as a whole in applying community standards would find appeals to the purient interest and is patently offensive; and which material taken as a whole lacks serious literary, scientific, political or artistic value; or

(2) Depicts a child engaged in or simulating any of the following sex acts:

1. A sex act which involves sexual contact between two or more persons by penetration of penis into the vagina or anus, by contact between the mouth and genitalia or by contact between the genitalia of one person and the

CORRECTIONS DEPARTMENT[291] (cont'd)

genitalia or anus of another person or by the use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

2. An act of bestiality involving a child.
 3. Fondling or touching the pubes or genitals of the child.
 4. Fondling or touching the pubes or genitals of a person by a child.
 5. Sadoomasochistic abuse of a child for the purpose of arousing or satisfying sexual desires of the person who may view a depiction of the abuse.
 6. Sadoomasochistic abuse of a person by a child for the purpose of arousing or satisfying the sexual desires of the person who may view a depiction of the abuse.
 7. Nudity of a child for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the nude child.
- c. Contains information ~~on how~~ relating to escapes or formulate ~~formulating~~ escape plans.
 - d. Contains information ~~on how~~ relating to ~~provoke~~ provoking a riot or disturbance.
 - e. Contains information ~~on how~~ relating to obtaining an emotional or behavioral state comparable to those produced by a controlled substance, by using aerosols, glue, or other chemical materials.
 - f. Contains materials which illustrate, explain, describe, or teach martial arts, or other manufacture of weapons or explosives, or advocate behavior contrary to duly established institution rules or Iowa statutes. Contains materials which illustrate, explain, describe, or teach ~~how~~ ability to frustrate crowd or riot control methods. Contains materials which illustrate, explain, describe, or teach ~~how~~ ability to sabotage or disrupt communications networks including a prison's internal communications.
 - g. Contains information concerning proposed criminal activities.
 - h. Contains encoded material. This shall not automatically include foreign language publications not otherwise prohibited in these rules.
 - i. May violate postal regulations, such as containing threats, blackmail, contraband, or similar violations.

20.6(5) An inmate may appeal the committee's decision within ten days of receipt of the decision by filing written objections to the Director, Department of Corrections, Capitol Annex Building, 523 East 12th Street, Des Moines, Iowa 50319. The director's decision shall be final.

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ARC 9366

ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Department of Economic Development emergency adopts and implements amendments to Chapter 26, "Iowa Rental Rehabilitation Program," Iowa Administrative Code, to comply with the federal Housing and Community Development Act of 1987.

Subrule 26.3(4) currently prohibits the use of program proceeds for administrative expenses. The amendment permits this activity as an eligible program expense, subject to other federal restrictions. Subparagraph 26.3(4)"c"(2) presently requires that program funds shall not exceed an average of \$5000 per rental unit in any project. The Housing and Community Development Act of 1987 (P.L. 100-242) amended this limit and created a sliding investment scale based on the number of bedrooms within each rental unit. The proposed amendment cites this revision.

Subparagraph 26.5(2)"d"(7) explicitly prohibits the use of program proceeds for administrative costs. In light of the amendments to subrule 26.3(4), this reference is removed to be consistent with subrule 26.3(4).

Neither of these changes will affect the original intent of the Iowa Rental Rehabilitation Program, which is to improve the quality of the rental housing and to provide affordable housing to lower income renters.

In compliance with Iowa Code section 17A.4(2), the Department of Economic Development finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest as these are amendments required by federal law and must be implemented in order to bring Iowa into compliance and further delays would jeopardize the timely award of program funds to affected eligible applicants.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Department also finds that the usual effective date of these rules, 35 days after publication, should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on September 30, 1988. The Department of Economic Development has determined that these amendments reflect new regulations the state must follow and also confer a benefit on the public by removing existing restrictions.

The Department of Economic Development adopted these amendments on September 22, 1988.

These rules are intended to implement Iowa Code section 15.108(8)"b" and the Housing and Community Development Act of 1987(P.L. 100-242), Sections 150 and 311.

These rules became effective on September 30, 1988.

The following amendments are adopted:

ITEM 1. Amend subrule 26.3(4) as follows:

26.3(4) Eligible rehabilitation costs. Eligible rehabilitation costs include:

a. The actual rehabilitation costs necessary to:

(1) Correct substandard conditions as referred to in 24 CFR 511.10(c)(2);

(2) Make essential improvements, as reasonably defined by the grantee, including energy-related repairs and improvements to permit the use of rehabilitated projects by handicapped persons;

(3) Repair major housing systems in danger of failure, as reasonably defined by the grantee; and

b. Other costs (soft costs) that are associated with the rehabilitation or rehabilitation financing, and are not for services provided or costs incurred by the grantee, state recipient or a PHA. Such costs may include, but are not limited to:

(1) Architectural, engineering or related professional services required in the preparation of rehabilitation plans and drawings or write-ups;

(2) Costs of processing and settling the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261] (cont'd)

filing of legal documents, building permits, attorneys' fees, private appraisal fees and fees for an independent rehabilitation cost estimate;

(3) Fees charged by a private lender for administrative costs associated with the disbursement of funds described in 24 CFR 511.74;

(4) Relocation payments made to tenants who are displaced by the rehabilitation activities; and

(5) Costs to provide information services to tenants in accordance with 24 CFR 511.10(h)(2)(iii); and

(6) Actual and documented administrative expenses of the state recipient.

c. Maximum expenditure. Expenditure of program funds for any project is subject to the following restrictions:

(1) Program funds can be used to pay no more than 50 percent of the total eligible rehabilitation costs, unless refinancing is involved, in which case additional funds may be available as set out in and subject to the restrictions of 24 CFR 511.10(e)(1).

(2) With the exception of subrule 26.3(4), paragraph "c," subparagraph (1) above, in no case may program funds for any project exceed the average of five thousand dollars per unit. The dollars per unit maximums as stipulated in 24 CFR 511.10(3)(2)(i), as amended on February 5, 1988.

d. Minimum rehabilitation. Minimum level of rehabilitation involving expenditures of not less than \$600 per dwelling unit and rehabilitating each unit to meet at least section 8 housing quality standards for existing housing as set out in 24 CFR 882.109.

ITEM 2. Amend subparagraph 26.5(2)"d"(7) as follows:

(7) Administrative plan. A statement of the applicant's plan to provide for the administration of the rental rehabilitation program including who will administer the program, the qualifications of the administrators, the name and address of the contact person, and the source of funds for administrative expenses. ~~Note: Rental rehabilitation funds may not be used for administrative costs including staff and consultant salaries and operating expenses.~~

These rules are intended to implement Iowa Code section 15.108(8)"b" and the Housing and Community Development Act of 1987 (P.L. 100-242), Sections 150 and 311.

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ARC 9344

ENVIRONMENTAL PROTECTION
COMMISSION [567]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 455B.105 and 1988 Iowa Acts, Senate File 2250, section 10, the Environmental Protection Commission for the Department of Natural Resources hereby emergency adopts rules to rescind Chapter 42, "Special Monitoring for Pesticides and Synthetic Organic Chemicals," and emergency adopts a new Chapter 42, "Water Supply Grants," Iowa Administrative Code.

These rules set out the procedures for applying for water supply grant funds as authorized under 1987 Iowa Code supplement section 455E.11, as amended by 1988 Iowa Acts, Senate File 2250, section 10, and provide the method by which applications will be evaluated and grants awarded. These rules may have an impact on small businesses.

Existing Chapter 42 provides the rules for the one-time testing of water supplies for pesticides and synthetic organic chemicals. This testing has been completed and the final report has been submitted to the Legislature.

Proposed new Chapter 42 includes the procedures to apply for water supply grant funds and to provide the method by which applications will be evaluated and grants awarded. It is the intent of the rules to award grants to projects that will result in abatement or elimination of water quality problems within a short time frame. The grant fund is created from moneys received from the landfill tonnage fee pursuant to Iowa Code section 455B.310.

Grant-eligible projects and project costs are detailed in the chapter. Procedures for ranking grant applications, awarding grants, payment of grant funds to the grantee and conditions under which forfeiture of grant funds may occur are outlined in this chapter.

In compliance with Iowa Code section 17A.4(2), the agency finds that public notice is unnecessary, impracticable, and contrary to the public interest. The new legislative authority for these rules became effective on July 1, 1988. It is in the interest of the public and in furtherance of legislative intent that this grant program be implemented immediately. Immediate implementation of this water supply grants program will enable the Department to award grants by March 1, 1989. Issuance of grants at that time will enable public water supply systems to coordinate receipt of this type of grant with receipt of other governmental grants and loans prior to the 1989 construction season. The public water supply systems will have the full 1989 construction season which begins approximately April 1, 1989, available for completion of the project due to the award of these grants by March 1, 1989. Additionally, no public comment was received in 1987 when very similar rules were proposed pursuant to earlier statutory authority which was then rescinded by the 1987 groundwater legislation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b," that the normal effective date of the rules, 35 days after publication, should be waived and the rules made effective on September 30, 1988, because the new chapter of rules confers a public benefit. The new rules are beneficial to the public since they allow water supply grants to be issued prior to the beginning of the 1989 construction season and to be coordinated with the receipt of other governmental grants and loans. The public water supply systems will have a 90-day period to apply for the grants under these rules.

Copies of Chapter 42 may be obtained from the Records Section, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034.

These rules are intended to implement Iowa Code chapter 455B, Division III, Part I, and 1987 Iowa Code supplement section 455E.11 as amended by 1988 Iowa Acts, Senate File 2250, section 10.

These rules were adopted by the Environmental Protection Commission on September 20, 1988, and

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became effective on September 30, 1988, after filing with the Administrative Rules Coordinator.

Rescind 567—Chapter 42 and adopt the following new chapter:

CHAPTER 42

WATER SUPPLY GRANTS

(Authorized Under 455E.11)

567—42.1(455B, 455E) Authority, purpose and applicability.

42.1(1) Authority. Pursuant to 1987 Iowa Code supplement section 455E.11, a groundwater fund is created from moneys received from the tonnage fee and from other sources designated for purposes related to groundwater monitoring and groundwater quality standards. Twenty-five percent of the moneys received from the tonnage fee, beginning July 1, 1987, and ending June 30, 1988, is reserved for the purpose of providing grants to public water supply systems to abate or eliminate threats to public health and safety resulting from contamination of the water supply source.

42.1(2) Purpose. The purpose of these rules is to provide the procedures to apply for grant funds and to provide the method by which applications will be evaluated and grants awarded. It is the intent of these rules to award grants to projects that will result in abatement or elimination of a problem within a short time after the grant has been awarded. Projects for which grants are awarded shall be completed no later than December 31, 1990.

42.1(3) Applicability. The requirements of this chapter apply to all water supply grant requests authorized under 1987 Iowa Code supplement section 455E.11 regardless of the type or size of water system for which the grant is being requested.

567—42.2(455B, 455E) Definitions. When used in this chapter, unless the context otherwise requires:

"Abate or eliminate threats from contamination" means to reduce the contaminant level in the finished water to a level below the maximum contaminant level pursuant to 567—Chapter 41 or to a level considered acceptable by the department.

"Application" means a request for grant funds including the required form and any attachments.

"Department" means the Iowa department of natural resources.

"Eligible applicant" means any public water supply system located within the state of Iowa and having a valid department water supply operation permit.

"Grant" means funds received pursuant to 1987 Iowa Code supplement section 455E.11.

"Maximum contaminant level goal" means a nonenforceable contaminant limit that has been set at a level at which no known or anticipated adverse effects on the health of the public will occur and which contains an adequate margin of safety.

"Project" means an activity or activities funded with 455E.11 grant funds.

"Recipient" means an eligible applicant receiving funds under this program.

"Unexpended funds" means any surplus grant funds available after all grants have been awarded.

567—42.3(455B, 455E) Eligible projects and costs.

42.3(1) Projects assisted by this program must be for the abatement or elimination of a threat to the public

health and safety resulting from contamination of the water supply source.

42.3(2) Eligible projects shall be limited to construction related projects. The grant-eligible portion of a project shall be limited to the actual construction costs. All other types of projects or project activities are not grant-eligible.

42.3(3) Examples of grant-eligible projects include, but are not limited to:

a. Construction costs to provide a replacement well or for reconstruction of an existing well.

b. Construction costs to provide a new water treatment facility or for reconstruction or modification of an existing facility to eliminate contamination.

c. Construction costs to connect to an alternate public water supply.

42.3(4) Examples of grant-ineligible projects or project costs include, but are not limited to:

a. Project related to improving the aesthetic quality of the water.

b. Project consisting of increasing the available water storage or improving or extending the distribution system.

c. Projects related to the correction of a problem caused by poor or inadequate operation and maintenance of the existing system.

d. Site cleanup or remedial work resulting from a spill, illegal dumping or a leaking underground storage tank.

e. Routine operation or maintenance costs.

f. Projects related to the correction of a contamination problem caused by or resulting from actions of the applicant, including but not limited to, leaking tanks, chemical spills, failure to maintain or properly operate the water system, and violations of state requirements.

g. Planning activities, including preparation of an engineering report.

h. Engineering costs to prepare plans and specifications.

i. Costs related to obtaining a construction permit or submission of a request for a grant.

j. Administrative costs of the project.

k. Costs associated with obtaining land or an easement for construction.

l. Fines and administrative penalties assessed against the public water supply system.

42.4 Reserved.

567—42.5(455B, 455E) Application for grant funds.

42.5(1) Restrictions on applicants.

a. No more than one application will be considered from any applicant. Where multiple water systems are served by another public water supply, only one grant will be awarded unless the consecutive water system maintains its own water sources and the sources are contaminated.

b. The application shall be for work anticipated and costs incurred after the award of the grant. Grants will not be awarded to reimburse the costs that were incurred prior to the grant award.

42.5(2) Application procedure. Grant applications will be accepted and reviewed and grants will be awarded in accordance with the following schedule:

Applications will be accepted from September 30, 1988, through December 31, 1988.

Award of grants will begin March 1, 1989.

An original and one copy of the application must be submitted. The application shall be made on a form

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provided by the department. Application forms and instructions are available upon request from:

Water Supply Section
Department of Natural Resources
900 East Grand Avenue
Des Moines, Iowa 50319-0034

Each application received will be reviewed, rated and ranked based on rating factors. Applications with the highest ranking will be funded, to the extent that grant funds are available. If unallocated grant funds exist following the award of grants, the department may consider grant applications received after December 31, 1988.

567—42.6(455B, 455E) Rating factors. The following rating system will be used to rank applications under this program.

42.6(1) Type of contamination. Priority will be given to synthetic organic compounds (including petroleum by-products), herbicides and other pesticides. Based upon the type of contamination at the point of entry to the distribution system, the following points will be awarded:

- Synthetic organic compounds, herbicides, and other pesticides100 points
- Inorganic compounds and chemicals which have maximum contaminant levels pursuant to 567—Chapter 41 other than fluoride and turbidity55 points
- Bacteriological30 points
- Radiological15 points
- All other contaminants0 points

Applicants with multiple contaminants will be awarded cumulative points if contaminants are present from more than one of the above categories and the project will correct these contamination problems.

42.6(2) Severity of problem. The severity of the contamination level in the system will be evaluated. Priority will be given to systems that have a more severe problem. Twenty points will be awarded if the contaminant level found in the drinking water exceeds a maximum contaminant level pursuant to 567—Chapter 41 and ten points will be awarded if the contaminant level exceeds a maximum contaminant level goal.

42.6(3) Type of system.

a. **Category 1:** A public water supply system regulated under Iowa Code chapter 455B which serves a city under Iowa Code chapter 362 or serves a state-owned facility regularly housing 200 or more persons, benefited water districts created under Iowa Code chapter 357, rural water districts created under Iowa Code chapter 357A, and water systems serving publicly owned schools or institutions100 points

b. **Category 2:** All community water systems not included in Category 140 points

c. **Category 3:** A noncommunity water system serving a nontransient population20 points

d. **Category 4:** All noncommunity water systems not included in Category 30 points

42.6(4) Regional solution. Priority will be given to a system for which regionalization with another public water system is the selected option30 points

42.6(5) Total points. The total points to an applicant will be the total of the points awarded pursuant to the four rating factors listed above in 42.6(1) to 42.6(4).

567—42.7(455B, 455E) Verification of data. Applications will be reviewed to verify figures or statements in the application. In cases where inaccuracies, omissions

or errors are found, the department may reject the application.

567—42.8(455B, 455E) Award of grants.

42.8(1) Grants will be awarded to eligible projects in the order of the project rating. Projects with the highest ratings will be awarded funds ahead of projects with lower ratings. Applications receiving equal points will be rated at the discretion of the department, in order to fund the applicant with the most immediate problem.

42.8(2) The amount of any grant shall not exceed 10 percent of the total available grant funds or 100 percent of the grant-eligible costs, whichever is less.

42.8(3) All applicants will be notified whether or not they will receive a grant. All grant applications will be retained by the department. Unsuccessful applicants may be awarded a grant after the initial grant award from funds forfeited under rule 42.10(455B, 455E).

42.8(4) Successful applicants may be required to attend a conference with department representatives to outline procedures to be followed as grant recipients.

42.8(5) Upon selection of a project for grant funding, the department will issue a grant award agreement. These rules and applicable federal and state laws and regulations shall become a part of the grant award. Certain activities may require that permits or clearances be obtained from other state or federal agencies prior to proceeding with the project. Award of the grant does not relieve the grantee of these requirements.

42.8(6) Copies of all contracts entered into by the grantee relative to this project shall be forwarded to the department.

567—42.9(455B, 455E) Payment of grants.

42.9(1) Payment of grant funds to the grantee will be made only after the actual expenses have been incurred. Grant recipients shall submit requests for funds in the manner and on forms prescribed by the department. Financial records, invoices, supporting documents, and all other records pertinent to the grant program shall be retained by the recipient for a minimum of three years.

42.9(2) Representatives of the state auditor's office and the department of natural resources or the department's designee shall have access to all books, accounts, documents, records, and the construction site pertaining to the project under these rules.

42.9(3) The department may perform any reviews or field inspections it deems necessary or require the applicant to perform and submit test results (including water quality analyses) it deems necessary to assure that water supply contamination problems have been eliminated or abated. If problems are noted, the department may require remedial actions to be taken.

567—42.10(455B, 455E) Forfeiture of grant funds.

42.10(1) Forfeiture of a portion of or the entire grant may result if moneys awarded are not spent by the grant expiration date.

42.10(2) Forfeiture of a portion of or the entire grant will result for the following reasons:

a. The grant will be forfeited if it is determined that the grant was obtained by fraud or misrepresentation regardless of whether grant moneys have already been given to the grantee. Any grant received or spent shall be repaid to the state.

b. The grant will be forfeited if it is determined that the grantee did not incur costs for which grant payments

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were made and moneys received or spent and shall be repaid to the state.

42.10(3) The grant recipient cannot receive more grant moneys for the grant-eligible portion of the project than the cost of those items. The grant will be reduced or forfeited so that the grant award applies to only the unfunded portion of the project. Any grant moneys received or spent in excess of the grant-eligible portion of the project shall be repaid to the state.

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ARC 9336**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed Emergency**

Pursuant to the authority of 1988 Iowa Acts, Senate File 2092, and Iowa Code chapter 455B, the Environmental Protection Commission of the Iowa Department of Natural Resources emergency adopts a new Chapter 92, "State Revolving Fund Loans for Wastewater Treatment," Iowa Administrative Code.

1988 Iowa Acts, Senate File 2092, sections 10 through 18, provide for the implementation of a state revolving loan fund program to provide loans to municipalities from a state revolving fund that will result from a federal grant and a state match.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation are impracticable in that 1988 Iowa Acts, Senate File 2092, provides that the Department shall adopt rules appropriate for the administration of this program and, because of the federal tie-in with the state program, it is necessary that the Department rules be adopted in order to administer the plans and agreements of the federal government.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules, 35 days after publication, should be waived and the rules should be made effective upon filing with the Administrative Rules Coordinator on September 26, 1988, as it confers a benefit upon the public to ensure municipalities in the state of Iowa will qualify for federal and state grants for sewage treatment projects.

These rules are intended to implement 1988 Iowa Acts, Senate File 2092, and Iowa Code chapter 455B.

CHAPTER 92**STATE REVOLVING FUND LOANS
FOR WASTEWATER TREATMENT**

567—92.1(455B) Statutory authority. The authority for the Iowa department of natural resources to provide loans to eligible-applicants to assist in the construction of wastewater treatment facilities is provided by 1988 Iowa Acts, Senate File 2092.

567—92.2(455B) Scope of title. The department has jurisdiction over the surface and groundwater of the state to prevent, abate and control pollution. As a part of that

general responsibility, the department and the authority are jointly delegated the administration of the state revolving fund (SRF) loan program to assist in water pollution abatement projects pursuant to the Clean Water Act. A project must comply with this chapter to be eligible for an SRF loan. This chapter provides for the general rules of practice for the department's administration of the program, including the criteria for loan eligibility, and the general project and program administration rules.

567—92.3(455B) Definitions. The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Applicable interest rate" means the interest rate applied to each individual loan as determined by the director and in accordance with any agreement with the Iowa finance authority.

"Authority" means the Iowa finance authority (IFA) as established by Iowa Code chapter 220.

"Clean Water Act" means the Federal Water Pollution Control Act of 1972, PL 92-500 as amended by the Water Quality Act of 1987, PL 100-4 as published in 33 U.S.C. 1251-1376.

"Commission" means the Iowa department of natural resources environmental protection commission of the state of Iowa.

"Department" means the Iowa department of natural resources (DNR).

"Director" means the director of the Iowa department of natural resources.

"Eligible cost" means the cost of all labor, material, machinery, equipment, loan initiation and service fees, design and construction engineering services incurred after the date of approval of a loan, legal fees and expenses related to the project, capitalized interest during construction of the project, and all other expansion, construction and rehabilitation of all or part of a project.

"Eligible recipient" means a municipality (as defined below) that meets the following criteria:

1. Appears on the state project priority list.
2. Has submitted a complete application for a project with eligible costs.
3. Will be in a state of readiness to proceed to construction and use loan payments timely.
4. Has been included on the state's intended use plan as a proposed loan recipient.

"Fiscal year" means the federal fiscal year starting October 1 and ending September 30.

"Intended use plan" means a plan identifying the intended uses of funds available for loans in the SRF for each fiscal year as described in Section 606(c) of the Clean Water Act.

"Municipality" means the city, county, sanitary district, or other governmental corporation or body empowered to provide sewage collection and treatment services, or any combination of the two or more of such governmental bodies, or corporations acting jointly, in connection with a project.

"Project" means the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in Section 212 of the Clean Water Act, or the implementation and development of management programs established under Sections 319

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and 320 of the Clean Water Act. The term also applies to a separate segment or phase of a segmented or phased project.

"Project completion" means the date operations of the project are initiated or are capable of being initiated, whichever is earlier.

"State project priority list (PPL)" means the list of projects in priority order that may qualify for SRF loan assistance. The list is developed in accordance with 567—Chapter 91.

"State revolving fund (SRF)" means the sewage treatment works revolving loan fund established by 1988 Iowa Acts, Senate File 2092.

567—92.4(455B) General policy. Loans up to 100 percent of the eligible costs will be made available pursuant to the requirements of these rules and Title VI of the Clean Water Act. Loans are available for construction only and will not be considered for planning activities as well as other costs identified as unallowable for loan assistance in subrule 92.8(2).

92.4(1) Administration. The department, in conjunction with the authority, has been delegated the responsibility of administering the SRF program. The director will coordinate with the authority under the terms of an interagency agreement entered pursuant to Iowa Code chapter 28E.

92.4(2) Decisions.

a. Departmental staff decisions in administering the SRF loan program shall conform to generally accepted principles and standards of good practice. Guidance shall include, but not be limited to:

1. 40 CFR, Parts 31, March 11, 1988, and 35, July 1, 1987;
2. Applicable state laws, rules, and court decisions;
3. Guidance available from the EPA;
4. Any applicable federal regulations.

b. Decisions of department staff are final unless the recipient files a written petition for review with the director. The petition must be addressed to the director and clearly state the decision in question and the basis for the requested review. The recipient has the right to appeal a decision to the commission pursuant to Iowa Code chapter 17A or to the state court.

92.4(3) First use of funds. All funds in the SRF fund as a result of capitalization grants under Title VI of the Clean Water Act will be first used to assure maintenance of progress toward compliance with enforceable deadlines, goals, and requirements of the Clean Water Act, including the municipal compliance deadline as provided by the Clean Water Act. Progress toward compliance with the Clean Water Act is considered to be the operation of a wastewater treatment facility that meets effluent limitations required in an NPDES permit or having an enforcement action either filed or in place which requires the facility to meet permit limits or having a funding commitment prior to the end of the first year covered by the intended use plan. The department will identify any municipalities that will qualify for this "first use" requirement in the intended use plan.

92.4(4) Minimum/maximum loans. The minimum loan amount which will be considered is \$50,000. The maximum amount loaned to any municipality shall not exceed 60 percent of the available loan funds in the SRF attributable to any fiscal year.

92.4(5) Phased projects. Loan funds for future portions of phased or segmented projects cannot be assured. Partial or phased funding for a project may be made on a case-by-case basis with no assurance of future funding. Loans made for separate phases or segments of a project will be administered separately.

92.4(6) Eligible recipient determination. Municipalities projected to be able to qualify for SRF assistance will be identified in an annual intended use plan. Only those projects on the current fiscal year state project priority list developed pursuant to 567—Chapter 91 may be considered as an eligible recipient. SRF assistance will be available to projects in priority order with first consideration given to the "first use" criteria of subrule 92.4(3).

92.4(7) State capitalization grant. The Clean Water Act authorizes the Environmental Protection Agency (EPA) to offer capitalization grants to states for use in a revolving fund loan program through fiscal year 1994. All wastewater treatment projects defined in Section 212 of the Clean Water Act which receive loan assistance from the fund before fiscal year 1995 will meet the requirements of Sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 of the Clean Water Act, as described in rule 92.10(455B). A portion of the capitalization grant, as allowed by Title VI of the Clean Water Act, will be used to administer the SRF program.

92.4(8) Loan commitments. Loan agreements will be binding commitments based on estimated eligible costs prior to construction. A final adjustment to a loan amount may be made upon completion of construction.

92.4(9) Loan adjustments. Loans will be made to eligible recipients as soon as possible after moneys are available. The SRF will be managed such that contingency moneys are available in loans to allow for final adjustments in allowable costs as approved by the director. If eligible costs exceed the loan amount, the recipient may request an increase. The director in coordination with the authority will evaluate the request considering available moneys in the fund as well as the financial risk to determine the appropriate action, including renegotiation of the loan. Should costs be less than the loan amount, the loan shall be adjusted.

92.4(10) Double benefits. Projects that have received a federal construction grant under provisions of the Clean Water Act are not eligible to receive a loan for the nonfederal share of the project.

567—92.5(455B) Application procedures.

92.5(1) Forms. The department will provide an application package to apply for SRF loan assistance and to provide documentation in the program. Forms can be obtained from the Environmental Protection Division, Iowa Department of Natural Resources, Henry A. Wallace Building, 900 E. Grand, Des Moines, Iowa 50319-0034.

92.5(2) General requirements. The following items in addition to the requirements of subrule 92.5(1) must be included in a complete SRF loan application:

- a. Two copies of the planning report certified by a professional engineer registered to practice in Iowa;
- b. Two copies of project plans and specifications certified by a professional engineer registered to practice in Iowa;

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c. A schedule for submission of an operation and maintenance manual and plan of operation;

d. A user charge system;

e. A project construction schedule and cash flow projection including the acquisition of necessary land;

f. A summary of all financial arrangements necessary to fund the project; and

g. A description of a dedicated revenue source for loan repayments.

92.5(3) Timing. In preparing the IUP for fiscal year 1989 loan funds, the director may consider potential applicants considered capable of submitting applications within the time necessary to effectively utilize SRF funds provided by the initial capitalization grant. To be considered for loan assistance during subsequent fiscal years, applications must be received by the department on or before July 1 preceding the fiscal year.

567—92.6(455B) Intended use plan.

92.6(1) Development. The director shall prepare an intended use plan (IUP) each year. The IUP will be subjected to a public hearing and approved by the commission.

92.6(2) Contents. The IUP will identify the anticipated uses of loan funds available for that fiscal year and will include the following:

a. A list of projects from the state project priority list that are eligible for SRF loans and any proposed activities eligible for assistance under Sections 319 and 320 of the Clean Water Act. The list will include the name of the eligible recipient, any applicable NPDES permit number, the projected amount of loan assistance, schedule of estimated disbursement of funds and preliminary identification of projects that may undergo an environmental impact statement. The department will consider the following in developing the list of eligible recipients for the intended use plan:

(1) The list will first include in priority order any unfunded "first use" projects addressed in subrule 92.4(3).

(2) Applications on file.

(3) Whether a project will be ready to proceed on a schedule consistent with time requirements for outlay of funds.

(4) Whether the proposed project addresses the need upon which the municipality's priority is based.

(5) Applicant's financial capability to service the loan, provide operation and maintenance, provide replacement and debt service reserves.

(6) Applicant's statement of willingness to accept all loan terms and conditions.

b. Discussion of the long- and short-term goals of the SRF.

c. Information on the types of activities to be supported by the SRF.

d. Assurances and specific proposals on how the state intends to meet requirements of the following sections of the Clean Water Act:

(1) 602(a) Environmental reviews.

(2) 602(b)(3) The state will agree to enter binding commitments equal to at least 120 percent of each quarterly federal capitalization grant payment within one year after receipt.

(3) 602(b)(4) Certify that expenditure of all funds in the SRF will be done in an expeditious and timely manner.

(4) 602(b)(5) All SRF funds will be first used toward compliance with the enforceable requirements of the

Clean Water Act including the municipal compliance deadline of July 1, 1988.

(5) 602(b)(6) All wastewater treatment projects defined in Section 212 of the Clean Water Act which receive loan funds will meet the requirements of Sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 of the Clean Water Act.

(6) Contingency list. The IUP will list those projects that are fundable in a fiscal year. In addition, a contingency list will also be included. These projects could become fundable in accordance with the procedures found in subrule 92.8(7) should a fundable project not proceed in a timely manner.

e. The method by which the IUP may be amended.

567—92.7(455B) Loan and project initiation.

92.7(1) Loan and project initiation conference. Each eligible recipient shall schedule loan initiation conference with the department. The eligible recipient's official representative (and usually their consultant) will meet with the department to discuss:

a. SRF loan program policies, procedures, and guidelines.

b. Allowable costs.

c. Treatment technologies.

d. Environmental impacts and review considerations.

e. Public participation.

f. Scheduling.

g. Other information as needed.

92.7(2) Review criteria. The director shall review SRF loan applications for eligible recipients and verify the following items:

a. The project is on the state project priority list.

b. The applicant has prepared and received approval of an adequate facility plan report.

c. The project will be in conformance with any applicable areawide water quality management plans.

d. The applicant has or will adopt an acceptable user charge system.

e. The applicant has demonstrated its ability to provide the necessary legal, institutional, managerial and financial capability to complete the project.

f. The applicant has provided an acceptable project schedule for project initiation and completion.

g. The applicant's ability to repay the loan is consistent with the department's requirements after consultation with the authority.

92.7(3) Loan denial. The director shall inform the applicant in writing the reason for denial and return any application not in substantial compliance with these rules.

567—92.8(455B) General administrative requirements.

92.8(1) Loan agreement conditions. The director in coordination with the authority will prepare a loan agreement when the application has been determined to be in compliance with the requirements of the Clean Water Act and applicable state rules for SRF funding. The loan agreement to be executed by the applicant and the department shall be a binding commitment under Iowa law, shall include conditions and terms to be effective for the loan period, and shall be accompanied by evidence of legality and tax exempt status satisfactory to the director.

