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IOWA ADMINISTRATIVE BULLETIN

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CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

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

Schedule for Rule Making 1999

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 25 '98	Jan. 13 '99	Feb. 2 '99	Feb. 17 '99	Feb. 19 '99	Mar. 10 '99	Apr. 14 '99	July 12 '99
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sept. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sept. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	May 28	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	June 25	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sept. 1	Nov. 29
May 28	June 16	July 6	July 21	July 23	Aug. 11	Sept. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sept. 29	Dec. 27
June 25	July 14	Aug. 3	Aug. 18	Aug. 20	Sept. 8	Oct. 13	Jan. 10 '00
July 9	July 28	Aug. 17	Sept. 1	Sept. 3	Sept. 22	Oct. 27	Jan. 24 '00
July 23	Aug. 11	Aug. 31	Sept. 15	Sept. 17	Oct. 6	Nov. 10	Feb. 7 '00
Aug. 6	Aug. 25	Sept. 14	Sept. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '00
Aug. 20	Sept. 8	Sept. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 6 '00
Sept. 3	Sept. 22	Oct. 12	Oct. 27	Oct. 29	Nov. 17	Dec. 22	Mar. 20 '00
Sept. 17	Oct. 6	Oct. 26	Nov. 10	Nov. 12	Dec. 1	Jan. 5 '99	Apr. 3 '00
Oct. 1	Oct. 20	Nov. 9	Nov. 24	Nov. 26	Dec. 15	Jan. 19 '99	Apr. 17 '00
Oct. 15	Nov. 3	Nov. 23	Dec. 8	Dec. 10	Dec. 29	Feb. 2 '99	May 1 '00
Oct. 29	Nov. 17	Dec. 7	Dec. 22	Dec. 24	Jan. 12 '99	Feb. 16 '99	May 15 '00
Nov. 12	Dec. 1	Dec. 21	Jan. 5 '00	Jan. 7 '00	Jan. 26 '00	Mar. 1 '00	May 29 '00
Nov. 26	Dec. 15	Jan. 4 '00	Jan. 19 '00	Jan. 21 '00	Feb. 9 '00	Mar. 15 '00	June 12 '00
Dec. 10	Dec. 29	Jan. 18 '00	Feb. 2 '00	Feb. 4 '00	Feb. 23 '00	Mar. 29 '00	June 26 '00
Dec. 24	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7 '00	Jan. 26 '00	Feb. 15 '00	Mar. 1 '00	Mar. 3 '00	Mar. 22 '00	Apr. 26 '00	July 24 '00

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
20	Friday, March 5, 1999	March 24, 1999
21	Friday, March 19, 1999	April 7, 1999
22	Friday, April 2, 1999	April 21, 1999

PLEASE NOTE:

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

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the processing of rule-making documents, we request a 3.5" High Density (not Double Density) IBM PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, 1st Floor, Lucas State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

2. Alternatively, if you have Internet E-mail access, you may send your document as an attachment to an E-mail message, addressed to both of the following:

bcarr@legis.state.ia.us

kbates@legis.state.ia.us

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies by the Governor's office, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

ALL AGENCIES: Contact bcarr@legis.state.ia.us to receive the Uniform Rules on Agency Procedure by E-mail.

Guide to Rule Making, June 1995 Edition, available upon request to the Iowa Administrative Code Division, Lucas State Office Building, First Floor, Des Moines, Iowa 50319.

The Administrative Rules Review Committee will hold its regular, statutory meeting on Monday, March 8, 1999, at 8 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

Bulletin

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]Bulk dry animal nutrients, ch 49, Notice ARC 8650A 2/10/99**ARCHITECTURAL EXAMINING BOARD[193B]**

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Definitions; architecture registration examination; rules of conduct; disciplinary action; petition for rule making and declaratory order, 1.5, 2.2(1), 2.2(2), 4.1, 4.1(5)"a," 4.1(6)"i," ch 5, 8.5 to 8.16, Notice ARC 8710A 2/24/99**BLIND, DEPARTMENT FOR THE[111]**Administrative procedures, 1.3, chs 3 to 5, Notice ARC 8714A 2/24/99**COMMUNITY ACTION AGENCIES DIVISION[427]**

HUMAN RIGHTS DEPARTMENT[421]"umbrella"

Recoupment of overpayments or payments fraudulently obtained under the weatherization assistance program, 5.6, Filed ARC 8703A 2/24/99Recoupment of overpayments or payments fraudulently obtained under the low-income home energy assistance program, 10.8, 10.8(2) to 10.8(4), Filed ARC 8704A 2/24/99**DENTAL EXAMINERS BOARD[650]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Dental hygiene committee—definition, 1.1, Filed ARC 8683A 2/10/99Dental hygiene committee, 5.1, 5.1(3), 5.1(4), 5.2(5), 5.2(6), 5.6, Filed ARC 8682A 2/10/99Sharing of information with the college student aid commission, 6.9(2)"i," Filed ARC 8684A 2/10/99Petitions for rule making—dental hygiene committee review, 7.1(5), 7.1(6), Filed ARC 8681A 2/10/99Unauthorized practice of dental hygiene, 10.4, Filed ARC 8680A 2/10/99Application to practice dental hygiene, 11.5(1) to 11.5(3), 11.5(5), 11.6(1) to 11.6(4), 11.6(6), 11.7, 11.8, Filed ARC 8679A .. 2/10/99License denial—certificate of noncompliance, 11.11, Filed ARC 8685A 2/10/99Examinations, 12.3(1) to 12.3(8), 12.4(2), Filed ARC 8678A 2/10/99Dental hygiene faculty permit, 13.2(2), 13.2(7), Filed ARC 8677A 2/10/99Dental hygiene license—renewal and reinstatement, 14.1(5), 14.5(4), Filed ARC 8676A 2/10/99License application fees, 15.1, 15.2(1), 15.2(2), Filed ARC 8675A 2/10/99Certificate of qualification in dental radiography—renewal fee, 22.9(2), Filed ARC 8674A 2/10/99Dental hygiene continuing education, 25.11, Filed ARC 8673A 2/10/99Dental hygiene ethics, 27.1, Filed ARC 8672A 2/10/99Discipline—certificate of noncompliance, 30.4"41" and "42," Filed ARC 8686A 2/10/99Dental hygiene committee—complaint investigation and review, 31.1, 31.5, Filed ARC 8671A 2/10/99Student loan default/noncompliance with agreement for payment of obligation, ch 34, Filed ARC 8687A 2/10/99Dental hygiene committee—disciplinary hearings, 51.4(2) to 51.4(7), 51.7(3), Filed ARC 8670A 2/10/99**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**Comprehensive community and economic development plan, 1.4(1) to 1.4(5), 21.2, 50.2, 53.2, 53.8(3)"d," 53.9(4)"c," 53.14(1), ch 80 division I title, 80.1 to 80.12, Filed ARC 8692A 2/10/99Workforce development accountability system, ch 4, Filed ARC 8696A 2/10/99Iowa community development block grant program, 23.2, 23.4(8), 23.7(1)"c," Filed ARC 8695A 2/10/99Self-employment loan program, 51.3(3), 51.3(8)"b," Filed ARC 8694A 2/10/99Enterprise zones, 59.2, 59.3(3)"b" to "d," Notice ARC 8697A 2/10/99Entrepreneurial ventures assistance program, 60.4, 60.5, Filed ARC 8693A 2/10/99**EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]"umbrella"

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NATURAL RESOURCES DEPARTMENT[561]"umbrella"

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HUMAN SERVICES DEPARTMENT[441]

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COMMERCE DEPARTMENT[181]"umbrella"

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WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

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COMMERCE DEPARTMENT[181]"umbrella"

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PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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- Board of behavioral science examiners, 30.2(9), 30.3(2)"a"(2), 30.4(2)"a"(2), 30.6(5), 31.1(3), 31.1(4), 31.1(6),
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- Board of optometry examiners, 180.4, 180.5, 180.5(1) to 180.5(3), 180.12(5)"d," Filed ARC 8689A 2/10/99
- Board of podiatry examiners, 220.3(10), 220.7, 220.101, 220.213, 221.6(2), 221.9, 221.10(5), Notice ARC 8705A 2/24/99

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- Consent for the sale of goods and services, ch 13, Notice ARC 8649A 2/10/99

PUBLIC HEALTH DEPARTMENT[641]

- Mammography, 41.1(1), 41.6(2)"g," Filed ARC 8669A 2/10/99
- Removal of dead body or fetus; burial-transit permit; transportation and disposition of dead body or fetus,
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- Trauma education and training, ch 137, Notice ARC 8691A 2/10/99
- Iowa regionalized system of perinatal health care, ch 150, Filed ARC 8663A 2/10/99

PUBLIC SAFETY DEPARTMENT[661]

- Bail enforcement, private investigation and private security businesses, ch 2 title, 2.1, 2.2, 2.3(3), 2.3(15),
2.4, 2.4(1) to 2.4(3), 2.4(5)"d," 2.4(7), 2.4(9), 2.5(9) to 2.5(11), 2.6 to 2.8, 2.10, 2.11(1), 2.12, 2.17, Filed ARC 8717A .. 2/24/99
- Detection of drugs other than alcohol, 7.9, Filed ARC 8718A 2/24/99

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- Length and dates of suspensions; weight allowances for apprentice jockeys; discounted single cash payment
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- Auditing claims, 201.1(2), Notice ARC 8711A 2/24/99

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- Farm-to-market review board, ch 101, Filed ARC 8651A 2/10/99
- Traffic and engineering investigations on secondary roads; federal-aid urban systems; rail rate regulation,
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WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Labor-management cooperation program, ch 9, Notice ARC 8707A 2/24/99

WORKFORCE DEVELOPMENT DEPARTMENT[871]

- Administration; unemployment insurance services division, rescind 345—ch 1, adopt 871—ch 21,
amend 22.1(2)"h," 23.10(2)"a" to "d," 23.52(6), 23.54, 23.70(3) to 23.70(9), 24.1(4),
24.1(8), 24.1(9), 24.1(54) to 24.1(56), 24.4(1), 24.8(2)"d"(2), 24.23(24), 24.26(14), 24.26(15),
24.39(1), 24.58(6), 25.12(2), 25.12(3), Filed ARC 8648A 2/10/99

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 1999.

Senator H. Kay Hedge, Chairperson
3208 335th Street
Fremont, Iowa 52561

Senator Merlin E. Bartz
2081 410th Street
Grafton, Iowa 50440

Senator Patricia M. Harper
3336 Santa Maria Drive
Waterloo, Iowa 50702

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

Senator Sheldon Rittmer
3539 230th Street
DeWitt, Iowa 52742

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Des Moines, Iowa 50319
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Fax (515)281-5995

Representative Christopher Rants, Vice-Chairperson
2740 South Glass
Sioux City, Iowa 51106

Representative Danny Carroll
244 400th Avenue
Grinnell, Iowa 50112

Representative Minnette Doderer
2008 Dunlap Court
Iowa City, Iowa 52245

Representative Geri Huser
213 7th Street NW
Altoona, Iowa 50009

Representative Janet Metcalf
12954 NW 29th Drive
Urbandale, Iowa 50323

Brian Gentry
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319

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
BLIND, DEPARTMENT FOR THE[111]		
Rule making and declaratory orders, 1.3, ch 3, 4.1 to 4.4, ch 5 IAB 2/24/99 ARC 8714A	Director's Conference Room 524 Fourth St. Des Moines, Iowa	March 16, 1999 1 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Enterprise zones, 59.2, 59.3(3) IAB 2/10/99 ARC 8697A	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	March 2, 1999 2 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Two-year conditional license, 14.16 IAB 2/10/99 ARC 8644A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	March 2, 1999 10 a.m.
Removal of expiration dates for endorsements, 14.20, 15.2(9) IAB 2/10/99 ARC 8690A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	March 2, 1999 1 p.m.
Science endorsement, 14.21(17) IAB 1/27/99 ARC 8633A	Conference Room 3 South—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	February 26, 1999 10 a.m.
HUMAN SERVICES DEPARTMENT[441]		
Pilot diversion initiatives, 41.25(9), 47.1 to 47.3, 47.4(4), 47.5, 47.8, 47.9, 47.10(3), 47.11, 47.21, 47.26(1), 47.41, 47.47, 47.48(2), 47.49 to 47.72 IAB 2/10/99 ARC 8656A	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	March 5, 1999 10 a.m.
	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	March 3, 1999 9 a.m.
	Conference Room 3 Bicentennial Bldg.—5th Floor 428 Western Davenport, Iowa	March 4, 1999 10 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	March 4, 1999 10 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	March 3, 1999 10 a.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)	Conference Room 2 120 E. Main Ottumwa, Iowa	March 3, 1999 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	March 5, 1999 1:30 p.m.
	Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	March 3, 1999 10 a.m.
CSRU—support obligation, 98.104(2), 99.1, 99.3(2), 99.4(1), 99.5(4) IAB 2/10/99 ARC 8659A	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	March 3, 1999 9 a.m.
	Suite 32 300 W. Broadway Council Bluffs, Iowa	March 4, 1999 9 a.m.
	Conference Room 507 Bicentennial Bldg.—5th Floor 428 Western Davenport, Iowa	March 3, 1999 1 p.m.
	Conference Room, Suite 8 1901 Bell Ave. Des Moines, Iowa	March 3, 1999 8 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	March 5, 1999 10 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	March 4, 1999 9 a.m.
	Conference Room B 520 Nebraska St. Sioux City, Iowa	March 3, 1999 10 a.m.
Child abuse assessment program, 175.21, 175.24, 175.41, 175.43 IAB 2/10/99 ARC 8661A	Conference Room Suite 400 501 Sycamore Waterloo, Iowa	March 3, 1999 1 p.m.
	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	March 3, 1999 2 p.m.
	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	March 3, 1999 10:30 a.m.
	Large Conference Room Bicentennial Bldg.—5th Floor 428 Western Davenport, Iowa	March 3, 1999 10 a.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)	Conference Room 102 City View Plaza 1200 University Des Moines, Iowa	March 3, 1999 10 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	March 3, 1999 11 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	March 3, 1999 12 noon
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	March 3, 1999 1:30 p.m.
	Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	March 5, 1999 11 a.m.
LAW ENFORCEMENT ACADEMY[501]		
Officer certification, 3.1(4) IAB 2/10/99 ARC 8639A	Library Law Enforcement Academy Camp Dodge Johnston, Iowa	March 2, 1999 10 a.m.
Telecommunicator training standards, 13.3(4), 13.5(3), 13.6 IAB 2/10/99 ARC 8638A	Library Law Enforcement Academy Camp Dodge Johnston, Iowa	March 2, 1999 9:30 a.m.
PROFESSIONAL LICENSURE DIVISION[645]		
Marital and family therapists and mental health counselors, 30.2(9), 30.3(2), 30.4(2), 30.6(5), 31.1 to 31.3 IAB 2/10/99 ARC 8688A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	March 2, 1999 8 to 10 a.m.
Podiatry examiners, 220.3(10), 220.7, 220.101, 220.213, 221.6(2), 221.9, 221.10(5) IAB 2/24/99 ARC 8705A	Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	March 16, 1999 9 to 11 a.m.
PUBLIC EMPLOYMENT RELATIONS BOARD[621]		
Consent for the sale of goods and services, ch 13 IAB 2/10/99 ARC 8649A	Board Hearing Room—2nd Floor 514 E. Locust St. Des Moines, Iowa	March 2, 1999 11 a.m.
PUBLIC HEALTH DEPARTMENT[641]		
Trauma education and training, ch 137 IAB 2/10/99 ARC 8691A (ICN Network)	National Guard Armory 11 E. 23rd St. Spencer, Iowa	March 2, 1999 2 to 3 p.m.

PUBLIC HEALTH DEPARTMENT[641] (ICN Network) (Cont'd)	National Guard Armory 1712 LaClark Rd. Carroll, Iowa	March 2, 1999 2 to 3 p.m.
	National Guard Armory 1160 10th St. S.W. Mason City, Iowa	March 2, 1999 2 to 3 p.m.
	ICN Room—6th Floor Lucas State Office Bldg. Des Moines, Iowa	March 2, 1999 2 to 3 p.m.
	National Guard Armory 195 Radford Rd. Dubuque, Iowa	March 2, 1999 2 to 3 p.m.
	National Guard Armory 501 Hwy. 1 South Washington, Iowa	March 2, 1999 2 to 3 p.m.
 RACING AND GAMING COMMISSION[491]		
General, 4.4(5), 13.25(2), 26.17(7) IAB 2/10/99 ARC 8653A	Suite B 717 E. Court Des Moines, Iowa	March 2, 1999 9 a.m.
 STATUS OF WOMEN DIVISION[435]		
Iowans in transition, 5.1, 5.2, 5.4, 5.5 IAB 2/24/99 ARC 8715A	Conference Room—1st Floor Lucas State Office Bldg. Des Moines, Iowa	March 16, 1999 3 p.m.
 TRANSPORTATION DEPARTMENT[761]		
Administrative rules and declaratory orders, 10.1(2), 10.2 to 10.4 IAB 2/10/99 ARC 8645A	Commission Conference Room 800 Lincoln Way Ames, Iowa	March 5, 1999 9 a.m. (If requested)
Default decisions and administrative procedures, 13.6 to 13.8, 13.10, 13.11, 13.13, 13.20, 615.38, 620.4 IAB 2/10/99 ARC 8646A	Commission Conference Room 800 Lincoln Way Ames, Iowa	March 5, 1999 10 a.m. (If requested)
Speed limits on secondary roads; federal-aid urban systems; rail rates, rescind chs 141, 180, 840 IAB 2/10/99 ARC 8647A	Commission Conference Room 800 Lincoln Way Ames, Iowa	March 5, 1999 11 a.m. (If requested)
 WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]		
Labor-management cooperation program, ch 9 IAB 2/24/99 ARC 8707A	Capitol View Conference Room 1000 E. Grand Ave. Des Moines, Iowa	March 16, 1999 10 a.m.

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

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

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

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of Blacks Division[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

NOTICE---AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Law Enforcement Education Partnership	Statewide	State, County or local law enforcement agencies; including district attorneys	Drug Abuse and Violence prevention activities Includes funding for DARE services.	4/15/99	7/1/99 to 6/30/2001

In writing, request application packet from:

Allen Vander Linden
 Contracts Administrator
 Iowa Department of Public Health
 Division of Substance Abuse and Health Promotion
 321 East 12th Street
 Lucas State Office Building
 Des Moines, Iowa 50319-0075
 Phone (515) 281-4636
 Fax (515) 281-4535

Note: Voluntary training will be offered on March 10, 1999. Information on time and locations is included in the application packet.