92.8(2) Allowable and unallowable costs. Allowable costs shall be limited to those eligible costs deemed necessary, reasonable, and directly related to the efficient

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completion of the project. Generally, the director will determine project costs eligible for loan assistance in accordance with state rule 567—91.6(455B). Land purchase, easement or rights-of-way costs are not eligible. In addition to those identified in 567—Chapter 91, unallowable costs include the following:

- a. Cost of the nonfederal share of any project funded by an EPA grant under the provisions of the Clean Water Act.
- b. Costs of planning and design phases of the project incurred prior to the date of approval of a loan.
- c. Cost of service lines and in-house plumbing.
- d. Administrative costs of the recipient.
- e. Vehicles and tools.

92.8(3) Records requirements. The recipient shall maintain adequate records that document all costs associated with the project. Moneys from the SRF and those contributed by the recipient shall be accounted for separately. Accounting procedures shall conform with generally accepted government accounting standards as defined by the U.S. General Accounting Office (GAO) publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," dated May 1988. All records shall be preserved and made available to the department, the authority, state auditor, and the Office of the Inspector General of the EPA for at least three years from the date of the final loan payment.

92.8(4) Audit and inspection. The recipient shall provide access at all times for the department, the authority, state auditor, and U.S. EPA Office of Inspector General to all project records and documents for inspection and audit purposes for a period of three years after the date of last loan payment. The same access to the project site(s) shall be provided for inspection purposes.

92.8(5) Crosscutting laws. Other federal and state statutes and programs may affect an SRF project. Loan agreements will include an assurance that a recipient will comply with all applicable federal and state requirements.

92.8(6) Construction payment schedules. The recipient must submit a construction drawdown schedule to the department prior to the award of contracts.

92.8(7) Project bypass. Any project identified in the intended use plan for funding in a fiscal year that has not signed a binding commitment by August 31 of the fiscal year will be bypassed by projects of a lower priority that are in a state of readiness.

92.8(8) Termination. The director shall have the right to terminate any loan when terms of the agreement have been violated or project activities are not progressing in a satisfactory manner. Loans will be terminated if construction has not begun within one year of the execution of a loan agreement. The director in coordination with the authority will establish a repayment schedule for funds already loaned to the recipient. All terminations must be in writing.

567—92.9(455B) Loan payment requirements.

92.9(1) Interim payments.

a. General. Payments will be made to the recipient for actual costs incurred. Interim payment requests can be made monthly using forms furnished by the department with adequate documentation to assure that the costs are allowable. Interim payment requests shall be certified by the recipient that costs incurred reflect the

value of work in place and materials and equipment on hand. Documentation should include evidence costs are incurred but need not include evidence of payment by the loan recipient. Interim payments will be made in accordance with the loan agreement.

b. Retainage. The department will retain loan payments to the extent that progress payments to the contractor from the recipient are withheld according to state law.

c. Overpayment. Any funds paid to the recipient that are not expended after the project is complete shall be repaid to the SRF after the loan is adjusted.

92.9(2) Final payment. Final payment to the recipient can be made following the final inspection and acceptance by the recipient and the department, and the following have been reviewed and approved:

- a. A request for final payment from the recipient.
- b. Certification by the recipient of project completion and acceptance by the recipient or an acceptable close-out settlement for projects that have encountered a dispute.
- c. Certification by the recipient that labor standard provisions have been met.
- d. An acceptable operation and maintenance manual, if applicable.
- e. Recap of all engineering, legal, administrative, and all other allowable and unallowable expenses.
- f. Final project budget showing all funding sources utilized by budget categories.
- g. Execution of a loan agreement adjustment based on final costs.

567—92.10(455B) Project requirements. The following requirements apply to all wastewater treatment projects defined in Section 212 of the Clean Water Act receiving assistance from the SRF. They are identified here with references to sections of the Clean Water Act and federal regulations, where appropriate.

92.10(1) Planning. The planning phase of a project includes those necessary plans and studies which directly relate to facilities needed to comply with enforceable requirements of the Clean Water Act and state statutes. It consists of a systematic evaluation of alternatives that are feasible considering the unique demographic, topographic, hydrologic, and institutional characteristics of the planning area. Facilities planning will determine which alternative is cost-effective.

The planning phase must include the following:

- a. A description of the proposed project and the complete system of which it is a part.
- b. Best practicable waste treatment technology — Section 201(b) requires that projects apply best practicable waste treatment technology (see 40 CFR 35.2005(b)(7): Definition of BPWTT, 40 CFR 35.2030(b)(2): Facilities Planning).
- c. Alternative waste management techniques — Section 201(g)(2) requires that alternative technologies be considered in project design (40 CFR 35.2030: Facilities Planning).
- d. Infiltration/inflow — Section 201(g)(3) requires the applicant to show that the related sewer collection system is not subject to excessive infiltration (40 CFR 35.2030(b)(4): Facilities Planning, 40 CFR 35.2120: Infiltration/Inflow).
- e. Innovative/alternative technology — Section 201(g)(5) requires that applicants study innovative and alternative treatment technologies and take into account

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opportunities to construct revenue producing facilities and to make more efficient uses of energy and resources (40 CFR 35.2030: Facilities Planning).

f. Recreation and open space opportunities — Section 201(g)(6) requires that the applicant analyze the potential recreation and open space opportunities in the planning of the proposed facilities (40 CFR 35.2030(b)(5): Facilities Planning).

g. Water quality management planning — Section 204(a)(1) and (2) (Two statutory references) requires that treatment works projects be included in any plans developed under Sections 205(j), 208, 303(e), 319 and 320 (40 CFR 35.2102: Water Quality Management Plans).

h. Environmental review. Loan recipients will conduct environmental review of projects using construction grants procedures in 40 CFR Part 6, July 1, 1987, as a part of facility planning. The potential applicant should work with the department as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from 40 CFR Part 6 requirements, or whether a finding of no significant impact or an environmental impact statement is required. In conjunction with the facility planning process as described in 40 CFR 35.2030(c) July 1, 1987 edition, a potential applicant may request formal determination under 40 CFR Part 6. All of 40 CFR Part 6, July 1, 1987 edition, pertaining to Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act, is hereby adopted and incorporated herein. However, all references to the U.S. Environmental Protection Agency as performing acts or reviews shall be substituted with the department for the purposes of this chapter.

92.10(2) Project design and construction. The project design and construction phase must include the following items:

a. Value engineering — Section 218 assures that treatment systems are cost-effective and requires that projects of over \$10 million include a value engineering review (40 CFR 35.2030(b)(3)).

The value engineering review must be conducted before the project design nears substantial completion.

b. User charge system — Section 204(b)(1) requires that a system of user charges be developed and enacted to assure that users will pay their proportionate share of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the recipient. A user charge system may also include methods of revenue collection for loan repayments.

c. Recipient capability. The recipient must demonstrate to the department that it has the legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance of treatment works, as required by Section 204(b)(1) of the Clean Water Act.

d. Davis-Bacon Act — Section 513 applies Davis-Bacon labor wage provisions to treatment works construction (see 29 CFR Part 5, July 1, 1987). Wages paid for the construction of treatment works must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act (Section 513 applies 40 U.S.C. 276 et seq.).

e. Project performance certification. The recipient shall confer with the department and a date for project works in operation shall be determined. One year after the project has been (or is capable of being) placed into

operation, the recipient must certify to the department whether or not the project meets design specifications and effluent limitations. If, for any reason, the recipient is not able to certify affirmatively on the due date, a report outlining timely corrective measures must be submitted in lieu of certification.

f. Minority business enterprise/women's business enterprise (MBE/WBE). The recipient must comply with requirements of MBE/WBE participation as found in 40 CFR 31.36(e) March 11, 1988. The director will negotiate with the EPA regional administrator to determine the overall "fair share" objective for SRF loan-assisted projects. The recipient shall take the following affirmative steps to assure that small, minority, and women's business enterprises are utilized where possible as sources of supplies, construction, and services:

(1) Placing qualified small, minority, and women's business enterprises on solicitation lists;

(2) Assuring that small, minority, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's business enterprises;

(4) Establishing delivery schedules, where requirements of the work permit, which encourage participation by small, minority, and women's business enterprises;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and

(6) Requiring prime contractors to take the affirmative steps listed above when awarding subcontracts.

g. Site. When real property is necessary to be acquired as part of the project and within the project period, the recipient shall submit documentation of the acquisition, including the legal description, the date the property was acquired, and an appraisal report by a qualified appraiser. Submittal to the department shall occur prior to contract award.

h. Project changes. The recipient must submit to the department prior to final loan payment all modifications to the project including changes to the plans and specifications and changes in the contract (change orders) for approval. The recipient is responsible for any costs or actions necessary should the changes be implemented prior to departmental review and subsequently found to be unapprovable.

i. State inspections. Personnel of the department shall have the right to examine all construction aspects of the project, including materials and equipment delivered and stored on site for use on the project.

92.10(3) Qualifying requirements. The Clean Water Act includes several conditions not identified in any particular phase of a project but which are basic qualifying factors necessary to qualify any project for SRF assistance. These consist of the following:

a. Fundable categories, as defined in 567-91.6 (2), including:

(1) Treatment — Section 201(g)(1) limits assistance to projects for secondary treatment, advanced treatment, or any cost-effective alternative, new interceptors and appurtenances, and infiltration/inflow correction. This section retains the governor's discretionary set-aside by which a state can use up to 20 percent of its allotment for other projects within the definition of treatment

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works in Section 212(2), and for certain nonpoint source control and groundwater protection purposes, as defined in Section 319 of the Clean Water Act and subsequent agency regulations (40 CFR 35.2015(b)(2)(ii-iv): State Priority System and Project Priority List).

(2) Sewers - governor's discretionary fund — Section 211 provides that major rehabilitation or replacement of collectors is not eligible under the governor's 20 percent discretionary authority of 201(g)(1) unless the collector is needed to assure the total integrity of the treatment works, or that, for a new collector, adequate capacity exists at the facilities (40 CFR 35.2116 Collection System).

(3) Combined sewer overflows — Section 201(n)(1) provides that funds under section 205 may be used for water quality problems due to discharges of combined sewer overflows which are not otherwise eligible, if such discharges are a major priority in a state (40 CFR 35.2015(b)(2)(iv): State Priority Systems — Categories of Need and 35.2024(a): Combined Sewer Overflows).

b. Capital financing plans. Section 201(o) calls on the state to assist eligible recipients in the development of a capital financing plan which, at a minimum:

(1) Projects the future requirements for waste treatment services within the applicant's jurisdiction for a period of no less than ten years;

(2) Projects the nature, extent, timing, and costs of future expansion and reconstruction of treatment works which will be necessary to satisfy the applicant's projected future requirements for waste treatment services; and

(3) Sets forth with specificity the manner in which the applicant intends to finance such future expansion and reconstruction.

The recipient must submit the plan to the department for any comments deemed necessary.

92.10(4) Other.

a. Cost information. Cost estimates for the total project and costs allowable for loan financing shall be provided to the department by an eligible recipient.

b. NPDES compliance. To qualify for an SRF loan, a recipient must demonstrate to the satisfaction of the director that the project receiving loan assistance is a part of the recipient's overall plan that addresses all wastewater treatment needs and that describes how compliance with NPDES permit limitations will be achieved and maintained.

567—92.11(455B) Loan agreement and repayment policy.

92.11(1) Loan policy. The prime purpose of SRF loan assistance is for construction of facilities necessary to solve existing pollution problems. Municipalities must qualify for placement on the State Project Priority List according to 567—Chapter 91.

92.11(2) Loan terms and conditions. Loan terms shall include, but not be limited to, the following:

a. Purpose of payments. The recipient shall use the proceeds of the SRF loan solely for the purpose of funding the project. Timely disbursements from the loan shall be made to contractors.

b. Costs. All costs must be documented to the satisfaction of the director before proceeds can be disbursed. Records should be maintained in accordance with subrule 92.8(3).

c. Applicable interest rate. For each pool there shall be a single below-market interest rate applicable to all

recipients, determined according to the following formula:

Applicable interest rate = A-B, where A is the rate of interest payable (including credit enhancement costs) on the bonds issued to provide the state portion of funds to be loaned to a pool of borrowers for an annual or other period; and B is the lesser of 0.3 times A or 2.0 percent of interest. The interest rate will be based on the true interest cost method and will be rounded upward to the nearest one-hundredth of one percent. In the event the aforementioned bonds bear interest at a variable or floating rate of interest, A shall be equal to the rate set forth in the 20 G.O. Bond Buyer Index in effect the date the bonds are delivered.

d. Repayment. The maximum repayment period allowed is 20 years. Principal repayments will commence not later than one year after project completion, generally on a level debt service schedule. Adjustments of maturities may be granted to enable a recipient to conform its loan terms to its existing debt obligations, but the average principal maturity of the loan shall not be longer than the average principal maturity of the loan would be if it were determined on a level debt service basis. Principal payments will be made annually and interest payments will be made semiannually on a schedule determined by the director which is consistent with these rules and financing requirements applicable to the SRF.

e. Security. The loan shall be secured by a first lien upon the dedicated source of repayment which may rank on a parity basis with other obligations.

The dedicated source of repayment is expected to be the net revenues of the municipal sewage utility plant and the system of the recipient, but may also include a general obligation secured by the levy of debt service taxes or its equivalent.

f. Loan initiation fee. A fee of 1.0 percent of the amount of the loan will be payable on the date the loan agreement is entered.

g. Annual loan servicing fee. A fee of 0.05 percent of the loan principal will be due at the time of each annual loan repayment.

h. Adjustment. Provision for adjustment of the loan amount based on final costs at completion of construction.

i. Applicable laws. The recipient shall agree to comply with all applicable laws, rules, and regulations of the department, the authority, or other state, federal and local jurisdictions concerning the financing, construction, operation, maintenance, and use of the wastewater facilities.

j. Delinquency provisions. Failure of the recipient to repay the loan in accordance with the schedule contained in the loan agreements will result in the loan being declared in default. Should a loan be declared in default, the director shall take legal action to collect amounts past due. Also, other state agencies will be notified and actions will be taken to preclude the recipient from receiving other grant or financial assistance from them until such time that all delinquent payments have been recovered.

92.11(3) Financial requirements.

a. Dedicated repayment source. The recipient shall establish sufficient revenue sources that are acceptable to the director for the repayment of the loan.

b. Project accounts. The recipient shall maintain separate financial records according to generally

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accepted government accounting standards for construction cost accounting, operating revenue and for loan repayments.

c. Audit. The authority or an independent firm acceptable to the authority may conduct an audit on all projects assisted by SRF loan funds to establish conformance with loan terms and conditions and the requirements of the Clean Water Act. Audit authority includes access to all files and documents associated with the project.

d. Increase revenues. To ensure repayment of obligations according to the terms of the loan agreement, the recipient shall agree to impose, collect, and increase, if necessary, user charges, taxes, or other dedicated revenue sources identified for the loan repayment. In case of loan default, the state shall have authority to require revenue adjustment to collect delinquent loan payments.

[Filed emergency 9/26/88, effective 9/26/88]
[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9327**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6(7), the Department of Human Services hereby amends Chapter 65, "Administration," appearing in the Iowa Administrative Code.

This amendment increases the maximum dependent care deduction to \$160 for each person for whom dependent care costs are incurred and increases the basis of issuance from 100 percent of the Thrifty Food Plan to 100.65 percent.

Under current policy the maximum dependent care deduction is \$160 for each household, regardless of the number of persons for whom dependent care costs are incurred.

The following table sets forth the difference in the maximum benefit level per household size from 100 percent of the Thrifty Food Plan to 100.65 percent.

Household Size	Dollar Amount	Household Size	Dollar Amount
1	\$89 to 90	9	\$603 to 608
2	163 to 165	10	670 to 676
3	234 to 236	11	737 to 744
4	298 to 300	12	804 to 812
5	353 to 356	13	871 to 880
6	424 to 427	14	938 to 948
7	469 to 472	15	1005 to 1016
8	536 to 540		

Each additional member +\$67 to +\$68

The Department of Human Services finds that notice and public comment on these rules are impracticable. These changes are required by the Hunger Prevention Act of 1988. The Department has no options in the adoption of these changes. Therefore, these rules are filed pursuant to Iowa Code section 17A.4(2).

The Department of Human Services finds that these rules confer a benefit on food stamp households by

allowing the actual cost of the care up to a maximum of \$160 for each dependent for whom care is purchased to be deducted from income, thereby increasing the amount of food stamp benefits for households affected. The change in the basis of issuance will also increase benefits for most households. The federal government pays 100 percent of the cost of food stamp benefits. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these rules on September 20, 1988.

These rules are intended to implement Iowa Code section 234.12.

These rules became effective October 1, 1988.

The following amendments are adopted:

Amend 441—Chapter 65 by adopting the following new rules:

441—65.32(234) Basis for food stamp allotments. The basis for food stamp uniform allotments shall be adjusted to reflect 100.65 percent of the cost of the thrifty food plan, and the result shall be rounded to the nearest lower dollar increment for each household size.

441—65.33(234) Maximum monthly dependent care deduction. The maximum monthly dependent care deduction shall be the actual cost of the care up to a maximum of \$160 per month for each dependent for whom care is purchased when the care is allowable as a deduction.

[Filed emergency 9/21/88, effective 10/1/88]
[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9351**INSURANCE DIVISION[191]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 502.607, the Insurance Division of Iowa hereby amends Chapter 50, "Registration and Operation of Broker-Dealers," Iowa Administrative Code.

The purpose of the amendments is to simplify and make uniform the broker-dealer registration process. Beginning November 1, 1988, nearly all 50 states will use a computerized registration procedure in conjunction with the NASAA-NASD CRD system. The amendments hereby adopted will permit Iowa to join in this coordinated effort.

The first amended rule pertains to applications for an original broker-dealer license. Instead of the 19 items of information currently required, the new rule will simply require submission of a nationally recognized form as well as financial statements and a surety bond. The rule also simplifies the application for renewal of a broker-dealer's license.

The second amendment eliminates a duplicative provision regarding registration found within the rule on qualification of principals.

Pursuant to Iowa Code section 502.607(2), the administrator finds that this action is necessary or appropriate, in the public interest, and is consistent with the intent to achieve maximum uniformity among the states and federal agencies.

INSURANCE DIVISION[191] (cont'd)

In accordance with Iowa Code section 17A.4(2), the Insurance Division of Iowa finds that public notice and participation are unnecessary since these revisions merely streamline the registration process without sacrificing the agency's duty to protect the public.

The agency further finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the rules confer a benefit or remove a restriction on a segment of the public and that the normal effective date of these changes, 35 days after publication, should be waived and the rules be made effective on November 1, 1988.

These rules are intended to implement Iowa Code section 502.607.

The following changes are adopted:

ITEM 1. Rescind rule 191—50.1(502) and insert the following in lieu thereof:

191—50.1(502) Broker-dealer applications and renewals.

50.1(1) Every applicant for an original license to conduct business as a broker-dealer shall submit:

a. A complete, current Form BD as adopted by the Securities and Exchange Commission;

b. The most recent audited financial statement, unless waived by the administrator, and the most recent unaudited financial statement;

c. The surety bond required by Iowa Code section 502.302(5);

d. If the applicant is a member of the National Association of Securities Dealers (NASD), a filing fee of \$200 shall be filed with the North American Securities Administrators Association (NASAA)/NASD Central Registration Depository (CRD);

e. If the applicant is not a member of the National Association of Securities Dealers (NASD), a filing fee of \$200.

50.1(2) An application submitted pursuant to this rule shall be signed by a principal of the applicant, and the signature shall be properly notarized.

50.1(3) Every applicant for renewal of a broker-dealer's license shall submit:

a. The applicant's most recent audited and unaudited financial statements;

b. A continuation certificate or new surety bond;

c. If the applicant is a member of the National Association of Securities Dealers (NASD), a filing fee of \$200 shall be filed with the North American Securities Administrators Association (NASAA)/NASD Central Registration Depository (CRD);

d. If the applicant is not a member of the NASD, a filing fee of \$200;

e. If the applicant is not a member of the NASD, an update to the Form BD.

50.1(4) If the information contained in an application for original license or renewal becomes inaccurate or incomplete in any material respect, including a change in the name or form of organization of the applicant, a correcting amendment shall be filed promptly.

ITEM 2. Amend subrule **50.2(8)** by rescinding paragraph "b" and relettering the remaining paragraph.

[Filed emergency 9/30/88, effective 11/1/88]

[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9371

PUBLIC EMPLOYMENT
RELATIONS BOARD[621]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board adopts emergency rules amending Chapter 11, "Merit Appeals," Iowa Administrative Code, in order to harmonize its rules with amendments to Iowa Code section 19A.14, enacted by the 72nd General Assembly.

In compliance with Iowa Code section 17A.4(2), the agency finds that public notice and participation are unnecessary and impracticable at this time, in that 1988 Iowa Acts, House File 2339, amended previously existing procedures governing certain employees' appeals of grievance and employee discipline decisions. The present rules of the agency are inconsistent with such legislative amendments since they facilitate the adjudication of employee appeals only under prior procedures, which inconsistencies should be eliminated by prompt amendment of the agency's rules governing the procedural aspects of such appeals.

The agency also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules, 35 days after their publication, should be waived and the rules made effective upon filing with the Administrative Rules Coordinator on September 30, 1988, as it confers a benefit upon the public for the agency's procedural rules to conform with the amended appeal procedures enacted by the Legislature, without delay.

These rules are also published herein under Notice of Intended Action as ARC 9372 to solicit public comment.

The Public Employment Relations Board adopted these rules at a meeting on September 30, 1988.

These rules implement Iowa Code section 19A.14, as amended by the 1988 Iowa Acts, House File 2339.

Amend 621—Chapter 11 as follows:

CHAPTER 11

MERIT APPEALS

STATE EMPLOYEE APPEALS OF
GRIEVANCE DECISIONS AND DISCIPLINARY
ACTIONS

621—11.1(19A,20) Notice of appeal rights. *When Whenever a state agency the director of the Iowa department of personnel (hereinafter referred to as the director) issues a decision response to an employee on a matter appealable to the public employment relations board (hereinafter referred to as the board) pursuant to Iowa Code section 19A.14 as amended by 1986 Iowa Acts, House File 2066, section 38, 1988 Iowa Acts, House File 2339, section 1, in which the director does not grant the relief sought by the employee, the agency director shall also provide notice to the affected employee notice of appeal procedures and time limitations governing the appeal. Upon request by the employee the agency shall provide a copy of the board's rules and regulations and a copy of the Merit Appeal Form.*

621—11.2(19A,20) Filing of appeal.

11.2(1) Appeals shall be filed on the Merit Appeal Form with the board on the State Employee Grievance

PUBLIC EMPLOYMENT RELATIONS BOARD[621] (cont'd)

and Disciplinary Action Appeal Form. with the public employment relations board.

11.2(2) *Grievances.* An employee who is discharged, suspended, demoted, or otherwise reduced in pay must appeal within 30 calendar days following the date of the discharge, suspension, demotion or reduction in pay. An employee, except an employee covered by a collective bargaining agreement which provides otherwise, who is not satisfied with the director's response to the employee's grievance may file an appeal with the board if the grievance alleged either a violation of Iowa Code chapter 19A or the rules of the department of personnel. Such appeal must be filed within 30 calendar days following the date the director's response was issued or should have been issued.

11.2(3) *Disciplinary appeals.* An employee must appeal a director's decision denying the relief sought with regard to the employee's grievance within thirty (30) calendar days following the date the grievance was filed with the director of personnel. A nonprobationary merit system employee, except an employee covered by a collective bargaining agreement, who is discharged, suspended, demoted, or otherwise reduced in pay, and appeals the action to the director and is not satisfied with the director's response, may file an appeal with the board. Such appeal must be filed within 30 calendar days following the date the director's response was issued or should have been issued.

11.2(4) The board shall serve copies of the appeal upon the director by ordinary mail.

621—11.3(19A,20) Content of the appeal.

11.3(1) The appeal shall contain the following:

1. Name and social security number of the appellant appealing employee; and name of acting agency;
2. The action taken by the agency, and its effective date; Name of agency/department by which the appealing employee is/was employed;
3. A request for hearing, if desired;
4. A statement of the reasons why the appellant believes the agency action to be wrong, supporting the appealing employee's dissatisfaction with the director's response;
5. A statement of the action the appellant would like the adjudicator to order, desired relief;
6. The name of the appellant's appealing employee's representative, if any;
7. Attachment of any Copies of all relevant documents;
8. Signature of the appellant appealing employee;
9. Any defenses not contained in the pleadings shall be deemed to be waived. Copy of the director's response to the employee;
10. A statement of the Iowa Code chapter 19A provision and department of personnel rule(s) which has allegedly been violated. (Note: This statement is required only for appeals of grievance decisions, not appeals of disciplinary actions.)

11.3(2) Completion of the Merit Appeal State Employee Grievance and Disciplinary Action Appeal Form shall constitute compliance with all subrule 11.3(1) requirements.

621—11.4(19A,20) Content of agency director's response answer to the appeal.

11.4(1) The board shall serve copies of the appeal upon the agency to the proceeding by ordinary mail. The agency director shall have fifteen(15) days from the date of receipt of notice of the employee's appeal in which to file a response an answer with the board.

11.4(2) The response answer shall contain the following:

1. The name names of the appellant appealing employee and the acting employing agency/department;
2. A proposed statement of the director's findings concerning the agency action taken against the appellant and the reasons therefor: grievance or disciplinary action which forms the basis of the appeal. This statement must be complete and concise, and shall include the reasons supporting the director's response to the appealing employee; The hearing shall be limited to the facts and issues contained in the pleadings.
3. A specific response reply admitting, denying, or explaining each allegation of contained in the appellant's appealing employee's petition: appeal;
4. All relevant documents contained in the agency director's record of the proceeding;
5. Designation of and signature by the authorized agency representative director or the director's designee.

11.4(3) The parties shall serve on each other one (1) copy of all pleadings filed with the board other than the petition for employee's appeal. Service shall be made according to PERB board rule 2.15(20). "Service of Pleadings and other papers."

621—11.5(19A,20) Right to a hearing.

11.5(1) The appellant appealing employee has a right to an evidentiary hearing closed to the public unless a public hearing is requested by the employee. If the appellant employee chooses to have a hearing, the board shall appoint an adjudicator a hearing officer to adjudicate the matter. The adjudicator hearing officer shall set the time, date, and place of the hearing. The hearing shall be conducted in accordance with PERB rules and regulations, Chapter 2, "Hearing Procedures." Chapter 2 of the board's rules, and shall be limited to the facts and issues contained in the employee's appeal and director's answer. Hearings of disciplinary action shall be closed to the public unless the appellant requests the hearing be public.

11.5(2) Alternatively, the appellant appealing employee may choose to have the hearing officer's determination based on upon the record consisting of all pleadings and documents filed with the board, without a hearing. In the event If the appellant employee chooses to have a decision based on upon the record, the following procedure shall apply:

1. The appellant employee shall submit the Merit Appeal State Employee Grievance and Disciplinary Action Appeal Form to the board pursuant to subrule 11.3(1);
2. The agency director shall be notified and required to respond shall answer in within fifteen(15) days as required in subrule 11.4(1);
3. The appellant employee shall then have ten (10) days following receipt of the director's answer to reply. to the agency's response, the The record shall then be closed and the adjudicator hearing officer shall issue the decision based upon the record.

621—11.6(19A,20) *Witnesses.* Every state agency shall make its employees available to furnish sworn statements or to appear as witnesses at the hearing. when requested by the adjudicator. When providing statements or testimony, witnesses shall be on official duty status.

621—11.7(19A,20) *Finality of decision.* The adjudicator's hearing officer's decision shall become final

PUBLIC EMPLOYMENT RELATIONS BOARD[621] (cont'd)

unless a petition for review is filed. ~~within twenty (20) days of its issuance.~~

621—11.8(19A,20) Filing of petition for review.

11.8(1) A petition for review of the ~~adjudicator's~~ hearing officer's decision shall be filed with the board within ~~twenty (20) days of its~~ the issuance of the decision.

11.8(2) A petition for review may be granted if it can be established that:

1. New and material evidence is available that, despite due diligence, was not available when the record was closed; or

2. The decision of the ~~adjudicator~~ hearing officer is based upon an erroneous interpretation of statute ~~or~~ regulation.

11.8(3) The board may review a decision on its own motion and shall inform the parties of the review. ~~and may~~ The board may also, at its own discretion:

1. Require the filing of briefs,

2. Hear oral arguments, or

3. Take any other action necessary for final disposition of the case.

621—11.9(19A,20) Other rules. Any matters not specifically addressed in ~~merit appeals rules by the rules contained in this chapter 11.1(20) to 11.8(20)~~ shall be governed by the general provisions of the rules ~~and regulations~~ of the public employment relations board.

621—11.10(19A,20) Applicability. This chapter shall apply to appeals filed with the board on or after July 1, 1988. Appeals filed prior to that date shall be governed by the board's prior rules governing "Merit Appeals," 621—11.1(20) through 621—11.9(20), filed October 15, 1986, and effective December 10, 1986.

These rules are intended to implement Iowa Code section 19A.14 as amended by 1986 1988 Iowa Acts, House File 2066 2339, section 28 1.

[Filed emergency 9/30/88, effective 9/30/88]

[Published 10/19/88]

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ARC 9348**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 135.47, the Department of Public Health emergency adopts amendments to Chapter 111, "Financial Assistance to Eligible End-Stage Renal Disease Patients," Iowa Administrative Code.

The rule changes are intended to increase travel reimbursement to 21 cents per mile, clarify dental benefit coverage, update poverty guidelines to currently defined federal guidelines and change the definition of "Period of eligibility" to one year.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are unnecessary. The Department also finds, pursuant to Iowa Code section 17A.5(2), that the normal effective date of these rules 35 days after publication should be waived and the rules made effective for services provided on or after October 1, 1988. The rules confer a benefit on the public by increasing travel reimbursement, clarifying dental benefit coverage, updating poverty guidelines consistent with current federal guidelines, and changing the definition of "period of eligibility" to be consistent with other provisions of the rules. Delaying the rules would be contrary to the public interest.

These rules were adopted by the Board of Health on September 23, 1988, and became effective October 1, 1988.

These rules are intended to implement Iowa Code sections 135.45 to 135.48.

ITEM 1. Amend rule **641—111.1(135)**, the definition of "Period of eligibility," to read as follows:

"Period of eligibility" means the ~~six~~ twelve-month maximum time frame for which financial assistance may be approved.

ITEM 2. Amend subrule **111.6(1)**, paragraph "f," the second and third sentences, to read as follows:

Reimbursement shall be paid at ~~10~~ 21 cents per mile for patients or family members (as defined in these rules) who are able to drive. When patients or family members are unable to drive and must hire a driver, reimbursement shall be paid at ~~20~~ 21 cents per mile.

ITEM 3. Amend subrule **111.6(1)**, paragraph "h," subparagraph (1), to read as follows:

(1) Premiums for health insurance policies, *dental insurance policies*, and enrollment fees for health maintenance organization contracts that provide the patient with coverage for ESRD medical care. *Dental insurance policies are eligible for reimbursement only if they were held by the patient prior to approval in the program and they provide the patient with coverage for ESRD dental care.* When a patient has health or dental family coverage, whether issued on an individual or group basis, program payment shall be limited to the premium or enrollment fee for an individual policy or contract (from the same company) that provides the same or substantially the same benefits. This does not include hospital and surgical indemnity policies.

ITEM 4. Amend subrule **111.7(6)**, paragraph "b," by changing the year "1985" to the year "1988."