NOTICE -- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Pharmacy Services	Statewide	Pharmacies in the state of Iowa.	Distribution of pharmaceuticals for the HIV/AIDS, STD, and TB programs for the Iowa Department of Public Health.	4/12/1999	7/1/99 to 6/30/2000

In writing, request application packet from:

Ralph Wilmoth
 Iowa Department of Public Health
 Division of Health Protection
 321 East 12th Street
 Lucas State Office Building
 Des Moines, Iowa 50319-0075
 Phone (515) 242-5149
 FAX (515) 281-4570

Note: Voluntary bidder's conference will be held on March 8, 1999. Information regarding the time and place of the conference will be included in the application packet.

NOTICE - AVAILABILITY OF PUBLIC FUNDS

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	SERVICES	APPLICATION DUE DATE	CONTRACT PERIOD
Public Health	PRIMECARRE Community Scholarship Program	Statewide	Communities in Federally Designated Health Provider Shortage Areas in Iowa	Scholarships for students who are residents of the community for educational expenses incurred while completing an accredited primary care training program.	March 22, 1999.	Extends until the service commitment has been completed.

Faxed requests will be accepted.
Request application packet from:

Margaret A. Pitiris, MS
PRIMECARRE Program Coordinator
Bureau of Rural Health & Primary Care
Division of Family and Community Health
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0075
Telephone: (515) 281-5069
FAX: (515) 242-6384

ARC 8710A

ARCHITECTURAL EXAMINING
BOARD[193B]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 1, "Description of Organization," Chapter 2, "Registration," Chapter 4, "Rules of Conduct," Chapter 5, "Disciplinary Action," and Chapter 8, "Petition for Rule Making and for Declaratory Order," Iowa Administrative Code.

The amendments to Chapter 1 add definitions which help to interpret the exceptions outlined in Iowa Code section 544A.18. These definitions are currently included in the Uniform Building Code which is recognized throughout the construction industry.

The amendment to Chapter 2 clarifies the requirements to apply for the architecture registration examination. The amendment to Chapter 4 includes the Iowa Code citations which apply to the architecture rules of professional conduct and additional requirements for sealing of documents by an architect.

Chapter 5 is rescinded and replaced by a new chapter which implements changes to the model rules required by the administrative procedure Act as a result of 1998 Iowa Acts, chapter 1202, and the amendments to Chapter 8 include changes required by 1998 Iowa Acts, chapter 1202, as well.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before March 30, 1999. Comments should be addressed to Glenda Loving, Architectural Examining Board, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to glenda.loving@comm7.state.ia.us.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and chapters 272C and 544A.

The following amendments are proposed.

ITEM 1. Amend rule **193B—1.5(544A,17A)** as follows:

Adopt the following **new** definitions in alphabetical order:

"Agricultural building" means a structure designed to house farm implements, hay, grain, poultry, livestock or other horticulture products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed or treated or packaged; nor shall it be a place used by the public.

"Alter" or "alteration" means any change, addition or modification in construction or occupancy.

"Basement" means any floor level below the first story in a building, except that a floor level in a building having only one floor shall be classified as a basement unless such floor level qualifies as a first story as defined herein.

"Dwelling unit" means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, or cooking and sanitation for not more than

one family, or a congregate residence for ten or fewer persons.

"Habitable space (room)" means a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

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

"Occupancy" means the purpose for which a building, or part thereof, is used or intended to be used.

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

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of the building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet (1829 mm) above grade for more than 50 percent of the total perimeter or is more than 12 feet (3658 mm) above grade at any point, such usable or unused under-floor space shall be considered a story.

"Story, first" means the lowest story of a building which qualifies as a story, as defined herein, except that the floor level in a building having only one floor level shall be classified as a first story, provided such floor is not more than 4 feet (1219 mm) below grade for more than 50 percent of the total perimeter, or not more than 8 feet (2438 mm) below grade at any point.

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Amend the definition of "Gross floor area" as follows:

"Gross floor area" means the aggregate floor area of an entire building enclosed by and including the surrounding exterior walls, and including the aggregate total area of existing, new and additional construction which is physically connected by enclosed space. *Basements and below-grade spaces shall be included when calculating gross floor area regardless of the use of such space.*

ITEM 2. Amend subrules 2.2(1) and 2.2(2) as follows:

2.2(1) All eligibility requirements shall have been verified by the council record and satisfied in accordance with the NCARB Handbook for Interns and Architects. The Handbook is available through the National Council of Architectural Registration Boards (NCARB), 1735 New York Avenue, N.W., Washington, D.C. 20006, the Iowa architectural examining board or the state law library. *Eligibility requirements include a professional degree from a program accredited by the National Architectural Accrediting Board (NAAB) or the Canadian Architectural Certification Board (CACB) and completion of IDP (Intern Development Program).*

2.2(2) ~~Effective January 1, 1997, IDP (Intern Development Program) training must be recorded and validated as credit is earned, except 300 value units (approximately one year) of credit are allowed prior to establishing and maintaining a council record.~~ Documentation of training standards shall be submitted on "IDP report" forms, published by NCARB, verified by signatures of registered architects serving as (a) a professional sponsor who has been the intern-architect's employer or who has been an architect in the firm

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

who has substantial responsibility and has been assigned by the firm to act in this capacity; and (b) a professional advisor who is a registered architect, usually outside the intern's firm, with whom the intern has met for guidance and evaluation of progress. The report form shall be completed to demonstrate attainment of an aggregate of the minimum number of value units in each training area. *To receive credit, training units must have been earned no longer than five years prior to the date of establishing an NCARB council record.*

ITEM 3. Amend rule **193B—4.1(544A,17A)** as follows:

Amend the introductory paragraph as follows:

193B—4.1(544A,17A) Rules of conduct. Failure by a registrant to adhere to *the provisions of Iowa Code sections 272C.10 and 544A.13* and the following rules of conduct shall be grounds for disciplinary action.

Amend subrule **4.1(5)**, paragraph "a," as follows:

a. Each office maintained for the preparation of drawings, specifications, reports or other professional work shall have an architect resident regularly employed in that office having ~~direct knowledge and supervisory responsible~~ control of such work.

Amend subrule **4.1(6)** by adding new paragraph "h" as follows:

h. The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the responsible control of the individual named on that seal.

ITEM 4. Rescind 193B—Chapter 5 and adopt the following new chapter in lieu thereof:

CHAPTER 5
DISCIPLINARY ACTION

193B—5.1(544A,272C) Disciplinary action. The Iowa architectural examining board has authority in Iowa Code chapters 544A, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193B—5.2(544A,272C) Investigation of complaints. The board shall, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the president shall cause an investigation to be made into the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board shall take no further action.

193B—5.3(544A,272C) Peer investigative committee. A peer investigative committee may be appointed by the president to investigate a complaint. The committee members will consist of one or more architects, serve at the discretion of the president, and shall have been registered to practice in Iowa for at least five years. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.

193B—5.4(544A,272C) Investigation report. Upon completion of the investigation, the investigator(s) shall prepare for the board's consideration a report containing the position or defense of the registrant to determine what further action is necessary. The board may:

1. Order the matter be further investigated.

2. Allow the registrant who is the subject of the complaint an opportunity to appear before the committee for an informal discussion regarding the circumstances of the alleged violation.

3. Determine there is no probable cause to believe a disciplinary violation has occurred and close the case.

4. Determine there is probable cause to believe that a disciplinary violation has occurred.

193B—5.5(544A,272C) Informal discussion. If the board considers it advisable, or if requested by the affected registrant, the board may grant the registrant an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The registrant may be represented by legal counsel at the informal discussion. The registrant is not required to attend the informal discussion. By electing to attend, the registrant waives the right to seek disqualification based upon personal investigation of a board member or staff from participating in making a contested case decision or acting as a presiding officer in a later contested case proceeding. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

193B—5.6(544A,272C) Consent agreement. It is unlawful for a person not qualified by registration to engage in or offer to engage in the practice of architecture. The board in its discretion and in lieu of prosecuting a first offense of any of the offenses described in Iowa Code section 544A.15 may enter into a consent agreement with a violator, or with a person guilty of aiding or abetting a violator, which acknowledges the violation and the violator's agreement to refrain from any further violations. A representative of the board, designated by the president, and a designated staff person or an assistant attorney general may agree to negotiate a consent agreement. The proposed consent agreement must be presented to the board for approval and shall be binding if signed by the board president and the violator.

Failure to abide by the agreement is grounds for prosecution as a serious misdemeanor pursuant to Iowa Code section 544A.15.

193B—5.7(544A,272C) Consent order. The board may negotiate a settlement and enter into a consent order with an architect who acknowledges a violation of the statute or rules and agrees to refrain from any further violation, pursuant to Iowa Code section 544A.29. A representative of the board, designated by the president, and a designated staff person or an assistant attorney general may agree to negotiate a settlement. The proposed consent order must be presented to the board for approval and shall be binding if signed by the board president and the architect. Any board member who participates in negotiation of a consent order is not disqualified from participating in adjudication of the contested case. Consent to negotiation by the respondent constitutes waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, during settlement negotiations. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board president or designee.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

193B—5.8(544A,272C) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense.

193B—5.9(17A) Time requirements.

5.9(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

5.9(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

193B—5.10(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

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

193B—5.11(544A,272C) Notice of hearing. The board's notice of hearing shall fix the time and place for hearing and shall contain those items specified in Iowa Code section 17A.12(2). The notice shall also contain the following:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved;
4. A short and plain statement of the matters asserted. If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
5. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and identification of parties' counsel where known;
6. Reference to the procedural rules governing conduct of the contested case proceeding;
7. Reference to the procedural rules governing informal settlement;
8. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and
9. A statement requiring the respondent to submit an answer of the type specified in rule 5.12(544A,272C) within 20 days after receipt of the notice of hearing.

193B—5.12(544A,272C) Form of answer. The answer shall contain the following information:

1. The name, address and telephone number of the respondent.
2. Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
3. Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

193B—5.13(544A,272C) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

193B—5.14(17A) Presiding officer.

5.14(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board or a panel of the board.

5.14(2) The board may deny the request only upon a finding that one or more of the following apply:

- a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f. Funds are unavailable to pay the costs of an administrative law judge and an inter-board appeal.
- g. The request was not timely filed.
- h. The request is not consistent with a specified statute.

5.14(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

5.14(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

5.14(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

193B—5.15(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

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193B—5.16(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

193B—5.17(17A) Disqualification.

5.17(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

5.17(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrule 5.32(9).

5.17(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

5.17(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 5.17(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts,

chapter 1202, section 19. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 5.34(17A) and seek a stay under rule 5.37(17A).

193B—5.18(17A) Consolidation—severance.

5.18(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

5.18(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193B—5.19(17A) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

193B—5.20(17A) Service and filing of pleadings and other papers.

5.20(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the board, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

5.20(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

5.20(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

5.20(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

5.20(5) Proof of mailing. Proof of mailing includes either a legible United States Postal Service postmark on the enve-

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lope, a certificate of service, a notarized affidavit, or a certification in substantially the following form;

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

193B—5.21(17A) Discovery.

5.21(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

5.21(2) Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 5.21(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

5.21(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193B—5.22(17A) Subpoenas. In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (disciplinary hearing). After service of the notice of hearing under rule 5.11(544A,272C), the following procedures are available to the parties in order to obtain relevant and material evidence:

1. Board subpoenas for books, papers, records, and other real evidence will be issued to a party upon request. Subpoenas for witnesses may also be obtained. The executive secretary shall issue all subpoenas for both parties upon request. The request, which may be verbal or written, must specify the documents sought to be obtained and the names of the witnesses whose testimony is sought.

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

3. In the event of a refusal to obey a subpoena, either party or the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena and, if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

193B—5.23(17A) Motions.

5.23(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

5.23(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

5.23(3) The presiding officer may schedule oral argument on any motion.

5.23(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

5.23(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 5.36(17A) and appeal pursuant to rule 5.35(17A).

193B—5.24(17A) Prehearing conference.

5.24(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

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

5.24(2) Each party shall bring to the prehearing conference:

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

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

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

5.24(3) In addition to the requirements of subrule 5.24(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

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

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

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

5.24(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

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193B—5.25(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

5.25(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

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

5.25(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

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

193B—5.26(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with board rules. Unless otherwise provided, a withdrawal shall be with prejudice.

193B—5.27(17A) Intervention.

5.27(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

5.27(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

5.27(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests

of the movant are not adequately represented by existing parties.

5.27(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

193B—5.28(544A,272C) Hearings. A hearing may be conducted before a majority of the board members. An administrative law judge may act as presiding officer to conduct the hearing for the board or a panel of the board. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and shall rule on all motions and objections.

5.28(1) Examination of witnesses by the board. The presiding officer and other board members have the right to conduct direct examination of the witnesses at any stage of that witness's testimony.

5.28(2) Public hearing. The hearing shall be open to the public unless the registrant or registrant's attorney requests in writing that the hearing be closed to the public.

5.28(3) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electrical means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the board for at least five years from the date of decision.

5.28(4) Order of proceedings. Before testimony is presented, the record shall show the identity of any board members present, identity of the administrative law judge, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. Hearings before the board shall generally be conducted in the following order, subject to modification at the discretion of the board.

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state interest before the board shall make a brief opening statement which will include a summary of charges and the witnesses and documents to support such charges.

c. The respondent(s) shall each be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. A summary, at the close of the evidence on behalf of the state.

f. The presentation of evidence on behalf of the respondent(s).

g. Rebuttal evidence on behalf of the state, if any.

h. Rebuttal evidence on behalf of the respondent(s), if any.

i. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

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5.28(5) Immunity. The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

5.28(6) Evidence. Admissibility of evidence at the hearing shall be governed by Iowa Code section 17A.14. Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies may also be furnished to members of the board.

5.28(7) Final decision. When four or more members of the board preside over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive secretary. A copy of the decision and order shall immediately be sent by certified mail, return receipt requested, to the registrant's last known post office address or may be served as in the manner of original notices upon the registrant.

193B—5.29(544A,272C) Dispensation. The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

1. Dismiss the charges.
2. Revoke the architect's registration. In the event of a revocation, the registrant shall not be allowed to remain a partner or shareholder of a business entity if the law requires all partners or shareholders of such entity to be registered architects.
3. Suspend the registrant's registration as authorized by law.
4. Impose civil penalties, the amount which shall be set at the discretion of the board but which shall not exceed \$1000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code sections 544A.13 and 544A.15 and these rules, or for any repeated offenses.
5. Impose a period of probation, either with or without conditions.
6. Require reexamination, using one or more parts of the examination given to architectural registrant candidates.
7. Require additional professional education, reeducation, or continuing education.
8. Issue a citation and a warning.
9. Issue a consent order.
10. Voluntary surrender of registration is considered as disciplinary action.

193B—5.30(17A) Evidence.

5.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

5.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

5.30(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

5.30(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of doc-

uments shall be provided to opposing parties. Copies may also be furnished to members of the board.

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

5.30(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

5.30(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

193B—5.31(17A) Default.

5.31(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

5.31(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

5.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 5.35(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

5.31(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

5.31(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

5.31(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

5.31(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 5.34(17A).

5.31(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall

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issue another notice of hearing and the contested case shall proceed accordingly.

5.31(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

5.31(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 5.37(17A).

193B—5.32(17A) Ex parte communication.

5.32(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 5.17(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

5.32(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

5.32(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

5.32(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 5.20(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

5.32(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

5.32(6) The executive secretary or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 5.32(1).

5.32(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 5.25(17A).

5.32(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initial-

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

5.32(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

5.32(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board: Violation of ex parte communication prohibitions by board personnel shall be reported to the division administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

193B—5.33(17A) Recording costs. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

193B—5.34(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

193B—5.35(17A) Appeals and review.

5.35(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

5.35(2) Review. The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

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5.35(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order which is being appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

5.35(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

5.35(5) Scheduling. The board shall issue a schedule for consideration of the appeal.

5.35(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

193B—5.36(17A) Applications for rehearing.

5.36(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

5.36(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 5.35(4), the applicant requests an opportunity to submit additional evidence.

5.36(3) Time of filing. The application shall be filed with the board within 20 days after issuance of the final decision.

5.36(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the certificate of service on all parties.

5.36(5) Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

193B—5.37(17A) Stays of board actions.

5.37(1) When available.

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

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

5.37(2) When granted. In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5) as amended by 1998 Iowa Acts, chapter 1212, section 23.

5.37(3) Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

193B—5.38(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

193B—5.39(17A) Emergency adjudicative proceedings.

5.39(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the U.S. Constitution, the Iowa Constitution, and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18 as amended by 1998 Iowa Acts, chapter 1202, section 20, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

5.39(2) Issuance of order.

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

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

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the board;
- (3) Certified mail to the last address on file with the board;

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

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

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

5.39(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

5.39(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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

193B—5.40(544A,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

193B—5.41(544A,272C) Reinstatement. Any person whose registration has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

5.41(1) If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the registration was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of voluntary surrender.

5.41(2) All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the respondent's registration. Such application shall be docketed in the original case in which the registration was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board.

5.41(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation or suspension of the respondent's registration no longer exists and that it will be in the public interest for the registration to be reinstated. The burden of proof to establish such facts shall be on the respondent.

5.41(4) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not fewer than five members of the board. This order will be published as provided for in rule 5.42(544A,272C).

193B—5.42(544A,272C) Publication of decisions. Final decisions of the board relating to disciplinary actions, including consent agreements and consent orders, are public documents, are available to the public, shall be published in the professional licensing division's newsletter and may be

transmitted to the appropriate professional association(s), other states, and news media.

193B—5.43(544A,272C) Hearing on license denial. If the board, upon receipt of a complete and proper application for initial registration or reciprocal registration, accompanied by the proper fee, shall deny registration to the applicant, the executive secretary shall send written notice to the applicant by regular first-class mail identifying the basis for denial.

5.43(1) An applicant denied registration who desires to contest the denial must request a hearing before the board within 30 days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service. The request for hearing shall specify the grounds under which the applicant contends that the board erred in denying registration. If a request for hearing is timely made, the board shall issue notice of hearing and conduct a contested case hearing.

5.43(2) Hearings on registration denial shall be open to the public. The burden of presenting evidence and information or documents to support the applicant's position shall be the responsibility of the applicant.

5.43(3) The board, after a hearing on registration denial, may grant or deny the application for registration. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for registration could be granted, if applicable.

5.43(4) The notice of registration denial, request for hearing, notice of hearing, and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, NCARB, and other persons or entities.