ITEM 5. Rescind Appendix 1 at the end of **641—Chapter 111** and insert the following in lieu thereof:

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

APPENDIX 1

1988 Poverty Guidelines for All States

CHRONIC RENAL DISEASE PROGRAM FINANCIAL STATUS CATEGORIES

# in Family	(A) Medical Assistance	(1) To 150% of Base	(2) To 200% of Base	(3) To 250% of Base	(4) To 300% of Base
1	Persons receiving	\$0 - \$ 8,654	\$ 8,655 - \$ 11,539	\$ 11,540 - \$ 14,424	\$ 14,425 - \$ 17,310
2		0 - 11,594	11,595 - 15,459	15,460 - 19,324	19,325 - 23,190
3	Medical Assistance	0 - 14,534	14,535 - 19,379	19,380 - 24,224	24,225 - 29,070
4		0 - 17,474	17,475 - 23,299	23,300 - 29,124	29,125 - 34,950
5	(Title XIX)	0 - 20,414	20,415 - 27,219	27,220 - 34,024	34,025 - 40,830
6		0 - 23,354	23,355 - 31,139	31,140 - 38,924	38,925 - 46,710
7		0 - 26,934	26,935 - 35,059	35,060 - 43,824	43,825 - 52,590
8		0 - 29,234	29,235 - 38,979	38,980 - 48,724	48,725 - 58,470

BASE - POVERTY INCOME GUIDELINES

# in Family	Amount
1	\$ 5,770
2	7,730
3	9,690
4	11,650
5	13,610
6	15,570
7	17,530
8	19,490

For family units with more than 8 members, add \$1,960 for each additional member.

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ARC 9333**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of 1988 Iowa Acts, Senate File 2310, the Iowa Department of Public Health hereby adopts and emergency implements Chapter 130, "Emergency Medical Services Training Fund," Iowa Administrative Code.

Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on June 15, 1988, as **ARC 8876**.

These rules provide an allocation formula and application procedure for distribution of the Emergency Medical Services Training Fund. The rules also establish an application review process and an appeal procedure for application denial or partial denial.

The Iowa Department of Public Health held a public hearing on Tuesday, July 5, 1988, at 1 p.m., in the First Floor Conference Room, Grimes State Office Building,

Des Moines, Iowa 50319-0075. As a result of the written and oral comments received, the following items were revised for clarification purposes:

130.1 "Advanced EMT"

130.1 "Training aid"

130.3(6)"c"

130.4(7)

130.5(3)"a"

131.6(72GA,SF2310) was incorrectly numbered; it should have been numbered as 130.6(72GA,SF2310).

The following items were revised to expand the definition of a county board of supervisor's designee:

130.1 "County EMS Association"

130.1 "Designee" - new definition

130.3(3)

130.3(5)

130.4(3)

The following item was revised to allow additional time to distribute obligated funds:

130.4(8)

The following items were deleted:

130.1 "Authorized Agent"

130.4(9)

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Iowa Department of Public Health finds that the emergency implementation of these rules "confers a benefit or removes a restriction on the public or some segment thereof" by providing for an earlier release of needed funds for emergency medical services training. Therefore, these rules shall become effective on September 26, 1988, upon filing with the Administrative Rules Coordinator.

These rules are intended to implement 1988 Iowa Acts, Senate File 2310. They were reviewed and adopted by the Iowa State Board of Health on September 23, 1988.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

CHAPTER 130
EMERGENCY MEDICAL SERVICES
TRAINING FUND

641—130.1(72GA,SF2310) Definitions. For the purpose of these rules, the following definitions shall apply:

“Advanced EMT” means an individual trained in advanced emergency medical care who is currently certified as an advanced EMT by the Iowa board of medical examiners.

“Ambulance service” means any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation and emergency medical care at the scene of an emergency or while en route to a hospital.

“Applicant” means an individual or public or private entity which has submitted an application for Special EMS Training Project funds.

“Area” means the number of square miles in a county listed in the 1980 Census of Population and Housing, dated March 1981, published by the Iowa department of economic development.

“CEHs” means continuing education hours which are based upon a minimum of 50 minutes of training per hour.

“Conferences” means continuing education courses which provide at least 7 CEHs.

“Continuing education” means approved training which is received after becoming certified as an EMS provider to maintain skills and knowledge and to satisfy renewal of certification requirements.

“County EMS association” means a countywide group of EMS providers and various agency and organization representatives and consumers who advise the county board of supervisors or their designee on EMS needs and objectives.

“Department” means the Iowa department of public health.

“Designee” means a county government agency or a board, commission or committee which has entered into an agreement with the county board of supervisors pursuant to Iowa Code chapter 28E.

“Director” means the director of the Iowa department of public health.

“Emergency medical technician-ambulance” means an individual trained in patient assessment, the recognition of signs and symptoms regarding illness or injury, and the use of proper procedures when rendering basic emergency medical care, and who is currently certified as an emergency medical technician-ambulance by the department.

“Emergency rescue technician” means an individual trained in various rescue techniques including rescue from heights and depths, extrication from automobiles, agricultural rescue, and rescue from water and special hazards, and who is currently certified as an emergency rescue technician by the department.

“EMS” means emergency medical services.

“EMS provider” means an FR, ERT, EMT-A, advanced EMT, paramedic or other health care practitioner involved in the provision of emergency medical care.

“EMT-A” means emergency medical technician-ambulance.

“ERT” means emergency rescue technician.

“First responder” means an individual trained in patient-stabilizing techniques, through the use of initial basic emergency medical care procedures and skills prior to the arrival of an ambulance or rescue squad, and who is currently certified as a first responder by the department.

“First response service” means any privately or publicly owned service program which does not provide patient transportation and utilizes only first response vehicles to provide emergency medical care at the scene of an emergency.

“FR” means first responder.

“Paramedic” means an individual trained in advanced emergency medical care and who is currently certified as a paramedic by the Iowa board of medical examiners.

“Regional EMS council” means a multicounty non-profit corporation whose purpose is to facilitate EMS development on a regional basis.

“Rescue service” means any privately or publicly owned service program which does not provide patient transportation and utilizes only rescue vehicles to provide emergency medical care and extrication at the scene of an emergency.

“Rural population” means the number of rural residents listed in the 1980 Census of Population and Housing, dated March 1981, published by the Iowa department of economic development.

“Service program” means any emergency medical care ambulance, rescue or first response service.

“Training” means EMS related courses designed and intended for EMS providers.

“Training aid” means an item used in EMS training and includes, but is not limited to: slides, films, mannequins, emergency care devices, books and other items pertinent and necessary for training purposes.

“Training program” means a facility providing training for EMS providers and which has received approval by the department as a basic care training program or by the Iowa board of medical examiners as an advanced care training program.

641—130.2(72GA,SF2310) Emergency medical services training fund.

130.2(1) EMS training funds shall be used for training-related purposes only.

130.2(2) EMS training funds are intended to supplement rather than supplant EMS funds that would otherwise be available at the state, county or local level.

641—130.3(72GA,SF2310) Allocation of EMS training funds to counties.

130.3(1) Funds for training-related purposes at the county and local level are available on a justifiable need basis. The maximum county funding shall be determined by the following formula:

a. Fifty percent of the funds will be allocated according to each county's rural population, and

b. Fifty percent of the funds will be allocated according to each county's area.

130.3(2) Each county requesting funds shall submit an application to the department. If by March 1 of each year, the contracted funds total less than the total amount available for county funding, the remaining funds shall be made available on an as needed basis through a supplemental application process.

130.3(3) The county board of supervisors or their designee shall be responsible for the administration of the county's EMS training funds.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

130.3(4) A county may use funds to train members of an ambulance, rescue, or first response service located in a neighboring county if service is provided on a regular basis to residents of the funding county.

130.3(5) Each county shall have a county EMS association to provide the county board of supervisors or their designee with advice relating to EMS funding needs and objectives.

130.3(6) Items which are eligible for EMS fund expenditures include:

- a. Reimbursement of EMS training costs for tuition and fees and course materials for persons who successfully pass the certification examinations;
- b. Payment of EMS continuing education costs for tuition and other fees and course materials;
- c. Payment for EMS training aids (not to exceed \$300 per item). NOTE: The \$300 may be applied toward training aids costing more than \$300.

130.3(7) Costs which are not eligible for funding include the following:

- a. Building and construction;
- b. Certification/recertification fees;
- c. Debt amortization;
- d. Examination fees;
- e. Land;
- f. Nontraining related equipment;
- g. Personnel costs;
- h. Rent;
- i. Travel;
- j. Utilities;
- k. Other operating expenses.

641—130.4(72GA,SF2310) Application and review process.

130.4(1) Application forms are available upon request from the Iowa Department of Public Health, Emergency Medical Services Section, Lucas State Office Building, Des Moines, Iowa 50319-0075.

130.4(2) Each application shall include, as a minimum:

- a. A complete description of the existing county EMS system including any interactions with other counties.
- b. A completed survey (needs assessment) for each ambulance, rescue, and first response service in the county.
- c. A description of the proposed use of the funds.
- d. A projected description of the county EMS system's future objectives.

130.4(3) Applications must be approved by the county board of supervisors or their designee and submitted to the appropriate regional EMS council for review and comment.

130.4(4) The regional EMS council may refer the application back to the county for further information or clarification if necessary.

130.4(5) The department may approve or deny an application in whole or in part.

130.4(6) If an application is approved, the department shall enter into a contract with the county to provide EMS training-related funds.

130.4(7) Contract funds will be provided to counties no more often than once a month. Monthly expenditure reports and quarterly progress reports shall be submitted to the department.

130.4(8) Contract funds must be obligated prior to May 31 and expended prior to August 30 of each year. No carryover of funds is permitted between fiscal years.

641—130.5(72GA,SF2310) Special EMS training projects.

130.5(1) Special EMS training funds are available for projects at the regional and state level.

130.5(2) The department may establish special EMS training projects which will serve the entire state.

130.5(3) Other special EMS training projects will be considered for approval according to the merits of the application, the date the application is received and the availability of funds. Allowable projects include, but may not be limited to:

- a. Regional EMS councils that apply for training aids to be made available for temporary or permanent loan to ambulance, rescue, or first response services, hospitals, training programs or other appropriate locations within their region. To avoid duplication and maximize the use of these funds, applications for training aids from regional EMS councils may be given priority.
- b. Sponsors of continuing education conferences that apply for funding to reduce the cost to attendees.

130.5(4) Applicants shall complete and submit a Special EMS Training Project Application available from the Iowa Department of Public Health, Emergency Medical Services Section, Lucas State Office Building, Des Moines, Iowa 50319-0075.

641—130.6(72GA,SF2310) Application denial or partial denial—appeal.

130.6(1) Denial or partial denial of an application shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the applicant of denial or partial denial shall be served by restricted certified mail, return receipt requested, or by personal service.

130.6(2) Any request for appeal concerning denial or partial denial shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 30 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Emergency Medical Services Section, Lucas State Office Building, Des Moines, Iowa 50319-0075. Prior to or at the hearing, the department may rescind the denial or partial denial. If no request for appeal is received within the 30-day time period, the department's notice of denial or partial denial shall become the department's final agency action.

130.6(3) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

130.6(4) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 4, Iowa Administrative Code.

130.6(5) When the hearing officer makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 130.6(6).

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

130.6(6) Any appeal to the director for review of the proposed decision and order of the hearing officer shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the hearing officer's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the hearing officer. Any request for an appeal shall state the reason for appeal.

130.6(7) Upon receipt of an appeal request, the hearing officer shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings on them.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the hearing officer.

130.6(8) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

130.6(9) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

130.6(10) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Emergency Medical Services Section, Lucas State Office Building, Des Moines, Iowa 50319-0075.

130.6(11) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

[Filed emergency after Notice 9/26/88, effective 9/26/88]
[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9329

TRANSPORTATION
DEPARTMENT[761]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation on September 20, 1988, adopted Chapter 164, "Traffic Safety Improvement Program," Iowa Administrative Code.

The 1987 Iowa Code supplement subsection 312.2(8) provided funds for state, county and city traffic safety improvement projects. These rules establish applicant and project eligibility, reimbursable activities and costs, application requirements and the application processing and selection procedures. Projects will be evaluated primarily on the basis of the project's anticipated effect on traffic safety.

A Notice of Intended Action for these rules was published in the August 10, 1988, Iowa Administrative Bulletin as **ARC 9054**. These rules are identical to the ones published under Notice.

In accordance with the Iowa Code paragraph 17A.5(2)"b," the Department finds that the normal effective date of the rules, 35 days after publication, should be waived. Waiver of the normal effective date confers a benefit on the public by allowing the Department to accept and process traffic safety improvement project applications from cities and counties during the Department's project programming period for the 1989 construction season and to coordinate these projects with other transportation projects in the Department's annual Transportation Improvement Program. The earlier effective date also ensures that the Department and program participants will have adequate time for the analyses, necessary design and construction engineering, funding awards, and the letting process.

Although the legislation was enacted in 1987, the funding available during last year's annual programming was inadequate for project disbursement. It was also necessary for the Department, in consultation with the cities and counties, to define the scope of the program, determine the types of traffic safety needs, and to solicit assistance in preparing the rules. Sufficient funding is now available to permit disbursement of a substantial portion of the funds for worthy traffic safety projects during calendar year 1989.

These rules shall become effective on September 30, 1988, after filing with the Administrative Rules Coordinator.

These rules are intended to implement 1987 Iowa Code supplement subsection 312.2(18).

Rule-making actions:

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 164] is being omitted. These rules are identical to those published under Notice as **ARC 9054**, IAB 8/10/88.

[Filed emergency after Notice 9/22/88, effective 9/30/88]
[Published 10/19/88]

[For replacement pages for IAC, see IAC Supplement, 10/19/88.]

ARC 9332

DEAF SERVICES DIVISION[429]

Adopted and Filed

Pursuant to the authority of Iowa Code section 601K.115 and the 1988 Iowa Acts, Senate File 2310, section 13, the Deaf Services Division adopts amendments to Chapter 1, "Organization"; Chapter 2, "Services and Procedures"; and Chapter 4, "Forms" appearing in the Iowa Administrative Code.

Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on July 27, 1988, as ARC 9001. Amendments include the re-designation of regional office locations, amends subrules 1.3(1) and 1.3(2) to include the election of a vice-chairperson and designates an annual meeting at which time the chairperson and vice-chairperson are elected.

These rules incorporate, in Chapters 1, 2, and 4, the purpose, definitions, disposition of funds, procedures and forms implementing a fee-for-service whereby a fee scale is established in accordance with 1988 Iowa Acts, Senate File 2310, sections 7 and 13. The Code of Ethics prescribed for professional Sign Language Interpreters has been included in Chapter 2.

Letters of notice to encourage comment were sent to approximately 125 agencies, programs, associations and individuals who would be impacted by the fee-for-service rules being filed and a public hearing was held on August 19, 1988.

Comments were received regarding individual contracts, internal state procedures and grammatical corrections. Since the fee-for-service procedures are based on current federal regulations and state statutes, a few modifications were made. The subrule on individual contracts was deleted from the Notice of Intended Action, a state of Iowa internal claim voucher form was added, and grammatical corrections were made.

These rules will become effective November 23, 1988.

These rules are intended to implement Iowa Code section 601K.115 and the 1988 Iowa Acts, Senate File 2310, sections 7 and 13.

ITEM 1. Rescind subrule 1.2(1) and insert in lieu thereof the following:

1.2(1) Location. The division of deaf services consists of a central office, three regional offices, and one branch office.

a. The central office is located in the Department of Human Rights, Ground Floor, Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is 515/281-3164, voice and TDD. The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday.

b. The eastern regional office is located in the Public Works Building, 1201 Sixth Avenue S.W., Cedar Rapids, Iowa 52401. The telephone number is 319/398-4005, voice and TDD. The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday.

c. The southwestern regional office is located in the City of Council Bluffs Health Department, City Hall, Lower Level, 209 Pearl Street, Council Bluffs, Iowa 51503. The telephone number is 712/328-3195, voice and TDD. The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday.

d. The northwestern regional office is located in the Jewish Community Center, 525 14th Street, Sioux City,

Iowa 51105. The telephone number is 712/258-8407, voice and TDD. The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday.

e. The eastern branch office is located in the Civil Defense Office, City Hall Basement, 715 Mulberry Street, Waterloo, Iowa 50703. The telephone number is 319/291-4374, voice and TDD. The hours of operation are 9 a.m. to 3:30 p.m. on Wednesdays. Telephone interpreting services are provided from 9 to 10 a.m. on Wednesdays.

ITEM 2. Amend rule 429—1.3(601K) as follows:

429—1.3(601K) Commission on the deaf.

1.3(1) Commission established. The commission on the deaf is established, pursuant to Iowa Code section 601K.112, consisting of seven members. The members of the commission shall ~~appoint~~ *elect* the chairperson and vice-chairperson of the commission by a two-thirds vote at the annual meeting. All members are appointed by the governor to serve a term of three years.

Amend subrule 1.3(2), introductory paragraph, by adding the following new sentence after the first sentence:

The first regular meeting of the fiscal year is the annual meeting.

Further amend rule 429—1.3(601K) by adding the following new subrule.

1.3(8) Interpreting services fund. All fees collected by the division for provision of interpreting service by the division to obligated agencies shall be transmitted to the treasurer of the state who shall deposit the money in a separate fund dedicated to and used by the division for the provision of continued and expanded interpreting services. The commission shall adopt rules which establish a fee schedule for the cost of provision of interpreting services, for collection of the fees, and for disposition of moneys received under this subrule.

Amend the implementation clause at the end of rule 1.3(601K) as follows:

These rules are intended to implement Iowa Code sections 601K.111 to 601K.116 and 1988 Iowa Acts, Senate File 2310, section 13.

ITEM 3. Amend rule 429—2.1(601K) by adding the following definitions in alphabetical sequence:

"Obligated agency" means any program or activity that receives federal financial assistance or that is conducted by any executive agency of the Federal government or by the U.S. Postal Service. Pursuant to the Civil Rights Restoration Act of 1987, Section 4, Section 504 of the Vocational Rehabilitation Act of 1973 is amended to define the term "program or activity" to obligate the following operations of:

1. A department, agency or special purpose district of a state or of a local government; or

2. The entity of such state or local government that distributes such assistance and each department or agency to which the assistance is extended; or

3. A college, university, or other postsecondary institution, or public system of higher education; or

4. A local education agency (as defined in Section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system; or

5. An entire corporation, partnership or other private organization or an entire sole proprietorship if:

DEAF SERVICES DIVISION[429] (cont'd)

Federal financial assistance is extended to such entity;
or

Principally engaged in the business of providing education, health care, housing, social services, or parks and recreation whereby federal financial assistance is extended in any part.

"Portal-to-portal" means the span of time when interpreters leave their domicile/office to interpret at a scheduled interpreting assignment to interpret, and return to their domicile/office or arrive at their next interpreting assignment.

"Revolving account" means the separate fund dedicated to and used by the division to deposit fees collected from obligated agencies for the provision of continued and expanded interpreting services, pursuant to 1988 Iowa Acts, Senate File 2310, section 13.

ITEM 4. Rescind subrule 2.3(1) and insert the following:

2.3(1) Interpreting.

a. The division of deaf services staff interpreters provide direct interpreting services during business hours Monday through Friday and appointments occasionally extend beyond regular hours of operation. When functioning as interpreters, the division of deaf services staff will maintain professional standards set forth in the Code of Ethics of the Registry of Interpreters for the Deaf, Inc. (RID). The interpreter shall:

(1) Keep all assignment-related information strictly confidential.

(2) Render the message faithfully, always conveying the content and spirit of the speaker, using language most readily understood by the person(s) whom they serve.

(3) Not counsel, advise, or interject personal opinions.

(4) Accept assignments using discretion with regard to skill, setting, and the consumers involved.

(5) Request compensation for services in a professional and judicious manner.

(6) Function in a manner appropriate to the situation.

(7) Strive to further knowledge and skills through participation in workshops, professional meetings, interaction with professional colleagues and reading of current literature in the field.

(8) Strive to maintain high professional standards in compliance with the Code of Ethics, by virtue of membership in or certification by the RID, Inc.

b. When interpreting services are provided by staff interpreters, not to include telephone interpreting services, and any party involved is an obligated agency, the division shall submit an invoice to the obligated agency for payment.

c. When staff interpreters are unable to meet an interpreting request, every attempt will be made to secure contractual or referral services.

d. Requests occurring beyond regular hours of operation will be referred to contractual or freelance interpreters.

e. Staff interpreters are employees of the state of Iowa and are not eligible to participate in the contractual interpreting service program.

ITEM 5. Amend subrule 2.3(2), paragraph "d," line 3, by striking "1987" and inserting "1988".

ITEM 6. Amend Chapter 2 by adding the following new rule:

429—2.4(601K) Fee for interpreting service. Pursuant to Section 504 of the Vocational Rehabilitation Act

of 1973, as amended in 1978 and in accordance with the Civil Rights Restoration Act of 1987, which applies to health care and social service programs, schools, colleges, vocational centers, housing, transportation, and other public services:

"...no otherwise qualified handicapped individual in the United States, as defined in Section 7(6), shall, solely by reason of his handicap, be excluded from the participation in; be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or by any activity conducted by any Executive Agency or by the United States Postal Service..."

Under this authority and in accordance with the 1988 Iowa Acts, Senate File 2310, section 13, the division of deaf services shall invoice obligated agencies for interpreting services provided by staff interpreters.

2.4(1) Responsibility of the division of deaf services.

a. The division shall arrange and provide interpreting services pursuant to subrule 2.3(1). The division shall submit an invoice to the obligated agency, and in addition, a claim voucher for Internal Services will be sent to those obligated agencies of the state of Iowa, on a portal-to-portal basis when services are provided by division staff and when:

(1) The obligated agency requested the interpreting services; or

(2) The deaf/hearing impaired individual(s) requested the interpreting services that were necessary for communication accessibility to the obligated agency; or

(3) The division determined the obligated agency is required under state or federal law to provide interpreting services to deaf/hearing impaired individual(s).

b. The payment of the invoice shall be due 30 days after the billing date. Invoices are considered delinquent after 45 days, whereby the division shall implement collection procedures.

2.4(2) Responsibility of the obligated agency.

a. The obligated agency shall make payment within 30 days of the billing date to the division of deaf services.

b. Under no circumstances shall the obligated agency charge the deaf/hearing impaired person for interpreting services.

c. If the obligated agency chooses to use interpreters in lieu of division staff, the division shall provide a list of interpreters by certification status, who have indicated their willingness and availability to provide services, to the obligated agency.

2.4(3) Fee schedule.

a. The fee schedule for service is based on a portal-to-portal basis. Consideration is given to the setting type and the amount of time services are provided.

b. The fee schedule for division staff is:

Legal Setting	\$23.00/hour
Mental Health Setting	\$20.00/hour
Health Setting	\$17.00/hour
Community Service Setting	\$13.00/hour
Consumer Service Setting	\$13.00/hour
Personal Matter Setting	\$13.00/hour
Employment Setting	\$13.00/hour
Educational Setting	\$13.00/hour

c. For interpreting services provided, when interpreting services and travel time for one assignment exceed six hours, a negotiated flat fee will be charged. The flat fee will be calculated by:

DEAF SERVICES DIVISION[429] (cont'd)

Total number of portal-to-portal service hours, multiplied by the appropriate rate according to 2.4(3)"b" and reduced by 25 percent.

2.4(4) Disposition of fees collected.

a. All fees collected shall be transmitted to the treasurer of the state for deposit in the division revolving account, pursuant to 1988 Iowa Acts, Senate File 2310, section 13.

b. Funds shall be used to provide continued and expanded interpreting services provided by the division.

This rule is intended to implement 1988 Iowa Acts, Senate File 2310, section 13.

ITEM 7. Amend 429—4.1(601K) by inserting the following new subrules:

4.1(15) Interpreting service invoice. This form is used to invoice obligated agencies for interpreting services provided by division staff. Information included on this form is considered confidential and shall include:

- a. Client names.
- b. Date, time, and location of assignment.
- c. Setting description and rate.
- d. Hours of service delivery.
- e. Calculated fee-for-service.
- f. Name of interpreter.

This form is maintained in the division's financial records for five years.

4.1(16) Claim voucher for internal services. This form is used to transfer funds between state agencies. The division will initiate and complete the sellers account distribution section, voucher and date section and submit the multicopy form with the interpreting service invoices for that month to the state obligated agency for completion. The state obligated agency will make the transaction to transfer funds into the division's revolving account. Revenue and finance will distribute copies to the appropriate agencies. This form is kept with the division's financial records for 5 years.

[Filed 9/23/88, effective 11/23/88]
[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9358**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106 and 1988 Iowa Acts, Senate File 2303, the Iowa Department of Economic Development hereby adopts amendments to Chapter 7, "Iowa Small Business New Jobs Training Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 27, 1988, as **ARC 9021**. The Department of Economic Development Board adopted these amendments on September 22, 1988.

These amendments update the rules to reflect changes made in the program under 1988 Iowa Acts, Senate File 2303. Specifically, the new legislation reduces the maximum advance amount from \$75,000 to \$50,000,

grants to the Department the authority to approve projects, and directs the agency to develop criteria for approving requests for funding.

A public hearing was held on August 16, 1988, to receive comments concerning the proposed rules. Those comments were taken into consideration prior to the adoption of final rules. The final rules are identical to the proposed rules.

These rules will become effective November 23, 1988.

These rules are intended to implement 1988 Iowa Acts, Senate File 2303.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to Ch 7] is being omitted. These rules are identical to those published under Notice as **ARC 9021**, IAB 7/27/88.

[Filed 9/30/88, effective 11/23/88]
[Published 10/19/88]

[For replacement pages for IAC, see IAC Supplement, 10/19/88.]

ARC 9357**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106 and 1988 Iowa Acts, House File 2416, the Iowa Department of Economic Development hereby adopts a new Chapter 9, "Self-Employment Business Assistance," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 27, 1988, as **ARC 9022**. The Department of Economic Development Board adopted these rules on September 22, 1988.

The new rules govern the establishment and administration of a Self-Employment Business Assistance Program conducted in coordination with the Job Training Partnership Program, the Self-Employment Loan Program and other federal and state financial and technical assistance programs. The purpose of the new program is to assist low-income persons seeking to establish or expand small business ventures. The rules describe the eligibility requirements for participation in the program and identify how the Department will select service providers to deliver the Self-Employment Business Assistance.

A public hearing was held on August 16, 1988, to receive public comments concerning the proposed rules. Comments received were taken into consideration before the adoption of final rules. The following changes were made to the proposed rules:

1. The program title was changed from "Case Management Program" to "Self-Employment Business Assistance." Case management is a term frequently used in the field of human services and has caused some confusion in the understanding of services available under this program.

2. The definition of "client" was modified to add a statement that priority will be given to targeted small businesses based on the response to questions posed by

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] (cont'd)

the Department in the Notice of Intended Action concerning how to accommodate the language in House File 2416 and Senate File 2309.

3. The definition of "underemployed" and subrule 9.3(3) were deleted in response to public comment. The term "underemployed" is confusing and does not impact program eligibility.

4. A reference to the Self-Employment Investment Demonstration project was deleted from rule 9.3(72GA, HF2416) to ensure the purity of the demonstration project, and a statement that priority will be given to targeted small businesses was added to this rule for the reason stated in number 3 above.

5. Subrule 9.3(4) was modified to include food stamp recipients in automatic income eligibility as food stamps are not included in the phrase "cash welfare" that is listed in the subrule.

The Department also solicited comments on the request for proposal (RFP) method of selecting service providers. Based on public comment, the Department will utilize the RFP method to select service providers.

These rules will become effective on November 23, 1988.

These rules are intended to implement 1988 Iowa Acts, House File 2416.

The following new chapter is adopted:

CHAPTER 9

SELF-EMPLOYMENT BUSINESS ASSISTANCE

261—9.1(72GA, HF2416) Purpose. The department of economic development administers the case management program in coordination with the job training partnership program, the self-employment loan program, and other state or federal programs providing financial or technical assistance administered by the department.

261—9.2(72GA, HF2416) Definitions. As used in this chapter, unless the context otherwise requires:

"Client" means a low-income person eligible for assistance under the self-employment loan program, established in Iowa Code section 15.241, who is establishing or expanding a small business venture. Priority will be given to clients that meet the definition of a targeted small business as defined in Iowa Code section 15.102(5).

"Department" or "IDED" means the Iowa department of economic development.

"Family income (annualized)" means all income actually received from all sources by all members of the family during the six months immediately prior to application multiplied by two. When computing family income, income of a spouse and other family members shall be counted for the portion of the income determination period that the person was actually a part of the family unit of the applicant.

"Low income" means annualized family income that is 70 percent of the most current lower living standard income level (LLSIL).

"Self-employment business assistance" means assisting clients seeking to establish or expand small business ventures. Appropriate technical assistance may include, but shall not be limited to: consulting, training and apprenticeship, professional services; assistance in furnishing information about available financial or technical assistance; evaluating small business venture proposals; assistance in the completion of viable start-up or expansion plans; and assistance in the completion

of applications for financial or technical assistance under the programs administered by the department.

"Service provider" means any entity such as a state agency, a private for-profit or not-for-profit corporation or other association or organization that contracts with the department to provide or offer case management assistance. Service providers may include, but are not limited to: community colleges, universities, Iowa state extension service, small business development centers, service corps of retired executives, the institute for social and economic development, women's economic development group enterprises, chambers of commerce and local economic development groups.

261—9.3(72GA, HF2416) Eligibility requirements. An individual must be a low-income person eligible for assistance under the self-employment loan program established in Iowa Code section 15.241 and actively seeking or awarded financial assistance from state support programs such as the self-employment loan program, the targeted small business financial assistance program, the Iowa linked deposit program for targeted small business. Priority will be given to clients that meet the definition of a targeted small business as defined in Iowa Code section 15.102(5).

9.3(1) Residence. An applicant must be a resident of Iowa to be eligible for self-employment business assistance.

9.3(2) Age. An applicant must be 18 years of age or older.

9.3(3) Income. To qualify for assistance an applicant must have annualized family income that is no more than 70 percent of the lower living standard income level. For purposes of calculating family income, exclusions are:

- a. Food stamps
- b. Compensation received in the form of food or housing
- c. Other noncash income
- d. Public assistance payment
- e. Federal, state, local or private unemployment benefits
- f. Payment, other than on-the-job training wages, made to participants while enrolled in employment and training programs
- g. Capital gains and losses
- h. Scholarship and fellowship grants
- i. Accident, health, and casualty insurance proceeds
- j. Disability and death insurance payments
- k. Awards and gifts
- l. Inheritances
- m. Workers' compensation
- n. Terminal leave
- o. Pay or allowances previously received by any veteran while serving on active duty in the U.S. armed forces
- p. Educational assistance and compensation payments to veterans and other eligible persons under the following chapters of Title 38 of the U.S. Code:

Chapter 11—Compensation for service-connected disability or death

Chapter 13—Dependency and indemnity compensation for service-connected deaths

Chapter 31—Training and rehabilitation for veterans with service-connected disabilities

Chapter 32—Post-Vietnam era veterans' educational assistance

Chapter 34—Veterans' educational assistance

Chapter 35—Survivors' and dependents' educational assistance

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261] (cont'd)

Chapter 36—Administration of educational benefits
 q. Payments received under the Trade Act of 1974
 r. Payments received on behalf of foster children
 s. Child support payments
 t. Cash payments received pursuant to a state plan approved under the Social Security Act:
 Title II—disability insurance payments
 Title IV—aid to families with dependent children
 Title XVI—supplemental security income for the aged, blind, and disabled
 u. Payments received under the Black Lung Benefits Reform Act of 1977 (Public Law 95-239)
 v. Assets drawn down as withdrawals from a bank
 w. Proceeds from the sale of property, a house, or car
 x. Tax refunds
 y. Other one-time and limited unearned income.