5.43(5) Judicial review of a final order denying registration may be sought in accordance with the provisions of Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202, which are applicable to judicial review of any agency's final decision in a contested case.

193B—5.44(544A,272C) Recovery of hearing fees and expenses. The board may assess the architect certain fees and expenses relating to a disciplinary hearing, only if the board finds that the architect did violate Iowa Code chapter 544A and rules of the architectural examining board.

5.44(1) The board may assess an amount up to the following costs under this rule:

a. For conducting a disciplinary hearing, an amount not to exceed \$75.

b. All applicable costs involved in the transcript including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs.

c. All normally accepted witness expenses and fees for a hearing or the taking of depositions. This shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony.

d. All normally applicable costs involved in depositions including, but not limited to, the services of the court reporter recording the deposition, transcription, duplication, and postage or delivery costs.

e. The board, at its discretion, may assess an appropriate amount up to but not exceeding the \$75 fee established by this subrule and the actual acceptable costs, fees, and expenses involved.

5.44(2) Fees, costs, and expenses assessed pursuant to this rule shall be calculated and may be entered into the disciplinary order specifying the amount to be reimbursed and the

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time period in which the amount assessed must be paid by the architect.

a. When it is impractical or not possible to include the assessment and time period in the disciplinary order in a timely manner, or if the expenditures occur after the disciplinary order, the board, by a majority vote of the members present, may assess the amount to be reimbursed and the time period in which payment is to be made by the architect.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have to the end of the sixth month after the date the state of Iowa paid the expenditures to assess the architect for such expenditure.

5.44(3) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

5.44(4) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall be considered prima facie evidence of a violation of Iowa Code chapter 544A. However, no action may be taken against the architect without a hearing as provided in this chapter.

193B—5.45(544A) Civil penalties against nonregistrant. The board may impose civil penalties by order against a person who is not registered as an architect pursuant to Iowa Code chapter 544A based on the unlawful practices specified in Iowa Code section 544A.15(3). In addition to the procedures set forth in Iowa Code section 544A.15(3), this rule shall apply.

5.45(1) The notice of the board's intent to impose a civil penalty required by Iowa Code section 544A.15(3) shall be served upon the nonregistrant by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the nonregistrant may accept service personally or through authorized counsel. The notice shall include the following:

- a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b. Reference to the particular sections of the statutes and rules involved.
- c. A short, plain statement of the alleged unlawful practices.
- d. The dollar amount of the proposed civil penalty.
- e. Notice of the nonregistrant's right to a hearing and the time frame in which hearing must be requested.
- f. The address to which written request for hearing must be made.

5.45(2) Nonregistrants must request hearing within 30 days of the date the notice is mailed, if served through restricted certified mail to the last-known address, or within 30 days of the date of service, if service is accepted or made in accordance with Rule of Civil Procedure 56.1. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service.

5.45(3) If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

5.45(4) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against registered architects.

5.45(5) In addition to the factors set forth in Iowa Code section 544A.15(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

- a. The time elapsed since the unlawful practice occurred.
- b. Evidence of reform or remedial actions.
- c. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
- d. Whether the violation involved an element of deception.
- e. Whether the unlawful practice violated a prior order of the board, a court order, cease and desist agreement, consent order, or similar document.
- f. The clarity of the issue involved.
- g. Whether the violation was willful and intentional.
- h. Whether the nonregistrant acted in bad faith.
- i. The extent to which the nonregistrant cooperated with the board.

5.45(6) A nonregistrant may waive right to hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

5.45(7) The notice of intent to impose civil penalty and order imposing civil penalty are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, the National Council of Architectural Registration Boards, and other entities. Hearings shall be open to the public.

193B—5.46(252J) Certificates of noncompliance. The board shall suspend or revoke a certificate of registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

5.46(1) The notice required by Iowa Code section 252J.8 shall be served upon the registrant by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the registrant may accept service personally or through authorized counsel.

5.46(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the registrant.

5.46(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 252J.8 and is directed to notify the registrant that the certificate of registration will be suspended, unless the registration is already suspended on other grounds. In the event a registration is on suspension, the executive secretary shall notify the registrant of the board's intent to revoke the certificate of registration.

5.46(4) Registrants shall keep the board informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

5.46(5) All board fees for license renewal or reinstatement must be paid by registrants before a certificate of registration will be renewed or reinstated after the board has sus-

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pendent or revoked a license pursuant to Iowa Code chapter 252J.

5.46(6) In the event a registrant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of suspension or revocation of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

5.46(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant or applicant when the certificate of registration is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

193B—5.47(261) **Suspension or revocation of a certificate of registration—student loan.** The board shall suspend or revoke a certificate of registration upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

5.47(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the registrant may accept service personally or through authorized counsel.

5.47(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the registrant.

5.47(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126 and is directed to notify the licensee that the certificate of registration will be suspended, unless the certificate of registration is already suspended on other grounds. In the event a certificate of registration is on suspension, the executive secretary shall notify the registrant of the board's intention to revoke the certificate of licensure.

5.47(4) Registrants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

5.47(5) All board fees required for registration renewal or registration reinstatement must be paid by registrants and all continuing education requirements must be met before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

5.47(6) In the event a registrant timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the

issuance or renewal of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

5.47(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant when the certificate of registration is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 17A, 252J, 272C, and 544A and Iowa Code sections 261.121 to 261.127.

ITEM 5. Rescind rules 193B—8.5(17A) through 193B—8.11(17A) and insert in lieu thereof the following new rules 193B—8.5(17A) through 193B—8.16(17A):

193B—8.5(17A) **Petition for declaratory order.** Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board's offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA ARCHITECTURAL EXAMINING BOARD

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved)	}	PETITION FOR DECLARATORY ORDER
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- The petition must provide the following information:
1. A clear and concise statement of all relevant facts on which the order is requested.
 2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
 3. The questions the petitioner wants answered, stated clearly and concisely.
 4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
 5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
 6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.
 7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.
 8. Any request by petitioner for a meeting provided for by 8.11(17A). The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

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193B—8.6(17A) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 8.10(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

193B—8.7(17A) Intervention.

8.7(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

8.7(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

8.7(3) A petition for intervention shall be filed at the board's offices. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA ARCHITECTURAL EXAMINING BOARD

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



PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

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

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

193B—8.8(17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

193B—8.9(17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the executive secretary of the board at the board's offices.

193B—8.10(17A) Service and filing of petitions and other papers.

8.10(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

8.10(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board's offices. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

8.10(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by 193B—subrule 5.20(5).

193B—8.11(17A) Board consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

193B—8.12(17A) Action on petition.

8.12(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13, after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by 1998 Iowa Acts, chapter 1202, section 13.

8.12(2) The date of issuance of an order or of a refusal to issue an order is as defined in 193B—1.5(544A, 17A).

193B—8.13(17A) Refusal to issue order. The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.19(1) as amended by 1998 Iowa Acts, chapter 1202, section 22, and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

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

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

10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

8.13(1) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

8.13(2) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue a ruling.

193B—8.14(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner, intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

193B—8.15(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

193B—8.16(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

ARC 8714A**BLIND, DEPARTMENT
FOR THE[111]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 216B.6, the Commission for the Blind gives Notice of Intended Action to amend Chapter 1, "Administrative Organization and Procedures," and Chapter 4, "Petition for Rule Making," to rescind Chapter 3, "Agency Procedure for Rule Making," and Chapter 5, "Declaratory Rulings," and to adopt Chapter 3, "Department Procedure for Rule Making," and Chapter 5, "Declaratory Orders," Iowa Administrative Code.

The amendment to rule 111—1.3(216B) updates information regarding Department office locations and telephone numbers.

The amendments to Chapter 4 and the adoption of Chapters 3 and 5 will revise the Department's rules governing pro-

cedures for rule making, petitions for rule making, and declaratory orders.

The Seventy-seventh General Assembly passed amendments to the Iowa Administrative Procedure Act in 1998 Iowa Acts, chapter 1202. The Attorney General's Office has drafted amendments to the Uniform Rules of Administrative Procedure to implement the amendments to the Administrative Procedure Act. The Department's proposed amendments are based on the draft amendments with some changes specific to the Department.

The Commission believes these changes will bring Department rules into compliance with 1998 Iowa Acts, chapter 1202, which becomes effective July 1, 1999.

Any interested person may make written suggestions or comments on the amendments through March 16, 1999. Such written suggestions or comments should be directed to the Commission for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364; fax (515)281-1263.

Persons are also invited to present oral or written comments at a public hearing which will be held on March 16, 1999, at 1 p.m. in the Director's Conference Room, Department for the Blind, 524 Fourth Street, Des Moines, Iowa. At the hearing, persons will be asked to confine their remarks to the subject of the amendments.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, Iowa Code section 25B.6, and Iowa Code chapter 216B.

The following amendments are proposed.

ITEM 1. Amend rule 111—1.3(216B) as follows:

111—1.3(216B) Location and information. The central office of the department is located at 524 Fourth Street, Des Moines, Iowa 50309-2364, telephone (515)281-1333, (incoming WATS number (800)362-2587). District offices are located at ~~Higley Building, 118 3rd Ave. SE, Suite 407, 411 Third Street SE, Suite 745, Cedar Rapids, Iowa 52401-1438 52401-1811, telephone (319)365-9111, (incoming WATS number (888)346-9557); First National Building, 607 Sycamore St., Suite 400, Waterloo, Iowa 50703-4725, 2915 McClain Drive, Cedar Falls, Iowa 50613-5266, telephone (319)235-1403 (319)268-2981, (incoming WATS number (888)378-4397).~~ Information concerning department services may be obtained by contacting any of these offices.

ITEM 2. Rescind **111—Chapter 3** and adopt the following **new** chapter in lieu thereof:

CHAPTER 3**DEPARTMENT PROCEDURE FOR RULE MAKING**

111—3.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the commission are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

111—3.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action as provided in Iowa Code section 17A.4(1)"a," solicit comments from the public on a subject matter of possible rule making by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when and how persons may comment.

111—3.3(17A) Public rule-making docket.

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3.3(1) Docket maintained. The department shall maintain a current public rule-making docket.

3.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the department or from the time of announcement at a meeting of the commission. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the commission 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.

3.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, pursuant to Iowa Code section 17A.4(1)"a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule.
- b. A citation to all published notices relating to the proceeding.
- c. Where written submissions on the proposed rule may be inspected.
- d. The time during which written submissions may be made.
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made.
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected.
- g. The current status of the proposed rule and any department determinations with respect thereto.
- h. Any known timetable for department 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.
- l. Where the rule-making record may be inspected.

111—3.4(17A) Notice of proposed rule making.

3.4(1) Contents. At least 35 days before the adoption of a rule, the department shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule.
- b. The specific legal authority for the proposed rule.
- c. Except to the extent impracticable, the text of the proposed rule.
- d. Where, when and how persons may present their views on the proposed rule.
- 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 department shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

To facilitate transcription into the alternative medium of braille, cassette tape or large-type format, the complete text of the proposed rule shall be published in the Notice of Intended Action whenever possible.

3.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to incorporation by reference of other materials in an adopted rule that are contained in subrule 3.12(2).

3.4(3) Copies of notices. Persons desiring to receive 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 or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the department for Notices of Intended Action. The written request shall be accompanied by payment of a subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

3.4(4) Provision in alternative media. Mailed copies of Notices of Intended Action shall be provided in standard print format, unless an individual requests provision of the notices in the alternative medium of braille, cassette tape or large-type format. Notices in the alternative media shall be provided in a timely manner.

111—3.5(17A) Public participation.

3.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Administrative Rules Coordinator, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309, or the person designated in the Notice of Intended Action.

3.5(2) Oral proceedings. The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the 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 also contain the following information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

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

The department may waive technical compliance with these procedures.

3.5(3) Conduct of oral proceedings.

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

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. The notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. **Presiding officer.** The director, the department's administrative rules coordinator or a division administrator of the department, as designated by the director, shall preside at the oral proceeding on the proposed rule. If the director does not preside, the presiding officer shall prepare a memorandum for consideration by the director summarizing the contents of the presentations made at the oral proceeding unless the director determines that a memorandum is unnecessary because the director will personally listen to or read the entire transcript of the oral proceeding.

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

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

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

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

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

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

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

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

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

3.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

3.5(5) Accessibility. The department shall schedule oral presentations in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Administrative Office, Department for the Blind, (515)281-1333, Iowa WATS (800)362-2587, or TTY (515)281-1355, in advance to arrange access or other needed services.

111—3.6(17A) Regulatory analysis.

3.6(1) Definition of small business. A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

3.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application to the department administrative rules coordinator. The application for registration shall state:

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

b. Its address.

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

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

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

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

3.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule

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making. In the case of a rule that may have an impact on small business, adopted in reliance upon Iowa Code section 17A.4(2), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

3.6(4) Qualified requesters for regulatory analysis—economic impact. The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

- a. The administrative rules coordinator; or
- b. The administrative rules review committee.

3.6(5) Qualified requesters for regulatory analysis—business impact. The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business; or
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

3.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis, the department shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

3.6(7) Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the department. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

3.6(8) Contents of concise summary. The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4) and (5).

3.6(9) Publication of a concise summary. The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

3.6(10) Regulatory analysis contents—administrative rules review committee or administrative rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

3.6(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

111—3.7(17A,25B) Fiscal impact statement.

3.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

3.7(2) If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

111—3.8(17A) Time and manner of rule adoption.

3.8(1) Time of adoption. The commission shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action or the end of oral proceedings thereon, the commission shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

3.8(2) Consideration of public comment. Before the adoption of a rule, the commission shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding, any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

3.8(3) Reliance on department expertise. Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

111—3.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

3.9(1) The commission shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of the Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of the rule-making proceeding could be the rule in question.

3.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of the rule-making proceeding could be the rule in question, the department shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests.
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.

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.

3.9(3) The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make the rule-making proceeding wholly unnecessary. A copy of any such 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 of its issuance.

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3.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

111—3.10(17A) Exemptions from public rule-making procedures.

3.10(1) Omission of notice and comment. To the extent the commission, for good cause, finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the commission may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.10(2) Categories exempt. The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

Rules which are mandated by federal law or regulation are exempted from the usual public notice and public participation requirements in any situation where the commission has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules. Notice and public participation would be unnecessary since the provisions of the law or regulation must be adopted in order to maintain federal funding and the commission would have no option in the rule which was adopted.

3.10(3) Public proceedings on rules adopted without them. The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule adopted in reliance upon subrule 3.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a department, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 3.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding is commenced pursuant to this subrule, the commission may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 3.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

111—3.11(17A) Concise statement of reasons.

3.11(1) General. When requested by a person, either prior to 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 for such a statement must be in writing and must be delivered to the Administrative Rules Coordinator, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

3.11(2) Contents. The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the reasons for overruling the arguments made against the rule.

3.11(3) Time of issuance. After a proper request, the department shall issue a concise statement of reasons by the latter of the time the rule is adopted or 35 days after receipt of the request.

111—3.12(17A) Contents, style, and form of rule.

3.12(1) Contents. Each rule adopted by the commission shall contain the text of the rule and, in addition:

- a. The date the commission adopted the rule.
- b. A brief explanation of the principal reasons for rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include such reasons.
- c. A reference to all rules repealed, amended, or suspended by the rule.
- d. A reference to the specific statutory or other authority authorizing adoption of the rule.
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule.
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include such reasons.
- g. The effective date of the rule.

3.12(2) Incorporation by reference. The department may incorporate, by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the proposed or adopted 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; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this department, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association or persons originally issuing the matter. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department.

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

3.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the

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full text would be unduly cumbersome, expensive or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department will provide a copy of the full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

To facilitate transcription into the alternative medium of braille, cassette tape or large-type format, the complete text of the proposed rule shall be published in the Notice of Intended Action whenever possible.

3.12(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.

111—3.13(17A) Department rule-making record.

3.13(1) Requirement. The department shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

3.13(2) Contents. The department 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 department submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based.

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

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

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

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

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

g. All petitions for 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 department response to that objection.

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

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

3.13(3) Effect of record. Except as otherwise required by provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on the rule.

3.13(4) Maintenance of record. The department shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

111—3.14(17A) Filing of rules. The department shall file each rule adopted by the commission in the office of the administrative rules coordinator. The filing must be executed as soon after adoption as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that were issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative rules coordinator.

111—3.15(17A) Effectiveness of rules prior to publication.

3.15(1) Grounds. The commission may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required findings and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.15(2) Special notice. When the commission makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3), the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the de-

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partment 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 rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 3.15(2).

111—3.16(17A) General statements of policy.

3.16(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(10)"a,""c,""f,""g,""h," and "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(10)"f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

3.16(2) Enforcement of requirements. A general statement of policy subject to the requirements of this rule 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 3.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

111—3.17(17A) Review by department of rules.

3.17(1) Any interested person, association, department, or political subdivision may submit a written request to the administrative rules coordinator requesting the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

3.17(2) In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the department's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reason any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department'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.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

ITEM 3. Amend **111—Chapter 4** as follows:

CHAPTER 4

PETITION PETITIONS FOR RULE MAKING

111—4.1(17A) Petition for rule making. Any person or state agency may file a petition for rule making with the Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. A petition is deemed filed when it is received by that office. The department must provide the petitioner with a file-stamped copy of the petition if the petitioner provides an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE IOWA DEPARTMENT FOR THE BLIND

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter)	}	PETITION FOR RULE MAKING
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The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 4.4(17A).

4.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.1(2) The department may deny a petition because it does not substantially conform to the required form.

111—4.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

111—4.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to ~~the director~~ *Director, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364.*

111—4.4(17A) Department consideration.

4.4(1) Forwarding of petition and meeting. Within 14 days after the filing of a petition, the ~~director must depart-~~

BLIND, DEPARTMENT FOR THE[111](cont'd)

ment shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the director must department shall schedule a brief and informal meeting between the petitioner and the department, a member of the commission, or a member of the staff, a member of the staff of the department or a member of the commission to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

4.4(2) Action on petition. Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department must shall, in writing, deny the petition and notify the petitioner of its action and the specific grounds for the denial or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the department mails or delivers the required notification to the petitioner.

4.4(3) Denial of a petition for nonconformance with form. Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the department's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A section 17A.7 as amended by 1998 Iowa Acts, chapter 1202, section 11.

ITEM 4. Rescind 111—Chapter 5 and adopt the following new chapter in lieu thereof:

CHAPTER 5
DECLARATORY ORDERS

111—5.1(17A) Petition for declaratory order. Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department at the Administrative Office, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE IOWA DEPARTMENT FOR THE BLIND

Petition by (Name of Petitioner) for a Declaratory Order on (cite provisions of law involved)



PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

- 1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.

4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by rule 111—5.7(17A).

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

111—5.2(17A) Notice of petition. Within ten working days of receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 111—5.6(17A) to whom notice is required by any provision of law.

111—5.3(17A) Intervention.

5.3(1) Nondiscretionary intervention. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 working days of the filing of a petition for declaratory order and before the 30-day time period for department action under rule 111—5.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

5.3(2) Discretionary intervention. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

5.3(3) Filing and form of petition for intervention. A petition for intervention shall be filed at the administrative office. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE IOWA DEPARTMENT FOR THE BLIND

Petition by (Name of Original Petitioner) for a Declaratory Order to (cite provisions of law cited in original petition)



PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

- 1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

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4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

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

111—5.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

111—5.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364.

111—5.6(17A) Service and filing of petitions and other papers.

5.6(1) Service. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served by mailing or personal delivery upon each of the parties of record to the proceeding, and on all other persons identified as affected by or interested in the question presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

5.6(2) Filing. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Administrative Office, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364. All documents are considered filed upon receipt.

111—5.7(17A) Consideration. Upon request by the petitioner, the department must schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the department to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

111—5.8(17A) Action on petition.

5.8(1) Time frame for action. Within 30 days after receipt of a petition for a declaratory order, the director or the director's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

5.8(2) Date of issuance of order. The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or the date of delivery if service is by other means unless another date is specified in the order.

111—5.9(17A) Refusal to issue order.

5.9(1) Reasons for refusal to issue order. The department shall not issue a declaratory order where prohibited by 1998

Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially conform with the required form.

2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.

3. The department does not have jurisdiction over the questions presented in the petition.

4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding that may definitively resolve them.

5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

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

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

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

10. The petitioner requests the department to determine whether a statute is unconstitutional on its face.

5.9(2) Action on refusal. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

5.9(3) Filing of new petition. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

111—5.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

111—5.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

111—5.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition.

111—5.13(17A) Programs exempted. The vocational rehabilitation services and business enterprises programs are

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required by federal regulations to conform to similar proceedings delineated by their respective federal government grantor agencies. Therefore, the provisions of this chapter are not applicable to those programs.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202, section 13.

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 217.6, the Department of Human Services proposes to amend Chapter 7, "Appeals and Hearings," appearing in the Iowa Administrative Code.

These amendments revise the Department's policy governing contested case proceedings to conform to changes made to the Administrative Procedure Act, Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202. Definitions have been added and specific procedures amended to reflect those changes as follows:

1. Iowa Code references have been updated.
2. Procedures for decisions when a party fails to appear or participate in a hearing have been expanded.
3. Provisions regarding ex parte communication have been expanded for clarification.
4. Provisions for stays of agency action have been added to the section regarding judicial review.
5. New language is incorporated regarding contested cases in which there is no factual dispute.
6. Provisions are added for emergency adjudicative proceedings.

These changes are consistent with the Uniform Rules on Agency Procedure.

The Department is exploring alternatives for more clearly setting forth in subrule 7.13(4) what options a party to the appeal has available when a party to the appeal fails to appear or participate and a default decision is issued without a hearing on the merits or when a party to the appeal fails to appear or participate and a decision on the merits is issued after a hearing is held without the party's participation. The Department specifically invites comments on these issues.

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 March 17, 1999.

These amendments are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 7** by adopting the following **new Preamble**:

PREAMBLE

This chapter applies to contested case proceedings conducted by or on the behalf of the department.

ITEM 2. Amend **441—Chapter 7** by changing the parenthetical implementation statute "217" to "17A" wherever it appears.

ITEM 3. Amend rule **441—7.1(17A)** by adopting the following **new** definition in alphabetical order:

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

ITEM 4. Amend rule 441—7.3(17A) as follows:

441—7.3(17A) The administrative law judge. Appeal hearings shall be conducted by an administrative law judge appointed by the department of inspections and appeals pursuant to ~~Iowa Code section 17A.11~~ *1998 Iowa Acts, chapter 1202, section 3*. The administrative law judge shall not be connected in any way with the previous actions or decisions on which the appeal is made. Nor shall the administrative law judge be subject to the authority, direction, or discretion of any person who has prosecuted or advocated in connection with that case, the specific controversy underlying that case, or pending factually related contested case or controversy, involving the same parties.

ITEM 5. Rescind subrule 7.13(4) and adopt the following **new** subrule in lieu thereof:

7.13(4) Default. If a party to the appeal fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

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

b. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within ten days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 7.16(5). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding.

c. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

d. Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

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

f. A decision to deny or grant a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

g. If a motion to vacate is granted, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

HUMAN SERVICES DEPARTMENT[441](cont'd)

h. A default decision may award any relief consistent with the relief requested prior to the default, but cannot exceed the requested relief prior to the default.

i. For purposes of calculating time limits when a motion to vacate a finding of default is granted, the situation will be treated as the filing of a new appeal, with the filing date being the date of the granting of the motion to vacate.

ITEM 6. Rescind rule 441—7.18(17A) and adopt the following **new** rule in lieu thereof:

441—7.18(17A) Ex parte communication.

7.18(1) Prohibited communication. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record. For purposes of this rule, the term “personally investigating” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

7.18(2) Commencement of prohibition. Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

7.18(3) When communication is ex parte. Written, oral, or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

7.18(4) Avoidance of ex parte communication. To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Written communications shall be provided to all parties to the appeal.

7.18(5) Communications not prohibited. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

7.18(6) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudi-

cial that the presiding officer should be disqualified from the case. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of communication.

7.18(7) Disclosure of prior receipt of information through ex parte communication. Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

7.18(8) Imposition of sanctions. The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule, including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by department personnel shall be reported to the department for possible sanctions, including censure, suspension, dismissal, or other disciplinary action.

ITEM 7. Amend rule 441—7.20(17A) as follows:

441—7.20(17A) Right of judicial review and stays of agency action.

7.20(1) Right of judicial review. If a director’s review is requested, the final decision shall advise the appellant of the right to judicial review by the district court. When the appellant is dissatisfied with the final decision, and appeals the decision to the district court, the department shall furnish copies of the documents or supporting papers which the appellant and legal representative may need in order to perfect the appeal to district court, including a written transcript of the hearing. *An appeal of the final decision to district court does not itself stay execution or enforcement of an agency action.*

7.20(2) Stays of agency action.

a. *Any party to a contested case proceeding may petition the director for a stay or other temporary remedies pending judicial review, of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.*

b. *In determining whether to grant a stay pending judicial review, the director shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).*

c. *A stay may be vacated by the director pending judicial review upon application of the department or any other party.*

ITEM 8. Amend 441—Chapter 7 by adopting the following **new** rules:

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—7.23(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs, and oral argument should be submitted to the presiding officer for approval as soon as practicable.

441—7.24(17A) Emergency adjudicative proceedings.

7.24(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the United States Constitution and the Iowa Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 as amended by 1998 Iowa Acts, chapter 1202, section 20(3), to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order the department shall consider factors including, but not limited to, the following:

- a. Whether there has been sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information.
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing.
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare.
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare.
- e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

7.24(2) Issuance of order.

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

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

- (1) Personal delivery.
- (2) Certified mail, return receipt requested, to the last address on file with the department.
- (3) Certified mail to the last address on file with the department.
- (4) First-class mail to the last address on file with the department.
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

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

7.24(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reason-

able immediate efforts to contact by telephone the persons who are required to comply with the order.

7.24(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger. Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

ITEM 9. Rescind the implementation clauses following rules **441—7.5(17A)**, **441—7.7(17A)**, **441—7.14(17A)**, **441—7.16(17A)**, and **441—7.21(17A)** and adopt the following new implementation clause following 441—Chapter 7:

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

ARC 8713A**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 225C.6, the Department of Human Services proposes to rescind Chapter 23, "Mental Illness, Mental Retardation, Developmental Disabilities, and Brain Injury Community Services," Chapter 26, "County Maintenance of Effort Calculations and Reporting," Chapter 31, "Reimbursement to Counties for Local Cost of Inpatient Mental Health Treatment," Chapter 32, "State Community Mental Health and Mental Retardation Services Fund and Special Needs Grants," Chapter 35, "Supplemental Expense Payment," and Chapter 37, "Standards for the Care of and Services to County Care Facility Residents with Mental Illness and Mental Retardation," appearing in the Iowa Administrative Code.

This amendment rescinds 441—Chapters 23, 26, 31, 32, 35, and 37 as they are no longer relevant.

Chapter 23 was adopted in 1992 to establish policy for the creation and composition of the county or multicounty mental illness, mental retardation, developmental disabilities, and brain injury (MI/MR/DD/BI) planning councils and to define the responsibility of the planning councils as mandated by 1992 Iowa Acts, chapter 1241, section 25. Planning Councils were codified at Iowa Code section 225C.18 by 1994 Iowa Acts, chapter 1170, section 19. Planning Councils are no longer required to develop a services plan to apply for state MI/MR/DD/BI funds. They are now optional on the part of counties.

Chapter 26 was adopted in 1989 to describe the process for calculating a county maintenance of effort. County maintenance of effort calculations were eliminated in state fiscal year 1993.

Chapter 31 was adopted in 1980 to implement Iowa Code section 225C.12. The purpose of the legislation was to pro-

HUMAN SERVICES DEPARTMENT[441](cont'd)

vide some state funding for counties who were using local hospitals in lieu of a state mental health institute for mental health commitment and admissions. At that time, for mental health institutes, counties were billed 80 percent of per diem and the state paid the remaining 20 percent. Under these rules, counties who used a local hospital in lieu of a mental health institute were eligible to receive an amount equal to the 20 percent state cost. The legislature appropriated funds for this program only for three or four years and only four or five counties received payments. Funding specifically for this program was stopped when the legislature created the precursor to the MH/DD Community Services Fund. Several smaller funding streams, including this funding, were folded into the new fund. Since that time, there have been no funds appropriated specifically for this purpose and no reimbursements have been made to counties. The state has now been using other mechanisms to channel state money into the county system and it is highly unlikely state money will be channeled in this manner in the future.

Chapter 32 was adopted in 1982 to deal with special allocation and general allocation distributions. These distributions have not been made since 1993. All funds have now been rolled into the community services funds.

Chapter 35 was adopted in 1995 to address county concerns brought about by the new definition for persons with mental retardation by establishing a procedure for counties to recover any excess costs incurred by the definition change. It required counties to submit information to the Department by January 1, 1996, if they had a claim. No claims were submitted and the time for submittal is now elapsed.

Chapter 37 was adopted in 1987 to establish standards for the care of and services to persons with mental illness and mental retardation who live in county care facilities. These rules were originally put in place to provide some protections when the state, to depopulate the state institutions, started to significantly increase the number of persons placed from state institutions into county care facilities and paid a per diem to the counties to cover increased costs. These rules have not been used since all county care facilities were required to be licensed by the Department of Inspections and Appeals. There are now only six county care facilities in the state and all are currently licensed by the Department of Inspections and Appeals (DIA) as ICF, ICF/MR or RCF/MR or RCF facilities. The rules under Chapter 37 are duplicative of the DIA rules and the DIA rules provide the protections for clients sought through Chapter 37.

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 March 17, 1999.

This amendment is intended to implement Iowa Code section 225C.6.

The following amendment is proposed.

Rescind and reserve 441—Chapters 23, 26, 31, 32, 35, and 37.

ARC 8712A

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 225C.46, the Department of Human Services proposes to amend Chapter 184, "Family Support Subsidy Program," appearing in the Iowa Administrative Code.

The Seventy-seventh General Assembly in 1998 Iowa Acts, chapter 1218, section 27, appropriated \$364,000 to continue the pilot project for the personal assistance services program. These rules establish policy for the pilot project in Muscatine, Scott, and Clinton counties. The program consists of a direct payment to adults with disabilities to be used to hire their own personal assistants.

The pilot program was designed by the Personal Assistance and Comprehensive Family Support Services Council at the direction of the legislature. The Council was convened in July of 1994 and consists of eleven members, five of whom are appointed by the Governor, three by the Majority Leader of the Senate, and three by the Speaker of the House. Iowa Code section 225C.48 requires at least three of the Governor's appointments and one of each legislative chamber's appointments to be a family member of a person with a disability and at least five of the members to be consumers of personal services.

The Council issued a Request for Proposal to the five independent living centers existing in Iowa at the time to design the process and implement the program. The Illinois/Iowa Center for Independent Living received the award and began implementing the program in its catchment area, Muscatine, Scott, and Clinton counties, in January of 1996.

The Illinois/Iowa Center for Independent Living completed its task of designing the tools and implementation of the program and in fiscal year 1998 transferred administration of the program to the county Department offices. There are currently 47 persons on the program, 34 from Scott County, 5 from Muscatine County, and 8 from Clinton County.

Eligibility for the program is needs based and the amount of the payment is determined by an assessment of each person's needs. Persons with taxable incomes of \$40,000 or less are eligible providing they meet the other eligibility requirements. Persons must have a severe and chronic disability, be at least 18 years of age, residing in their own homes or have a discharge plan to return home in the next 60 calendar days, be an Iowa resident, be ineligible for consumer-directed attendant care under the Home- and Community-Based waiver programs, access all other programs for which they might be eligible, and agree to use any funds received from the program solely for a personal attendant.

Payments under the program range from \$200 to \$1,000 per month, depending on the level of care needed by the person. Level of care is determined by the number of tasks with which the person requires help. Tasks are listed under the broad categories of personal care, household maintenance, and community living support. Personal care tasks are given

HUMAN SERVICES DEPARTMENT[441](cont'd)

twice the weight of household maintenance and community living tasks. Each task is also given a weight of 1, 2, or 3, depending on whether the support needed for the task is minimal, moderate, or intensive.

The total score determines the payment level the applicant is eligible to receive as follows:

Score	Level	Payment
0 - 40	Level 1	\$200/month
41 - 75	Level 2	\$400/month
76 - 104	Level 3	\$700/month
105 +	Level 4	\$1,000/month

The appropriation is allocated to the three counties based on their percentage of the total population of the three counties. If all of the funds become obligated, each county is required to maintain a waiting list. At the present time there is no one on the waiting lists. Once the waiting lists are activated, persons move off of the waiting list based on the following criteria: Persons who are working or volunteering or receiving job training or schooling move off the waiting lists first, then persons at imminent risk of out-of-home placement, then based on the date of application.

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 March 17, 1999.

These amendments are intended to implement Iowa Code section 225C.46.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 184**, title, as follows:

CHAPTER 184

FAMILY SUPPORT SUBSIDY PROGRAM

INDIVIDUAL AND FAMILY DIRECT SUPPORT

ITEM 2. Amend **441—Chapter 184** by adopting a **new Division I** consisting of rules **441—184.1(225C)** to **441—184.9(225C)** entitled "Family Support Subsidy Program."

ITEM 3. Reserve rules **441—184.10** to **184.20** as part of Division I.

ITEM 4. Amend **441—Chapter 184** by adopting the following **new Division II**:

DIVISION II

PERSONAL ASSISTANCE SERVICES PROGRAM

PREAMBLE

The purpose of this chapter is to define and structure the personal assistance services pilot program. The program is designed to assist in the inclusion of persons with disabilities in the general population, community, and work force of the state by helping to defray the cost of hiring a personal care attendant. The pilot will operate in Scott, Clinton and Muscatine counties.

441—184.21(225C) Definitions.

"County office" means the county department office.

"Department" means the department of human services.

"Disability," for the purposes of this program, means a physical or mental impairment that substantially limits one or more of the major life activities of the person, a record of physical or mental impairment that substantially limits one or more of the major life activities of the person, or being regarded as a person with a physical or mental impairment that

substantially limits one or more of the major life activities of the person.

"Disability" does not include any of the following:

1. Homosexuality or bisexuality.
2. Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
3. Compulsive gambling, kleptomania, or pyromania.
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs.
5. Alcoholism.

"Home" means a person's private home. The person may be living alone or with family or friends. "Home" does not include intermediate care facilities, intermediate care facilities for the mentally retarded, residential care facilities, residential care facilities for the mentally retarded, or other facility-owned living arrangements.

"Personal assistance services" means services performed by an individual to assist a person with a disability with tasks which that person would typically do if the person did not have a disability. The services are intended to enable a person with a disability to live in the person's home or community rather than in an institutional setting and may include, but are not limited to, any of the following:

1. Dressing.
2. Bathing.
3. Access to and from bed or a wheelchair.
4. Toilet assistance, including bowel, bladder, and catheter assistance.
5. Eating and feeding.
6. Cooking and housekeeping assistance.
7. Employment support.
8. Cognitive assistance with tasks such as handling money and scheduling.
9. Fostering communication access through interpreting and reading services.

441—184.22(225C) Eligibility requirements. A person shall be eligible for the personal assistance program if funds are available and all of the following requirements are met:

184.22(1) Disability. The person has a disability which is severe and chronic and:

- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments and,
- b. Results in a substantial functional limitation in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, capacity for independent living, and economic self-sufficiency.

184.22(2) Age. The person is at least 18 years of age.

184.22(3) Residing in own home. The person is currently residing in the person's own home, or there is a discharge plan for the person to return home in the next 60 calendar days.

184.22(4) Residency. The person has residency in Scott, Muscatine, or Clinton counties.

184.22(5) Income. The person has a taxable income of \$40,000 or less. Only the income of the person with a disability should be considered. If a joint return is filed and the person's gross income is \$40,000 or less, the person meets the income eligibility. If the person's gross income exceeds \$40,000, the person's net taxable income is computed in the same manner as on the Iowa income tax return for married filing separately on the combined return. That amount would then be reduced by the amount of the personal exemptions allowed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

184.22(6) Other programs. The person shall apply for other programs that provide assistance with personal care and home chore services prior to accessing this program and access all programs for which the person is eligible.

a. If the person is eligible for consumer-directed attendant care services under one of the home- and community-based waivers, the person must access that program. Since the waivers are Medicaid programs and Medicaid cannot be supplemented, the person would then not be eligible for the personal assistance services program.

b. If the person is eligible for in-home health-related care, the person must access that program. If, according to the person's Personal Assistance Needs Checklist, the person's allowed payment level exceeds the amount the person receives from in-home health-related care, the person is eligible for the personal assistance services program for the amount of the difference.

184.22(7) Use of funds. The person must agree that any funds received through this program shall be used solely for a personal attendant.

441—184.23(225C) Application process. Applications for the personal assistance services program may be obtained at the county office in the county in which the person resides.