9.3(4) Automatic income eligibility. Cash welfare recipients (AFDC, general assistance, refugee assistance, etc.) food stamp recipients or applicants which are JTPA eligible qualify as income eligible for self-employment business assistance.

261—9.4(72GA, HF2416) Evaluation procedure. The department will release a request for proposal to determine service provider(s). Proposals will be submitted and reviewed by the department. The IDED director will review recommendations and make a final decision.

261—9.5(72GA, HF2416) Evaluation factors. The department will evaluate proposals based on such factors as: experience or demonstrated ability in providing assistance to small businesses in such areas as completing and evaluating viable business start-up or expansion plans and completing applications for financial and technical assistance; ability to effectively administer state programs; fiscal management and record-keeping capabilities; and ability to provide ongoing technical assistance to clients.

261—9.6(72GA, HF2416) Contract. The department will contract with designated service providers. Statements for reimbursement will be submitted to the department based on the number of hours of self-employment business assistance provided per client. Self-employment business assistance funds shall only be used for activities which are in addition to those which would otherwise be available in the area in the absence of self-employment business assistance funds.

261—9.7(72GA, HF2416) Monitoring and reporting.

9.7(1) Monitoring. The IDED reserves the right to monitor the service provider's records to ensure compliance with the terms of the contract.

9.7(2) Reporting. Service providers shall submit to the IDED reports in the format requested by the department. The department retains the authority to request information on a more frequent basis.

These rules are intended to implement 1988 Iowa Acts, House File 2416.

[Filed 9/30/88, effective 11/23/88]
 [Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9359

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104, 15.106, and 15.225 and 1988 Iowa Acts, Senate File 2328, the Iowa Department of Economic Development hereby adopts amendments to Chapter 14, "Youth Affairs," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 27, 1988, as ARC 9023. The Department of Economic Development adopted these amendments on September 22, 1988.

Public comments were accepted until August 16, 1988. No comments were received by the Department concerning the proposed rules. The adopted rules are identical to the proposed rules.

The amendments bring the administrative rules into compliance with legislative changes mandated by 1988 Iowa Acts, Senate File 2328. Senate File 2328 provides for the set-aside of \$100,000 for minority youth employment. The amendments add new reporting requirements to track expenditures for minority employment.

These rules will become effective on November 23, 1988.

These rules are intended to implement 1988 Iowa Acts, Senate File 2328, section 5.

The following amendments are adopted:

ITEM 1. Amend subrule 14.3(10) as follows:

14.3(10) Program reporting. Sponsoring agencies shall submit monthly financial reports and a final performance report. The format and due dates of the reports shall be specified by the Iowa department of economic development. *All contractors shall report the amount of grant funds expended for wages and fringe benefits for all minority youth employed.*

ITEM 2. Amend subrule 14.4(9), paragraph "a," as follows:

a. Work experience costs. Allowable cost categories for the work experience component are youth salaries, FICA, liability insurance and workers' compensation. *All contractors shall report the amount of grant funds expended for wages and fringe benefits for all minority youth employed.*

ITEM 3. Amend subrule 14.7(10) as follows:

14.7(10) Program reporting. Participating agencies shall submit monthly financial reports and a final performance report. The format will be provided by the department of economic development. *All contractors shall report the amount of grant funds expended for wages and fringe benefits for all minority youth employed.*

[Filed 9/30/88, effective 11/23/88]
 [Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9331
ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF [261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106 and 1988 Iowa Acts, Senate File 2328, the Iowa Department of Economic Development (IDED) adopts the following amendments to Chapter 52, "Business Incubator Center Program," Iowa Administrative Code.

The amendments will implement the rural incubator center program intended for communities under 10,000 population.

Notice of Intended Action was published in the July 27, 1988, Iowa Administrative Bulletin as **ARC 9006**. A public hearing was held August 16, 1988, to solicit comments and suggestions on the proposed rules. No oral or written comments were received by the Department during the comment period or at the public hearing.

The Department of Economic Development adopted these amendments on September 22, 1988.

These rules will become effective November 23, 1988.

These rules are intended to implement 1988 Iowa Acts, Senate File 2328, section 5"d"(6).

The following amendments are adopted:

ITEM 1. Amend **261—Chapter 52** by amending the chapter title to read as follows:

SMALL BUSINESS
INCUBATOR CENTER PROGRAM

ITEM 2. Amend rule 261—52.1 (99E) to read as follows:

261—52.1 (99E) Purpose. The purpose of the small business incubator center program is to encourage the establishment and development of small businesses and to provide an environment aimed at assisting entrepreneurial efforts in the critical stages of business development. This program will provide new employment opportunities for Iowans, assist in improving the efficiency, productivity, and viability of all Iowa businesses, encourage innovation and improve the overall economy of the state. *The two funding components of the small business incubator center program are: (1) the business incubator center program and (2) the rural incubator center program, which is designated for communities under 10,000 population as defined by the rural incubator center definition in 52.2(99E).*

ITEM 3. Amend rule **261—52.2(99E)**, definition of "Act," to read as follows:

"Act" means Iowa Code section 99E.32(3) as amended by 1987 Iowa Acts, ~~Senate File 515, chapter 231~~, section 7"d"(5) and by 1988 Iowa Acts, ~~Senate File 2328~~, section 5"d"(6).

Further amend rule 261—52.2(99E) by adding the following new definitions in alphabetical sequence:

"Business incubator center" means an incubator center located anywhere in the state of Iowa, including areas eligible to receive rural incubator center funding.

"Rural incubator center" means an incubator center located in a community with a population of less than 10,000, which is not contiguous to a community over 10,000 population.

ITEM 4. Amend rule 261—52.6(99E) by adding the following new subrules:

52.6(1) Business incubator centers. Eligible business incubator center applicants must match the funding received under the business incubator center program component of these rules on a dollar-for-dollar basis.

52.6(2) Rural incubator centers. Eligible rural incubator center applicants are required to provide a 25 percent match for the incubator funding received under the rural incubator center program component of these rules.

ITEM 5. Amend subrule **52.7(2)** by adding paragraph "c" to read as follows:

c. Eligible applicants in communities under 10,000 population may apply for funding under both funding components of the small business incubator center program provided the applicant provides separate budgets for each component which meet the grant match requirements outlined in rule 52.6(99E). The applicant is not required to prioritize the applications pursuant to 52.7(2)"a" if the same application is submitted under both funding categories.

ITEM 6. Amend subrule **52.8(1)** by adding paragraph "f" to read as follows:

f. A statement identifying the funding component for which the applicant is applying: (1) the business incubator center program; (2) the rural incubator center program.

[Filed 9/23/88, effective 11/23/88]

[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9337

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455A.6 and 455B.105, the Environmental Protection Commission of the Department of Natural Resources hereby adopts a new Chapter 8, "Contracts for Public Improvements and Professional Services," Iowa Administrative Code.

The rules were published in full on August 10, 1988, under the Department of Natural Resources as **ARC 9075**. The Commission adopts by cross-reference 561—Chapter 8, Iowa Administrative Code, to appear as 567—Chapter 8.

Additionally, the Commission is renumbering the present Chapter 8, "Tax Certification of Pollution Control Property," as new Chapter 11.

The Notice of Intended Action was published in the August 10, 1988, Iowa Administrative Bulletin as **ARC 9074**. There were no comments to the Notice except within the Department and appropriate changes were made.

These rules are to become effective on November 23, 1988.

These rules are intended to implement Iowa Code sections 455A.6 and 455B.105.

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

ITEM 1. Adopt a new 567—Chapter 8 as follows:

CHAPTER 8

CONTRACTS FOR PUBLIC IMPROVEMENTS
AND PROFESSIONAL SERVICES

567—8.1(17A) Adoption by reference. The commission adopts by reference 561—Chapter 8, Iowa Administrative Code.

ITEM 2. Renumber 567—Chapter 8, "Tax Certification of Pollution Control Property," as **567—Chapter 11.**

[Filed 9/26/88, effective 11/23/88]
[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9343

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed

Pursuant to the authority of 1987 Iowa Code supplement section 455B.190, the Environmental Protection Commission has adopted a new Chapter 39, "Requirements for Properly Plugging Abandoned Wells."

1987 Iowa Code supplement section 455B.190 requires that all abandoned wells be properly plugged in accordance with a closure program implemented by the Department of Natural Resources. Accordingly, the adopted rules establish a time schedule for plugging various types of abandoned wells; set forth proper procedures and materials to be employed; and require certification of each plugged well by completing a new form entitled, "Abandoned Water Well Plugging Record."

Notice of Intended Action was published in the April 20, 1988, Iowa Administrative Bulletin as ARC 8658. Thirty-seven oral and written comments were received during the comment period and at three public hearings. [An Economic Impact Statement published IAB 8/10/88]

Significant changes from the Notice of Intended Action are as follows:

Subrule 39.5(2) provides that Category I wells must be properly plugged by July 1, 1990.

Paragraph 39.7(2)"c" requires the services of a registered well contractor to plug a sandpoint well only if the sandpoint and casing cannot be extracted.

Rule 39.8(455B) limits the disinfection requirement for standby wells. Disinfection is required prior to taking a well out of use for an extended period and when a well is placed back in service after a prolonged period of disuse.

These rules were adopted by the Environmental Protection Commission at its September 20, 1988, meeting and will become effective on November 23, 1988.

These rules are intended to implement 1987 Iowa Code supplement section 455B.190.

The following chapter is adopted:

CHAPTER 39

REQUIREMENTS FOR PROPERLY PLUGGING
ABANDONED WELLS

567—39.1(455B) Purpose. The purpose of this chapter is to implement 1987 Iowa Code supplement section 455B.190 by providing a schedule and required procedures for the proper plugging of abandoned wells.

567—39.2(455B) Applicability. These rules govern the proper plugging of all abandoned wells. For additional guidance and background information, refer to "Guidelines for Plugging Abandoned Water Wells," Technical Information Series 15, Geological Survey Bureau, Iowa Department of Natural Resources, 1987.

567—39.3(455B) Definitions.

"Abandoned well" means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impracticable.

"Agricultural lime" means all calcium and magnesium products sold for agricultural purposes in the oxide, hydrate, or carbonate form; designated as quicklime, hydrated lime, carbonate of lime, and crushed or ground limestone which is used for agricultural purposes as a soil pH buffer.

"Annular space" means the space between the well casing and the well bore or the space between two or more concentric well casings.

"Approved" means accepted or acceptable under an applicable specification stated or cited in these rules.

"Aquifer" means a geological formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield significant quantities of water to wells and springs.

"Artesian well" means a well in an aquifer where the groundwater is confined under pressure and the static water level in the well stands above the top of the confined aquifer it taps.

"Bentonite" means a naturally occurring highly plastic, colloidal clay composed largely of the mineral montmorillonite which expands upon wetting.

"Bentonite grout (or slurry)" means a mixture of 10 percent processed bentonite (by weight) and clean water.

"Bentonite pellets" means a form of processed bentonite which can be used directly for sealing applications in well plugging operations.

"Bentonite products" means the forms of bentonite which can be used for sealing materials in wells, including graded bentonite, bentonite pellets and bentonite grout.

"Casing" means a tubular retaining structure which is installed in the excavated hole to maintain the well opening.

"Concrete" means a mixture of one sack (94 pounds) of portland cement, an equal amount by volume of sand and gravel or crushed stone and not more than six gallons of clean water.

"Confined aquifer" means an aquifer in which the groundwater is under pressure greater than atmospheric pressure. The static water level in a well tapping a confined aquifer rises to a level above the top of the aquifer.

"Crushed stone" means Class A or Class B crushed stone as defined in the specifications of the Iowa department of transportation.

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

"Department" means the department of natural resources created under Iowa Code section 455A.2.

"Director" means the director of the department.

"Fill materials" means soil, sand, gravel, crushed stone, pea gravel and agricultural lime used to occupy space between and below sealing materials in abandoned wells being plugged.

"Graded bentonite" means bentonite which is crushed and sized for pouring and easy handling. Like processed bentonite, it swells when hydrated by fresh water and will form a plastic, essentially impermeable mass.

"Gravel" means Class C gravel as defined in the specifications of the Iowa department of transportation.

"Groundwater" means any water of the state, as defined in Iowa Code section 455B.171, which occurs beneath the surface of the earth in a saturated geological formation of rock or soil.

"Grout" means a fluid mixture of cement and water (neat cement); sand, cement and water (sand cement grout); or bentonite and water (bentonite grout or slurry) of a consistency that can be forced through a pipe and placed as required.

"Limestone" means sedimentary rock which contains greater than 50 percent calcium carbonate and has strong reaction with hydrochloric acid (HCl).

"Liner pipe" means a protective well casing pipe installed subsequent to initial construction to seal off a zone of bacterial or chemical contamination or a casing pipe installed during or subsequent to the initial well construction to seal off a caving formation.

"Neat cement" means a mixture of one sack (94 pounds) of portland cement to not more than six gallons of clean water. Bentonite up to 2 percent by weight of cement may be added to reduce shrinkage.

"Plugging" means the proper closure of an abandoned well by procedures which will permanently seal the well from contamination by surface drainage; and where the well penetrates multiple or confined aquifers, will permanently seal off and prevent flow or contamination out of an aquifer or from one aquifer to another. Plugging involves the application of sealing materials and can include fill materials.

"Processed bentonite" means bentonite which has been kiln dried and processed into pellets for direct use in well sealing applications or into powder or coarse granules for use in bentonite grout for sealing.

"Pump pit" means a sunken area located directly over the well used to house the equipment for discharging water from a well into the water system.

"Quaternary sediments" means the unconsolidated materials, such as alluvium, soil, loess, glacial drift clay, and sand and gravel, above the bedrock.

"Sand cement grout" means a mixture of one sack (94 pounds) of portland cement, an equal amount by volume of clean masonry sand and not more than six gallons of clean water.

"Sandpoint well" means a small diameter water well constructed by joining a screened drive point with lengths of pipe and driving the assembly into a shallow sand and gravel aquifer. Sandpoint wells commonly are less than 30 feet deep.

"Sealing" means the application of sealing materials (bentonite products, neat cement, sand cement grout or concrete) for plugging an abandoned well to seal off unwanted flow into, out of or between aquifers.

"Standby well" means a water well which is temporarily taken out of service with the expectation of being returned to service when needed.

"Static water level" means the water level in a water well when the well is not flowing or being pumped.

"Tremie pipe" means a device, usually a small diameter pipe, that carries grouting materials to the bottom of the hole and which allows pressure grouting from the bottom up without introduction of air pockets.

"Unconfined aquifer" means an aquifer in which the static water level does not rise above the top of the aquifer, i.e., the pressure of the water in the aquifer is approximately equal to that of the atmosphere.

"Water well" means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted or otherwise constructed for accessing groundwater.

"Well screen" means the intake section of the well that obtains water from an aquifer and serves as a structural retainer to support the bore hole in unconsolidated materials.

567—39.4(455B) Forms. The following form is currently in use: Abandoned Water Well Plugging Record. 2/88. 542-1226.

567—39.5(455B) Abandoned well plugging schedule.

39.5(1) Certification. Within 30 calendar days after completion of plugging, abandoned well owners must certify on DNR Form 542-1226, Abandoned Water Well Plugging Record, that abandoned wells have been properly plugged in accordance with the requirements and time schedule contained in this chapter.

39.5(2) Category I. Abandoned wells eight inches or larger in diameter abandoned prior to November 23, 1988, must be properly plugged by July 1, 1990.

39.5(3) Category II. Wells abandoned prior to November 23, 1988, and located less than 200 feet from an active well supplying potable water or located less than one-eighth mile (660 feet) from a point source of potential contamination must be properly plugged by July 1, 1990. Examples of point sources of potential contamination include, but are not limited to, industrial waste sites; uncontrolled hazardous waste sites; petroleum storage areas; hazardous waste treatment, storage or disposal areas; agricultural chemical storage areas; animal feedlots; and wastewater treatment facilities.

39.5(4) Category III. All other wells which were abandoned prior to November 23, 1988, must be properly plugged by July 1, 1993.

39.5(5) Category IV. Wells which are abandoned on or after November 23, 1988, must be properly plugged within 90 days of the date of abandonment.

567—39.6(455B) Water well plugging materials.

39.6(1) Sealing materials. Approved sealing materials are bentonite products (graded bentonite, bentonite pellets and bentonite grout), neat cement, sand cement grout and concrete.

39.6(2) Fill materials. Approved fill materials include soil, sand, pea gravel, gravel, crushed stone and agricultural lime. Fill materials are not required for well plugging, but may be used to save on quantities and costs of sealing materials as provided in 567—39.7(455B). The fill materials shall be free of sticks, leaves or other foreign matter and shall be free of any toxic or agricultural chemical residue.

567—39.7(455B) Water well plugging procedures.

39.7(1) Freedom from obstructions. Abandoned wells must be checked before they are plugged in order to ensure freedom from obstructions that may interfere with plugging operations. Drop pipes, check valves,

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

pumps, and other obstructions shall be removed if practicable.

39.7(2) Wells in quaternary sediments.

a. Large diameter wells 100 feet or less in depth. The services of a registered well contractor are not required for the plugging of large diameter (18-inch diameter or more) wells 100 feet or less in depth in quaternary sediments (above bedrock). These wells may be plugged by pouring fill and sealing materials from the top of the well or by using tremie pipes, except for sand cement grout placed below water, which must be placed by dump bailer.

Fill materials of sand, gravel, crushed stone, pea gravel or agricultural lime shall be placed up to one foot below the static water level. A minimum of one foot of bentonite pellets, graded bentonite or neat cement shall be placed on top of the fill material up to the static water level as a seal. Sand cement grout placed with a dump bailer also may be used on top of the fill material up to the static water level and in standing water above the static water level to act as a seal. Fill material of soil, sand, gravel, crushed stone, pea gravel or agricultural lime shall then be added up to four feet below the ground surface.

The fill materials may be omitted and sealing materials may be used to fill the entire well up to four feet below the ground surface. Bentonite pellets, graded bentonite or neat cement sealing materials shall be used below the static water level. Sand cement grout placed with a dump bailer also may be used below the static water level or in standing water above the static water level. Sealing materials which may be used above the static water level include bentonite pellets, graded bentonite, neat cement, sand cement grout and concrete.

The casing pipe shall be removed down to four feet below the ground surface and shall be capped by a minimum of one foot of bentonite pellets, graded bentonite, neat cement, sand cement grout or concrete. The cap shall extend six or more inches beyond the outside diameter of the top of the remaining well casing and shall terminate three feet below the ground surface.

If there is any curbing, pump pit or pump house structure located directly over the well, this shall also be removed down to a minimum of four feet below the ground surface. The top four feet (three feet above the cap) shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

b. Wells less than 18 inches in diameter or greater than 100 feet in depth, excluding sandpoint wells. Plugging of wells less than 18 inches in diameter or greater than 100 feet in depth must be performed by a well contractor registered pursuant to 567—Chapter 37.

Fill material consisting of sand, gravel, crushed stone or pea gravel shall be placed in the bottom portion of the well open to the water-bearing formation up to four feet below the static water level. A minimum of four feet of sealing materials consisting of bentonite products or neat cement shall be added above the fill material up to the original static water level. If bentonite grout or neat cement is used, it shall be placed by tremie pipe. If graded bentonite or bentonite pellets are used, they may be added by pouring in place and agitating to avoid bridging. Any of the approved sealing materials shall be added above the static water level up to four feet below the ground surface. If bentonite grout is used, it

shall be capped by at least six feet of neat cement terminating four feet below the ground surface.

The fill materials may be omitted and bentonite products or neat cement sealing materials may be used to fill the entire well up to four feet below the ground surface. If bentonite grout is used from the static water level to the top of the well, it shall be capped by at least six feet of neat cement terminating four feet below the ground surface.

The upper four feet of the casing pipe below the ground surface shall be removed and if there is any curbing, pump pit or pump house structure located directly over the well, this shall also be removed down to a minimum of four feet below the ground surface. The top four feet shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

c. Sandpoint wells. The preferred method of plugging a sandpoint well is to pull the casing and sandpoint out of the ground, allowing the hole to collapse and fill. This does not require the services of a registered well contractor. If the sandpoint and casing cannot be extracted, they shall be tremied full of neat cement or completely sealed with bentonite products, and this plugging must be performed by a well contractor registered pursuant to 567—Chapter 37.

The upper four feet of the casing pipe below the ground surface shall be removed and if there is any curbing, pump pit or pump house structure located directly over the well, this shall also be removed down to a minimum of four feet below the ground surface. The top four feet shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

39.7(3) Bedrock wells. Plugging of all bedrock wells shall be performed by well contractors registered pursuant to 567—Chapter 37. If the details of well construction are unknown, the well shall be tremied full of neat cement up to four feet below the ground surface or tremied full of bentonite grout up to ten feet below the ground surface, with the bentonite grout capped by at least six feet of neat cement terminating four feet below the ground surface.

a. Bedrock wells completed in a single confined aquifer. Before proceeding to plug the well, a bridge plug or packer shall be placed at or below the bottom of the casing to stop the flow of water if necessary where the pressure in the confined aquifer is great, causing the well to flow at the surface. In such cases, fill materials shall be placed in the lower portion of the well before the bridge plug or packer is set.

Fill material consisting of pea gravel, crushed stone or gravel shall be placed from the bottom of the well to within ten feet below the bottom of the casing or confining layer. Sealing material consisting of bentonite products or neat cement shall be placed from the top of the fill material to at least ten feet above the bottom of the casing or confining layer or to the static water level, whichever is higher. If bentonite grout or neat cement is used, it shall be placed by tremie pipe. Bentonite pellets or graded bentonite may be added by pouring in place and agitating to avoid bridging. Any of the approved sealing materials shall be added above the static water level up to four feet below the ground surface. If bentonite grout is used, it shall be capped by at least six feet of neat cement terminating four feet below the ground surface.

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

The fill materials may be omitted and any of the approved sealing materials may be used to fill the entire well up to four feet below the ground surface. Only bentonite products or neat cement sealing materials shall be used below the static water level. If bentonite grout is used from the static water level to the top of the well, it shall be capped by at least six feet of neat cement terminating four feet below the ground surface.

The upper four feet of the casing pipe below the ground surface shall be removed and if there is any curbing, pump pit or pump house structure located directly over the well, this shall also be removed down to a minimum of four feet below the ground surface. The top four feet shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

b. Bedrock wells completed in a single unconfined aquifer. The plugging procedure for these wells is the same as for bedrock wells completed in a single confined aquifer except that a bridge plug or packer is not required to stop the flow of water since this problem will not exist in this type of well.

c. Bedrock wells completed in multiple aquifers. For the lowest aquifer, fill material consisting of pea gravel, crushed stone or gravel shall be placed to within ten feet below the bottom of the casing or confining layer. Neat cement tremied in place shall then be used as a sealing material to ten feet above the bottom of the casing or above the bottom of the confining layer, whichever is highest. The minimum thickness of the sealing material above each aquifer shall be ten feet except for the uppermost aquifer. This same procedure and type of fill materials and sealing material shall be used throughout subsequent aquifers including the uppermost aquifer. The seal for the uppermost aquifer shall extend from at least ten feet below the bottom of the casing or confining layer to at least ten feet above the bottom of the casing or confining layer. The casing shall be filled above the static water level with any of the approved sealing materials up to four feet below the ground surface. If bentonite grout is used, it shall be capped by at least six feet of neat cement terminating four feet below the ground surface.

The fill materials may be omitted and any of the approved sealing materials may be used to fill the entire well up to four feet below the ground surface. Only bentonite products or neat cement shall be used as the sealing materials below the static water level. If bentonite grout is used from the static water level to the top of the well, it shall be capped by at least six feet of neat cement terminating four feet below the ground surface.

The upper four feet of the casing pipe below the ground surface shall be removed and if there is any curbing, pump pit or pump house structure located directly over the well, this shall also be removed down to a minimum of four feet below the ground surface. The top four feet shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

567—39.8(455B) Standby wells. Standby wells do not require the plugging operations for an abandoned well which renders the well permanently unusable as a source of water supply. A standby well must be disinfected prior to being taken out of use for a long period of time and must be disinfected and checked for bacterial safety

when placed back in service after being out of use for a prolonged period. Disinfection of standby wells shall be done in accordance with AWWA (American Water Works Association) Standard A100. The well must not be subject to contamination by surface drainage or from other causes, and the well casing must be provided with an air-tight cover when the well is not in use.

567—39.9(455B) Variances. In accordance with Iowa Code section 455B.181, a variance to these rules may be granted by the department provided sufficient information is submitted in writing to the department to substantiate the need for a variance and to assure the protection of all aquifers penetrated by the affected well. When justification satisfactory to the director is provided substantially demonstrating that a variance to these rules will result in equivalent effectiveness or improved effectiveness, a variance to these rules may be granted by the director. A denial of a variance may be appealed to the environmental protection commission pursuant to 567—Chapter 7.

567—39.10(455B) Noncompliance. Violations of any of the provisions of this chapter may be addressed by the department pursuant to Iowa Code sections 455B.109, 455B.175, 455B.191 and 1987 Iowa Code supplement section 455B.190.

These rules are intended to implement 1987 Iowa Code supplement section 455B.190.

[Filed 9/29/88, effective 11/23/88]

[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9328

**HUMAN SERVICES
DEPARTMENT[441]**

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 217.6 and 249A.4, the Department of Human Services hereby amends Chapter 60, "Refugee Cash Assistance," and Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

Proposed federal regulations were received October 19, 1987, which proposed to amend current policy to change the period of eligibility for the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from an 18-month period which begins with the first month a refugee entered the United States to a 12-month period beginning with the same month of entry.

The RCA and RMA programs assist refugees whose economic needs are equivalent to the economic needs required in a state's Aid to Dependent Children (ADC) program but who do not meet ADC family composition requirements or the Supplemental Security Income age or disability requirements.

The RCA and RMA programs are 100 percent federally funded. There are a total of 76 persons receiving refugee cash and medical assistance currently and another 77 persons receiving just refugee medical assistance.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

ARC 9330

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed

The Department submitted a Notice of Intended Action to reduce the time limit for refugees to receive RCA and RMA from 18 months after entry into the United States to 12 months after entry based on the proposed federal regulations. (See ARC 8331 in the January 27, 1988, Iowa Administrative Bulletin.) No comments were received from that Notice.

It was necessary for the Department to terminate rule making on that Notice because the 180-day time period allowed for adoption in Iowa Code section 17A.4(1)"b" expired. (See ARC 8943 in the June 29, 1988, Iowa Administrative Bulletin.)

Final federal regulations were published August 24, 1988, which adopted the proposed regulations of October 19, 1987, with no changes. Therefore, this amendment reduces the time limit as required by the federal regulations and is identical to ARC 8331.

The Department of Human Services finds that notice and public participation on these rules are unnecessary. These rules are identical to those placed under Notice in ARC 8331 with the exception of Item 2 which was adjusted to conform to amendments adopted and filed in the August 24, 1988, Iowa Administrative Bulletin as ARC 9111. Therefore, these rules are filed pursuant to Iowa Code section 17A.4(2).

The Council on Human Services adopted these rules September 20, 1988.

These rules are intended to implement Iowa Code sections 217.6 and 249A.4.

These rules shall become effective December 1, 1988.

The following amendments are adopted:

ITEM 1. Amend rule 441—60.7(217), introductory paragraph, and subrule 60.7(1) as follows:

441—60.7(217) Time limit for eligibility. A refugee may receive assistance, if eligible, during the first ~~eighteen (18)~~ 12 months the refugee is in the United States, beginning the month the refugee enters the country. A nonrefugee child in the home with a refugee parent (or refugee parents, if both are in the home) is eligible for assistance until the parent(s) has been in the United States for ~~eighteen (18)~~ 12 months, or until the child reaches ~~eighteen (18)~~ 12 months of age, whichever occurs first.

60.7(1) Resources. The resources of refugees excluded because of the ~~eighteen (18)~~ 12-month limit shall be considered in the same manner as though these refugees were included in the eligible group.

ITEM 2. Amend subrule 75.1(11), paragraph "f," as follows:

f. Recipients canceled from RCA are eligible for the four months of extended Medicaid coverage as long as the ~~18~~ 12-month limit for participation in the refugee program is not exceeded.

[Filed Without Notice 9/21/88, effective 12/1/88]

[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

Pursuant to the authority of Iowa Code sections 234.6 and 237A.12, the Department of Human Services hereby amends Chapter 110, "Family and Group Day Care Homes"; Chapter 154, "Child Care Center Financial Assistance"; and Chapter 170, "Child Day Care Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules September 20, 1988. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on August 10, 1988, as ARC 9080.

These amendments provide for the following changes in administration of the day care program. The amendments:

1. Require that 20 percent of all registered homes in the county be spot-checked for compliance with registration requirements. The Department already does spot checks. This standardizes the number of homes to be checked.

2. Require registered and licensed applicants to serve two or more low-income families in order to be eligible for child care center financial assistance and lower the number of years applicants are required to keep records on low-income families served from five to two years.

3. Require reallocation of child care center assistance funds as of April 30 of each year only if the unencumbered funds exceed \$5000. State law requires that the unencumbered funds be reclaimed and reallocated. Prior to this year there has been intent language in the Department's appropriation bill that it was not necessary to redistribute unencumbered funds totaling less than \$5000. The language was inadvertently omitted and the Department has been advised to promulgate a rule to this effect.

4. Allow child day care services to be provided while the parent is looking for employment. This change was recommended by the Welfare Reform Council.

5. Require that a registered facility providing transitional child care must be checked for compliance with registration requirements within 30 days of the date of the voucher agreement if the facility has not been spot-checked within the last 12 months.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code sections 234.6, 237A.4, and 237A.13.

These rules shall become effective December 1, 1988.

The following amendments are adopted:

ITEM 1. Amend 441—Chapter 110 by adding the following new rule:

441—110.10(237A) Compliance checks. Twenty percent or more of all registered facilities in the county shall be checked during the calendar year for compliance with registration requirements contained in this chapter.

110.10(1) Form SS-1210-3, Group Day Care Home Registration Evaluation Check List, shall be used in registered group homes and a copy shall be placed in the registration file.

110.10(2) Form SS-1206-3, Family Day Care Home Registration Evaluation Check List, shall be used in

HUMAN SERVICES DEPARTMENT[441] (cont'd)

registered family day care homes and a copy shall be placed in the registration file.

ITEM 2. Amend subrule 154.3(3) as follows:

154.3(3) A day care facility shall serve two or more low-income families to be eligible to receive funds. Licensed or registered applicants shall maintain records of the number of children of low-income families served and the verification of how those numbers were established for a period of five (5) two years.

ITEM 3. Amend 441—Chapter 154 by adding the following new rule:

441—154.7(237A) Unencumbered funds. Any funds unencumbered as of April 30 of any year shall be reclaimed and redistributed among counties that have used all of the funds allocated to them. However, funds unencumbered shall not be reallocated unless the unencumbered funds reclaimed exceed \$5000.

ITEM 4. Amend subrule 170.2(3) by adding the following new paragraph:

f. The parent or parents are looking for employment. Child care for job search shall be limited to only those hours the parent is actually looking for employment including travel time. A job search plan shall be approved by the department and limited to a maximum of 30 working days in a 12-month period. Child care in two-parent families may be provided only during the coinciding hours of both parents looking for employment, or during one parent's employment and one parent's looking for employment. Documentation of job search contacts shall be furnished to the department upon request. The department may enter into a nonfinancial coordination agreement for information exchange concerning job search documentation.

ITEM 5. Amend 441—Chapter 170 by adding the following new rule:

441—170.7(234) Transitional child care. All registered facilities with a signed voucher agreement for transitional day care shall be checked by a social worker for compliance with registration requirements within 30 days of the date of the voucher agreement if the facility has not been checked within the last 12 months.