184.23(1) Application forms. An application for the personal assistance services program shall be submitted on Form 470-3511, Personal Assistance Application and Disability Verification, and Form 470-0615, Application for Social Services/Title IV-A Emergency Assistance Services. Verification of disability and verification of income for the previous calendar year, or estimated income for the current year shall be submitted with the application forms.

184.23(2) Date of application. The date of application is the date that all completed required forms are received in the county office. Obtaining verifications is the responsibility of the applicant.

184.23(3) Eligibility determination. Eligibility shall be determined within 30 working days after the completed applications and required verifications are received by the department. The person shall be notified in writing of the decision of the county office regarding the person's eligibility for the program and the amount of the payment to be made.

184.23(4) Effective date. The effective date of service shall be the first of the month following the month the county determines the applicant is eligible.

184.23(5) Program limits. After all funds appropriated for this purpose are obligated, pending applications shall be denied by the county office. If all funds have been obligated, a notice of decision shall be mailed to the applicant within ten calendar days following the determination. The notice shall state that the applicant meets eligibility requirements but no funds are available and that the applicant will be placed on a waiting list, or that the applicant does not meet eligibility requirements. Applicants not awarded funding who meet the eligibility requirements shall be placed on a waiting list maintained by each county office.

As funds are determined available, persons shall be served from the waiting lists based on the following schedule in descending order of prioritization:

a. The person is working or volunteering or receiving job training or schooling. Work is defined as competitive employment or supported employment. School or training must lead to an employment goal and is included if a person requires assistance in getting the education or training, whether it is in or out of the home.

b. The person is at imminent risk of out-of-home placement.

c. The date the application forms and verification are received.

d. In the event that more than one application is received on the same date and all of the applicants meet the criteria set forth in paragraphs "a" and "b," a person shall be removed from the waiting list on the basis of the day of the month of the person's birthday, lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

441—184.24(225C) Amount of personal assistance services payments. The amount of the personal assistance service payments shall be determined in the following manner:

184.24(1) Completion of checklist. Form 470-3512, Personal Assistance Needs Checklist, shall be completed by the county worker with assistance from the applicant. Those activities with which the applicant wants to receive help shall be checked in the appropriate column. If another member of the household is either applying for the program or is already on the program, both cannot receive assistance with the same household tasks.

If help with an activity is requested, the intensity of support needs shall be indicated as minimal, moderate, or intensive.

a. Minimal support may include: giving instructions, prompting, or feedback; making preparations by collecting and placing materials within reach, setting up area, preparing devices, i.e., installing supplies, such as floss in a flossing aid, or adjusting settings and parts; assisting with mobility by providing balance support or coordination, pushing or moving equipment; restoring order to area by disposing of used waste items, wiping spills or soiled surfaces; and maintaining equipment and devices that require only cleaning, changing batteries or filters.

b. Moderate support may include: monitoring task completion assisted by instructions, prompting, or feedback; hands-on assistance with primary tasks or performing all of nonsubstantial tasks, as well as preparation and cleanup; supplement strength (such as transfers), operating equipment or devices, maneuvering demanding environmental conditions, and maintaining equipment and devices that require adjustments in tensions or pressure.

c. Intensive support may include: providing total assistance for the consumer who is cognitively alert but physically unable to carry out tasks and providing total or near total assistance for the consumer who is significantly cognitively disabled under the direction of a caregiver or guardian.

184.24(2) Scoring of checklist. The county worker shall score the Personal Assistance Needs Checklist. The tasks on the form are listed under the broad categories of personal care, household maintenance, and community living support. Each task is given a weight of 1, 2, or 3, based on whether the support needed for the task is minimal, moderate, or intensive. Personal care tasks are also given twice the weight of household maintenance and community living support tasks.

The total score determines the payment level the applicant is eligible to receive as indicated in the following table:

Score	Level	Payment
0 - 40	Level 1	\$200/month
41 - 75	Level 2	\$400/month
76 - 104	Level 3	\$700/month
105 +	Level 4	\$1,000/month

A copy of Form 470-3512, Personal Assistance Needs Checklist, may be obtained from the county office of participating counties.

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—184.25(225C) Redetermination of eligibility. The county office shall send Form 470-3513, Personal Assistance Reapplication, which shall include instructions and necessary forms for verification of continuing eligibility, to all program participants at least 30 calendar days prior to the deadline date for annual redetermination of eligibility. If the signed application and verification are not received in the county office by the time designated in the reapplication letter, the person shall be terminated from the program.

The Personal Assistance Needs Checklist, Form 470-3512, shall be reviewed at least annually. If the person's needs have changed due to, but not limited to, increasing disability, an improvement in ability or a change in environment, a new form shall be completed and payment levels re-determined.

441—184.26(225C) Employment of attendant.

184.26(1) Responsibility of person. It is the responsibility of the person to locate, hire, train and supervise the person's own attendant. If the person desires assistance in locating, training or employing an attendant, the department may assist by providing written material or referring the person to local or state resources such as, but not limited to, centers for independent living, the division of vocational rehabilitation services, or home health care agencies.

184.26(2) Contract. The person shall have a written contract with each of the person's attendants. A sample contract shall be provided to the person for the person's use. Any contract used should include: the scope of services; the duties of the employer; the duties of the attendant; payment of services; emergency, illness, or absence procedures; how services are terminated; and by whom and how the attendant will be trained. Any contract is between the person and the person's attendant, not between the department and the attendant. The person shall provide a copy of each contract to the department.

441—184.27(225C) Termination of payments.

184.27(1) Reasons for termination of payments. The personal assistance services payments shall terminate at the end of the month in which any of the following occur. A notice shall be sent identifying the reason for the termination.

a. The person no longer meets one or more of the eligibility criteria outlined in rule 441—184.22(225C).

b. The person has failed to provide information required for redetermination of eligibility as outlined in rule 441—184.25(225C).

c. The person has died.

d. The person does not use the funds for their intended purpose.

184.27(2) Reporting requirements. The person is required to report to the county office within ten working days any changes which may affect eligibility. Failure to do so may result in responsibility for repayment of funds and termination of the payments.

184.27(3) Insufficient funding. If funds are not sufficient to cover payments for all persons on the program, payments to persons will be terminated from the program in inverse order to the dates they began receiving payments, i.e., the last person to be added to the program will be the first person to be removed. The name of any person whose payment was terminated shall be put on the waiting list. The county office is responsible for notifying the person whose payment from the program was terminated for this reason.

441—184.28(225C) Appeals. The person may appeal a denial of an application, termination of the payments or any decision pursuant to 441—Chapter 7.

441—184.29(225C) Allocation of appropriation. The appropriation shall be distributed to each of the counties in the pilot program based on their share of the total population of all of the counties in the program.

441—184.30(225C) Coordination of personal assistance activities. The personal assistance and comprehensive family support services council shall oversee the activities of the personal assistance services program and provide coordination with and information to other programs which provide services to people with disabilities.

These rules are intended to implement Iowa Code section 225C.46.

ARC 8705A**PROFESSIONAL LICENSURE
DIVISION[645]****BOARD OF PODIATRY EXAMINERS****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 220, "Podiatry Examiners," and Chapter 221, "Minimum Training Standards for Podiatry Assistants Engaging in Podiatric Radiography," Iowa Administrative Code.

These proposed amendments change the continuing education compliance period to coincide with the license renewal period, clarify peer review committees, and add a fee for returned checks.

Any interested person may make written comments on the proposed amendments not later than March 16, 1999, addressed to Judy Manning, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on March 16, 1999, from 9 to 11 a.m. in the Professional Licensure Conference Room, Department of Public Health, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Persons may present their views at the public hearing either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

The Board has determined that the amendments will have no impact on small business within the meaning of Iowa Code section 17A.31.

The proposed amendments are intended to implement Iowa Code section 147.76 and chapters 149 and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 645—220.3(147) by adopting a new subrule as follows:

220.3(10) Fee for a returned check is \$15.

ITEM 2. Rescind rule 645—220.7(272C) and adopt the following new rule in lieu thereof:

645—220.7(272C) License renewal.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

220.7(1) The biennial renewal period for a license to practice as a podiatrist shall extend from July 1 of each even-numbered year until June 30 of the next even-numbered year. Beginning July 1, 2000, the continuing education compliance period shall extend from July 1 of each even-numbered year until June 30 of the next even-numbered year.

An application and a continuing education report form for renewal of license to practice as a podiatrist shall be mailed to the licensee at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

220.7(2) Beginning July 1, 2000, the continuing education compliance period will coincide with the renewal compliance period. The licensee shall submit to the board office 30 days before licensure expiration the application and continuing education report form with the renewal fee as specified in rule 220.3(147). Individuals who were issued their initial license within six months of license renewal will not be required to renew their license until the next renewal two years later. The new licensee shall be exempt from meeting the continuing education requirement for the continuing education biennium in which the licensee is originally licensed. Podiatrists will be required to report 40 hours of continuing education for the first renewal and every renewal thereafter.

220.7(3) Late renewal. If the renewal fee is received by the board within 30 days after the renewal expiration date, a penalty fee is charged. If the renewal fee is received more than 30 days after the renewal expiration date, the license is lapsed. An application for reinstatement must be filed with the board with the reinstatement fee, the renewal fee and the penalty fee as outlined in rule 220.3(147). Individuals who fail to submit the renewal application and complete documentation of continuing education hours shall be required to pay a penalty fee and shall be subject to an audit of their continuing education report.

220.7(4) Podiatrists who have not fulfilled the requirements for license renewal or an exemption in the required time frame will have a lapsed license and shall not engage in the practice of podiatry.

ITEM 3. Rescind rule 645—220.101(272C) and adopt the following **new** rule in lieu thereof:

645—220.101(272C) Continuing education requirements.

220.101(1) It is the responsibility of each licensee to arrange for financing of costs of continuing education.

220.101(2) Each person licensed to practice podiatry in this state shall complete during each continuing education compliance period a minimum of 40 hours of continuing education obtained by attending and participating in a continuing education activity which meets the requirements herein.

220.101(3) The continuing education compliance period shall be each biennium beginning July 1 of each even-numbered year and ending two years later on June 30 of the next even-numbered year. For the 2000 renewal cycle only, 50 hours of continuing education will be due by July 1, 2000. Continuing education hours will return to 40 hours each biennium at the end of this prorated compliance period.

220.101(4) Carryover credit of continuing education hours into the next continuing education compliance period is not permitted.

220.101(5) When an initial license is issued via examination, the new licensee shall be exempt from meeting the con-

tinuing education requirement for the continuing education biennium in which the license is originally issued.

220.101(6) A report of continuing education activities shall be submitted on a board-approved form with the renewal application by the end of the biennial license renewal period. All continuing education activities submitted must be completed in the continuing education compliance period for which the license was issued or a penalty fee will be assessed as outlined in 220.3(8).

220.101(7) Licensees are responsible for keeping on file required documents that can support the continuing education attendance and participation reports submitted to the board for license renewal. These documents shall include a program brochure which includes the statement of purpose, course objectives, qualifications of speakers, program outline with a time frame designation and a certification of attendance. Programs or other educational activities that do not meet board standards will be disallowed. The licensee is required to make available to the board upon request documents to support the continuing education activities for auditing purposes. The licensee should maintain these records for four years.

ITEM 4. Rescind rule 645—220.213(272C) and adopt the following **new** rule in lieu thereof:

645—220.213(272C) Peer review committees.

220.213(1) A complaint may be assigned to a peer review committee for review, investigation, and report to the board.

220.213(2) The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review and report to the board.

220.213(3) Members of the peer review committees shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

220.213(4) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

ITEM 5. Amend subrule 221.6(2) as follows:

221.6(2) A podiatry assistant who takes the examination for issuance of a renewal as defined in subrule 221.8(6) 221.9(6) of a certificate is allowed to take the examination not more than two times. The board may require the podiatry assistant to take remedial training prior to being allowed to retake the examination. Podiatry assistants in this category may not participate in podiatric radiography before successful completion of the examination and issuance of a certificate or issuance of a renewal of an existing certificate.

ITEM 6. Rescind rule 645—221.9(136C,147,149) and adopt the following **new** rule in lieu thereof:

645—221.9(136C,147,149) Renewal requirements.

221.9(1) The biennial renewal period for a certificate to practice as a podiatry assistant shall extend from July 1 of each even-numbered year until June 30 of the next even-numbered year. Beginning July 1, 2000, the continuing education compliance period shall extend from July 1 of each even-numbered year until June 30 of the next even-numbered year.

An application and a continuing education report form for renewal of certificate to practice as a podiatry assistant shall be mailed to the licensee at least 60 days prior to the expiration of the certificate. Failure to receive the renewal applica-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tion shall not relieve the certificate holder of the obligation to pay biennial renewal fees on or before the renewal date.

221.9(2) Beginning July 1, 2000, the continuing education compliance period will coincide with the renewal compliance period. The certificate holder shall submit to the board office 30 days before certificate expiration the application and continuing education report form with the renewal fee as specified in rule 221.10(136C). Individuals who were issued their initial certificate within six months of certificate renewal will not be required to renew their certificate until the next renewal two years later. The new certificate holder shall be exempt from meeting the continuing education requirement for the continuing education biennium in which the initial certificate is originally issued. Podiatry assistants will be required to report two hours of continuing education for the first renewal and every renewal thereafter.

Continuing education requirements can be satisfied by attending courses in diagnostic radiography conducted by teaching institutions approved by the bureau of environmental health or given by the American Podiatric Medical Association (APMA) or the Iowa Podiatric Medical Society (IPMS). Proof of attendance at such courses of study shall be retained for four years by the podiatry assistant and submitted to the board as further proof of compliance at the request of the board.

221.9(3) Late renewal. If the renewal fee is received by the board within 30 days after the renewal expiration date, a penalty fee is charged. If renewal fee is received more than 30 days after the renewal expiration date, the certificate is lapsed. An application for reinstatement must be filed with the board with the renewal fee and the penalty fee as outlined in rule 221.10(136C). Individuals who fail to submit the renewal application and complete documentation of continuing education hours shall be required to pay a penalty fee and shall be subject to an audit of their continuing education report.

221.9(4) Podiatry assistants who have not fulfilled the requirements for certificate renewal or an exemption in the required time frame will have a lapsed certificate and shall not engage in the practice of podiatric radiography. The holder of a certificate who fails to renew within five years after its expiration may obtain a renewal certificate only by following the procedures for application and testing provided in these rules.

221.9(5) The board may require recertification, qualification and clinical evaluation of a podiatry assistant holding a certificate in podiatric radiography if the board, in its discretion, believes such action is necessary for the protection of the public.

ITEM 7. Amend rule 645—221.10(136C) by adopting a new subrule as follows:

221.10(5) Fee for a returned check is \$15.

ARC 8711A

REVENUE AND FINANCE
DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 201, "Auditing Claims," Iowa Administrative Code.

Subrule 201.1(2) is amended to implement 1998 Iowa Acts, chapter 1164, section 39, which allows state departments to enter into written contracts for goods and services on payment terms of less than 60 days if the state may obtain a financial benefit or incentive which would not otherwise be available from the vendor. Departments taking advantage of this provision must maintain written documentation demonstrating that the Department obtained a financial benefit or incentive which would not otherwise have been available from the vendor.

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

The Department has determined that the proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than March 16, 1999, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on the proposed amendment on or before March 26, 1999. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by March 19, 1999.

This amendment is intended to implement Iowa Code section 421.40 as amended by 1998 Iowa Acts, chapter 1164, section 39.

The following amendment is proposed.

Amend subrule 201.1(2) as follows:

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

201.1(2) Interest on claims. Any claim received after January 1, 1984, for services, supplies, materials or a contract which is payable from the state treasury that remains unpaid after 60 days following the receipt of the claim or the satisfactory delivery, furnishing or performance of the services, supplies, materials or contract whichever date is later, the state shall pay interest at the rate of 1 percent per month on the unpaid amount of the claim. After July 1, 1998, departments may enter into written contracts for goods and services on payment terms of less than 60 days if the state may obtain a financial benefit or incentive which would not otherwise be available from the vendor. All departments entering into written contracts for goods and services on payment terms of less than 60 days shall maintain written documentation demonstrating that the department obtained a financial benefit or incentive which would not otherwise have been available from the vendor. This paragraph does not apply to claims against the state under Iowa Code chapters 25 and 669 or the claims paid by federal funds. The interest shall be charged to the appropriation or fund to which the claim is certified.

ARC 8715A**STATUS OF WOMEN DIVISION[435]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 216A.54, the Division on the Status of Women gives Notice of Intended Action to amend Chapter 5, "Displaced Homemakers," Iowa Administrative Code.

The reason for revising the definition of "displaced homemakers" is to bring the state into line with the federal definition. The change in name is intended to present a more positive label for involved citizens. The change in allowance for job-related travel is intended to allow for out-of-state travel as may be necessary.

Any interested person may make written suggestions or comments on these proposed amendments on or before March 16, 1999.

A public hearing will be held at 3 p.m. on Tuesday, March 16, 1999, in the Department of Human Rights Conference Room, First Floor, Lucas State Office Building, Des Moines, Iowa.

Written materials should be directed to Charlotte Nelson, Administrator, Department of Human Rights, Division on the Status of Women, Lucas State Office Building, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code chapter 216A.

The following amendments are proposed.

ITEM 1. Amend the title of **435—Chapter 5** as follows:

~~DISPLACED HOMEMAKERS~~
IOWANS IN TRANSITION

ITEM 2. Amend rule 435—5.1(216A) as follows:

435—5.1(216A) Definitions. "Displaced homemaker" "Iowan in transition" means an individual who meets the following criteria:

1. Has worked principally in the home providing unpaid household services for family members;
2. Is unemployed or underemployed;
3. Has had, or would apparently have, difficulty finding appropriate paid employment; and
4. Is or has been dependent on the income of another family member but is no longer supported by that income, is or has been dependent on government assistance, or is supported as the parent of a minor; ; or
5. Is a female offender, or a female who has a record of criminal offense.

ITEM 3. Amend rule 435—5.2(216A) as follows:

435—5.2(216A) Program eligibility. In any year in which the legislature appropriates funds, the department of human rights division on the status of women shall provide moneys for certain selected programs to provide services to ~~displaced homemakers~~ **Iowans in transition**. The amount of money provided shall be contingent upon the amount of funds available. Programs shall include the provision of intake, assessment, planning and personal counseling services. Only non-profit organizations or governmental units are eligible.

ITEM 4. Amend rule **435—5.4(216A)**, numbered paragraph "**5**," as follows:

5. The plan for using the funds; funds may be used for salaries, fringe benefits, contract services, job-related ~~in~~ state travel, and operational expenses.

ITEM 5. Amend rule **435—5.5(216A)**, numbered paragraph "**1**," as follows:

1. An applicant denied assistance or who wishes to file a complaint about the ~~displaced homemakers~~ **Iowans in transition** program has ten days from the date of denial or complaint action to submit an appeal in writing to the administrator of the division on the status of women;

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Units James E. Forney, Superintendent of Banking Michael K. Guttau, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for February is 6.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

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

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

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 February 10, 1999, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum 4.30%
32-89 days	Minimum 4.40%
90-179 days	Minimum 4.60%
180-364 days	Minimum 4.60%
One year	Minimum 4.70%
Two years or more	Minimum 4.72%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories 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.

UTILITIES DIVISION[199]

Notice of Inquiry

Pursuant to the authority of Iowa Code sections 17A.4 and 476.2, the Utilities Board (Board) gives notice that on February 4, 1999, the Board issued an order in Docket No. RMU-99-2, In re: Uniform Rules On Agency Procedure, "Order Commencing Rule Making Inquiry," to receive public comment on whether it may be necessary or appropriate for the Board to amend some of its rules to conform to the recent revisions to Iowa Code chapter 17A.

Attached to the order is a copy of certain proposed amendments to the recommended uniform rules of agency procedure relating to declaratory orders, rule making, and contested cases. The proposed amendments were prepared by the Iowa Attorney General's Office. The attachment shows deletions and additions to the existing recommended uniform rules.

The Board is not publishing the proposed amendments to the recommended uniform rules at this time because they are voluminous and because the Board is not yet proposing to adopt any amendments to its existing rules. At this time, the Board is seeking public comment concerning the degree to which the Board should adopt the amended uniform rules, if at all. If and when the Board actually proposes to adopt any changes to its existing rules, the proposed new rules will be published. Anyone wishing to obtain a copy of the proposed amendments to the recommended uniform rules may request a copy, which the Board will make available for the cost of copying.

Based upon a preliminary review of the proposed amendments to the recommended uniform rules, the Board invites public comment concerning the appropriate scope of any subsequent rule-making proceedings.

Any interested person may file a written statement of position on the identified issues no later than March 16, 1999, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

ARC 8707A

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 84A.1B(9) and 96.11, the Department of Workforce Development hereby gives Notice of Intended Action to rescind Chapter 9, "Labor-Management Cooperation Program," Iowa Administrative Code, and to adopt a new Chapter 9 with the same title.

Pursuant to 1998 Iowa Acts, chapter 1225, section 9, paragraph 6, the responsibility of the State Labor Management Council has not been reauthorized. Responsibility for the program has been transferred to the state Workforce Development Board.

On January 26, 1999, the Workforce Development Board approved rescinding 877—Chapter 9, "Labor-Management Cooperation Program," and adopting a new Chapter 9.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on March 16, 1999. Interested persons may submit written or oral comments by contacting Maggie Wilcox, Office for Workforce Development Policy, Workforce Development Department, 150 Des Moines Street, Des Moines, Iowa 50309; telephone (515)281-9019.

A public hearing to receive comments about the proposed new chapter will be held at 10 a.m. on March 16, 1999, at 1000 East Grand Avenue in the Capitol View Conference Room. Individuals interested in providing comments at the hearing should contact Maggie Wilcox at (515)281-9019 by 4 p.m. on March 15, 1999, to be placed on the hearing agenda.

The new chapter is intended to implement 1998 Iowa Acts, chapter 1225, section 9, paragraph 6.

The following chapter is proposed.

Rescind 877—Chapter 9 and adopt the following new chapter in lieu thereof:

CHAPTER 9

LABOR-MANAGEMENT COOPERATION PROGRAM

877—9.1(77GA,ch1225) Purpose. The 1998 Iowa legislature appropriated funds to the department of workforce development to improve communications and facilitate dialogue between labor, management, and government on workforce development problems, to establish in-plant labor-management committees, and to provide technical assistance to promote effective labor-management policies in the state. The workforce development board appointed by the governor is responsible for overseeing the establishment of a labor-management effort in the state by promoting the establishment of areawide and in-plant labor-management committees.

877—9.2(77GA,ch1225) Definitions.

"DWD" means the department of workforce development.

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION[877](cont'd)

“Labor-management committee” means any existing or newly created labor-management committee, which meets the following criteria:

1. The committee has been jointly organized by employers and labor organizations representing employees in that plant, area or industry; and
2. The committee is established for the purpose of improving labor-management relations, job security, organizational effectiveness, enhancing economic development or improving communications with respect to subjects of mutual interest or concern to labor and management; and
3. The committee shall not interfere with the collective bargaining activities in any plant or industry.

877—9.3(77GA,ch1225) Requests for training funds.

9.3(1) Request for training funds. Labor-management committees may request training funds from DWD by submitting a request letter and training plan. The training plan shall include a description of each training session to be conducted, who will provide the training, when the training will be provided, and the cost of the training session.

9.3(2) Request submittal. Completed requests shall be submitted to the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309, Attention: Labor-Management Coordinator.

9.3(3) Review procedure. Eligible requests will be reviewed and approved by staff of the DWD. A monthly report

of requests received and funded will be provided to the DWD board.

877—9.4(77GA,ch1225) Grant period and amount of grants.

9.4(1) The maximum training grant amount will be established annually by the DWD board based upon funds available for this purpose.

9.4(2) Approved training must be completed during the 12-month program year beginning July 1 and ending June 30. Training funded during one fiscal year does not automatically guarantee funding in future fiscal years.

877—9.5(77GA,ch1225) Technical assistance. Technical assistance for establishing an in-plant or areawide labor-management committee may be requested either by writing the Department of Workforce Development, 150 Des Moines Street, Des Moines, Iowa 50309, Attention: Labor-Management Coordinator or by telephoning the labor-management coordinator at (515)281-9018.

877—9.6(77GA,ch1225) Monitoring. DWD reserves the right to monitor and evaluate the activities of any committee receiving funding under this chapter.

These rules are intended to implement 1998 Iowa Acts, chapter 1225, section 9, paragraph 6.

ARC 8708A

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 514D.5, the Insurance Commissioner amends Chapter 37, "Medicare Supplement Insurance Minimum Standards," Iowa Administrative Code.

Changes by the federal government in the Balanced Budget Act of 1997 (P.L. 105-33) necessitate the following Medicare Supplement rule changes. Previous amendments to Chapter 37 were Adopted and Filed Emergency and published in the September 9, 1998, Iowa Administrative Bulletin as **ARC 8298A**. However, an error was discovered in the Model Regulations approved by the Health Care Financing Administration (HCFA). Therefore, additional changes are required. Because the federal changes became effective July 1, 1998, it is necessary that these amendments be Adopted and Filed Emergency.

The amendments provide additional provisions for open enrollment and preexisting condition exclusions. In addition, guaranteed issue provisions for persons in a Medicare+Choice organization became effective July 1, 1998, and not January 1, 2002, as originally noted.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are unnecessary because Medicare Supplement policies are standardized under federal requirements.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing because the federal statute so provides.

The amendments became effective February 3, 1999.

These amendments are intended to implement Iowa Code section 514D.5 and the Balanced Budget Act of 1997, P.L. 105-33.

The following amendments are adopted.

ITEM 1. Amend subrule 37.7(2), paragraph "e," to read as follows:

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

ITEM 2. Amend rule 191—37.10(514D) by adopting the following new subrule and renumbering existing subrule 37.10(2) as subrule 37.10(3).

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

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

ITEM 3. Amend subrule 37.15(3), paragraph "d," to read as follows:

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

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

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

BASIC BENEFITS: Included in All Plans.

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medicare Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses *or, in the case of hospital outpatient department services under a prospective payment system, applicable copayments*).

Blood: First three pints of blood each year.

A	B	C	D	E	F F*	G	H	I	J J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery			At-Home Recovery		At-Home Recovery	At-Home Recovery

INSURANCE DIVISION[191](cont'd)

A	B	C	D	E	F	F*	G	H	I	J	J*
								Basic Drugs (\$1,250 Limit)	Basic Drugs (\$1,250 Limit)	Extended Drugs (\$3,000 Limit)	
				Preventive Care						Preventive Care	

*Plans F and J also have an option called a high deductible Plan F and a high deductible Plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year [\$1500] deductible. Benefits from high deductible Plans F and J will not begin until out-of-pocket expenses are [\$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in Plan J, the plan's separate prescription drug deductible or, in Plans F and J, the plan's separate foreign travel emergency deductible.

ITEM 4. Amend subrule 37.24(2), paragraph "b," introductory paragraphs, to read as follows:

b. The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under Part C of Medicare, and ~~there are circumstances permitting discontinuance of the individual's election of the plan under the first sentence of Section 1851(e)(4) of the federal Social Security Act, which consists of the following: any of the following circumstances apply:~~

~~"Effective as of January 1, 2002, an individual may discontinue an election of a Medicare+Choice plan offered by a Medicare+Choice organization other than during an annual, coordinated election period [under Medicare] and make a new election under this section if:~~

ITEM 5. Amend subrule 37.24(2), paragraph "c," subparagraph (5), to read as follows:

(5) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of Section 1851(3)(4) of the federal Social Security Act as delineated above in paragraph 37.24(2)"b."

[Filed Emergency 2/3/99, effective 2/3/99]
[Published 2/24/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/99.

ARC 8703A

COMMUNITY ACTION AGENCIES
DIVISION[427]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216A.92B, the Division of Community Action Agencies hereby adopts an amendment to Chapter 5, "Weatherization Assistance Program," Iowa Administrative Code.

The amendment establishes procedures to implement a 28E Agreement between the Department of Human Rights and the Department of Inspections and Appeals to recoup overpayments or payments fraudulently obtained under the Weatherization Assistance Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 2, 1998, as **ARC 8539A**. A public hearing was held on January 5, 1999. No one appeared at the public hearing. No comments were received with respect to this amendment.

The following acronyms are used in this amendment:

LAA - Local Administering Agencies

DHR/DCAA - Department of Human Rights/Division of Community Action Agencies

This amendment is identical to the one published under Notice.

This amendment will become effective on March 31, 1999.

This amendment is intended to implement Iowa Code section 216A.92.

The following amendment is adopted.

Adopt the following **new** rule:

427—5.6(216A) Payments.

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

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

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

[Filed 2/2/99, effective 3/31/99]

[Published 2/24/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/99.

ARC 8704A

COMMUNITY ACTION AGENCIES
DIVISION[427]

Adopted and Filed

Pursuant to the authority of Iowa Code section 216A.92B, the Division of Community Action Agencies hereby adopts amendments to Chapter 10, "Low-Income Home Energy Assistance Program," Iowa Administrative Code.

These amendments establish procedures to implement a 28E Agreement between the Department of Human Rights and the Department of Inspections and Appeals to recoup overpayments or payments fraudulently obtained under the Low-Income Home Energy Assistance Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 2, 1998, as **ARC 8540A**. A public hearing was held on January 5, 1999. No one appeared at the public hearing. No comments were received with respect to these amendments.

The following acronyms are used in these amendments:

LAA - Local Administering Agencies

DHR/DCAA - Department of Human Rights/Division of Community Action Agencies

The amendments are identical to those published under Notice.

These amendments will become effective on March 31, 1999.

These amendments are intended to implement Iowa Code section 216A.92.

The following amendments are adopted.

ITEM 1. Amend rule 427—10.8(216A,PL97-35,PL98-558), catchwords, as follows:

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

ITEM 2. Amend subrule 10.8(2) as follows:

10.8(2) Duplicate *and fraudulent* payment control. Each LAA is required to provide a system to monitor and prevent possible duplicate *and other fraudulent* applications and payments. Duplication cross-checks shall be based on household members' ~~name, address and social security number~~ *names, addresses and social security numbers*. ~~Suspected cases of fraud, including making fraudulent statements on an application, will be referred to the state for investigation.~~

ITEM 3. Adopt the following **new** subrule 10.8(3):

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

ITEM 4. Adopt the following **new** subrule 10.8(4):

10.8(4) Overpayments. If the DHR/DCAA receives information from an LAA or from any source that an overpayment has occurred because of client error, client fraud, client misrepresentation or agency error, the DHR/DCAA may refer the overpayment to the department of inspections and

COMMUNITY ACTION AGENCIES DIVISION[427](cont'd)

appeals (DIA) for investigation and collection in accordance with the procedures under 481 IAC 71.

[Filed 2/2/99, effective 3/31/99]
[Published 2/24/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/99.

ARC 8716A**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions," and Chapter 63, "Monitoring, Analytical and Reporting Requirements," Iowa Administrative Code.

The purpose of this rule making is to update references in rules 62.4(455B) and 62.5(455B) to federal effluent and pretreatment standards found in 40 Code of Federal Regulations (CFR) which need to be changed due to federal amendments and revisions to 40 CFR. The change to rule 60.2(455B) is to update the definition of "Act" to include amendments to the Water Pollution Control Act through July 1, 1998. The change to subrule 63.1(1) is to update the reference to the latest federally approved methods for the analysis of wastewater samples which are adopted by reference.

In accordance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary. Under rule 62.2(455B) the Commission has determined previously that good cause exists for exempting from the notice and public participation requirements of Iowa Code section 17A.4(1) the adoption by reference of certain federal effluent and pretreatment standards. The Commission found that public participation is unnecessary since the Commission must adopt effluent and pretreatment standards at least as stringent as the enumerated promulgated federal standards in order to have continued approval of the Environmental Protection Agency (EPA) of the Department's National Pollutant Discharge Elimination System (NPDES) program. Iowa Code section 455B.173(3) requires that the effluent and pretreatment standards adopted by the Commission not be more stringent than the enumerated promulgated federal standards. The Commission also found that public participation is unnecessary when updating the reference to approved methods for analysis because these methods are required by EPA to be used to implement federal effluent and pretreatment standards.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments shall become effective March 31, 1999.

The following amendments are adopted.

ITEM 1. Amend rule **567—60.2(455B)**, definition of "Act," as follows:

"Act" means the Federal Water Pollution Control Act as amended through July 1, ~~1997~~ 1998, 33 U.S.C. §1251 et seq.

ITEM 2. Amend rule 567—62.4(455B), introductory paragraph, as follows:
567—62.4(455B) Federal effluent and pretreatment standards. The federal standards, 40 Code of Federal Regulations (CFR), revised as of July 1, ~~1997~~ 1998, are applicable to the following categories:

ITEM 3. Amend rule 567—62.5(455B) as follows:

567—62.5(455B) Federal toxic effluent standards. The following is adopted by reference: 40 CFR Part 129, revised as of July 1, ~~1997~~ 1998.

ITEM 4. Amend subrule **63.1(1)**, paragraph "a," as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, revised as of July 1, ~~1997~~ 1998.

[Filed Without Notice 2/5/99, effective 3/31/99]
[Published 2/24/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/99.

ARC 8701A**LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 88.5, 89B.8 and 17A.3(1), the Labor Commissioner hereby adopts amendments to Chapter 3, "Inspections, Citations and Proposed Penalties," and Chapter 120, "Worker Right to Know," Iowa Administrative Code.

These amendments relate to inspection activities, procedures for abatement verification, responses to emergencies, and worker right-to-know. A provision of 875—Chapter 120 is moved into Chapter 3 and Chapter 120 is rescinded since the requirements are duplicated in Chapter 10.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 16, 1998, as **ARC 8565A**. A public hearing was scheduled for January 11, 1999. No oral comments were received at the hearing and no written comments were filed.

There is one change from the Notice. Subrule 3.7(3), which has been changed to apply only to complaints filed during an inspection, is amended as follows:

3.7(3) ~~Prior to or during~~ During any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the compliance safety and health officer, ~~in writing~~, of any violation of the Act which they have reason to believe exists in the workplace. ~~Any such notice shall comply with the requirements of subrule 3.7(1).~~

These amendments are intended to implement Iowa Code chapters 88 and 89B.

LABOR SERVICES DIVISION[875](cont'd)

These amendments will become effective on March 31, 1999.

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 amendments [amendments to Chs 3 and 120] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8565A**, IAB 12/16/98.

[Filed 1/26/99, effective 3/31/99]
[Published 2/24/99]

[For replacement pages for IAC, see IAC Supplement 2/24/99.]

ARC 8719A**MEDICAL EXAMINERS
BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Medical Examiners hereby amends Chapter 12, "Discipline," Iowa Administrative Code.

These amendments establish criteria and procedures for the approval of evaluating facilities and treatment providers for the Impaired Physician Review Committee (IPRC).

Notice of Intended Action was published on December 2, 1998, in the Iowa Administrative Bulletin as **ARC 8515A**. Changes from the Notice include nonsubstantive date changes in 12.16(9) and 12.16(15).

These amendments were approved during the January 21, 1999, meeting of the Board of Medical Examiners.

These amendments will become effective March 31, 1999.

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

The following amendments are adopted.

ITEM 1. Amend subrule **12.16(1)** by adopting the following new definitions in alphabetical order:

"Approved evaluating facility" means a hospital, agency, or other program approved by the IPRC pursuant to subrule 12.16(11).

"Approved treatment provider" means a physician, counselor, or other individual approved by the IPRC pursuant to subrule 12.16(17).

ITEM 2. Amend rule 653—12.16(272C) by adopting the following new subrules:

12.16(9) Evaluating facilities. As of April 1, 1999, the physician who self-reports an impairment and is determined by the IPRC to be in need of evaluation shall undergo a comprehensive multidisciplinary evaluation at an evaluating facility approved by the IPRC in accordance with subrules 12.16(10) to 12.16(13).

12.16(10) Standards for approval of evaluating facilities. A hospital, agency, or other program shall be approved by the IPRC as an approved evaluating facility if each of the following requirements is satisfied:

a. The evaluation process is directed by a licensed physician and involves a multidisciplinary team including psychologists, social workers, addiction counselors, or other therapists who are licensed or certified in their discipline.

b. The evaluation process is an objective, measurable program which utilizes appropriate tools and testing procedures.

c. The evaluation process involves an inpatient or an intensive outpatient component.

d. The evaluation includes a complete medical history and physical examination.

e. The evaluation includes a psychiatric evaluation and mental status examination, including neuropsychiatric or psychiatric testing as indicated.

f. The evaluation includes a comprehensive chemical use history.

g. The evaluation includes urine screening or blood alcohol screening, or both, with legal chain of custody and forensic capability protocol.

h. The evaluation includes a family and social history with corroboration from at least two sources.

i. The evaluation culminates in the formulation of an evaluation report which includes specific diagnoses and recommendations for corrective action.

j. The facility has substantial experience in the evaluation of impaired physicians and others with similar professional backgrounds.

k. The facility is certified or registered as an alcoholism program or drug treatment program by the appropriate state agency or is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

12.16(11) Procedure for approval. A hospital, agency, or other program which meets the standards for approval and seeks to be designated as an approved evaluating facility shall apply on an application form provided by the IPRC. In addition to evaluating the application, the IPRC or its designee may conduct an on-site inspection of the hospital, agency, or other program. If approved by the IPRC, such hospital, agency, or other program shall be designated as an approved evaluating facility.