[Filed 9/21/88, effective 12/1/88]
[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9356

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 104A.104(5) and 1987 Iowa Code supplement section 135G.7, the Department of Inspections and Appeals adopts Chapter 52, "Birth Centers," Iowa Administrative Code.

This chapter sets standards for licensing birth centers as required by the 1987 Legislature. The standards are designed for facilities which provide prospective parents an alternative to hospital natal care. In a birth center the major part of care, both prenatal and postnatal, is

provided by a nurse midwife. A physician is consulted and is required to see the prospective mother at least twice during pregnancy. Safety standards are set forth for care of both mothers and infants. The Department adopts this chapter to promote freedom of choice with safety.

Notice of Intended Action was published in the Iowa Administrative Bulletin June 1, 1988, as ARC 8811. The rules are similar to the Notice; the changes are as follows: Rule 52.2(1)"k" is amended to require that the medical director supervise a laboratory in a birth center. A new paragraph "l" is added to 52.2(3) to require a Certificate of Need from the Health Facilities Council. The requirements to renew a license are amended to 52.2(1)"f," "g," "h," and "i," instead of 52.2(1)"e," "g," "h," and "i."

When physician is referred to in rule 52.3(135G) and subrule 52.4(4) the explanation has been lengthened for clarity. Duties of the Director of Medical Affairs in rule 52.3(135G) have been increased to include periodic review and continuing maintenance of policies, procedures, and protocols. Subrule 52.9(3) has been amended by adding paragraph "h," which requires the health record of the mother and newborn be reviewed and signed by the consulting physician after delivery.

Amendments are made in response to written and oral comment.

These rules are intended to implement 1987 Iowa Code supplement chapter 135G.

These rules are effective November 23, 1988.

Adopt the following chapter.

CHAPTER 52 BIRTH CENTERS

481—52.1(135G) Definitions. For the purpose of these rules the definitions set out in 1987 Iowa Code supplement section 135G.1 shall be considered to be incorporated verbatim in the rules. The use of the word "shall" indicates that standard is mandatory.

481—52.2(135G) License. Each facility shall obtain a license (Form 427-0059) from the department. This license shall be:

- 1. Posted in each facility so the public can see it easily, (III)
2. Valid only for the premises and person named on the license and not be transferable, and (III)
3. Valid for one year from the date of issuance.

52.2(1) To obtain a birth center license for a facility not currently licensed as a birth center the applicant shall:

- a. Submit application (Form 427-0087) to the department.
b. Meet all of the requirements contained in this chapter.
c. Submit a letter of intent and a written description of programs and services to be provided.
d. Submit a floor plan which accurately reflects the current status of the building. The floor plan shall show:
(1) Room areas in proportion,
(2) Room dimensions,
(3) Bathrooms,
(4) Window and door locations, and
(5) Use of each room.
e. Submit a photograph of the front and side elevations of the facility.
f. Submit the license fee of \$500.

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g. Comply with state and local statutes and ordinances applicable at the time of licensure.

h. Have on record a certificate signed by the state fire marshal or deputy state fire marshal which states that fire safety requirements have been met.

i. Submit a report of the most recent approved water test as required by the department of natural resources for public water supplies, if the water supply is from a private source.

j. Arrange for storage of drugs and pharmaceuticals in consultation with the board of pharmacy.

k. Assure laboratory services by having:

(1) A laboratory on the premises supervised by the medical director, or

(2) A signed agreement with a laboratory supervised by a pathologist.

l. Obtain a certificate of need from the health facilities council.

52.2(2) To renew a license the applicant shall:

a. Meet requirements set out in 52.2(1)"f," "g," "h," and "i."

b. Submit a description of changes in program and services to be provided and changes in the facility, and

c. Submit application (Form 427-0087) to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, 90 days before the renewal date on the current license.

52.2(3) Variances. A variance from these rules may be granted by the director of the department.

a. To request a variance the licensee shall:

(1) Submit request for variance (Form 427-0080), to the department of inspections and appeals at the address above,

(2) Cite the rule or rules from which a variance is desired,

(3) State why compliance with the rule or rules cannot be accomplished,

(4) Explain alternate arrangements or circumstances which justify the variance, and

(5) Demonstrate that the requested variance will not endanger the health, safety or welfare of any client.

b. Upon receipt of request for a variance the director shall:

(1) Evaluate the alternate arrangements or circumstances which are presented,

(2) Study the probable effect of the requested variance on the health, safety, or welfare of the client, and

(3) Consult with the applicant if additional information is required.

52.2(4) Based on these factors, the variance shall be either granted or denied within 45 days of receipt of request. Variances that are granted may be reviewed at the discretion of the director and revoked as deemed necessary. The approved variance shall remain in effect as long as alternate arrangements or circumstances continue to maintain the health, welfare, and safety of the clients.

52.2(5) Change of ownership. When a birth center is to be sold, transferred, assigned, or leased, the licensee shall:

a. Notify current clients of the pending action at least 30 days before action is taken.

b. Inform the department of the name and address of the purchaser, transferee, assignee or lessee at least 30 days before the action is to be taken, and

c. Submit a written authorization for the department to release requested information, except that which

identifies individual mothers or children, to the prospective purchaser, transferee, assignee, or lessee.

(1) Information released shall not include identification of individual clients, and

(2) The purchaser may be obligated to pay for copies of documents.

d. To obtain a license when the ownership of a currently licensed birth center changes, the new applicant shall:

(1) Meet all requirements of 52.2(1)"a" through "j"; and

(2) Submit application (Form 427-0087) to the department at least 30 days prior to the planned change of ownership.

52.2(6) At least 60 days before a birth center is physically altered, modified, or expanded the licensee shall submit plans to the department for recommendations and approval.

52.2(7) A birth center license may be denied, suspended or revoked if the department finds that a facility has failed to comply with 481—Chapter 52 or Iowa Code chapter 135G.

a. Notice. When the department denies, suspends or revokes a license, the licensee or applicant shall be notified by registered mail or by personal service.

b. Hearing. The applicant or licensee may request a hearing on the decision of the department.

(1) The request must be in writing and must be mailed within 30 days of the receipt of the notice to: Department of Inspections and Appeals, Division of Health Facilities, Lucas State Office Building, Des Moines, Iowa 50319.

(2) The status of the license remains until the final agency action is taken.

(3) The hearing shall be held pursuant to 481—50.6 (10A).

c. Appeal. The decision of the hearing officer is a proposed decision and becomes final unless appealed to the director within ten days pursuant to 481—50.6(10A).

52.2(8) Penalties. When a facility is found to be in violation of Iowa Code chapter 135G or 481—Chapter 52, the department may:

a. Impose a fine in an amount up to \$500 per day. Determination of the amount of the fine is based on:

(1) The severity of the violation, including the probability that death or serious harm to the health and safety of any person will result or has resulted,

(2) The extent to which the provisions of this chapter and other administrative rules were violated,

(3) Actions taken by the licensee to correct the violations or to remedy situations complained about,

(4) Any previous violations by the licensee.

b. Issue an emergency order immediately suspending or revoking a license when the department determines that any condition in the licensed birth center presents a clear and present danger to the public health and safety.

c. Impose an immediate moratorium on elective admissions to any licensed birth center when the department determines that any condition in the birth center presents a threat to the public health and safety.

d. Maintain action in the name of the state for injunction or other process to enforce Iowa Code chapter 135G and 481—Chapter 52.

Any person who establishes, conducts, manages or operates any birth center without a license shall be guilty of a simple misdemeanor. Each week of continuing violation after conviction shall be considered a separate offense. The department shall enjoin an unlicensed birth center from operating.

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481—52.3(135G) Direction. Each birth center, whether organized as a proprietary or voluntary service under sole ownership or corporate group, shall have a governing body with full authority and responsibility for overall policy and fiscal management of the facility and services. The governing body shall:

1. Develop and make available to the department a table of organization which shows the position of each staff member.

2. Be responsible for the appointment of the director of the birth center and a director of medical affairs.

The director of the birth center shall have administrative ability and shall be responsible for the operation and maintenance of the facility. If the director is not a physician with a valid license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, or a licensed nurse midwife, a licensed nurse midwife shall be appointed director of midwifery services.

The director of medical affairs shall be a licensed physician in good standing with hospital obstetrical privileges and shall advise and consult with the birth center staff and approve policies, procedures and protocols related to midwifery management of care and medical management of pregnancy. These shall relate to birth, postpartum, newborn and gynecologic health care. The director of medical affairs shall periodically review previously developed policies, procedures and protocols and ascertain the need for amendment, if any.

3. Adopt bylaws which include criteria for staff and consultation appointments, delineation of clinical privileges and organization of staff.

481—52.4(135G) Staff requirements. There shall be sufficient professional staff to provide services for operation and maintenance of the birth center.

52.4(1) Clinical staff shall be on duty at all times when clients are present. All clinical staff members and consultants shall hold valid Iowa licenses.

52.4(2) A licensed nurse midwife or licensed physician shall attend each birth. A second nurse or physician shall also be present at each birth. All licensed staff shall be certified annually in basic life support.

52.4(3) Any staff member or volunteer not licensed as a nurse, nurse midwife or physician shall be trained by and be under the supervision of a professional staff member.

52.4(4) All staff shall have an annual medical evaluation by a physician with a valid license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy certifying that the staff member is physically and emotionally capable of performing assigned tasks.

481—52.5(135G) Client selection. Each client served at a birth center shall be confirmed as having a low-risk pregnancy by her physician. The client shall begin prenatal care before 20 weeks after conception. The following list of complications of pregnancy shall require the midwife at the birth center to call and confer with the client's consulting physician to determine if the pregnancy continues to be low risk:

52.5(1) Previous history.

a. One or more previous premature labors or history of low birth weight infants (less than 2500 grams),

b. Excessively large previous infants (greater than 4000 grams),

c. Cesarean section,

d. Neonatal loss,

e. Two or more abortions,

f. Fetal loss,

g. Suspected incompetent cervix,

h. Medical indication for termination of pregnancy,

i. Diagnosed abnormalities of genital tract,

j. Need for special neonatal care,

k. Infant with a known or suspected genetic or familial disorder or mental retardation,

l. Severe emotional problem associated with pregnancy or delivery.

m. Hepatitis B.

52.5(2) Early pregnancy.

a. Maternal diabetes mellitus,

b. Client less than 18 or more than 35 years of age,

c. Psychiatric disorder,

d. Marked nutritional abnormality (obesity, abnormal stature, low weight for height, etc.),

e. Malignancy,

f. Unresponding urinary tract infection,

g. Suspected ectopic pregnancy,

h. Suspected missed abortion,

i. Severe hyperemesis,

j. Exposure to teratogens (radiation, infection, chemicals),

k. Positive serologic test for syphilis,

l. Pregnancy complicated by medical disease (endocrine, renal, cardia, hypertensive, etc.),

m. Anemia not responsive to iron therapy,

n. Drug addiction,

o. Vaginal bleeding or unusual abdominal pain.

52.5(3) Late pregnancy.

a. Third trimester uterine bleeding,

b. Toxemia of all classes,

c. Polyhydramnios or oligohydramnios,

d. Antepartum fetal death,

e. Thromboembolic disease,

f. Multiple pregnancy,

g. Need for fetal maturation studies,

h. Inappropriate fetal growth for gestational age (too small or too large),

i. Persistent abnormal presentation,

j. Postdate pregnancy of 42 weeks,

k. Rupture of membranes for more than 12 hours without labor, or evidence of amnionitis or sepsis at any time,

l. Premature labor (less than 36 weeks of gestation),

m. Induction of labor,

n. Tumor or other obstruction of birth canal,

o. Suspected fetopelvic disproportion,

p. Clinical evidence of active herpes disease.

52.5(4) Intrapartum.

a. Inadequate progress in labor, suspected fetopelvic disproportion or abnormal presentation,

b. Need for operative delivery,

c. Fetal distress suspected by abnormality of the fetal heart rate, fetal acidosis, or passage of meconium,

d. Fever or suspected amnionitis or sepsis,

e. Umbilical cord prolapse,

f. Any conditions listed in the previous subrule which appear first during labor,

g. Rh isoimmunization,

h. Identified fetal anomaly.

481—52.6(135G) Consultation. Each client shall have a consulting physician who currently has privileges to

INSPECTIONS AND APPEALS DEPARTMENT[481] (cont'd)

provide obstetrical services in a licensed hospital. The client shall be examined by the consulting physician at least twice during her pregnancy, at the time she enters care and during the third trimester.

52.6(1) The consulting physician shall sign an agreement with the birth center to provide advice and services.

52.6(2) The client shall have a consulting physician who currently has hospital pediatric privileges and who agrees to provide consultation and care for the newborn baby.

481—52.7(135G) **Transfer to hospital.** If complications arise during labor or birth or following birth, the mother or baby shall be transferred to a hospital for obstetrical or newborn care.

52.7(1) The birth center shall have a signed agreement with the participating hospitals stating that transferred mothers and babies will be accepted for admission if problems arise during labor, birth, or soon after birth. This agreement shall be reviewed and signed annually.

52.7(2) The birth center shall develop a written policy and procedure for arranging transfer to a hospital.

a. The birth center shall maintain a list of available neonatal and adult transportation services including ground and air ambulance services with the qualifications of each service and telephone numbers.

b. This list shall be posted near appropriate telephones.

c. These lists and the transfer protocols shall be reviewed and updated annually.

52.7(3) The birth center shall ensure that ambulance stretchers and wheelchairs will easily be able to enter and exit each birth room and the birth center by conducting a practice run with an ambulance service.

481—52.8(135G) **Facility.** All birth centers shall be designed, constructed, maintained, and operated to minimize the possibility of a fire or other life-threatening emergency to the staff and clients.

Hallways and doors providing entry and exit to the birth center and birth rooms shall be demonstrated to accommodate an ambulance stretcher.

An emergency power source shall be available that meets the fire marshal's requirements.

Written copies of a plan for evacuation in event of fire shall be available to all personnel. All personnel shall be instructed and kept informed of their responsibilities under the plan and supervised drills shall be conducted at least annually.

52.8(1) **Patient care areas.**

a. The family room shall include a play area for children and a living room setting of tables and chairs. It shall include some sleeping accommodation for use by family members.

b. The birth rooms shall be at least 120 square feet with at least 8-foot ceilings.

c. A sink with hot and cold running water with elbow-wrist controls shall be in or adjacent to each birth room.

d. Fixed or portable toilets shall be available to the mother in labor. A separate toilet shall be available for family and staff use.

e. Bath or shower facilities shall be available to the mother in labor.

f. Separate segregated storage areas shall be available for:

- (1) Sterile supplies and equipment,
- (2) Clean supplies and equipment,
- (3) Janitorial supplies,

(4) Soiled supplies and equipment.

g. Storage and disposal of waste materials shall be in compliance with subrule 51.7(34).

h. A utility area shall be available for washing, sterilizing and handling of equipment. Sterilization may be done off the premises.

i. An area with easy access to birth rooms or in birth rooms shall be designated for emergency equipment, medication, and supplies outlined in protocols for practice.

j. Consultation and examination rooms shall be large enough to hold an examination table, stool, handwashing facilities, writing desk, and chairs. Privacy and confidentiality shall be ensured.

52.8(2) **Office area.** When business offices are part of the birth center facility the office suite shall have a closed door between the office area and the patient care area. The area designated as the business area shall include:

a. A reception area, which is large enough to allow clients to wait in comfort.

b. A support service area such as a library, record storage area, staff office, and laboratory.

52.8(3) **Equipment.**

a. Birth room furnishings shall be constructed of materials that are easily cleaned and maintained and shall include:

(1) A double bed or bed large enough to safely hold the mother and baby,

(2) Comfortable chair or chairs,

(3) Bedside and procedure table,

(4) A bassinet,

(5) Space for birth room supplies, equipment and family belongings.

b. The birth center may arrange for laundry to be done away from the birth center. If not, a washer and dryer shall be maintained in optimum working order. Clean linens shall be kept separated from soiled or contaminated linen.

c. Resuscitation equipment for both mother and infant.

(1) **Infant.** A table-like area of appropriate size and height shall be designated as an infant resuscitation area. This area shall have a radiant heat source fixed at the height recommended by the manufacturer. A resuscitation tray as described in protocols shall also be available in the area.

(2) **Mother.** Equipment for adult resuscitation as required by procedures outlined in protocols shall be maintained in an area convenient for emergency use.

d. Equipment needed to administer intravenous fluids shall be stored in an area convenient for emergency use.

e. A supply of oxygen shall be available for emergency use.

481—52.9(135G) **Administration.** A policy and procedure manual, adopted by the governing body, shall include all contracts and agreements of the birth center and shall be available for staff use and inspection by the department at all times. Policies and procedures shall also address provision of food for clients and their families, infection control, housekeeping, sanitation, disaster plans, medical record procedures, and criteria by which risk status will be established.

52.9(1) **Protocols for the management of routine and emergency care.** Protocols shall be developed by the director of medical affairs and the director or the director of midwifery services. They shall be available on-site at

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all times. Annual review and revisions shall be documented.

a. Protocols shall address at least the following:

- Provision of laboratory services,
- Prenatal care,
- Delivery care,
- Emergencies with mothers,
- Emergencies with infants,
- Emergency transfers of mothers and infants,
- Immediate postpartum care,
- Newborn care,
- Discharge criteria for the infant,
- Discharge criteria for the mother,
- Infection control.

b. Infection control protocols for handling of blood, body fluids, and body wastes shall be consistent with 1987 Center for Disease Control Guidelines published August 21, 1987, Vol. 36, No. 25 of Morbidity and Mortality Weekly Report available from U.S. Department of Health and Human Services, Public Health Services, Center for Disease Control, Atlanta, Georgia.

52.9(2) Personnel policies. Personnel policies shall include job descriptions for all personnel, employment agreements, description of required orientation, training and educational preparation. These policies shall be available on-site.

52.9(3) Management records. The quality of the management of care of mothers, babies and families shall be evaluated by a review of records kept by staff of the birth center. A record of the following activities shall be included in the records, maintained on-site, and made available for review by the department:

- a. Regular staff meetings;
- b. Case reviews, which must occur at least quarterly and must include all transfers and morbidity;
- c. Midwifery audits conducted at least quarterly to evaluate the process and outcome of cases and client satisfaction;
- d. Regular equipment maintenance; and
- e. Drills for emergency procedures.

52.9(4) Health records. A health record shall list all services provided while the mother and fetus or newborn are under the care of the birth center. The record shall:

- a. Be available at all times,
- b. Include all reports of outside examinations or treatments and all related correspondence,
- c. Be confidential and released only on the signature of the mother or, in the case of the baby, the signature of a parent or when the record is available by law according to Iowa Code section 135G.15(3)"b."
- d. Be made available to the department during licensure or complaint surveys,
- e. Accompany, in copy form, the mother or newborn if either is transferred for other services,
- f. Be stored in a secure manner and be readily retrievable,
- g. Include:
 - (1) Identifying information,
 - (2) Risk assessments,
 - (3) Information relating to prenatal visits,
 - (4) Information relating to the course of labor and intrapartum care,
 - (5) Information relating to consultation, referral and transport to a hospital,
 - (6) Newborn assessment, Apgar score, record of required treatments and follow-up,

(7) Postpartum follow-up,

(8) Documentation of newborn metabolic testing as required by Iowa Code chapter 136A, and

h. Be reviewed and signed by the consulting physician after delivery.

52.9(5) Administrative records. The birth center shall maintain state inspection reports which shall be made available to any person. The person requesting the report may be required to pay a reasonable fee to cover copying costs. Inspection reports shall be maintained in the records of the birth center for five years.

52.9(6) Birth and death reports. Certificates of births, newborn deaths and stillbirths shall be reported as required by Iowa Code chapter 144.

52.9(7) Annual report. An annual report shall be submitted to the department which shall include:

- 1. Number of clients,
- 2. Number of births, deaths and referrals, and
- 3. Reasons for the deaths and referrals.

The content of the annual report may result in further review by the department to determine if violations are occurring.

481—52.10(135G) Services. Each client and family shall be fully informed of the policies and procedures of the licensed birth center, including, but not limited to:

- 1. The selection of clients,
- 2. The expectation for prenatal care and self-help involving the client and family,
- 3. The qualifications of the clinical staff,
- 4. Conditions which may result in a transfer to physician management or a hospital,
- 5. The philosophy of childbirth care practiced by the staff,
- 6. Services available, and
- 7. The customary length of stay after delivery.

52.10(1) Informed consent. No client shall be accepted for care at the birth center until she has signed a form indicating she has been informed of the possible risks and benefits of being enrolled in the birth center program for pregnancy and birth care. This form shall be developed by the department and used by the birth centers.

52.10(2) Program of care. The birth center shall provide at least:

- a. A record of the personal, medical and family history,
- b. A physical examination and laboratory tests,
- c. A continuous assessment of risk to mother and baby,
- d. Prenatal visits which comply with standards of the American College of Obstetricians and Gynecologists,
- e. Prenatal education that includes the importance of nutrition; information on adverse effects of smoking, alcohol and other drugs; preparation for birth; breast feeding; and care of the newborn,
- f. Intrapartum and postpartum services that foster parental control and responsibility in giving birth and bonding to the newborn,
- g. Labor support for the client and her family,
- h. Professional attendance at the birth, immediate postpartum care and newborn assessment, and
- i. Surveillance and documentation of fetal heart rate and uterine contractions during labor.

52.10(3) Other services. Services not provided by the birth center and available in the community shall be made available to clients through referral.

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52.10(4) Emergency consultation, referral and transfer. Emergency consultation or referral and transfer to obstetric and pediatric care or hospital obstetrical and newborn services shall be provided by the center when, in the course of pregnancy, labor or postpartum, risk factors are identified which may preclude continuation of care by the center.

a. Circumstances which shall require physician consultation and may require transfer of a client to a hospital include, but are not limited to:

- (1) Inadequate progress in labor, suspected fetopelvic disproportion or abnormal presentation,
- (2) Need for operative delivery,
- (3) Vaginal bleeding or unusual abdominal pain,
- (4) Indications of fetal distress,
- (5) Suspected amnionitis or sepsis,
- (6) Suspected systemic infection,
- (7) Umbilical cord prolapse, or
- (8) Any condition listed in rule 52.4(135G) which first appeared during labor.

b. Circumstances which require transfer of a newborn to a hospital shall include:

- (1) Less than 37 weeks gestation with a birth weight less than 2500 grams,
- (2) Respiratory distress or cyanosis lasting longer than 15 minutes,
- (3) Exposure to infection,
- (4) Neonatal seizures,
- (5) Suspected neonatal sepsis or meningitis,
- (6) Congenital anomalies requiring diagnostic evaluation or neonatal surgery,
- (7) Meconium aspiration,
- (8) An Apgar score of six or less at five minutes,
- (9) Apnea,
- (10) Gastrointestinal distress as exemplified by bilious vomiting, continuous vomiting, abdominal distension, and bloody diarrhea,
- (11) Suspected hypoglycemia documented by dextro stick or other similar method.

52.10(5) Surgical procedures. Surgical procedures shall be limited to those normally performed during uncomplicated childbirth, such as episiotomy and repair. Other surgical procedures such as forceps, tubal ligation, abortion, or cesarean section shall not be performed in birth centers.

52.10(6) Analgesia and anesthesia. Pain control shall depend primarily on close human support, psychological analgesia and adequate preparation for the birth experience. Local anesthesia for pudendal block and episiotomy and repair may be administered according to procedures outlined in approved protocols.

52.10(7) Chemical agents. Labor may not be stimulated or augmented with chemical agents. Labor may be inhibited with chemical agents only when prescribed by a physician in anticipation of an emergency transfer.

52.10(8) Discharge follow-up. A mother and her infant shall be dismissed within 24 hours after the birth of the infant. If a mother or infant is retained at the birth center for more than 24 hours after the birth, a report shall be filed with the department within 48 hours of the birth describing the circumstances and the reasons for the decisions.

a. A prophylactic shall be instilled in the eyes of each newborn in accordance with Iowa Code section 140.13.

b. Postpartum evaluation and follow-up care shall be provided, which shall include:

- (1) A physical examination of the infant,
- (2) Metabolic screening tests required by Iowa Code chapter 136A,
- (3) Referral to sources for pediatric care,
- (4) Maternal postpartum assessment,
- (5) Instruction in child care, including immunizations,
- (6) Family planning services, and
- (7) Referral to a licensed hospital.

481—52.11(135G) Evaluation. The birth center shall have available on-site reports of periodic self-evaluation of the service that shall include, but not be limited to:

1. Demonstration of how program goals and objectives are being met;
2. Analysis of data collected on use of services and outcomes for mothers and babies;
3. Determination of client satisfaction.

These rules are intended to implement 1987 Iowa Code supplement chapter 135G.

[Filed 9/30/88, effective 11/23/88]

[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9355**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104 and 135C.14, the Iowa Department of Inspections and Appeals amends Chapter 57, "Residential Care Facilities"; Chapter 58, "Intermediate Care Facilities"; Chapter 59, "Skilled Nursing Facilities"; Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)"; Chapter 63, "Residential Care Facilities for the Mentally Retarded"; and Chapter 64, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 1988, as **ARC 9121**.

These rules set standards for infection control in Iowa health care facilities, and are intended to protect residents, staff, and visitors from communicable diseases. The Center for Disease Control has established workable techniques for controlling infection in care facilities, and Iowa facilities are expected to be consistent with Center for Disease Control Standards.

The rules require use of disposable items with exceptions cited. Requirements for health maintenance physical examinations for staff are updated.

INSPECTIONS AND APPEALS DEPARTMENT[481] (cont'd)

There are conditions which preclude providing service in a care facility. People who may transmit a disease which can harm others through normal working contact may not work in a facility while they are ill. Guidelines of the Center for Disease Control are used to assess specific situations.

The rules provide for an infection control committee in each facility. This committee will help maintain control by reviewing policies annually and suggesting revisions.

A public hearing was held on September 15, 1988. No comment was made.

One written comment was considered. Because of the disability level of these residents and their behavior problems no change was made.

These amendments are similar to those published under Notice. Information about where to request a copy of Center for Disease Control Guidelines was added to Item 9.

These amendments are intended to implement Iowa Code sections 135C.14(3), 135C.14(5), and 135C.14(8).

These amendments will become effective November 23, 1988.

ITEM 1. Rescind subrules 57.11(3), 58.10(3), 59.12(3), 63.9(3), and 64.13(15) and insert the following in lieu thereof:

There shall be written personnel policies for each facility. Personnel policies shall include the following requirements:

a. Employees shall have a physical examination and Tuberculin test before employment,

b. Employees shall have a physical examination at least every four years, including an assessment of tuberculosis status.

ITEM 2. Rescind subrules 58.38(3), 59.43(3), and 64.26(8), paragraph "b," and insert the following in lieu thereof:

There shall be disposable or one-time use items available with provisions for proper disposal to prevent reuse except as allowed by subrule 58.10(8)"h," 59.12(10)"h," or 64.12(14)"h."

ITEM 3. Rescind subrules 57.12(1), paragraphs "c" and "d," 58.11(1), paragraphs "c" and "d," 59.13(1), paragraphs "c" and "d," 63.11(1), paragraphs "c" and "d," and insert the following in lieu thereof:

c. No person shall be allowed to provide services in a facility if the person has a disease;

(1) Which is transmissible through required workplace contact,

(2) Which presents a significant risk of infecting others,

(3) Which presents a substantial possibility of harming others, and

(4) For which no reasonable accommodation can eliminate the risk.

Refer to 1983 CDC Guidelines PN85-923401-LL to determine 1, 2, and 3 above.

d. Reserved.

ITEM 4. Rescind subrules 64.13(12) and 62.9(2), paragraph "a," and insert the following in lieu thereof.

No person shall be allowed to provide services in a facility if the person has a disease;

(1) Which is transmissible through required workplace contact,

(2) Which presents a significant risk of infecting others,

(3) Which presents a substantial possibility of harming others, and

(4) For which no reasonable accommodation can eliminate the risk.

Refer to 1983 CDC Guidelines PN85-923401-LL to determine 1, 2, and 3 above.

ITEM 5. Delete the word "transportation" in subrules 57.11(10), 58.10(10), 59.12(10), and 64.12(13) and insert "transmission" in lieu thereof.

ITEM 6. Renumber subrule 63.9(10) as 63.9(12) and insert the word "transmission" in lieu of the word "transportation".

ITEM 7. Rescind subrules 57.11(5), 58.10(5), 63.9(5), and 64.13(16).

ITEM 8. Rescind subrule 58.10(8) and insert the following in lieu thereof and also as new subrules 59.12(11) and 64.12(14):

Infection control program. Each facility shall have a written and implemented infection control program addressing the following:

a. Techniques for hand washing consistent with 1985 Center for Disease Control (CDC) Guidelines;

b. Techniques for handling of blood, body fluids, and body wastes consistent with 1987 CDC Guidelines;

c. Decubitus care;

d. Infection identification;

e. Resident care procedures consistent with 1987 CDC Guidelines to be used when there is an infection present;

f. Sanitation techniques for resident care equipment;

g. Techniques for sanitary use and reuse of enteral feeding bags, feeding syringes and urine collection bags;

h. Techniques for use and disposal of needles, syringes, and other sharp instruments consistent with 1987 CDC Guidelines and 567—100.3(2) and 102.14(455B) Iowa Administrative Code;

i. Aseptic techniques when using:

1. Intravenous or central line catheter,

2. Urinary catheter,

3. Respiratory suction, oxygen or humidification,

4. Dressings, soaks, or packs,

5. Tracheostomy,

6. Nasogastric or gastrostomy tubes.

CDC Guidelines may be obtained at cost from the Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-4115.

ITEM 9. Rescind subrule 62.19(4) and insert the following in lieu thereof and also as new subrules 57.11(11) and 63.9(10):

Each facility shall have a written and implemented infection control program addressing the following:

a. Techniques for hand washing consistent with 1985 Center for Disease Control (CDC) Guidelines;

b. Techniques for handling of blood, body fluids, and body wastes consistent with 1987 CDC Guidelines;

c. Decubitus care;

d. Infection identification;

e. Resident care procedures consistent with 1987 CDC Guidelines to be used when there is an infection present;

f. Sanitation techniques for resident care equipment;

g. Techniques for sanitary use and reuse of enteral feeding bags, feeding syringes and urine collection bags;

h. Techniques for use and disposal of needles, syringes, and other sharp instruments consistent with 1987 CDC Guidelines.

CDC Guidelines may be obtained at cost from the Department of Inspections and Appeals, Health Facil-

INSPECTIONS AND APPEALS DEPARTMENT[481] (cont'd)

ities Division, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-4115.

ITEM 10. Add new subrules 57.11(12), 62.19(5), and 63.9(11) as follows:

Aseptic techniques. If a resident needs any of the treatment or devices on the list below, written and implemented procedures regarding aseptic techniques shall be followed.

1. Intravenous or central line catheter,
2. Urinary catheter,
3. Respiratory suction, oxygen or humidification,
4. Dressings, soaks, or packs,
5. Tracheostomy,
6. Nasogastric or gastrostomy tubes.

Further amend 62.19(135C) by renumbering subrules 62.19(5) to 62.19(11) as 62.19(6) to 62.19(12).

ITEM 11. Amend rule 58.10(135C) by adding the following as subrule 58.10(9) and renumbering subsequent subrules and also add a new subrule 64.18(4).

Infection control committee. Each facility shall establish an infection control committee of representative professional staff responsible for overall infection control in the facility. (III)

a. The committee shall annually review and revise the infection control policies and procedures to monitor effectiveness and suggest improvement. (III)

b. The committee shall meet at least quarterly, submit reports to the administrator, and maintain minutes in sufficient detail to document its proceedings and actions. (III)

c. The committee shall monitor the health aspect and the environment of the facility. (III)

These rules are intended to implement Iowa Code sections 135C.14(3), 135C.14(5), and 135C.14(8).

[Filed 9/30/88, effective 11/23/88]
[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9353**INSPECTIONS AND APPEALS
DEPARTMENT[481]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Iowa Department of Inspections and Appeals amends Chapter 58, "Intermediate Care Facilities"; Chapter 59, "Skilled Nursing Facilities"; and Chapter 64, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 1988, as ARC 9119.

The amended subrules resolve a conflict between state and federal law and clearly divide responsibility for care of people who are involved in a Medicare hospice program and live in an intermediate care or skilled nursing facility.

These amendments are similar to those published under Notice. The words "for mentally retarded" were added to subrule 64.19(9). No comment was received.

These amendments are intended to implement 1988 Iowa Acts, Senate File 2159, and will become effective November 23, 1988.

ITEM 1. Amend subrule 58.14(1) as follows:

58.14(1) Each resident in an intermediate care facility shall designate a licensed physician, who may be called when needed. Professional management of a resident's care shall be the responsibility of the hospice program when:

a. The resident is terminally ill, and

b. The resident has elected to receive hospice services under the federal Medicare program from a Medicare certified hospice program, and

c. The facility and the hospice program have entered into a written agreement under which the hospice program takes full responsibility for the professional management of hospice care.

ITEM 2. Amend rule 481—59.17(135C) by adding the following new subrule:

59.17(8) Each resident in a skilled care facility shall designate a licensed physician who may be called when needed. Professional management of a resident's care shall be the responsibility of the hospice program when:

a. The resident is terminally ill, and

b. The resident has elected to receive hospice services under the federal Medicare program from a Medicare certified hospice program, and

c. The facility and the hospice program have entered into a written agreement under which the hospice program takes full responsibility for the professional management of hospice care.

ITEM 3. Amend rule 481—64.19(135C) by adding the following new subrule:

64.19(9) Each resident in an intermediate care facility for the mentally retarded shall designate a licensed physician who may be called when needed. Professional management of a resident's care shall be the responsibility of the hospice program when:

a. The resident is terminally ill, and

b. The resident has elected to receive hospice services under the federal Medicare program from a Medicare certified hospice program, and

c. The facility and the hospice program have entered into a written agreement under which the hospice program takes full responsibility for the professional management of hospice care.

These rules are intended to implement 1988 Iowa Acts, Senate File 2159.

[Filed 9/30/88, effective 11/23/88]
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ARC 9354**INSPECTIONS AND APPEALS
DEPARTMENT[481]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Iowa Department of Inspections and Appeals amends Chapter 58, "Intermediate Care Facilities," Iowa Administrative Code, by

INSPECTIONS AND APPEALS DEPARTMENT[481] (cont'd)

adding standards for licensing special units for people with Alzheimer's disease or related disorders.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 1988, as ARC 9120.

These standards will apply only when a facility requests that an Alzheimer's Disease and Related Disorders unit be licensed. A facility need not license a separate unit in order to care for people afflicted with Alzheimer's or related disorders. However, facilities which advertise a licensed unit must meet the new standards.

This rule assures that personnel in a special unit are educated and that appropriate special programming is provided. The rule takes into consideration the need for increased security to ensure safety for residents.

A public hearing was held on September 15, 1988. No comment was made. No written comment was received.

This rule is identical to that published under Notice.

This rule is intended to implement Iowa Code section 135C.14(8) and will become effective November 23, 1988.

Amend 481—Chapter 58 by adding the following new rule:

481—58.54(135C) Alzheimer's disease and related disorders.

58.54(1) An intermediate care facility which chooses to care for residents in a distinct part may request a license for an Alzheimer's disease and related disorders unit. This license will be in addition to its ICF license. The license shall state the number of beds in the unit.

a. Application for this category of care shall be submitted on a form provided by the department.

b. Plans to modify the physical environment shall be submitted to the department. The plans shall be reviewed based on requirements of 481—Chapter 61.

58.54(2) A statement of philosophy shall be developed for each unit which states the beliefs upon which decisions will be made regarding a licensed unit. Objectives shall be developed for each unit as a whole. The objectives shall be stated in terms of expected results.

58.54(3) A program of care shall be submitted to the department for approval 60 days before a separate Alzheimer's disease and related disorders (ADRD) unit is opened in a long-term care facility. A new program of care shall be submitted when services are substantially changed. The program of care shall:

- a. Describe the population to be served,
- b. State philosophy and objectives,
- c. List admission and discharge criteria,
- d. Include a copy of the floor plan,
- e. List the titles of policies and procedures developed for the unit,
- f. Propose a staffing pattern,
- g. Set out a plan for specialized staff training,
- h. State visitor, volunteer, and safety policies,
- i. Describe programs for activities, social services and families, and
- j. Describe the interdisciplinary care planning team.

58.54(4) The policies and procedures for the facility shall be followed except as defined in separate written policies and procedures which shall be implemented in each ADRD unit. There shall be:

a. Admission and discharge policies and procedures which state the criteria to be used to admit residents and the evaluation process which will be used. These policies shall require a statement from the attending

physician agreeing to the placement before a resident can be moved into a unit.

b. Safety policies and procedures which state the actions to be taken by staff in the event of a fire, natural disaster, emergency medical or catastrophic event. Safety procedures shall also explain steps to be taken when a resident is discovered to be missing from the unit and when hazardous cleaning materials or potentially dangerous mechanical equipment is being used in the unit. The facility shall identify its method for security of the unit and the manner in which the effectiveness of the security system will be monitored.

c. Program and service policies and procedures which explain programs and services offered in the unit including the rationale.

d. Policies and procedures concerning staff which state minimum numbers, types, and qualifications of staff in the unit.

e. Policies about visiting which suggest times and assure the residents' rights to free access to visitors.

f. Quality assurance policies and procedures which list the process and criteria which will be used to monitor and to respond to risks specific to the residents. This shall include but not be limited to drug use, restraint use, infections, incidents, and acute behavioral events.

58.54(5) Preadmission assessment of physical, mental, social and behavioral status shall be completed to determine whether the applicant meets admission criteria. This assessment shall be completed by a registered nurse and a staff social worker or social work consultant and shall become part of the permanent record upon admission of the resident.

58.54(6) All staff working in an Alzheimer's disease and related disorders unit shall have training appropriate to the needs of the people who will live there.

a. Everyone working in this unit shall be oriented to the needs of people with Alzheimer's disease and related disorders upon assignment to the unit. They shall have special training appropriate to their job description within 30 days of assignment to the unit. The orientation shall be at least six hours. The following topics shall be covered:

1. Explanation of the disease or related disorder,
2. Symptoms and behaviors of memory impaired people,
3. Progression of the disease,
4. Communication with ADRD unit residents,
5. Adjustment to care facility residency by the ADRD unit residents, victims and their families,
6. Inappropriate and problem behavior of ADRD unit residents and how to deal with them,
7. Activities of daily living for ADRD residents,
8. Handling combative behavior, and
9. Stress reduction for staff and residents.

b. Licensed nurses, certified aides, certified medication aides, social services personnel, housekeeping and activity personnel shall have a minimum of six hours of in-service training annually. This training shall be related to the needs of ADRD residents. The six-hour training shall count toward the required annual in-service training.

58.54(7) The ratio of staff to residents shall be two hours nursing staff per resident per day computed on a seven-day week. The staff on this unit shall be counted separately. There shall be at least one nursing staff person on the unit at all times.

INSPECTIONS AND APPEALS DEPARTMENT[481] (cont'd)

58.54(8) The Alzheimer's disease and related disorders unit license may be revoked, suspended or denied pursuant to Iowa Code chapter 135C and 481—Chapter 50, Iowa Administrative Code.

[Filed 9/30/88, effective 11/23/88]
[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9352**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals amends Chapter 63, "Residential Care Facilities for the Mentally Retarded," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 1988, as **ARC 9118**.

The amendments expand the population eligible for the demonstration waiver project to include people aged 60 and older.

These amendments are identical to those published under Notice. No comment was received.

These amendments are intended to implement 1988 Iowa Acts, House File 2466, and will become effective November 23, 1988.

ITEM 1. Amend rule 481—63.47 (135C), introductory paragraph, first sentence, as follows:

481—63.47(135C) Demonstration waiver project. The demonstration waiver project is for residential care facilities which serve persons with mental retardation, chronic mental illness, and other developmental disabilities or who are aged 60 or over, having five (5) or fewer residents for persons as specified in Iowa Code section 225C.26.

ITEM 2. Amend subrule 63.47(1), paragraph "f," as follows:

f. Unless documented as appropriate within the residents' individual program plans, the two(2) populations with primary diagnosis of chronic mental illness or mental retardation/developmental disability or people aged 60 and over may not be residents of the same demonstration waiver facility.

These rules are intended to implement 1988 Iowa Acts, House File 2466.

[Filed 9/30/88, effective 11/23/88]
[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9338**MANAGEMENT
DEPARTMENT[541]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 8.6(8), the Iowa Department of Management hereby adopts an amendment to 541—1.8(8), "Access to data in the personnel management information system," Iowa Administrative Code.

In subrule 1.8(1), the sixth additional member was unintentionally excluded from the previous filing of the department rules.

Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on May 4, 1988, as **ARC 8698**.

These rules are identical to the Notice of Intended Action and they will become effective November 23, 1988.

Amend subrule 1.8(1) to read as follows:

1.8(1) Organization. There shall be a personnel management information system board of review consisting of an appointed representative from each of (1) the department of management; (2) the institutions governed by the board of regents; (3) the department of general services; (4) the department of transportation; (5) the department of revenue and finance; and (6) the department of personnel. This board will recommend an administrator who will be the contact person for securing information from the system. The price for the production of a requested report will be the cost as determined by the data processing division of the department of general services. Billings will be accomplished under the rules established by the department of general services.

These rules are intended to implement Iowa Code section 8.6.

[Filed 9/27/88, effective 11/23/88]
[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9339**PERSONNEL DEPARTMENT[581]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Personnel Commission hereby adopts Chapter 31, "Department Procedures for Rule Making."

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 9, 1988, as **ARC 8467**.

A public hearing was held on April 14, 1988. There were no comments from the public on this chapter. The Commission decided at that time to defer adoption of this particular chapter. [Noticed as rule 19.4(19A)]. The Iowa Personnel Commission adopted these rules on September 29, 1988.

Uniform rules on rule-making procedures are added as 581—Chapter 31. However, the regulatory flexibility analysis provisions will not be adopted since rules of the Department typically do not involve issues relevant to small businesses.

PERSONNEL DEPARTMENT[581] (cont'd)

Changes to the Notice of Intended Action include the following:

Renumbered from 19.4(19A) as 581—Chapter 31.

581—31.1(19A) Added language regarding rule-making authority in the department.

Added 31.3(3) Notices mailed.

31.4(3)c - Revised language pertaining to the presiding officer at an oral proceeding.

31.8(1) Added three categories of rules that are exempt from public rule-making procedures.

31.11(1) Added language to provide for public inspection of rule-making records and materials.

Made other nonsubstantive language changes.

These rules are intended to implement Iowa Code section 17A.3.

These rules will become effective November 23, 1988.

ITEM 1. Reserve Chapters 26 through 30 for future use.

ITEM 2. Add Chapter 31 to read as follows:

CHAPTER 31

DEPARTMENT PROCEDURE FOR RULE MAKING.

581—31.1(19A) Applicability. Except to the extent otherwise expressly provided by statute, all adopted rules are subject to the provisions of Iowa Code chapter 17A, the Iowa Administrative Procedure Act, and the provisions of this chapter. The director has that rule-making authority specifically delegated to the director by statute. If rule-making authority is not specifically or by necessary implication vested in the director or another entity, the commission is vested with rule-making authority for the department for matters within the scope of chapter 19A. Unless otherwise specified, the provisions of this chapter pertain to both.

581—31.2(19A) Public rule-making docket.

31.2(1) Docket maintained. A current public rule-making docket shall be maintained.

31.2(2) Anticipated rule making. The rule-making docket shall list anticipated rule-making proceedings. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the department. For each anticipated rule-making proceeding the docket shall contain a listing of the subject matter which may be submitted for consideration for subsequent proposal under the provisions of Iowa Code section 17A.4(1)"a," the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the department of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

31.2(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)"a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of an economic impact statement or a concise statement of reasons has been filed, whether the statement or a fiscal note has been issued, and where the written request, statement, or note may be inspected;
- g. The current status of the proposed rule and any determinations with respect to it;
- h. Any known timetable for decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The date of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

581—31.3(19A) Notice of proposed rule making.

31.3(1) Contents. At least 35 days before the adoption of a rule Notice of Intended Action shall be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority of the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

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

31.3(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 31.10(2).

31.3(3) Notices mailed. Persons desiring to receive mailed copies of future Notices of Intended Action by subscription must file with the department a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail a copy of that notice to subscribers who have filed such a written

PERSONNEL DEPARTMENT[581] (cont'd)

request with the department for mailed Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for the calendar year or the balance thereof.

581—31.4(19A) Public participation.

31.4(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions shall identify the proposed rule to which they relate and shall be submitted to the Iowa Department of Personnel, East 14th Street at Grand Avenue, Des Moines, Iowa 50319-0150, or the person designated in the Notice of Intended Action.

31.4(2) Oral proceedings. Oral proceedings on a proposed rule may be scheduled at any time. An oral proceeding on a proposed rule shall be scheduled if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. The request must contain the following information:

a. A request by one or more persons must be signed by each of them and include the current mailing address of each of them.

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

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

31.4(3) Conduct of oral proceedings.

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

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

c. **Presiding officer.** The presiding officer shall be the chair of the commission or a person designated by the chair for proposed rules under the jurisdiction of the commission, or the director or a person designated by the director for the proposed rules under the jurisdiction of the director.

d. **Conduct of proceeding.** At an oral proceeding on a proposed rule persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at a proceeding must notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceedings, those who participate shall indicate

their current names and current mailing addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

Persons making oral presentations shall avoid restating matters which have already been submitted in writing.

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

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

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

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

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

The presiding officer may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

31.4(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, information may also be obtained concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

581—31.5(19A) Economic impact statement and fiscal note.

31.5(1) Issuance of impact statement. Upon written request of two or more members of the administrative rules review committee or the administrative rules coordinator the department shall issue a statement indicating its estimate of the economic impact of a proposed rule or a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2) or made effective in reliance upon Iowa Code section 17A.5(2)"b," on all persons affected by it and upon the department, or a statement indicating that an estimate cannot be formulated and the reasons for this conclusion. The department may also issue an economic impact statement for a proposed or adopted rule on its own motion.

31.5(2) Impact statement contents. When an economic impact statement is issued in response to a written request from two or more members of the administrative rules review committee or the administrative rules

PERSONNEL DEPARTMENT[581] (cont'd)

coordinator, it shall conform to all lawful and feasible requirements for the statement imposed by the requester. An economic impact statement may contain one or more of the following:

a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

b. A description of the probable quantitative and qualitative impact of the proposed rule upon affected classes of persons;

c. The probable costs to the department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

d. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;

e. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;

f. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered and the reasons why they were rejected in favor of the proposed rule;

g. An indication of both the short-term and long-term consequences of the proposed rule;

h. An indication of the precise methodology used to reach the estimates and the particular data, if any, used to formulate the estimates and their source; and

i. Quantification of the data relied upon to formulate any estimate contained in that impact statement.

31.5(3) Publication and notice of impact statement. The economic impact statement or statement indicating the reasons why an estimate is impossible shall be published in the Iowa Administrative Bulletin at least 15 days in advance of the adoption of the rule if it is requested for a proposed rule, or within 45 days following the time it is requested if it is requested for a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2) or made effective in reliance upon Iowa Code section 17A.5(2)"b."

31.5(4) Fiscal note. If a proposed rule is likely to necessitate additional expenditures by political subdivisions or agencies and entities that contract with a political subdivision to provide services which are beyond the expenditures explicitly provided by state law, a fiscal note estimating those costs shall be formulated by the department. In addition to that estimate, the fiscal note shall indicate the precise methodology used to reach that estimate and the data, if any, used to formulate that estimate and their source. The Notice of Intended Action shall indicate where and how persons may obtain copies of the fiscal note prepared for that proposed rule, which shall, if feasible, be available by the date the Notice of Intended Action is published in the Iowa Administrative Bulletin. If it is determined that the fiscal note issued in the proceeding upon which the rule is based contains errors, the department shall issue a corrected fiscal note.

581—31.6(19A) Time and manner of rule adoption.

31.6(1) Time of adoption. A rule shall not be adopted until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings concerning it, the rule shall be adopted pursuant to the rule-making proceeding or

rule making shall be terminated by publication of a notice to that effect in the Iowa Administrative Bulletin.

31.6(2) Consideration of public comment. Before the adoption of a rule, all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing oral submissions, and any economic impact statement, and fiscal note issued in that rule making proceeding shall be taken into account.

31.6(3) Reliance on agency expertise. Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

581—31.7(19A) Variance between an adopted rule and the proposed rule published under Notice of Intended Action.

31.7(1) A rule shall not be adopted that substantially differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

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

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

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

31.7(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question the following factors shall be considered:

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

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

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

31.7(3) Rule making shall begin within 60 days following receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless it is found that the differences between the adopted rule and the proposed rule are so insubstantial as to make a rule-making proceeding unnecessary. A copy of any finding and the petition to which it responds shall be sent to the petitioner, the administrative rules coordinator, and the administrative rules review committee within three days following its issuance.

31.7(4) Concurrent rule-making proceedings. Nothing in this rule shall take away from the discretion to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

581—31.8(19A) Exemptions from public rule-making procedures.

31.8(1) Omission of notice and comment. To the extent that it is determined that public notice and participation are unnecessary, impracticable, or contrary to the public

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interest in the process of adopting a particular rule, rules may be adopted by the director without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral submissions by the public prior to adoption. The required finding and a brief statement of supporting reasons shall be incorporated in each rule adopted in reliance upon this subrule.

31.8(2) Categories exempt. The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

- a. Rules that implement the precise language of federal law;
- b. Rules that implement the precise language of state law;
- c. Minor changes such as grammar, punctuation or spelling that are otherwise nonsubstantive and serve only to make a correction.

31.8(3) Rules adopted without public proceedings. A standard rule-making proceeding may be initiated for the adoption of a rule that is identical or similar to a rule adopted in reliance upon subrule 31.8(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, a standard rule-making proceeding shall be initiated for any rule specified in the petition that was adopted in reliance upon subrule 31.8(1). The petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days following the receipt of a petition. After a standard rule-making proceeding commenced pursuant to this paragraph, the rule may be readopted without benefit of all usual procedures on the basis of subrule 31.8(1), or other lawful action may be taken, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

581—31.9(19A) Concise statement of reasons.

31.9(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests shall be in writing and mailed to the Iowa Department of Personnel, East 14th Street at Grand Avenue, Des Moines, Iowa 50319-0150. The request shall indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

31.9(2) Contents. The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as adopted, with the reasons for the change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the reasons for overruling the arguments made against the rule.

31.9(3) Time of issuance. After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 45 days after the receipt of the request. A copy of the concise statement of reasons shall be mailed to the requesting party within two working days of the date it is issued.

581—31.10(19A) Contents, style, and form of rule.

31.10(1) Contents. Each adopted rule shall contain the text of the rule and, in addition:

- a. The date the rule was adopted;
- b. A statement of the purpose of the rule;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule; and
- f. The effective date of the rule.

31.10(2) Incorporation by reference. All or any part of a code, standard, rule, or other matter may be incorporated by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, if it is determined that the incorporation of its text in the rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; and shall briefly indicate the subject of the incorporated matter. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the agency and shall make copies available for inspection or copying subject to costs.

31.10(3) References to materials not published in full. When the Code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the Code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department will provide a copy of that full text, subject to costs, upon request.

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

31.10(4) Style and form. In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

581—31.11(19A) Agency rule-making record.

31.11(1) Requirement. The department shall maintain an official rule-making record for each rule it proposes or adopts by publication in the Iowa Administrative

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Bulletin. The rule-making record and materials incorporated by reference shall be available for public inspection.

31.11(2) Contents. The rule-making record shall contain:

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

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

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

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

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

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

g. All petitions for exceptions to, amendments of, or repeal or suspension of, the rule;

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

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

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

31.11(3) Effect of record. Except as otherwise required by law, the rule-making record need not constitute the exclusive basis for action on that rule.

31.11(4) Maintenance of record. The department shall maintain the rule-making record for a period of not less than five years from the date the rule is effective.

581—31.12(19A) Filing of rules. Each rule adopted shall be filed in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal note and any concise statement of reasons that were issued with respect to that rule. If a fiscal note or statement of reasons was not issued until a time subsequent to the filing the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the standard forms prescribed by the administrative rules coordinator shall be used.

581—31.13(19A) Effectiveness of rules prior to publication.

31.13(1) Grounds. A rule may be made effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it is determined that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The required finding and a brief statement of supporting reasons shall be incorporated in each rule adopted in reliance upon this subrule.

31.13(2) Special notice. When a rule is made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3), reasonable efforts shall be employed to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires that the department employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following: radio, newspaper, television, signs, mail, telephone or personal notice.

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

581—31.14(19A) General statements of policy.

31.14(1) Compilation, indexing, public inspection. The department shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(7)"a," "c," "f," "g," "h," "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record kept. Except for those portions containing statements governed by Iowa Code section 17A.2(7)"f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

31.14(2) Enforcement of requirements. A general statement of policy subject to the requirements of this paragraph shall not be relied on by the department to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 31.14(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

581—31.15(19A) Review by agency of rules. At least every five years, the department shall review all of its rules and decisions of particular applicability to determine whether any new rule should be adopted or any existing rule should be amended or repealed. In conducting that review, the agency shall prepare a

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written report summarizing its findings, its supporting reasons, and any proposed course of action. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

[Filed 9/29/88, effective 11/23/88]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9334**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of 1988 Iowa Acts, Senate File 2157, the Iowa Department of Public Health hereby adopts amendments to Chapter 11, "Financial Assistance to Eligible Acquired Immune Deficiency Patients," Iowa Administrative Code.

To incorporate all AIDS-related rules in a single chapter of the Iowa Administrative Code, minor editorial changes are necessary in reference to the chapter title and the existing rules in Chapter 11.

The new rules describe:

1. The certification procedures and standards that laboratories must comply with in order to perform HIV testing services, and
2. The two-hour training programs for certain legislatively identified groups of health care and health care-related workers.

Notice of Intended Action regarding these rules was published in the August 10, 1988, Iowa Administrative Bulletin as **ARC 9048**.

The Iowa Department of Public Health held a public hearing on Wednesday, August 31, 1988, at 1 p.m., in the Third Floor Conference Room, Lucas State Office Building, Des Moines, Iowa 50319-0075. As a result of the written and oral comments received, the following items were revised:

In rule 641-11.17(72GA,SF2157), three definitions were clarified, four new definitions were added, and one definition was deleted.

Rules 641-11.18(72GA,SF2157) and 641-11.19(72GA,SF2157) were revised for purposes of simplification/clarification.

Rule 641-11.20(72GA,SF2157) was deleted in its entirety and reserved for future use.

Rule 641-11.21(72GA,SF2157) was revised for purposes of clarification/simplification.

Rule 641-11.23(72GA,SF2157) was revised to reduce the various application fees and for clarification purposes.

Rule 641-11.24(72GA,SF2157) was revised for purposes of clarification, simplification and practicality.

Rules 641-11.25(72GA,SF2157) to 641-11.30(72GA,SF2157) and 641-11.35(72GA,SF2157) were revised for purposes of clarification.

These rules are intended to implement 1988 Iowa Acts, Senate File 2157.

They were reviewed and adopted by the Iowa State Board of Health on September 23, 1988.

These rules shall become effective November 23, 1988.

ITEM 1. Amend the title of 641—Chapter 11 as follows:

CHAPTER 11
FINANCIAL ASSISTANCE TO ELIGIBLE
ACQUIRED IMMUNE DEFICIENCY
SYNDROME (AIDS) PATIENTS

ITEM 2. Add immediately thereafter the following caption:

FINANCIAL ASSISTANCE TO
ELIGIBLE AIDS PATIENTS

ITEM 3. Amend rule 641—11.1(135), introductory paragraph, and the definitions of "exempt financial resources," items 1 and 2, and "personal property," as follows:

641—11.1(135) Definitions. For the purpose of these rules 641—11.1(135) to 11.12(135), the following definitions shall apply:

"Exempt financial resources" means:

1. A homestead as defined in these rules herein,
 2. Personal property as defined in these rules herein,
- "Personal property" means property of any kind, except real property as defined in these rules herein, and is limited to household goods and nontaxable personal property.

ITEM 4. Amend subrule 11.4(4) as follows:

11.4(4) Approved applicants will receive financial assistance for time periods not to exceed 12 months at which time a redetermination of eligibility shall be made by the department. If during an approved period the patient experiences a change in financial status, the patient shall notify the department in writing within 30 days of the date and nature of the change. Upon receipt of this information, the department shall evaluate the patient in accordance with the eligibility criteria identified in these rules and any subsequent change in financial assistance shall become effective the month following the change in medical or financial status. Patients shall be notified by mail of any change in financial assistance. Failure of the patient to notify the department of any change in financial status during an approved period of eligibility may deny to that patient any increase in financial assistance that may otherwise have been allowed. Similarly, failure of the patient to notify the department of any change in financial status during an approved period of eligibility which would have caused a decrease in financial assistance may result in the recovery of financial assistance as set forth in subrule 11.5(6).

ITEM 5. Amend subrule 11.5(6) as follows:

11.5(6) Program staff may, for purposes of verification, contact any person or agency referred to in these rules in order to assure ensure that any financial assistance that may be provided is not or will not be provided when another financial or medical resource exists. The department may pursue the recovery of any financial assistance provided for any duplicate or unallowable payment made by the department to or on behalf of the patient.

ITEM 6. Amend subrule 11.10(1) as follows:

11.10(1) The department may deny, suspend, revoke or reduce financial assistance based upon eligibility and financial criteria and other pertinent sections of these

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rules. Applicants or patients so affected shall be notified by certified mail, return receipt requested, or by personal service.

ITEM 7. Amend 641—Chapter 11 by adding the following caption, and rules as follows:

CERTIFICATION OF LABORATORIES
FOR HIV TESTING

641—11.16(72GA,SF2157) Purpose. To describe the certification procedures and standards for laboratories that desire to perform HIV testing services.

641—11.17(72GA,SF2157) Definitions. For the purpose of rules 641—11.16(72GA,SF2157) to 11.34 (72GA,SF2157), the following definitions shall apply:

“AAB” means American Association of Bioanalysts.

“AABB” means American Association of Blood Banks.

“AOA” means American Osteopathic Association.

“Blood bank” means a facility for the collection, processing, or storage of human blood or blood derivatives, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

“CAP” means College of American Pathologists.

“CDC” means Centers for Disease Control.

“CLIA” means Clinical Laboratories Improvement Act as administered by HCFA for HIV testing.

“Clinical laboratory” means a facility for the microbiological, serological, chemical, hematological, radioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

“Confirmatory test” means an additional more specific test designed to validate the results of a screening test.

“Department” means Iowa department of public health.

“FDA” means Food and Drug Administration.

“HCFA” means Health Care Financing Administration.

“HIV” means “human immunodeficiency virus.”

“HIV testing” means laboratory analysis of a specimen for the purpose of detecting HIV infection.

“JCAHO” means Joint Commission on Accreditation of Healthcare Organizations.

“Laboratory” means a clinical or public health laboratory or a blood bank inside or outside the boundaries of Iowa.

“Medicare” means Medicare laboratories certified by HCFA under 42 CFR 482.27, effective September 15, 1986, (Conditions of Participation for Hospitals) or 42 CFR 405.1310 et seq., effective January 1, 1966, (Conditions for Coverage of Services of Independent Laboratories).

“Physician” means a person currently licensed pursuant to Iowa Code chapters 148, 150 or 150A.

“Public health laboratory” means a laboratory operated by an agency of city, county or state government for purposes of supporting disease control activities.

“Screening test” means the initial test performed to detect antibodies to HIV.

“Specimen” means a human body fluid or tissue sample.

641—11.18(72GA,SF2157) Responsibilities of the department.

11.18(1) The department shall consider for certification those laboratories that desire to perform HIV testing services.

11.18(2) An application package is available from the Iowa Department of Public Health, Division of Disease Prevention, Lucas State Office Building, Des Moines, Iowa 50319-0075.

11.18(3) The application package shall include:

a. A copy of these rules, and

b. An “Application to Perform HIV Testing.”

11.18(4) To determine laboratory compliance with the standards established pursuant to these rules, the department, at the department’s discretion, may conduct periodic inspections of:

a. Laboratory facilities,

b. Methods,

c. Procedures,

d. Materials (including reagents),

e. Staff, and

f. Equipment.

NOTE: The department may delegate this authority to the State Hygienic Laboratory pursuant to the provisions of 1988 Iowa Acts, Senate File 2157.

11.18(5) The department shall issue a written notice for each certified laboratory that clearly identifies the laboratory and the certification period. The notice shall also specify whether the laboratory is certified to perform screening only, or can perform both screening and confirmatory HIV testing services.

11.18(6) The department shall maintain and furnish upon request a current list of all HIV testing laboratories certified by the department. The list shall also specify whether the laboratories are certified to perform screening only, or can perform both screening and confirmatory HIV testing services.

641—11.19(72GA,SF2157) Initial application and certification requirements.

11.19(1) Laboratories desiring to perform HIV testing services shall apply to the department.

11.19(2) Laboratories requesting certification to perform HIV testing shall provide to the department:

a. A completed “Application to Perform HIV Testing.”

b. Proof of current accreditation, certification or licensure by AOA, CAP, CLIA, FDA, JCAHO or Medicare.

c. A copy of the documents that describe the interpretive basis for positive, negative and indeterminate screening and confirmatory test results.

NOTE: Recommended guidelines for interpreting test results are those published by the Committee on HIV Testing, Association of State and Territorial Public Health Laboratory Directors, 6728 Old McLean Village Drive, McLean, Virginia 22101, or other guidelines approved by the department.

d. Proof of current enrollment in an HIV proficiency testing program. Proficiency testing programs include, but are not limited to, those administered by AAB, AABB, CAP or CDC.

11.19(3) Acceptable performance must be maintained during the 12-month certification period in all appropriate areas of HIV proficiency testing. Laboratories shall send copies of their proficiency testing results to

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the State Hygienic Laboratory on a quarterly basis for the purpose of on-going monitoring and evaluation of performance. The address is: State Hygienic Laboratory, University of Iowa, Oakdale Hall, Iowa City, Iowa 52242.

11.19(4) Acceptable proficiency testing performance is stipulated below:

a. For laboratories providing screening tests, four out of five survey specimens must be interpreted accurately with a minimum of five survey specimens analyzed per quarter.

b. For laboratories providing confirmatory tests, no unacceptable results are permitted for five out of five survey specimens with a minimum of five survey specimens analyzed per quarter.

11.20 Reserved.

641—11.21(72GA,SF2157) Renewal of laboratory certification. Certification to continue HIV testing must be renewed annually. To renew certification, laboratories must submit the following information to the department at least 60 days before their current certification expires:

1. Proof of continued accreditation, certification or licensure by AOA, CAP, CLIA, FDA, JCAHO or Medicare.

2. Proof of continued enrollment in a recognized HIV proficiency testing program.

641—11.22(72GA,SF2157) Reinstatement of certification. A laboratory whose certification has been limited, suspended, or revoked may be reinstated, provided the department receives (within 90 days) documentation that corrective actions have been taken that satisfy the reason(s) for limitation, suspension, or revocation.

641—11.23(72GA,SF2157) Application fees and inspection costs.