12.16(12) Notification of changes. An approved evaluating facility shall notify the IPRC of the following changes prior to the change's becoming effective, and any such change may result in reevaluation of approval status:

a. Transfer of ownership of the facility;

b. Change in location of the facility; or

c. Any substantial change in policies and procedures, treatment philosophy, or quality management.

12.16(13) Review of approved evaluating facilities. The IPRC may at any time reevaluate an approved evaluating facility. Upon evidence that the facility has failed to meet the requirements of subrule 12.16(10) or for good cause, the IPRC may revoke the approval.

12.16(14) Postapproval. In the event an impaired physician undergoes a comprehensive multidisciplinary evaluation at a facility which has not been approved by the IPRC, the physician shall submit evidence to the IPRC that the facility which performed the evaluation substantially meets the qualifications as defined by subrule 12.16(10). In the event the IPRC determines that the facility does not substantially meet the qualifications as defined by subrule 12.16(10), the IPRC shall require that the physician undergo a comprehensive multidisciplinary evaluation at an approved facility.

12.16(15) Treatment providers. As of April 1, 1999, all physicians, counselors, or other individuals providing treatment to a physician pursuant to an impaired physician program shall be approved for such purpose by the IPRC in accordance with subrules 12.16(16) to 12.16(18).

MEDICAL EXAMINERS BOARD[653](cont'd)

12.16(16) Standards for approval of treatment providers. A physician, counselor, or other individual shall be approved by the IPRC as an approved treatment provider if each of the following requirements is satisfied:

a. The provider is licensed by the appropriate licensing board and has not been disciplined by the licensing board for a violation which concerns serious matters related to the provider's ability to practice with reasonable safety and skill.

b. The provider has not been convicted of violating any federal or state law pertaining to furnishing or using narcotics or illegal substances.

c. The provider has demonstrated education, training, and expertise in the treatment of substance abuse or other impairments.

d. The philosophy and individualized treatment plan of the provider is based on the disease concept.

e. The chemical dependency model of treatment is based on a 12-step addiction recovery model such as Alcoholics Anonymous.

f. The provider has treated impaired physicians and others with similar professional backgrounds. The provider encourages peer support and frequent contact with vocationally focused peer support groups.

g. The provider has a network of referral agencies or professionals to meet the needs of the impaired physician and significant others in the event the needs go beyond the provider's expertise or available facilities.

h. The provider involves the family and significant others of the impaired physician in appropriate aspects of treatment.

i. The provider agrees to execute the treatment provider agreement of the IPRC with respect to each impaired physician to whom treatment is provided.

12.16(17) Procedure for approval. A physician, counselor, or other individual who meets the standards for approval and seeks to be designated as an approved treatment provider shall apply on an application form provided by the IPRC. In addition to evaluating the application, the IPRC or its designee may conduct an on-site inspection of the offices of the physician, counselor, or other individual. If approved by the IPRC, such physician, counselor, or other individual shall be designated as an approved treatment provider.

12.16(18) Review of approved treatment provider. The IPRC may at any time reevaluate an approved provider. Upon evidence that the provider has failed to meet the requirements of subrule 12.16(16) or for good cause, the IPRC may revoke the approval.

12.16(19) Appeal. In the event of a denial or revocation of approval of an evaluating facility or treatment provider, the applicant or approved facility or provider shall have the right to request a hearing before the IPRC. The request must be sent within 20 days after the receipt of the notification of denial or revocation. The hearing shall be conducted by the IPRC and the final decision shall be rendered by the IPRC.

12.16(20) Board orders for physician evaluation or treatment. In cases where the board of medical examiners orders a physician to be evaluated for an impairment, the physician shall be evaluated only at an evaluating facility approved by the IPRC under this chapter. In cases where the board of medical examiners orders a physician to undergo treatment or counseling for an impairment from a physician, counselor,

or other individual, such treatment providers shall be approved by the IPRC under this chapter.

[Filed 2/5/99, effective 3/31/99]

[Published 2/24/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/99.

ARC 8709A**PROFESSIONAL LICENSING AND REGULATION DIVISION[193]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 546.2, the Professional Licensing and Regulation Division hereby amends Chapter 1, "Organization and Operation," and adopts Chapter 4, "Proof of Legal Presence," Iowa Administrative Code.

The amendments to Chapter 1 update the Iowa Code citations for the six professions regulated by the division.

New Chapter 4 outlines the procedures which the Division will require pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621). Applicants for an initial license or renewal of a professional license will be required to provide proof of legal presence in the United States before an application will be approved.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 30, 1998, as **ARC 8580A**. The amendments are identical to those published under Notice of Intended Action.

The amendments were adopted by the Professional Licensing and Regulation Division on February 3, 1999.

The amendments will become effective March 31, 1999. These amendments are intended to implement Iowa Code chapter 546.

The following amendments are adopted.

ITEM 1. Amend subrules 1.4(1) to 1.4(6) as follows:

1.4(1) The engineering and land surveying examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of four professional engineers, one land surveyor, and two public members. The board administers Iowa Code chapter ~~114~~ **542B**, Professional Engineers and Land Surveyors, and board rules published under agency number [193C]—Chapters 1 to ~~5~~ 7, Iowa Administrative Code.

1.4(2) The accountancy examining board is an eight-member board, appointed by the governor and confirmed by the senate. The board is composed of five certified public accountants, two public members, and one licensed accounting practitioner. The board administers Iowa Code chapter ~~116~~ **542C**, Public Accountants, and board rules published under agency number [193A]—Chapters 1 to ~~16~~ **18**, Iowa Administrative Code.

1.4(3) The real estate commission is a five-member commission appointed by the governor and confirmed by the senate. It is composed of three members licensed under Iowa Code chapter ~~117~~ **543B** and two public members. The commission administers Iowa Code chapters ~~117~~ **543B**, Real Estate Brokers and Salespersons; ~~117A~~ **543C**, Sales of Subdivided Land Outside of Iowa; ~~557A~~, Time-Share Act; and

PROFESSIONAL LICENSING AND REGULATION DIVISION[193](cont'd)

commission rules published under agency number [193E]—Chapters 1 to 6 7, Iowa Administrative Code.

1.4(4) The architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered architects and two public members. The board administers Iowa Code chapter ~~118~~ 544A, Registered Architects, and board rules published under agency number [193B]—Chapters 1 to 6 9, Iowa Administrative Code.

1.4(5) The landscape architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered landscape architects and two public members. The board administers Iowa Code chapter ~~118A~~ 544B, Landscape Architects, and board rules published under agency number [193D]—Chapters 1 to 5 7, Iowa Administrative Code.

1.4(6) The real estate appraiser examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five certified real estate appraisers and two public members. The board administers Iowa Code chapter ~~117B~~ 543D, Real Estate Appraisals and Appraisers, and board rules published under agency number [193F]—Chapters 1 to ~~10~~ 11, Iowa Administrative Code.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 4
PROOF OF LEGAL PRESENCE

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

193—4.2(546) Applicability.

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

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

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

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

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

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

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

c. A birth certificate or passport issued from:

1. Puerto Rico, on or after January 13, 1941.

2. Guam, on or after April 10, 1989.

3. U.S. Virgin Islands, on or after February 12, 1927.

4. Northern Mariana Islands after November 4, 1986.

5. American Samoa.

6. Swain's Island.

7. District of Columbia.

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

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

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

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

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

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

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

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

1. INS Form I-551 (Alien Registration Receipt Card commonly known as a "green card"); or

2. Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94.

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

1. INS Form I-94 annotated with stamp showing grant of asylum under Section 208 of the INA.

2. INS Form I-668B (Employment Authorization Card) annotated "274a.12(a)(5)."

3. INS Form I-776 (Employment Authorization Document) annotated "A5."

4. Grant Letter from the Asylum Office of INS.

5. Order of an immigration judge granting asylum.

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

1. INS Form I-94 annotated with stamp showing admission under Section 207 of the INA.

2. INS Form I-668B (Employment Authorization Card) annotated "274a.12(a)(3)."

3. INS Form I-766 (Employment Authorization Document) annotated "A3."

4. INS Form I-571 (Refugee Travel Document).

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

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

1. INS Form I-668 (Employment Authorization Card) annotated "271a.12(a)(10)."

2. INS Form I-766 (Employment Authorization Document) annotated "A10."

3. Order from an immigration judge showing deportation withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of the INA.

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

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1. INS Form I-94 with stamp showing admission under Section 203(a)(7) of the INA.

2. INS Form I-668 (Employment Authorization Card) annotated "274a.12(a)(3)."

3. INS Form I-776 (Employment Authorization Document) annotated "A3."

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

1. INS Form I-551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, or CH6.

2. Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with code CU6 or CU7.

3. INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" under Section 212(d)(5) of the INA.

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

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

j. Any other documentation acceptable under the INA. These rules are intended to implement Iowa Code chapter 546.

[Filed 2/4/99, effective 3/31/99]

[Published 2/24/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/99.

ARC 8706A**PROFESSIONAL LICENSURE
DIVISION[645]****BOARD OF BARBER EXAMINERS****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 158.15, the Board of Barber Examiners hereby amends Chapter 20, "Barber Examiners," Iowa Administrative Code.

This amendment provides direction in submitting an application for examination and licensure in a time frame that allows for ordering the newly imposed national examination 30 days prior to the examination date and for processing the application within the Professional Licensure Division.

Notice of Intended Action was published in the November 18, 1998, Iowa Administrative Bulletin as **ARC 8492A**. A public hearing was held on December 8, 1998, from 2 to 3 p.m. in the Fourth Floor Conference Room 1, Lucas State Office Building, Des Moines, Iowa. No written or verbal comments were received. These amendments are identical to the ones published under Notice of Intended Action.

The Board has determined that the amendment will have no impact on small business within the meaning of Iowa Code section 17A.31.

This amendment was adopted by the Board on January 26, 1999.

This amendment will become effective on March 31, 1999.

This amendment is intended to implement Iowa Code sections 147.76 and 158.15.

The following amendment is adopted.

Adopt **new** rule 645—20.12(158) as follows:

645—20.12(158) Application. All persons who practice barbering in the state of Iowa are required to be licensed as barbers. To be considered eligible for examination or licensure, or both, an applicant shall meet the licensure requirements of Iowa Code section 158.3 and submit fees and a completed application form prescribed by the board. An application for examination must be filed with the board at least 45 days preceding the examination. Application forms may be obtained from the barber school at which the student is enrolled, or by contacting the Board of Barber Examiners, Department of Public Health, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

[Filed 2/3/99, effective 3/31/99]

[Published 2/24/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/99.

ARC 8717A**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 80A.15, the Department of Public Safety hereby amends Chapter 2, "Private Investigation and Private Security Businesses," Iowa Administrative Code.

Iowa Code chapter 80A authorizes the Department of Public Safety to license private investigation and security businesses operating in the state. The Iowa General Assembly modified that authority in significant ways in 1998. 1998 Iowa Acts, chapter 1149 [Senate File 2374], added bail enforcement agents to the persons covered by Iowa Code chapter 80A and the rules of the Department of Public Safety which implement that chapter. 1998 Iowa Acts, chapter 1131 [Senate File 2331], exempted transportation of prisoners under contract with a county sheriff, the Iowa Department of Corrections, a similar agency from another state, or a federal agency from the provisions of Iowa Code chapter 80A and the corresponding rules of the Department. Most of the amendments proposed here address modifications to the rules required by these two legislative changes, although some additional administrative issues are also addressed. The following is a more detailed explanation of these proposed amendments:

Item 1 changes the title of Chapter 2 of the rules to include bail enforcement agents.

Item 2 updates directions to contact the Department for information, inquiries, or applications for private investigator, private security, or bail enforcement licensing.

Item 3 amends the definitions of "moral turpitude," "peace officer," and "proof of financial responsibility" and adds new definitions for "bail enforcement agent," "bail enforcement business," "chief law enforcement officer," "conviction resulting from domestic abuse," and "defendant." The definition of "peace officer" is amended to clarify that only peace officers with authority to act as such in Iowa are covered by these rules. The definition of "proof of financial responsibility" is amended by adding "bail enforcement business" to the definition and recognizing the different levels of proof required for different businesses.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Item 4 clarifies that a person exempt from the provisions of these rules based on working for an employer solely on the affairs of that employer must only be working for that single employer and it includes language to exempt persons engaged in transport of prisoners from application of these rules.

Item 5 adds references to bail enforcement businesses to existing provisions regarding licensing requirements for private investigative and security businesses. Similar language is contained in several other items. Item 5 also adds language to the subrule regarding proof of financial responsibility which authorizes the Commissioner of Public Safety to accept alternate forms of proof of financial responsibility and clarifies language requiring that each licensed business have at least one licensee who has successfully passed the written examination required for the business.

Item 6 contains language clarifying that licensees must have valid proof of financial responsibility and must reestablish valid proof of financial responsibility within 60 days of the expiration of previous proof.

Item 9 eliminates a requirement that licenses be returned to the Department upon expiration.

Item 12 provides that no metal badges will be approved for bail enforcement agents. This is parallel to an existing provision for private investigative and private security businesses.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 15, 1998, as **ARC 8140A**. A public hearing on these proposed amendments was held on August 10, 1998. No comments regarding the proposed amendments were received at the public hearing or otherwise. These amendments were simultaneously Adopted and Filed Emergency as **ARC 8141A**.

One change from the Notice of Intended Action appears in subrule 2.4(2) in Item 5. Reference to a separate temporary identification card for employees of licensees was inadvertently retained and is now removed. A temporary identification card is now part of the form (# PD2) used to apply for an identification card. References to the name of this form have also been corrected.

These amendments are intended to implement Iowa Code chapter 80A.

These amendments will become effective on April 1, 1999, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend **661—Chapter 2, title**, as follows:

CHAPTER 2

**BAIL ENFORCEMENT, PRIVATE INVESTIGATION
AND PRIVATE SECURITY BUSINESSES**

ITEM 2. Amend rule 661—2.1(80A) as follows:

661—2.1(80A) Licensing. The administrative services division shall administer the *bail enforcement*, private investigation and private security statute. Any questions, comments, information, requests for information, or application for a license or an identification card shall be directed to the *Department of Public Safety, Administrative Services Division Field Services Bureau, Iowa Department of Public Safety, Wallace State Office Building, Third Floor, Des Moines, Iowa 50319-0045*, or, with the exception of applications, by electronic mail via the Internet to piinfo@dps.state.ia.us.

ITEM 3. Amend rule **661—2.2(80A)** as follows:
Amend the following definitions:

“Moral turpitude” is an act of baseness, vileness, or depravity or conduct which is contrary to justice, honesty, or good morals. The following is a nonexclusive list of examples of moral turpitude:

1. Any act or pattern of conduct involving dishonesty, fraud, or deception;
2. Any act or pattern of conduct of harassment or stalking;
3. Any act of sexual misconduct;
4. Any offense with a specific criminal intent;
5. Domestic abuse assault *or other assault conviction resulting from domestic abuse*.

“Peace officer” means such persons as may be so designated by law and who have the lawful authority and power to so act *in the state of Iowa*.

“Proof of financial responsibility” means proof of the ability of a licensee to respond in damages for liability on account of accidents or wrongdoings occurring subsequent to the effective date of the proof, arising out of ownership and operation of a *bail enforcement business*, private security business or a private investigative business in amounts as follows:

1. With respect to agencies holding only a *bail enforcement*, private investigative or private security agency license and having five or fewer permanent and temporary employees, the amount of \$5,000.
2. With respect to agencies holding ~~both a private investigative and private security~~ *more than a single agency license* and having five or fewer permanent and temporary employees, the amount of \$10,000.
3. With respect to agencies holding only a *bail enforcement*, private investigative or private security agency license and having more than 5 and fewer than 30 permanent and temporary employees, the amount of \$20,000.
4. With respect to agencies holding ~~both a private investigative and private security~~ *more than a single agency license* and having more than 5 and fewer than 30 permanent and temporary employees, the amount of \$30,000.
5. With respect to agencies holding only a *bail enforcement*, private investigative or private security agency license and having ~~more than 30 or more~~ permanent and temporary employees, the amount of \$50,000.
6. With respect to agencies holding ~~both a private investigative and private security~~ *more than a single agency license* and having ~~more than 30 or more~~ permanent and temporary employees, the amount of \$100,000.

Adopt the following new definitions in alphabetical order:

“Assault conviction resulting from domestic abuse” means a conviction at any level that has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

“Bail enforcement agent” means a person engaged in the bail enforcement business, including licensees and persons engaged in the bail enforcement business whose principal place of business is in a state other than Iowa.

“Bail enforcement business” means the business of taking or attempting to take into custody the principal on a bail bond issued or a deposit filed in relation to a criminal proceeding to ensure the presence of the defendant at trial, but does not include such actions that are undertaken by a peace officer or

PUBLIC SAFETY DEPARTMENT[661](cont'd)

law enforcement officer in the course of the officer's official duties.

"Chief law enforcement officer" means the county sheriff, or the sheriff's designee, in the county where the defendant is located, or the chief of police, or the chief's designee, when the defendant is located within the city limits of a city or town which has a police force.

"Defendant" means the principal on a bail bond issued or deposit filed in relation to a criminal proceeding in order to ensure the presence of the defendant at trial.

ITEM 4. Amend rule 661—2.3(80A) as follows:
Amend subrule 2.3(3) as follows:

2.3(3) A person employed full- or part-time *exclusively* by one employer in connection with the affairs of the employer.

Adopt **new** subrule 2.3(15) as follows:

2.3(15) A person engaged in the business of transporting prisoners under a contract with the Iowa department of corrections or a county sheriff, a similar agency from another state, or the federal government.