11.23(1) Each laboratory at the time of application shall remit to the department the appropriate application fee. All fees shall be made payable to the "Iowa Department of Public Health" as follows:

a. Annual certification. A fee of \$100 is required the first time a laboratory applies for annual certification.

b. Renewal. A fee of \$100 is required for laboratories desiring to renew their annual certification.

c. Reinstatement. A fee of \$100 is required for laboratories desiring to reinstate their certification. If, however, the reinstatement occurs with less than 2 months remaining in the 12-month certification period, the \$100 fee shall be waived.

NOTE: A reinstatement does not alter a laboratory's previously established certification period.

11.23(2) Inspection costs. Reimbursement for actual expenses shall be assessed only to those laboratories where an on-site inspection is considered necessary. Expenses shall be reimbursed to the State Hygienic Laboratory for the actual costs incurred for personnel time and travel expenses consistent with state of Iowa travel reimbursement limitations.

641—11.24(72GA,SF2157) Requirements for laboratory personnel.

11.24(1) Laboratory directors shall meet the qualifications specified by AOA, CAP, CLIA, FDA, JCAHO or Medicare.

11.24(2) Laboratory supervisors shall meet the qualifications specified by CLIA or Medicare.

641—11.25(72GA,SF2157) Laboratory procedures and procedure manual requirements.

11.25(1) All laboratories shall have written procedures and a procedure manual which encompasses all current aspects of the HIV testing process including, but not limited to:

a. Specimen acquisition.

b. Specimen and report security.

c. Test performance.

d. Reporting of results.

e. Confirmation of positive test results.

f. Confidentiality.

11.25(2) Procedure manuals shall be readily available for review during any on-site inspection.

11.25(3) Positive and negative controls shall be used each time a test is performed.

11.25(4) Laboratories shall develop criteria for the rejection of specimens.

641—11.26(72GA,SF2157) Notification of certain changes during a certification period. Any of the following changes that occur during a certification period shall be reported to the department within ten working days from the date the changes take place:

1. Change in accreditation, certification or licensure.

2. Change in address.

3. Change in method used for screening or confirmatory tests.

4. Change in laboratory used to perform confirmatory tests.

5. Change in laboratory director.

6. Change in laboratory ownership.

641—11.27(72GA,SF2157) Testing methodologies and confirmation of positive test results.

11.27(1) Screening tests. The screening test shall be the enzyme-linked immunosorbent assay (ELISA) test or an equivalent test as determined by the department.

11.27(2) Confirmatory tests. Specimens which are reactive as a result of the screening test, shall be confirmed by the enzyme-linked immunoelectrotransfer blot (Western blot) test or an equivalent test as determined by the department before being reported by the laboratory to the department as a confirmed positive test result.

11.27(3) Specimens requiring confirmation that cannot be tested by the laboratory performing the screening test shall be referred to a laboratory capable of performing confirmatory testing which has been certified by the department.

11.27(4) Confirmed positive specimens shall be retained at or below minus 20 degrees Centigrade for at least six months.

641—11.28(72GA,SF2157) Record maintenance and documentation of the testing process. The following information shall be retained for at least two years:

1. Test results of all specimens.

2. Relevant quality control documentation that includes the identification and lot number of the kit or reagents used for each batch.

641—11.29(72GA,SF2157) Reporting of test results to the department.

11.29(1) Each laboratory shall ensure that:

a. Written procedures have been established for reporting test results and release of information.

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b. All test results are reviewed by the director, or a qualified designee, prior to reporting.

c. All test results are clearly identified and that appropriate interpretive information is included with the HIV test report.

11.29(2) Within seven days of the receipt of a person's confirmed positive test result indicating HIV infection, the director of a blood plasma center, blood bank, clinical laboratory or public health laboratory that performed the test or that requested the confirmatory test shall make a report to the department on a form provided by the department. The report shall include:

a. The person's age, race, marital status and other information deemed necessary by the department for epidemiological purposes or as much of that information as the director may possess, but shall not include the person's name or address without the written authorization of the person.

b. The name, address and telephone number of the blood plasma center, blood bank, clinical laboratory or public health laboratory that performed or requested the test.

c. The address of the physician or other health care practitioner that requested the test. This paragraph, however, shall not apply to a blood plasma center or blood bank.

NOTE: Iowa Code requires the performance of a confirmatory test for any screening test result which is reactive. However, only confirmatory test results that are positive are to be reported to the department.

641—11.30(72GA,SF2157) Complaints or noncompliance.

11.30(1) The department shall accept complaints of alleged problems or noncompliance, provided they relate to the laboratory's HIV testing performance. The complainant shall state in as specific a manner as possible the basis for the complaint. The complaint shall be presented in writing or in person to the Iowa Department of Public Health, Division of Disease Prevention, Lucas State Office Building, Des Moines, Iowa 50319-0075.

11.30(2) Within 20 working days following the department's receipt of the complaint, the department shall communicate with the laboratory director for initial evaluation of the specific matters alleged in the complaint.

11.30(3) Based upon the nature of the complaint, the department may request technical assistance from the State Hygienic Laboratory in order to properly assess the alleged problem.

11.30(4) The laboratory shall receive a written report of the department's findings relating to the complaint investigation and the complainant shall be informed of any action taken by the department.

11.30(5) Upon a determination by the department that a laboratory has violated these rules, the department may immediately move to limit, suspend, revoke or deny that laboratory's certification.

641—11.31(72GA,SF2157) Adverse actions and the appeal process.

11.31(1) Laboratories shall receive written notice by certified mail, return receipt requested, setting forth the reason(s) for any limitation, suspension, revocation or denial of certification.

11.31(2) The adverse action shall become effective 30 days after the aggrieved party has received the department's notice unless the aggrieved party, within 30

days, gives written notice to the department requesting a hearing. In that event, the notice shall be deemed to be suspended.

11.31(3) Contested cases. The procedures for contested cases, as set out in Iowa Code chapter 17A and the rules adopted by the department in 641—Chapter 173, shall be followed in all cases where proper notice has been made to the department of the intent to formally contest any limitation, suspension, revocation or denial of certification.

11.32 to 11.34 Reserved.

TRAINING PROGRAMS

641—11.35(72GA,SF2157) Purpose. The purpose is to describe what constitutes an approved training program, the required content of acquired immune deficiency syndrome training programs and to identify the groups of personnel involved.

11.35(1) Nonemergency personnel. All supervisory and patient care personnel of any agency listed below shall complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions:

- a. A licensed hospice,
- b. A homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or
- c. An agency which provides respite care services and receives funds.

NOTE: New employees shall complete the training within six months of their initial employment. Existing employees shall complete the training on or before January 1, 1989. AIDS education programs conducted on or after January 1, 1987, shall count as satisfying the two-hour requirement when attendance and course content can be verified.

11.35(2) Content. Training programs must address the following topics:

- a. HIV disease processes,
- b. Signs and symptoms,
- c. Transmission,
- d. High risk activities,
- e. Prevention recommendations, and
- f. Universal precautions according to the following Morbidity and Mortality Weekly Reports published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333:

(1) Volume 36, Number 2S, Supplement, dated August 21, 1987, entitled "Recommendations for Prevention of HIV Transmission in Health-Care Settings," and

(2) Volume 37, Number 24, dated June 24, 1988, entitled "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings."

11.35(3) Emergency and law enforcement personnel. All emergency medical services personnel, firefighters, and law enforcement personnel shall complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions and the prevention of human immunodeficiency virus infection.

11.35(4) Content. Training programs must address the following topics:

- a. HIV disease processes,
- b. Signs and symptoms,
- c. Transmission,

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d. High risk activities,
 e. Prevention recommendations, and
 f. Universal precautions according to the following Morbidity and Mortality Weekly Reports published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333:

(1) Volume 36, Number 2S, Supplement, dated August 21, 1987, entitled "Recommendations for Prevention of HIV Transmission in Health-Care Settings," and

(2) Volume 37, Number 24, dated June 24, 1988, entitled "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings."

These rules are intended to implement 1988 Iowa Acts, Senate File 2157.

[Filed 9/26/88, effective 11/23/88]

[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9350**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of 1988 Iowa Acts, House File 2354, the Iowa Department of Public Health hereby adopts Iowa Administrative Code 641—Chapter 43, "Minimum Requirements For Radon Testing and Analysis," and amends Iowa Administrative Code 641—Chapter 38, "General Provisions," by adding a new subrule 38.13(8), "Radon Certification."

These rules were published as a Notice of Intended Action on August 10, 1988, as **ARC 9045**.

The rules establish minimum requirements for the certification of individuals and businesses which test for the presence of radon inside buildings located in Iowa. They also establish minimum requirements for the certification of laboratories which may analyze radon measurements conducted in Iowa. The amendment to Chapter 38 establishes a schedule of fees that persons wishing to become certified must meet. Fees collected will be used by the Department of Public Health to defray costs of the certification program.

In response to public comment the following changes were made in the rules:

1. In 641—43.1 Purpose and scope: This paragraph was changed for purposes of clarification to read—"This chapter establishes requirements for the certification of radon measurement specialists, radon measurement technicians, and radon measurement laboratories. All persons performing measurements for radon or radon progeny in buildings, other than those which they own or occupy, and who provide the results of these measurements to the owner or occupant of these structures must be certified in accordance with the provisions of this chapter."

2. In 641—43.2 Definitions (changes for clarification purposes):

a. The definition of a "certified radon measurement technician" was changed to read—"means an individual who may make radon or radon progeny measurements and meets the provisions for certification in this chapter. Such individuals can only report results of radon or radon progeny measurements, and cannot interpret results of measurements obtained." The underlined area was added.

b. The definition for "Diagnostic tests" was deleted.

3. In 641—43.3 General provisions:

a. References to "Be of good moral character" were deleted as recommended by an assistant attorney general.

b. After deliberations during the public hearing and concerns expressed, the requirement that technicians have 40 hours of basic radiological health training has been deleted.

c. The requirement for filing a bond has been changed to read—"The applicant must provide written proof that his or her place of employment is properly bonded within this state. The bond, at minimum, must be in the amount of \$10,000."

4. Add rule 641—43.11(72GA, HF2354) Persons exempted from certification.

These rules are intended to implement 1988 Iowa Acts, House File 2354.

The Board of Health adopted this rule on September 23, 1988. The rule will become effective on November 23, 1988.

ITEM 1. Amend 641—Chapter 38 by adding a new subrule 38.13(8) as follows:

38.13(8) Radon certification. All persons wishing to become certified as a radon measurement specialist, radon measurement technician, or radon measurement laboratory, are required to pay fees sufficient to defray the cost of administering this chapter. Fees, which must be submitted in the form of a check or money order made payable to the Iowa Department of Public Health, are as follows:

a. Application fee.

(1) Each person with Iowa residency wishing certification under the provisions of 641—43.1 (72GA, HF2354) shall pay a nonrefundable \$25 application fee.

(2) Each person without Iowa residency wishing certification under 641—43.1 (72GA, HF2354) shall pay a nonrefundable \$100 application fee.

b. Examination fee. Each individual wishing certification as a radon measurement specialist or radon measurement technician must pay a nonrefundable examination fee of \$100. This fee must accompany the application fee.

c. Annual certification fee.

(1) Each individual requesting certification and renewing certification as a radon measurement specialist must pay a nonrefundable annual fee of \$300.

(2) Each individual requesting certification and renewing certification as a radon measurement technician must pay a nonrefundable annual fee of \$200.

(3) Each person requesting certification and renewing certification as a radon measurement laboratory must pay a nonrefundable annual fee of \$500.

d. Each person wishing to give reciprocal recognition of credentials from another jurisdiction must pay the appropriate fees as outlined in subrule 38.13(8), paragraphs "a," "b" and "c."

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ITEM 2. Adopt a new chapter as follows:

CHAPTER 43

MINIMUM REQUIREMENTS FOR RADON TESTING AND ANALYSIS

641—43.1(72GA, HF2354) Purpose and scope. This chapter establishes requirements for the certification of radon measurement specialists, radon measurement technicians, and radon measurement laboratories. All persons performing measurements for radon or radon progeny in buildings, other than those which they own or occupy, and who provide the results of these measurements to the owner or occupant of these structures must be certified in accordance with the provisions of this chapter.

641—43.2(72GA, HF2354) Definitions. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Iowa Radon Testing Act (1988 Iowa Acts, House File 2354).

"Building" means a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, and designed for the housing, shelter, enclosure and support of individuals.

"Certified person" means a certified radon measurement specialist, certified radon measurement technician, or certified radon measurement laboratory as defined by this chapter.

"Certified radon measurement laboratory (certified laboratory)" means a commercial laboratory which may analyze samples or test for radon or radon decay products and meet the provisions for certification in this chapter.

"Certified radon measurement specialist (certified specialist)" means an individual who performs radon or radon progeny measurements in buildings and provides professional or expert advice on radon and radon progeny measurements, radon entry routes, and other radon related activities; is knowledgeable in the health risk associated from exposure to radon; and who meets the provisions for certification of this chapter.

"Certified radon measurement technician (certified technician)" means an individual who makes radon or radon progeny measurements and meets the provisions of this chapter for certification. The technician can only report results of radon measurements, but cannot interpret them.

"Compensation" means any form of monetary gain which in any way directly or indirectly results from a radon or radon progeny measurement being conducted.

"Department" means the Iowa department of public health.

"E.P.A." means the United States Environmental Protection Agency.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, any other state or political subdivision or agency, and a legal successor, representative, agency or agencies of the entities listed in this paragraph.

"Picocurie per liter" means a quantity of radioactive material per liter of air that will produce 2.2 disintegrations per minute of radiation. It may be used as a measure of the concentration of radon gas in air. One curie is equivalent to one trillion picocuries.

"Radon" means the radioactive noble gas radon-222.

"Radon progeny" means the short-lived radonnuclides formed as a result of the decay of radon-222, including polonium-218, lead-214, bismuth-214, and polonium-214.

"Working level (WL)" means the concentration of radon progeny that will result in 130,000 million electron volts of alparticle energy released per liter of air. Working level is a measure of radon decay product concentration in air.

641—43.3(72GA, HF2354) General provisions.

43.3(1) Except as provided in this chapter, no person may test for the presence of radon or radon progeny in the state of Iowa unless the person has been certified by the department. This requirement also applies to persons whose place of business is located in Iowa or in a state other than Iowa, and who offer radon testing to residents of Iowa either directly or through the mail.

43.3(2) Individual qualifications for radon measurement specialist. No individual may be certified as a radon measurement specialist unless all of the following conditions are met:

a. Be at least 18 years of age at the time of application.

b. Have a bachelor's degree in natural science, engineering, or a related discipline approved by the department, or the educational or professional work experience equivalent to a degree, as approved by the department.

c. Have one year's experience in radiation or radioactivity measurements.

d. Have successfully completed a training course on radon/radon decay product measurement approved by the department.

e. Have successfully completed a uniform examination approved by the department.

43.3(3) Individual qualifications for radon measurement technicians. No individual may be certified as a radon measurement technician unless all of the following conditions are met:

a. Be at least 18 years of age at the time of application,

b. Have successfully completed a training course on radon measurement approved by the department,

c. Have successfully completed a uniform examination approved by the department.

43.3(4) Certification for radon measurement laboratories. Where the applicant for testing certification is a laboratory, it must employ at least one Iowa certified radon measurement specialist who is in responsible charge of the laboratory's testing activities. If the laboratory loses its certified individual, the certification automatically lapses and is void unless and until the laboratory notifies the department of employment of another Iowa certified individual. The laboratory shall notify the department when it loses its Iowa certified individual.

43.3(5) Additional requirements. Where the applicant for testing certification is a laboratory, it must be successfully enrolled in the E.P.A.'s Radon/Radon Progeny Measurement Proficiency Program. Where the applicant for testing is an individual, that individual must be successfully enrolled in the E.P.A.'s Radon/Radon Progeny Measurement Proficiency Program, or be employed by a business or firm who is successfully enrolled in the E.P.A.'s Radon/Radon Progeny Measurement Proficiency Program. Each person conducting radon measurement activities shall provide written evidence of successful enrollment or participation in the E.P.A.'s Radon/Radon Progeny Measurement Profi-

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ciency Program for each type of radon measurement utilized.

43.3(6) No certification shall be approved unless the applicant demonstrates to the department that the following conditions are met:

- a. Has in place a plan, approved by the department, for the protection of all workers from radiation hazards;
- b. Has in place a quality assurance plan and quality control procedures for all measurements and equipment;
- c. Has shown the ability or intention to comply with the Radon Testing Act (72GA, HF2354) or this chapter, or has been able or willing to conduct radon-related activities forthrightly and honestly with the applicant's clients; and
- d. Has provided written proof that the applicant's place of employment is properly bonded within this state. The bond at minimum must be in the amount of \$10,000.

43.3(7) Requirements for continued certification shall include, at a minimum, the following conditions:

a. A certified person located within the state of Iowa shall allow the department, its agents, employees, and contractors, upon presentation of appropriate credentials, to have access without undue delay to their facilities, offices and files for inspection and examination of records and equipment. The certified person shall also allow the department, its agents, employees, and contractors to accompany them while performing any radon measurement, for the purpose of inspection of those activities, with the approval of the property owner or resident on whose property the activities are being performed.

b. An out-of-state certified person shall notify the department in writing at least three days prior to engaging in radon or radon progeny measurements within the state of Iowa if it requires them to be physically present within the state.

c. If, for a specific case, the three-day-period would impose an undue hardship on the out-of-state person, they may, upon application to the department, obtain permission to proceed sooner.

d. The certified person shall remain in compliance with the Act and this chapter. Any changes in the information provided in the original application including changes in certified personnel shall be reported in writing to the department within ten working days of the change.

641—43.4(72GA, HF2354) Application for certification.

43.4(1) An application for certification or renewal of certification as a radon measurement specialist, radon measurement technician, or a radon measurement laboratory shall be filed on a form prescribed by the department and shall contain complete and accurate information. The applications shall be accompanied by reports, plans, advertising and records requested by the department.

43.4(2) The department may require the applicant to submit supplementary statements containing additional information to enable the department to determine whether an application should be approved or denied, or whether a previously issued certification should be amended, suspended, or revoked.

43.4(3) Each application or supplementary statement shall be signed by either the applicant personally, or a person authorized in writing by the applicant to do so on the applicant's behalf.

43.4(4) A certification will be valid for one year following the date of issuance. No radon measurement covered by this chapter can be conducted after the

expiration of the term of certification unless an application for renewal certification has been received by the department 30 days prior to the expiration date of certification and is pending approval. If the application is rejected, no radon test or measurement may be conducted by that applicant in the state of Iowa if a financial arrangement is involved.

43.4(5) An application for annual certification must contain all the information required in an initial certification application along with the fee specified in subrule 38.13(8).

43.4(6) Applications for initial and renewal certification must be submitted along with fees specified in subrule 38.13(8) to the Iowa Department of Public Health, Bureau of Radiological Health, Des Moines, Iowa 50319-0075. The fee must be in the form of a check or money order made payable to the Iowa Department of Public Health.

641—43.5(72GA, HF2354) Revocation of certification. The department will consider revoking or suspending any certification, in whole or in part, for:

1. Any misstatement in the application or in any supplementary statement;
2. Any condition revealed by the application, supplementary statement, report, record, or other evidence, which would warrant the department's refusal to grant a certification on an original application;
3. Any violation or failure to observe any of the applicable terms or provisions of certification, the Public Health Law, or any other applicable rule, regulation, code or order;
4. Being discontinued or removed from the E.P.A.'s Radon/Radon Progeny Measurement Proficiency Program.

641—43.6(72GA, HF2354) Reporting requirements.

43.6(1) A certified person must submit to the department within 30 days after any radon/radon progeny testing, or at the request of the department prior to testing, the address or location of the building, the name and phone number of the owner(s) of the building where the radon testing will be conducted and the results of any tests performed.

43.6(2) The results for each test conducted shall include, but not necessarily be limited to:

- a. The method used for radon or radon decay product testing, media tested, and conditions under which the testing was or will be performed.
- b. The level or floor of building where the test(s) was or will be conducted.
- c. The results of the test(s) in picocuries/liter (pCi/l) of radon gas or working level (WL) of radon decay products.
- d. The date on which the test was or will be conducted.
- e. The purpose of the test.

43.6(3) A certified radon measurement technician shall:

- a. Report to the department within 24 hours any measurement results that exceed 100 pCi/l.
- b. Refer the owner of the building where the test was performed to a radon measurement specialist if any measurement results exceed 100 pCi/l.

43.6(4) A certified person shall:

- a. Cooperate with the department when conducting field evaluations.
- b. Notify the department within 14 days of any changes in testing results or procedures.

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c. Not disclose to any other person, except to the department, the address or owner of a nonpublic building that was tested for radon gas or radon progeny, unless the owner of the building waives this right of confidentiality in writing.

641—43.7(72GA, HF2354) Training and continuing education programs. Each person conducting radon-related activities shall complete a radon training program approved by the department to ensure that the applicant and all employees have had initial training and the certified person will participate in a continuing education program consisting of a minimum of 12 hours of department approved courses or seminars on radon testing or mitigation each year.

641—43.8(72GA, HF2354) Exemptions. Certification requirements shall not apply to:

1. Those persons who test for radon/radon decay products in buildings that they own.

2. Those persons testing for radon/radon decay products as part of scientific research approved by the department.

3. Those persons testing for radon/radon decay products in which the testing will be conducted without any form of compensation.

4. State officials conducting radon testing as part of the state's radon testing program or local officials acting on behalf of the state, and approved by the department.

5. Officials conducting radon testing as part of government programs in the United States or contractors working for the United States government.

641—43.9(72GA, HF2354) Enforcement.

43.9(1) A certified individual who measures for radon or radon progeny in the state of Iowa must meet the requirements of this chapter.

43.9(2) Any laboratory providing analysis services for radon detectors used in Iowa must meet the provisions of this chapter.

43.9(3) Any certified individual is prohibited from using radon measurement devices in Iowa obtained from a laboratory which is not certified under the provisions of this chapter.

641—43.10(72GA, HF2354) Penalties. It is unlawful for an individual to function as a radon measurement specialist, radon measurement technician, or radon measurement laboratory in violation of the provision of the Iowa radon testing Act or of any rule adopted pursuant to the Act. Persons convicted of violating the provisions of the Act or the rules adopted pursuant to the Act shall be guilty of a serious misdemeanor (1988 Iowa Acts, House File 2354, section 5).

641—43.11(72GA, HF2354) Persons exempted from certification. Persons providing radon or radon progeny measurement devices to the public, but not conducting physical tests for the presence of radon or radon progeny with the measurement devices may do so under the following conditions:

1. They must provide measurement devices obtained from a laboratory certified in Iowa.

2. A valid visible expiration date must be permanently affixed to each measurement device.

3. In addition to the required laboratory instructions regarding measurement procedures, each measurement device must be accompanied by clear directions on where to obtain additional information and interpretation for test results. The certified laboratory or a certified

specialist must be included as one of the sources of information and interpretation.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9349

**PUBLIC HEALTH
DEPARTMENT[641]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby adopts Chapter 76, "Maternal and Child Health Program," Iowa Administrative Code.

The Board of Health adopted the rules at their meeting on September 23, 1988, after considering all oral and written comments. Notice of Intended Action was published in the Iowa Administrative Bulletin on August 10, 1988, as **ARC 9052**.

The rules define the well-child and prenatal services funded with Maternal and Child Health block grant funds and establish rules covering contracts for services.

The adopted rules differ from the Noticed rules in the following areas:

641—76.4 Definitions

- changed the definition of a social worker to be more specific and expansive of qualifications

- included two new definitions of "health education" and "parenting education."

641—76.12(2) Expanded the length of time for the expenditure of program income from 1 year to 2 years.

641—76.5(2) Added a division on optional services that may be provided.

Editorial changes were also made in 76.4, definition of "family" and 76.6(2). All changes were based upon written comments received.

These rules implement Iowa Code section 135.11.

These rules will become effective November 23, 1988.

CHAPTER 76

MATERNAL AND CHILD HEALTH PROGRAM

641—76.1(135) Program explanation. The maternal and child health (MCH) programs are operated by the Iowa department of public health as the designated state agency pursuant to an agreement with the federal government. The majority of the funding available is from the maternal and child health block grant, administered by the United States Department of Health and Human Services.

The purpose of the program is to promote the health of mothers and children by providing preventative, well-child care services to low-income children and prenatal and postpartum care for low-income women.

The department of public health, bureau of maternal and child health, enters into contracts with selected local agencies on an annual basis for the provision of prenatal and well-child services to eligible participants.

641—76.2(135) Adoption by reference. Federal requirements contained in the Omnibus Reconciliation Act of 1981 (P.L. 97-35), Title V, maternal and child

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health services block grant shall be the rules governing the Iowa MCH program and are incorporated by reference herein.

The Iowa department of public health finds that certain rules should be exempted from notice and public participation as being a very narrowly tailored category of rules for which notice and public participation are unnecessary as provided in Iowa Code section 17A.4(2). Such rules shall be those that are mandated by federal law governing the Iowa MCH program where the department has no option but to adopt such rules as specified and where federal funding for the MCH programs is contingent upon the adoption of the rules.

Copies of the federal legislation adopted by reference are available from: Bureau Chief, Iowa MCH Bureau, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-4911.

641—76.3(135) Rule coverage. These rules cover only the prenatal and well-child portions of the block grant. Other programs funded by the Iowa legislature from the maternal and child health block grant are not included in these rules.

641—76.4(135) Definitions.

“Case management” means services provided by a registered nurse or person with at least a bachelor’s degree in social work, counseling, sociology, or psychology to include outreach and community education, ensuring a client receives all components of care, risk tracking, assistance with referrals and arrangements for further care.

“Dental health education” means services provided by a dental hygienist or registered nurse to include education about dental care and oral hygiene, and referral if indicated.

“Family” means a group of two or more persons related by birth, marriage or adoption who reside together or a unit of one is an unrelated individual who is not living with any relatives. An unborn fetus will be counted as a family member.

“Health education” means services provided by a registered nurse or other health professional to include normal anatomy and physiology of pregnancy, relief measures for common discomforts, signs or symptoms indicating need to contact physician, signs of labor, postpartum self-care, and infant care.

“Nutrition counseling” means services provided by a licensed dietitian to include assessment and education appropriate to the needs of the client.

“Parenting education” means services provided by a registered nurse or other health professional to include care of infants and children, normal development, discipline and other topics as appropriate.

“Prenatal and postpartum care” means those types of services as recognized by the latest edition of the American College of Obstetricians and Gynecologists, Standards for Obstetric Gynecologic Services.

“Psychosocial counseling” means services provided by a person with at least a bachelor’s degree in social work, counseling, sociology or psychology or registered nurse to include social assessment, short-term crisis intervention, and referral.

“Well-child care” means those types of services as recognized by the latest edition of the American Academy of Pediatrics, Guidelines for Health Supervision.

641—76.5(135) Covered services. The following services shall be provided by contracting agencies:

76.5(1) Well-child services

- a. Routine, ambulatory well-child care
- b. Nutrition counseling
- c. Dental health education
- d. Psychosocial counseling
- e. Parenting education
- f. Case management

76.5(2) Prenatal/postpartum services

- a. Routine, ambulatory prenatal care
- b. Postpartum exams
- c. Nutrition counseling
- d. Dental health education
- e. Psychosocial counseling
- f. Health education
- g. Case management

76.5(3) Contracting agencies may provide diagnosis and dental services if those services are in the approved contract.

641—76.6(135) Eligibility criteria. The certification process to determine eligibility for services under the program will include the following requirements:

76.6(1) Age:

- a. Prenatal program—no age restrictions
- b. Well-child—birth through 20 years of age

76.6(2) Income:

a. Income guidelines will be set at 150 percent of the poverty income guidelines published by the U. S. Department of Health and Human Services (DHHS). State income guidelines will be adjusted following any change in Department of Health and Human Services guidelines.

b. Income information will be provided by the applicant, who will attest in writing to the accuracy of the information contained in the application.

c. All earned and unearned income of family members as defined by DHHS poverty guidelines will be used in calculating the applicant’s gross income for purposes of determining initial and continued eligibility.

d. Income will be estimated as follows:

(1) Annual income will be estimated based on the applicant’s income for the past three months unless the applicant’s income will be changing or has changed, or

(2) In the case of self-employed families the past year’s income tax return (adjusted gross) will be used in estimating annual income unless a substantial change has occurred.

(3) Terminated income will not be considered.

e. An applicant whose income falls between 150 percent and 250 percent will qualify for services in a sliding fee scale. An applicant whose income falls over 250 percent will qualify for services at full fee.

f. Eligibility determinations must be done at least once annually. Should the applicant’s circumstances change in a manner to affect third-party coverage or Title XIX eligibility, eligibility determinations shall be completed more frequently.

g. Title XIX recipients are eligible for the program.

76.6(3) Residency: Applicant must be currently residing in Iowa to be eligible.

641—76.7(135) Application procedures.

76.7(1) A person desiring services under this program, or the parent or guardian of a minor desiring such care, may apply to the contract agency approved to cover the person’s county of residence.

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76.7(2) The applicant will provide the following information to be considered for eligibility under this program:

- a. Income information
- b. Title XIX eligibility, if applicant is covered by Title XIX.

76.7(3) The approved contract agency will determine the eligibility of the applicant and what percent of the cost of the care the applicant is responsible for. The applicant will be informed in writing of eligibility status prior to incurring costs for care.

76.7(4) After an applicant has been determined to be eligible, the applicant will report any changes in eligibility to the approved contract agency within 30 days from the date the change occurred.

641—76.8(135) Grant application procedures for local agencies. Local agencies wishing to provide maternal or child health services shall make application to the Iowa department of public health not less than 120 days prior to the beginning of the contract period. Agencies shall apply to administer MCH programs on an annual basis. The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are public records.

Contract agencies are selected on the basis of the grant application submitted to the Iowa department of public health. The department will only consider applications from private nonprofit or public agencies. In the case of competing applications, the contract will be awarded to the agency that scores the highest number of points in the review. Copies of review criteria are available from: Bureau Chief, Iowa Maternal/Child Health Bureau, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-4911.

641—76.9(135) Funding levels. The amount of funds granted to each contract agency on an annual basis shall be determined by the Iowa department of public health using a methodology based upon dollars available, number of clients, and selected performance criteria.

641—76.10(135) Agency performance. Contract agencies are required to provide services in accordance with these rules. The state agency shall review local agency operations through use of reports and documents submitted, state-generated data reports, chart audits, on-site visits for evaluation and technical assistance.

641—76.11(135) Reporting. Completion of grant applications, budgets, expenditure reports, and computer forms shall be done by local agencies in compliance with the contract with the Iowa department of public health.

641—76.12(135) Fiscal management. All contract agencies are required to meet certain fiscal management policies.

76.12(1) Last pay. MCH grant funds are considered last pay. Title XIX, other third party, are to be billed first if the client is covered by those sources.

76.12(2) Program income. Program income means gross income earned by the contractor from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost toward meeting cost-sharing or matching requirements of the grant. It includes but is not limited to such income in the form of fees for services, third-party reimbursements, proceeds from sales of tangible, personal or real property.

Program income may be used for allowable costs of the project. The amount of this income is deducted from the total project costs to determine the net costs of the contract. Program income shall be used during the current fiscal year or the following fiscal year. If excess, unobligated program income remains, the department of public health shall be notified in writing and a plan of expenditure be approved.

641—76.13(135) Audits. Each local agency shall ensure an audit of the MCH program within their agency at least every two years, to be conducted to comply with OMB Circular A-128 Audits of State and Local Governments. Each audit shall cover all unaudited periods through the end of the previous grant year. The department of public health's audit guide should be followed to ensure an audit which meets federal and state requirements.

641—76.14(135) Denial, suspension, revocation or reduction of contracts with local agencies. The department may deny, suspend, revoke or reduce contracts with local agencies in accord with applicable federal regulations or contractual relationships. Notice of such action shall be in writing.

641—76.15(135) Right to appeal. Agencies may appeal denial of a contract or the suspension, revocation or reduction of an existing contract. Participants may appeal a denial of service.

76.15(1) Appeal. The appeal shall be made in writing to the Iowa department of public health within 30 days of receipt of notification of the adverse action. Notice is to be addressed to the Division Director, Family and Community Health Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

76.15(2) Contested case. Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

76.15(3) Hearing. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 4, Iowa Administrative Code.

76.15(4) Decision of administrative law judge. When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director of public health is taken as provided in subrule 76.15(5).

76.15(5) Appeal to the director of public health. Any appeal to the director of public health for review of the proposed decision and order of the law judge shall be filed in writing and mailed to the director of public health by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the law judge. Any request for an appeal shall state the reason for appeal.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

76.15(6) Record of hearing. Upon receipt of an appeal request, the law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the law judge.

76.15(7) Decision of director of public health. The decision and order of the director of public health becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

76.15(8) Exhausting administrative remedies. It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director of public health or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

[Filed 9/30/88, effective 11/23/88]

[Published 10/19/88]

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ARC 9368

REGENTS BOARD[681]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.3 and section 501(C)(3) of the Internal Revenue Code, the Board of Regents hereby amends Chapter 12, "University of Iowa Procedures"; Chapter 13, "Iowa State University of Science and Technology Procedures"; Chapter 14, "The University of Northern Iowa"; Chapter 15, "Iowa Braille and Sight Saving School"; and Chapter 16, "Iowa School for the Deaf," Iowa Administrative Code.

The amendments provide a procedure for charitable organizations which are qualified charities under the Internal Revenue Code to solicit contributions from employees of Regent institutions under the following conditions:

1. Solicitation must have the approval of an authorized administrator;
2. At the University of Iowa, solicitation will be permitted only through the campus mail; at Iowa State University, the University of Northern Iowa, Iowa Braille and Sight Saving School, and Iowa School for the Deaf, solicitations will be permitted through the campus mail or through an on-campus coordinated campaign of all eligible organizations which have given 120 days' prior written notice of desire to participate in the campaign;
3. Solicitation by any one such charitable organization may occur once in any calendar year;

4. The organization may be expected to pay the administrative and out-of-pocket costs which are associated with using the campus mail system or other university or school facilities;

5. Eligible charitable organizations may arrange to conduct information sessions at which no solicitation occurs, at times and places and in such manner as the institution deems reasonable;

6. Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 79.14 and 79.15, if qualified under the terms of those provisions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 10, 1988, as **ARC 9088**.

No comments were received in writing or at the public hearing held on May 10, 1988.

At the request of the University of Northern Iowa, two phrases have been added to rule 681—14.2(262):

In subrule 14.2(2), the word "given" is deleted and the words "granted in limited cases" are inserted;

In paragraph 14.2(2)"d," the phrase "and must not interfere with normal operations" is added to the end of the sentence.

At the request of the Administrative Rules Review Committee, the words "all of" have been added at the beginning of the phrase "the following circumstances" in subrules 12.7(3), 13.7(3), 15.8(1) and rules 681—14.2(262) and 681—16.9(262). In addition, the word "such" has been removed several times in each rule or subrule at the suggestion of a Committee member.

These rules were adopted September 14, 1988.

These rules will become effective on January 18, 1989.

These rules are intended to implement Iowa Code sections 79.14, 79.15, and 262.9.

ITEM 1. Amend subrule 12.7(3) by adding an unnumbered paragraph and lettered paragraphs as follows:

Permission is given by the vice president for finance and university services for the solicitation of employees by charitable organizations under all of the following circumstances:

a. The charitable organization presents documentation of its tax-exempt status as provided in Section 501(C)(3) of the Internal Revenue Code.

b. The solicitation is conducted through the university's campus mail system.

c. The solicitation by any one such charitable organization may occur once in any calendar year.

d. The organization may be expected to pay the administrative and out-of-pocket costs associated with using the university campus mail system or other university facilities.

e. No solicitation using the university's facilities may occur except through campus mail as described above; however, any eligible charitable organization may arrange to conduct information sessions at which no solicitation occurs, at times and places and in a manner the university deems reasonable.

f. Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 79.14 and 79.15, if qualified under the terms of those provisions.

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ITEM 2. Amend subrule 13.7(3) by adding an unnumbered paragraph and lettered paragraphs as follows:

Permission is given by the vice president for business and finance for the solicitation of employees by charitable organizations under all of the following circumstances:

a. The charitable organization presents documentation of its tax-exempt status as provided in Section 501(C)(3) of the Internal Revenue Code.

b. The solicitation is conducted through the university's campus mail system or once a year through an on-campus coordinated campaign of all eligible organizations meeting the conditions and giving written notice to the university of the desire to participate at least 120 days prior to the campaign period.

c. The organization may be expected to pay the administrative and out-of-pocket costs associated with using the university campus mail system or other university facilities.

d. The solicitation by any one charitable organization may occur once in any calendar year.

e. No solicitation using the university's facilities may occur except as described above; however, any eligible charitable organization may arrange to conduct information sessions at which no solicitation occurs, at times and places and in a manner the university deems reasonable.

f. Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 79.14 and 79.15, if qualified under the terms of those provisions.

ITEM 3. Adopt the following new rule:

681—14.2(262) General rules.

14.2(1) Sales persons or agents for any product, proposition, or cause are prohibited from soliciting employees or students in any building or part of the university property, except with the permission of the vice president for administration and finance in the case of employees, or the vice president for educational and student services in the case of students.

14.2(2) Permission is granted in limited cases by the vice president for administration and finance for the solicitation of employees by charitable organizations under all of the following circumstances:

a. The charitable organization presents documentation of its tax-exempt status as provided in Section 501(C)(3) of the Internal Revenue Code.

b. The solicitation is conducted through the university's campus mail system or once a year through an on-campus coordinated campaign of all eligible organizations meeting the conditions and giving written notice to the university of the desire to participate at least 120 days prior to the campaign period.

c. The organization may be expected to pay the administrative and out-of-pocket costs associated with using the university campus mail system or other university facilities.

d. The solicitation by any one charitable organization may occur once in any calendar year and must not interfere with normal operations.

e. No solicitation using the university's facilities may occur except as described above; however, any eligible charitable organization may arrange to conduct information sessions at which no solicitation occurs, at times

and places and in a manner the university deems reasonable.

f. Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 79.14 and 79.15, if qualified under the terms of those provisions.

ITEM 4. Amend subrule 15.8(1) by adding an unnumbered paragraph and lettered paragraphs as follows:

Permission is given by the superintendent for the solicitation of employees by charitable organizations under all of the following circumstances:

a. The charitable organization presents documentation of its tax-exempt status as provided in Section 501(C)(3) of the Internal Revenue Code.

b. The solicitation is conducted through the school's campus mail system or once a year through an on-campus coordinated campaign of all eligible organizations meeting the conditions and giving written notice to the school of the desire to participate at least 120 days prior to the campaign period.

c. The organization may be expected to pay the administrative and out-of-pocket costs associated with using the campus mail system or other school facilities.

d. The solicitation by any one charitable organization may occur once in any calendar year.

e. No solicitation using the school's facilities may occur except as described above; however, any eligible charitable organization may arrange to conduct information sessions at which no solicitation occurs, at times and places and in a manner the school deems reasonable.

f. Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 79.14 and 79.15, if qualified under the terms of those provisions.

ITEM 5. Adopt the following new rule:

681—16.9(262) General rules.

16.9(1) Sales persons or agents for any product, proposition, or cause are prohibited from soliciting employees or students in any building or part of the school property, except with the permission of the superintendent.

16.9(2) Permission is given by the superintendent for the solicitation of employees by charitable organizations under all of the following circumstances:

a. The charitable organization presents documentation of its tax-exempt status as provided in Section 501(C)(3) of the Internal Revenue Code.

b. The solicitation is conducted through the school's campus mail system or once a year through an on-campus coordinated campaign of all eligible organizations meeting the conditions and giving written notice to the school of the desire to participate at least 120 days prior to the campaign period.

c. The organization may be expected to pay the administrative and out-of-pocket costs associated with using the campus mail system or other school facilities.

d. The solicitation by any one charitable organization may occur once in any calendar year.

e. No solicitation using the school's facilities may occur except as described above; however, any eligible charitable organization may arrange to conduct infor-

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mation sessions at which no solicitation occurs, at times and places and in a manner the school deems reasonable.

f. Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 79.14 and 79.15, if qualified under the terms of those provisions.

[Filed 9/30/88, effective 1/18/89]

[Published 10/19/88]

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ARC 9380**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 11, "Administration," and Chapter 15, "Determination of a Sale and Sale Price," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 1988, as ARC 9151.

The 1988 Iowa Acts, House File 2477, made two changes, among many others, in Iowa sales tax law. Neither change fits into any particular category. Both changes are thus placed in this miscellaneous rule. The first change ends the requirement that the director's examination of a taxpayer's books or records not include any transaction completed five or more years prior to the examination. The law now contains no specific provision limiting the time period in which the director can examine books and records; however, when a sales tax permit has been filed without a fraudulent intent to evade tax, an assessment must be issued within five years after the return is filed. Furthermore, if an assessment is based upon examination of a taxpayer's books or records, it remains the law that the assessment must be issued within one year after the examination of the books and records is completed. The Department's existing rule regarding statutes of limitations is amended to reflect the end of one limitation and the retention of two others. Also, under prior law, a "fuel exemption certificate," which protects a retailer who in good faith sells fuel on the assumption that the fuel will be used in processing, was available only for fuel which was to be used in "self-propelled" implements of husbandry. As of January 1, 1988, the requirement that the implement of husbandry be "self-propelled" has been retroactively eliminated. January 1 was the effective date of the legislation which originally allowed the use of an exemption certificate for "fuel consumed in processing." Because of this retroactive amendment to the beginning date of the legislation, all reference to any requirement that an implement of husbandry be "self-propelled" is eliminated from the Department's rules.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective November 23, 1988, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The amendments are intended to implement 1987 Iowa Code supplement section 422.47(4)"f" and Iowa Code subsection 422.70(1) as amended by 1988 Iowa Acts, House File 2477.

The following amendments are adopted:

ITEM 1. Amend rule 701—11.2(422,423), the first unnumbered paragraph and the implementation clause, to read as follows:

In all other circumstances, within five years after a return is filed, the department shall examine it, determine sales or use tax due, and give notice of assessment to the taxpayer. If the determination is based upon an examination of books, papers, records, or memoranda, the examination will not include any transactions completed five years or more prior to the examination.

This rule is intended to implement Iowa Code sections 422.54(1), 422.54(2), and 422.70(1), as amended by 1988 Iowa Acts, House File 2477.

ITEM 2. Amend subrule 15.3(3), paragraph "a," the first sentence of the second unnumbered paragraph and the implementation clause, to read as follows:

"Fuel consumed in processing" includes fuel used in grain drying, providing heat or cooling for livestock buildings, fuel used for generating electric current, fuel consumed in self-propelled implements of husbandry engaged in agricultural production, as well as fuel used in processing as defined in rule 18.29(422,423).

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(13), 422.42(16), 422.47 as amended by 1987 1988 Iowa Acts, chapter 196 House File 2477, and Iowa Code sections 422.53 and 423.1(1).

[Filed 9/30/88, effective 11/23/88]

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ARC 9378**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 11, "Administration," and Chapter 107, "Local Option Sales and Service Tax," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 1988, as ARC 9149.

Until recently, Iowa law did not require a retailer to collect Iowa sales tax unless that retailer had a physical presence or an agent in this state. As a result of 1988 Iowa Acts, House File 2459, certain retailers, not present in this state, are required to collect Iowa sales tax. Retailers who solicit in Iowa through the electronic or printed media, those who maintain a franchisee or licensee here, and those affiliated with a business selling

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tangible personal property in this state and meeting certain other qualifications are now responsible for collecting sales tax. The newly liable retailers are not obligated to collect local option sales tax.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective November 23, 1988, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The amendments are intended to implement 1987 Iowa Code supplement section 422.43 as amended by 1988 Iowa Acts, House File 2459.

The following amendments are adopted.

ITEM 1. Amend 701—Chapter 11 by adding the following rule:

701—11.11(422) Retailers newly liable, as of July 1, 1988, for collection of sales tax. On and after July 1, 1988, certain retailers who solicit sales of tangible personal property from residents of this state or who are owned or controlled by the same interests which own or control other retailers engaged in business in this state or who have certain franchisees or licensees operating in this state must collect and remit sales tax to the state of Iowa even though those retailers were not required to collect and remit Iowa sales tax prior to July 1, 1988.

11.11(1) Definitions and characterizations. Words are defined or characterized for the purposes of this rule in the manner set out below.

a. "Marketing." The meaning of the word "marketing" is far broader than the meaning of the word "selling." *Treasure Valley Potato Bargaining Association v. Ore-Ida Foods, Inc.*, 497 F.2d 203 (C.A. 9th, 1974). Marketing includes numerous functions directed to the purpose of transferring title and moving tangible personal property in a series of transactions to the consumer. By way of nonexclusive example, marketing of tangible personal property includes buying, selling, storing, transporting, standardizing, financing, risk bearing under the contract of sale, and gathering information.

b. "Residents of this state" may be artificial persons (e.g., corporations and partnerships) as well as natural persons.

c. "Sales solicitation message." Not all advertising of tangible personal property for sale to Iowa residents involves a "sales solicitation message." Advertising and soliciting are not synonymous terms. In *re Owen*, 177 S.E. 403, 207 N.C. 445 (1934). A "sales solicitation message" involves not only a statement that tangible personal property is for sale or a message urging or inciting residents of Iowa to buy the tangible personal property but also an offer to sell tangible personal property with delivery in Iowa or an inducement to Iowa residents to purchase tangible personal property for delivery into this state. Any "sales solicitation message" must include information which allows a resident of Iowa to contact a retailer and offer to purchase tangible personal property from the retailer. Information allowing a resident to do this includes, by way of nonexclusive example: order blanks, a company name and address where offers to purchase are accepted, and 800 telephone numbers.

d. "Solicitation" includes, but is not necessarily limited to, the following:

(1) Transmittance of a printed sales solicitation message by United States mail, common carrier, or otherwise, in the form of a bulk mailing or a bulk delivery, a sales

catalog, brochure, advertising flier, billing or package insert or similar publication or device.

(2) Transmittance of a sales solicitation message by space advertising in a newspaper, magazine, or other publication, which is local, regional, or national in character.

(3) Transmittance of a sales solicitation message by radio, television, telephone, telegraph, computer data base, or by cable, optic, microwave or any other electronic means.

Each separate transmittance of a sales solicitation message is a separate act of "solicitation." Thus, by way of nonexclusive example, a retailer who solicited orders from Iowa residents by means of one bulk mailing of advertising fliers in June, by another mailing of catalogs in August, and by advertising in a newspaper in October, would be engaging in three separate "solicitations."

e. "Soliciting on a continuous basis" means soliciting without interruption or cessation, the uninterrupted or unceasing solicitation consisting of recurring acts of solicitation.

f. "Soliciting on a regular basis" means recurring solicitation at fixed, periodic or unvarying intervals.

g. "Soliciting on a seasonal basis" means soliciting during at least one season (spring, summer, fall, or winter) of a calendar year.

h. "Soliciting on a systematic basis." A retailer is soliciting on a systematic basis if the retailer is soliciting orders from residents of this state in an orderly or methodical fashion, in accordance with some plan or design or in a step-by-step fashion.

11.11(2) Advertising broadcast from a transmitter. Any retailer who solicits sales of tangible personal property from residents of this state by means of advertising broadcast from or relayed from a transmitter within this state must collect and remit tax to the department on sales to Iowa residents. The solicitation must be on either a "continuous, regular, seasonal, or systematic basis." Solicitation which is "seasonal" gives rise to liability for tax only if that solicitation is by the means described in this subrule. The term "advertising . . . broadcast from or relayed from a transmitter within this state" can include advertising disseminated through a cable television system.

11.11(3) Retailers soliciting in this state by means other than those described in subrule 11.11(2). Retailers soliciting orders for tangible personal property from Iowa residents by any means other than advertising which is broadcast or relayed from a transmitter within Iowa are obligated to collect Iowa sales tax if the following circumstances exist:

a. The solicitations are continuous, regular, or systematic, and

b. The retailer benefits from:

(1) Any banking, financing; debt collection; telecommunication, or marketing activities occurring in this state. A retailer benefits from banking activities occurring in Iowa if the retailer takes payment for tangible personal property sold by means of a check or a credit card drawn upon or issued by a bank in this state; or

(2) The location in Iowa of authorized installation, servicing, or repair facilities. To "benefit" from the location in Iowa of installation, servicing, or repair facilities, a retailer need not own or control those facilities. The facilities need only be "authorized" to install, service, or repair tangible personal property sold by the retailer.

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11.11(4) Differing treatments of solicitations of sales by means of advertising, broadcast, or relayed from the transmitters inside and outside of Iowa. Differing consequences exist when solicitation is by means of electronic transmitters located inside or outside of Iowa. If the transmissions originate inside Iowa, the provisions of subrule 11.11(2) are applicable, and the mere act of soliciting on a continuous, regular, seasonal, or systematic basis is enough to impose liability for collection of sales tax on sales to Iowa residents. If the solicitation is by means of a transmitter or transmitters located outside this state, the provisions of subrule 11.11(3) are applicable, and the mere act of solicitation on a continuous, regular, or systematic basis is not enough to impose liability for collection of tax on sales to Iowa residents. The retailer must, additionally, benefit from banking, financing, or other activities described in subrule 11.11(3) to be held liable for collection of the tax.

EXAMPLE: ABC Company, a major retailer, solicits sales of its snowmobiles in an advertisement run on a radio station located in Spencer, Iowa, on November 12, 1988. It solicits sales for its snowblowers in an advertisement on a Mason City radio station on December 4, 1989. It solicits sales of both snowmobiles and snowblowers in an advertisement run on a Decorah radio station on December 14, 1990. ABC is "soliciting on a seasonal basis" by means of advertising broadcast from a transmitter within this state and is, without further activity on its part, obligated to collect tax on its sales to Iowa residents.

EXAMPLE: DEF Company is located in Geneseo, Illinois. Advertisements for this store are broadcast daily from a television transmitter located in East Moline, Illinois. These advertisements are intended to be and are watched by residents of Iowa. DEF is soliciting orders from residents of Iowa on a continuous basis; however, since the solicitations are broadcast from a transmitter located outside the state of Iowa, without more, DEF is not liable for collection of Iowa sales tax unless the furniture store benefits from Iowa banking, financing, debt collection, or other activities previously described to be held liable for collection of the tax.

11.11(5) Retailers owned or controlled by similar interests. Retailers which are owned or controlled by interests which own or control a retailer engaged in business in the same or a similar line of business in Iowa are obligated to collect tax on their Iowa sales regardless of any other contacts with this state which they might have.

11.11(6) Retailers with franchisees or licensees in this state. Retailers who maintain or have a franchisee or licensee operating under the retailer's trade name in this state are required to collect tax on the retailer's Iowa sales if the franchisee or licensee is required to collect Iowa sales or use tax on any of the franchisee's or licensee's Iowa sales.

This rule is intended to implement 1987 Iowa Code supplement section 422.43 as amended by 1988 Iowa Acts, House File 2459.

ITEM 2. Amend rule 701—107.9(422B) by adding a new numbered subparagraph and at the implementation clause as follows:

6. On and after July 1, 1988, sales subject to tax only under the circumstances described in rule 701—11.11(422) are exempt from local option tax. Sales of "foreign retailers" taxable by virtue of any circumstances

other than those described in rule 11.11 (422) remain subject to Iowa local option sales tax.

This rule is intended to implement Iowa Code supplement subsection 422B.8(1) as amended by 1986 1988 Iowa Acts, Senate House File 2302 2459.

[Filed 9/30/88, effective 11/23/88]
[Published 10/19/88]

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ARC 9381

REVENUE AND FINANCE
DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422B.9, the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 19, "Sales and Use Tax on Construction Activities," and Chapter 107, "Local Option Sales and Service Tax," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 1988, as ARC 9150.

Under prior law, construction contractors had no right to a refund of local option sales tax paid on property used in a construction contract if the property was incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to the date local option sales tax was imposed or its rate increased. As a result of 1988 Iowa Acts, House File 2463, a right of refund under the circumstances previously mentioned now exists. The right is similar to a right of refund for contractors currently existing with regard to tax paid on a contract fully executed prior to an increase in state sales and service tax. House File 2463 was effective upon enactment (May 4, 1988).

These rules are identical to those published under Notice of Intended Action. The amendments will become effective November 23, 1988, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The amendments are intended to implement Iowa Code chapter 422B as amended by 1988 Iowa Acts, House File 2463.

The following amendments are adopted.

ITEM 1. Amend rule 701—19.2(422,423), the third unnumbered paragraph which begins "Construction contractors may make application . . ." by adding to it, at the end, the following sentence:

A similar right of refund exists with reference to local option sales tax paid upon goods, wares, or merchandise incorporated into an improvement to real estate. See subrule 107.3(3)"a."

ITEM 2. Amend subrule 107.3(3), paragraph "a," by adding the following paragraph:

As of May 4, 1988, construction contractors may apply for refund of additional local option sales or service tax paid as a result of the imposition of or an increase in the rate of local option tax if the following circumstances exist:

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(1) The additional tax was paid upon tangible personal property incorporated into an improvement to real estate in fulfillment of a written construction contract fully executed prior to the date local option sales tax is imposed or its rate increased, and

(2) The contractor has paid the full amount of both state and local option sales tax due to the department or to a retailer, and

(3) The claim is filed on forms provided by the department within six months of the date on which the contractor has paid the tax.

See rule 19.2(422,423) for a description of a similar right of refund applicable to state sales tax. The rule contains several examples useful in understanding this right of refund for local option tax paid. This local option tax right of refund is not applicable to equipment transferred under a mixed construction contract. See rule 19.9(422,423) for a description of a mixed construction contract and rule 19.10(422,423) for a description of "equipment."

ITEM 3. Amend rule 701—107.3(422B) by adding, at the end, the following unnumbered paragraph:

This rule is intended to implement Iowa Code chapter 422B as amended by 1988 Iowa Acts, House File 2463.

[Filed 9/30/88, effective 11/23/88]

[Published 10/19/88]

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ambulances, rescue vehicles, or fire vehicles may be licensed as vehicle wholesalers. It is presumed that vehicle wholesalers purchase vehicles subject to registration for resale; therefore, vehicle wholesalers are not required to pay tax upon their purchases of vehicles subject to registration. Rebuilders, now classified by the law as vehicle wholesalers, are therefore no longer required to pay use tax on their purchase of vehicles subject to registration which they will rebuild into ambulances, rescue, or fire vehicles. Also, 1988 Iowa Acts, House File 2460, has provided that the amount of a cash rebate which a manufacturer allows to the purchaser of a vehicle subject to registration is excluded from use tax so long as the rebate is applied to lessen the "purchase price" of the vehicle. The effective date of House File 2460 was July 1, 1988.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective November 23, 1988, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement 1988 Iowa Acts, House File 2259.

The following amendments are adopted:

ITEM 1. Amend subrule 34.1(3), first sentence, to read as follows:

34.1(3) "Taxable price" shall be the total delivered price of the vehicle less cash discounts, and trade-in allowances, and any manufacturer's cash rebate to a purchaser which is applied to the purchase price of a vehicle.

ITEM 2. Amend rule 701—34.1(422,423) at the implementation clause to read as follows:

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1(1) as amended by 1988 Iowa Acts, House File 2460, 423.2, 423.4(4) and 423.7.

ITEM 3. Amend rule 701—34.5(423) by adding the following subrule:

34.5(10) On and after July 1, 1988, purchases of vehicles subject to registration by persons who will rebuild those vehicles into ambulances, rescue, or fire vehicles (as defined in Iowa Code chapter 321) are exempt from tax. These purchases are exempt only if the person purchasing the vehicle for rebuilding into an ambulance, rescue, or fire vehicle is a licensed wholesaler of new motor vehicles. This exemption is applicable only to purchases of vehicles which will be rebuilt into ambulances, rescue, or fire vehicles.

ITEM 4. Amend rule 701—34.5(423) at the implementation clause to read as follows:

This rule is intended to implement Iowa Code sections 422.45(5), 423.4(4), and 423.4(9), and 1988 Iowa Acts, chapter 1988 Iowa Acts, House File 2259.

[Filed 9/30/88, effective 11/23/88]

[Published 10/19/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/19/88.

ARC 9379

REVENUE AND FINANCE
DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 34, "Vehicles Subject to Registration," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 1988, as ARC 9153.

The 1988 session of the General Assembly amended the law regarding use tax upon vehicles subject to registration in several respects. Under prior law, persons who purchased vehicles subject to registration and rebuilt those vehicles into ambulances, rescue vehicles, or fire vehicles were required to pay Iowa use tax on their purchase of vehicles for rebuilding. As a result of 1988 Iowa Acts, House File 2259, those who purchased vehicles subject to registration for rebuilding into



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA
EXECUTIVE ORDER NUMBER THIRTY-FIVE

- WHEREAS, the people of Iowa recognize the fundamental importance of foreign language study and international education in an increasingly interdependent world; and
- WHEREAS, additional efforts must be made to increase the number of Iowans with a fluency and proficiency in foreign languages, and with an understanding of and an appreciation for foreign cultures; and
- WHEREAS, an aggressive effort in foreign language training can give Iowans a clear advantage in a competitive world economy.
- NOW THEREFORE, I Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by the laws and Constitution of the State of Iowa do hereby order that:
- I. There shall be created an Iowa Commission on Foreign Language Studies and International Education to be appointed by the Governor whose membership shall include representatives from:
 - A. Faculty of Higher Education Institutions, Secondary Schools, and Primary Schools
 - B. Business and Industry
 - C. Government
 - D. General Public

- II. The Commission on Foreign Language Studies and International Education shall be administratively attached to the Department of Education. With the approval of the Director of the Department of Education, the Department shall fund the travel and administrative expenses of the Commission. The Commission shall have a Chairperson, appointed by the Governor to serve for a term of two years. One half of the initial members shall serve for a term of two years and the remaining half shall serve for three years. Subsequent appointments shall be for a term of three years. The Commission shall consist of at least 20 members and no more than 28 members.
- III. The Commission's charge shall include but need not be limited to:
- A. Coordinating and enhancing efforts to inform and educate Iowans on the importance of foreign language study and international education.
 - B. Promoting a comprehensive foreign language and international studies program for Iowa, extending from kindergarten through college and beyond.
 - C. Developing closer and more productive relationships between educational programs and the business community and encouraging efforts to explore the educational and economic benefits of such relationships.
 - D. Working with appropriate state and private agencies to promote international exchange programs.
 - E. Presenting an annual written report to the Governor, the Board of Regents, and the State Board of Education and providing continuing advice on coordination and implementation of recommendations.
- IV. The Chairperson shall be responsible for calling meetings and preparing meeting agendas with the advice of the membership.

- V. After a period of five years, the Iowa Commission on Foreign Language Studies and International Education shall make a recommendation to the Governor regarding the continuation of the Commission. The Governor shall review this recommendation and shall make a decision to continue or discontinue the Commission. Following this review, the Governor shall review the status of the Commission upon each subsequent appointment of the chairperson.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the Great Seal of the State of Iowa to be affixed. Done on this 27th day of September in the year of our Lord one thousand nine hundred and eighty-eight.

Terry E. Branstad
GOVERNOR

ATTEST:

Elaine Baxter
SECRETARY OF STATE

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

August 1988

COUNTIES

Joint 911 Service Board. Iowa Code ch. 39, § 39.3; Iowa Code ch. 47; § 47.4; Iowa Code ch. 422B, § 422B.8; Iowa Code ch. 477B. House File 2400, 72nd G.A., 2d Sess. § 1 (Iowa 1988). The surcharge referendum may be included in any election, including a special election, in which all voters of the proposed service area will be eligible to vote. We do not recommend inclusion in a primary election. A special election may not be held for the exclusive purpose of the surcharge referendum. A "subscriber" for purposes of the surcharge referendum is the person in whose name the service is billed and need not be a qualified elector. The surcharge is not a local option tax that can be presented to voters under chapter 422B. The decision whether to establish a new joint 911 service board or substitute a 28E entity is vested in the discretion of the board of supervisors. A legal entity created pursuant to chapter 28E and substituted for the joint 911 service board must meet the voting and membership requirements of § 3(1). Whether a newly established joint 911 service board is a "creature of county government" raises several different issues which must be resolved specifically as they develop in context rather than generally. There is no statutory authority for the board of supervisors to appoint an acting chairperson or to ultimately select the chairperson of a joint 911 service board. The decision whether and how to weigh votes among voting members of a joint 911 service board is an internal issue for resolution by the joint 911 service board. The membership of a joint 911 service board may not be expanded by the board of supervisors beyond those members delineated by statute. Membership turns on service territory or operating area rather than headquarters. (Pottorff to Baxter, Secretary of State; Barbour, Webster County Attorney; Vander Hart, Buchanan County Attorney, 8-30-88)
#88-8-4

HIGHWAYS

Transfer of jurisdiction by city. Iowa Code §§ 306.8; 306.43; 368.8. Severing or deannexing of a road or street by a city does not change the jurisdiction of the public road involved unless another entity agrees to accept jurisdiction in the manner prescribed by §§ 306.8 and 306.43. (Krogmeier to Metcalf, 8-19-88) #88-8-2

LAW ENFORCEMENT, PUBLIC SAFETY, SHERIFFS

Disposition of prisoners. Iowa Code §§ 356.1, 356.2, 356.5, 804.21, 804.22, 804.28 (1987). Generally under Iowa Code §§ 356.1, 356.2, 804.21 and 804.22 (1987) the arresting agency and not the county sheriff is responsible for the safekeeping and custody of prisoners who have not been committed to the county jail. this includes the responsibility of making emergency

medical care available. Iowa Code § 804.28 (1987) creates an exception to this rule. Under § 804.28, the Sheriff is responsible to take charge of prisoners of the Iowa Department of Public Safety. The Sheriff is responsible for such prisoners as though the Sheriff made the initial arrest. The arresting agency is not responsible for the cost of medical care made available to arrestees. (Hayward to Shepard, Commissioner of Public Safety, 8-2-88) #88-8-1(L)

SCHOOLS

Financing. Iowa Code §§ 442.4, 442.4(6), 281.9. The amendment to § 442.4 allowing eleventh and twelfth grade students to move from a district but to continue attending the district until graduation without the payment of tuition does not include those students who require special education and are counted in the "weighted enrollment" for the generation of funds. (Skinner to De Groot, State Representative, 8-26-88) #88-8-3(L)

STATUTES CONSTRUED

1987 IOWA CODE

1987 IOWA CODE	OPINION
ch. 39	#88-8-4
39.3	#88-8-4
ch. 47	#88-8-4
47.4	#88-8-4
281.9	#88-8-3(L)
306.8	#88-8-2
306.43	#88-8-2
356.1	#88-8-1(L)
356.2	#88-8-1(L)
356.5	#88-8-1(L)
368.8	#88-8-2
ch. 422B	#88-8-4
422B.8	#88-8-4
442.4	#88-8-3(L)
442.4(6)	#88-8-3(L)
ch. 477B	#88-8-4
804.21	#88-8-1(L)
804.22	#88-8-1(L)
804.28	#88-8-1(L)

72nd G.A., 2d Sess.

72nd G.A., 2d Sess.	OPINION
H.F. 2400, § 1	#88-8-4

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