ITEM 5. Amend rule 661—2.4(80A) as follows:

Amend the introductory paragraph as follows:

661—2.4(80A) Licenses. Each person who engages in, who performs any service as, or who in any way represents or holds out as engaging in, a *bail enforcement business*, private investigative business or private security business or activity in this state shall be licensed prior to such activity. Each business requires a separate license. *For a license to be valid, the business shall have at least one current valid licensee who is a director, officer, partner or person who is actively involved in the business in Iowa. Failure to maintain a valid license shall be grounds for revocation of the license.*

Amend subrule 2.4(1) as follows:

2.4(1) Application for licenses—generally. Anyone who wishes to be considered for a *bail enforcement*, private investigative or private security license or ID card should contact the ~~administrative services division field services bureau~~ as indicated in rule 661—2.1(80A) and request application information.

Amend subrule 2.4(2) as follows:

2.4(2) Forms. An applicant for a license or ID card shall execute forms provided by the department. These forms must be submitted to the commissioner and will not be processed by the commissioner unless complete. The forms used in the administration of this chapter are as follows:

a. "Application for ~~License~~ *Bail Enforcement Agency License, Private Investigative Agency License and/or Private Security Agency License*" Form #PD1

b. ~~"Application for a Private Investigator and/or Security Guard Identification Card"~~ *"Identification Card Application For: Private Investigator/Private Security Guard/Bail Enforcement Agent"* Form #PD2

c. "Application for License Renewal" Form #PD3

d. "Fingerprint Card" Form #FD-258

e. "Reference Form" Form #PD5

f. "Surety Bond" Form #PD6

g. "Corporate Information" Form #PD7

h. "Identification Card" Form #PD8

Amend subrule 2.4(3) as follows:

2.4(3) Application requirements. An applicant for a license as a *bail enforcement agency*, private investigative agency or private security agency must submit the following to complete the application process:

a. A completed Application for *Bail Enforcement Agency License, Private Investigative Agency License and/*

or Private Security Agency License (Form #PD1) for each individual.

With respect to an applicant who is a corporation, Form #PD1 must be completed by the president of the corporation and by each officer or director who is actively involved in the licensed business in Iowa.

With respect to an applicant who is a partnership or association, Form #PD1 must be completed by each partner or association member.

b. Two completed Fingerprint Cards (Form #FD-258) for each individual identified in this subrule, paragraph "a."

c. A completed Surety Bond Form (Form #PD6) issued by a surety company authorized to do business in this state.

d. If the applicant is a corporation, a completed Corporate Information Form (Form #PD7).

e. Two color photographs 1" wide x ~~1 1/4"~~ 1" high of the head and shoulders of each individual identified in this subrule, paragraph "a," taken not more than one year prior to application.

f. A fee of \$100 for each agency license requested plus \$10 for each identification card requested pursuant to this subrule.

g. Proof of financial responsibility.

Amend subrule 2.4(5) by adding the following **new** paragraph:

d. Such other proof of assets that the commissioner may agree to accept.

Amend subrule 2.4(7) as follows:

~~**2.4(7)** Mandatory examinees. Each director, officer, partner, or person who is actively involved in the private investigation or security business in Iowa shall take the written examination. However, if the applicant is a foreign corporation, the employee responsible for its operations in the state of Iowa shall take the examination. Each licensed business shall have at least one licensee who has taken and successfully completed the written examination and who has met all other licensing requirements.~~

Amend subrule 2.4(9) as follows:

2.4(9) Reexaminations. An applicant who fails to pass the examination or who fails to appear for the examination shall not be permitted to take any subsequent examination unless the applicant has duly filed a request for reexamination.

A written request for reexamination should be addressed to the department at the following address: Department of Public Safety, ~~Administrative Field Services Division Bureau, Third Floor,~~ Wallace State Office Building, ~~Third Floor,~~ Des Moines, Iowa 50319-0045.

ITEM 6. Amend rule 661—2.5(80A) as follows:

Amend subrule 2.5(9) as follows:

~~**2.5(9)** Not have a history of mental illness or instability;~~
~~and~~

Amend subrule 2.5(10) as follows:

~~**2.5(10)** Comply with the bonding requirements in the amount and for the purpose delineated in the Iowa Code;~~
~~and~~

Adopt the following **new** subrule:

2.5(11) Comply with the proof of financial responsibility requirements in the amount and for the purpose delineated in the Iowa Code and administrative rules. Licensees will have no more than 60 days to comply with these requirements following any specified expiration dates.

ITEM 7. Amend rule 661—2.6(80A) as follows:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—2.6(80A) ID cards. Each prospective ID cardholder must satisfy the qualifications required by rule 2.5(80A) and complete the appropriate forms.

An applicant for an ID card as an employee of a *bail enforcement business*, private investigative agency or private security agency must submit the following:

1. A completed ~~Application for a Private Investigator and/or Security Guard Identification Card, Identification Card Application For: Private Investigator/Private Security Guard/Bail Enforcement Agent, Form #PD2;~~
2. Two 1" x 1" color photographs of the head and shoulders of the applicant;
3. A fee of \$10 for each ID card; and
4. Two Fingerprint Cards, Form #FD-258.

For purposes of this rule, an employee is an agent or employee who is engaged in the activities of the business which render it subject to the regulation of Iowa Code chapter 80A.

EXAMPLE: A person engaged strictly in clerical functions shall not be considered an employee under this definition.

ITEM 8. Amend rule 661—2.7(80A) as follows:

661—2.7(80A) License fee. A fee of \$100 must accompany each application for a *bail enforcement*, private investigative or private security license. Upon approval of the application, the money shall be applied to the license fee, but if disapproved, the entire amount deposited shall be refunded to the applicant.

ITEM 9. Amend rule 661—2.8(80A) as follows:

661—2.8(80A) Display of license. Immediately upon receipt of the license issued by the department, the licensee named therein shall cause such license to be posted and at all times displayed in a conspicuous place in the licensee's principal place of business within the state, so that all persons visiting such place may readily see it. If there is more than one place of business, then there shall be a copy of the original license issued by the department posted in every such place of business which is located in Iowa, and in a county contiguous to the state of Iowa. The licensee shall notify the commissioner of each location where a copy of the license is posted. If the licensee has no office in the state of Iowa, the licensee shall post the license at the principal place of business and notify the commissioner of the address where such license is posted. Such license shall at all reasonable times be subject to inspection by the commissioner. It shall be unlawful for any person holding such license to post such license or to permit such license to be posted upon premises other than those authorized therein. Every license, and each copy thereof, shall be surrendered to the department within seven days after ~~its terms have expired or after~~ written notice to the holder that such license has been revoked. Failure to comply with any of the provisions of this rule is sufficient cause for the revocation of the license.

ITEM 10. Amend rule 661—2.10(80A) as follows:

661—2.10(80A) License renewal. Each applicant for a license renewal must execute Form #PD3 provided by the department. This form must be submitted to the commissioner not less than 30 days prior to expiration of the applicant's current license and is not required to be processed unless complete. In order to be complete, the applicant must satisfy the *bail enforcement*, private investigation and private security rules 661—2.4(80A), 661—2.5(80A), and 661—2.7(80A), and for license renewals after July 1, 1999, 661—2.22(80A). The reference date for any deadline enumerated in these rules will be determined by the postmark on the piece of mail.

In no event will a renewal license be granted if the application for renewal is received more than 30 days after the expiration date of the existing license.

Upon the passage of 30 days subsequent to the expiration date, the license will become invalid, and if the former licensee wishes to continue the *bail enforcement*, private investigative or *private security business*, the former licensee must reapply as if the former licensee were making an initial application.

Upon satisfying all the pertinent rules, the applicant's license remains valid until the applicant receives a renewal license or a notification that the license will not be renewed.

ITEM 11. Amend subrule 2.11(1) as follows:

2.11(1) Temporary ID cards. The ~~Application for a Private Investigator and/or Security Guard Identification Card, Identification Card Application For: Private Investigator/Private Security Guard/Bail Enforcement Agent, Form #PD2,~~ shall contain a temporary identification card that shall be valid for 14 calendar days from the date of issuance. This temporary identification card shall be issued to new employees of a licensee so that the requirement that employees have in their possession a valid identification card may be met while the application for a permanent identification card is being processed.

ITEM 12. Amend rule 661—2.12(80A), introductory paragraph, as follows:

661—2.12(80A) Badges, uniforms, insignia and equipment. No badges, uniforms, or insignia will be approved for private investigative or *bail enforcement* agents. No holder of a license or ID card while performing the duties of a private security guard shall wear any uniform, or wear, display, or likewise use any badge, insignia, device, shield, or the like, without the prior written approval of such by the commissioner.

ITEM 13. Amend rule 661—2.17(80A), introductory paragraph, as follows:

661—2.17(80A) Licensee's duty regarding employees. The licensee shall be held responsible for ascertaining that all the licensee's employees meet the requirements of the *bail enforcement*, private investigation and private security statute and rules.

[Filed 2/5/99, effective 4/1/99]

[Published 2/24/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/99.

ARC 8718A

**PUBLIC SAFETY
DEPARTMENT[661]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 321J.2, the Department of Public Safety hereby amends Chapter 7, "Devices and Methods to Test Body Fluids for Alcohol or Drug Content," Iowa Administrative Code.

Iowa Code section 321J.2 requires the Department to adopt "nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances." The standards being adopted herein in-

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clude those for five controlled substances which were established by the Substance Abuse and Health Services Administration of the U.S. Department of Health and Human Services for testing of urine samples in federal workplace drug testing programs. The adoption of these standards was proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on July 15, 1998, as **ARC 8174A**. The standards were also adopted through emergency rule-making procedures; this adoption through regular administrative rule-making procedures will remove the emergency designation from the subrule containing the standards. The language contained herein is identical to **ARC 8175A**, which was Adopted and Filed Emergency in the July 15, 1998, Iowa Administrative Bulletin; however, the Notice of Intended Action contained an additional proposed subrule, 7.9(2), regarding the detection of controlled substances other than those which will be governed by federal standards. This additional subrule is not being adopted. While the statutory language contained in Iowa Code section 321J.2 clearly authorizes the Department to adopt minimum detectable levels of illicit controlled substances for which there is a "nationally accepted standard," it does not address substances for which no such standards are available.

A public hearing was held on August 10, 1998. Comments critical of the proposed rule were received from two persons at the public hearing, and both also submitted written comments. One commenter especially objected to subrule 7.9(2) which is not being adopted herein, on the grounds that the wording of that subrule was too vague. The other commenter objected to the per se character of the standards being established in the proposed rule, arguing that the mere presence of a small amount of the drugs covered by the standards, especially marijuana, does not necessarily imply that one's driving capabilities would be impaired and also that small, but detectable, amounts of these drugs may persist in the body long after actual use. Without addressing the validity of these comments, it should be noted that the Department's statutory mandate is clear and that these comments directly relate to the wording of the statute.

This rule is intended to implement Iowa Code chapter 321J.

This rule will become effective May 1, 1999, at which time the Adopted and Filed Emergency rule is hereby rescinded.

Amend 661—Chapter 7 by adopting the following **new** rule:

661—7.9(321J) Detection of drugs other than alcohol.

7.9(1) Adoption of federal standards. Initial test requirements adopted by the federal Substance Abuse and Health Services Administration in "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 59 FR 29908, as amended in "Revisions to the Mandatory Guidelines," 62 FR 51118, are hereby adopted as standards for determining detectable levels of controlled substances in the division of criminal investigation criminalistics laboratory initial screening for controlled substances detected by the presence of the following: marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines. The following table shows the minimum levels of these substances which will result in a finding that a controlled substance is present at a detectable level:

Substance	Minimum Level (ng/ml)
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	2000
Phencyclidine	25
Amphetamines	1000

NOTE: "ng/ml" means "nanograms per milliliter."

7.9(2) Reserved.

This rule is intended to implement Iowa Code section 321J.2.

[Filed 2/5/99, effective 5/1/99]

[Published 2/24/99]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/99.

UNIFORM RULES ON AGENCY PROCEDURE

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

CHAPTER X DECLARATORY ORDERS

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

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

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

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

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

Agency No.—X.3(17A) Intervention.

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

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

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

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

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

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

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

UNIFORM RULES(cont'd)

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The petition does not substantially comply with the required form.

2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected

by the failure of the (designate agency) to issue an order.

3. The (designate agency) does not have jurisdiction over the questions presented in the petition.

4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

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

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

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

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

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

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

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

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

A declaratory order is effective on the date of issuance.

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

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

UNIFORM RULES(cont'd)

CHAPTER X
AGENCY PROCEDURE FOR RULE MAKING

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

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

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

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

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

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

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any agency determinations with respect thereto;
- h. Any known timetable for agency decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;

- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

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

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

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

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

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

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

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

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

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

UNIFORM RULES(cont'd)

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

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

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

X.5(3) Conduct of oral proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Its address;

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

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

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

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

X.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative

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Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

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

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

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

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

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

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

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

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

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

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

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

X.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompa-

nied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

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

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

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

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

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

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

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

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

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

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

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

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er, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

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

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

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

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

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

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

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

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

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

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended

Action and the text of the rule as finally adopted, with the reasons for any such change;

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

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

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

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

- a. The date the agency adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the agency in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the agency in its discretion decides to include such reasons; and
- g. The effective date of the rule.

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

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

X.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary

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statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

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

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

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

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

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

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

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

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

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

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

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

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative

rules review committee, the governor, or the attorney general;

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

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

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

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

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

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

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

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

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

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

X.15(2) Special notice. When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that

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may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

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

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

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

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

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

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

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

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CHAPTER X
CONTESTED CASES

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

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

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

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

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

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

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

"Presiding officer" means the (designate official).

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

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

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

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

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

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

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

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

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure; or
- e. (other options).

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

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and
- i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule X.6(17A), that the presiding officer be an administrative law judge.

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

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

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

- a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. An administrative law judge with the qualifications identified in subrule X.6(4) is unavailable to hear the case within a reasonable time.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

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

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

g. The request was not timely filed.

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

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

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

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

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

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

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

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

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

Agency No.—X.9(17A) Disqualification.

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

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

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

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

factually related contested case or controversy involving the same parties;

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

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

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

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

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

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

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

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

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

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

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

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

Agency No.—X.11(17A) Pleadings.

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

X.11(2) Petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Date) (Signature)

Agency No.—X.13(17A) Discovery.

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

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

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

Agency No.—X.14(17A) Subpoenas.**X.14(1) Issuance.**

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

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

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

Agency No.—X.15(17A) Motions.

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

X.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time pe-

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riod is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

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

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

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

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

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

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

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

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

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

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

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

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

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters which the parties intend to request be officially noticed;

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

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

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

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

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

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

b. State the specific reasons for the request; and

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

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

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

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

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

Agency No.—X.19(17A) Intervention.

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

X.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or

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unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

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

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

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

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

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

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

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

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

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

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

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

Agency No.—X.21(17A) Evidence.

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

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

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

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

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

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

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

Agency No.—X.22(17A) Default.

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

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

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

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

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

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on the motion, if a request to do so is included in that party's response.

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

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

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

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

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

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

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

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

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

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

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

X.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer

without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule X.23(1).

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

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

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

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

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

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

Agency No.—X.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the (board, commission, director) may review an interlocutory order (of the presiding officer). In determining whether to do so, the (board, commission, director) shall weigh the extent to which

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its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days (or other time period designated by the agency) of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

Agency No.—X.26(17A) Final decision.

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

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

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

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

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

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

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

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

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

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

The (board, commission, director) may resolve the appeal on the briefs or provide an opportunity for oral argument.

The (board, commission, director) may shorten or extend the briefing period as appropriate.

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

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

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

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

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

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

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

X.29(1) When available.

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

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

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

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

Agency No.—X.30(17A) No factual dispute contested cases.

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

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

X.31(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitu-

UNIFORM RULES(cont'd)

tion and other provisions of law, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

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

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

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

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

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

X.31(2) Issuance of order.

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

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

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the agency;
- (3) Certified mail to the last address on file with the agency;
- (4) First-class mail to the last address on file with the agency; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

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

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

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

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

ALL AGENCIES: Contact bcarr@legis.state.ia.us to receive the Uniform Rules on Agency Procedure by E-mail.

AGENCY

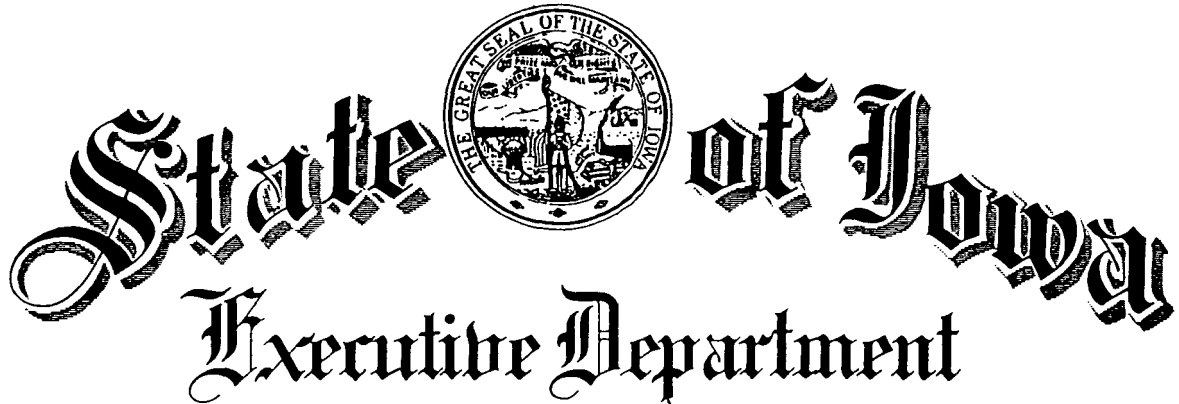
Public Safety Department[661]

RULE

5.620, 5.620(1)
[IAB 1/13/99, ARC 8602A]

DELAY

Effective date of March 1, 1999, delayed
70 days by the Administrative Rules
Review Committee at its meeting held
February 8, 1999 [Pursuant to §17A.4(5)]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA
EXECUTIVE ORDER NUMBER TWO

- WHEREAS, the residents of the State of Iowa have historically enjoyed a high quality of life; and
- WHEREAS, the State of Iowa is rich in natural resources that have contributed greatly to the aesthetic beauty, economic development, and social fabric of this state; and
- WHEREAS, the state must invest in the development of value-added mechanisms that increase the ability of persons engaged in agriculture throughout the state to compete more efficiently in the world market; and
- WHEREAS, economic and social trends have resonated throughout the country, and through this state, limiting the number of opportunities afforded to Iowans through the businesses and institutions of this state; and
- WHEREAS, limitations on the opportunities afforded to Iowans limits their ability to develop and grow; and
- WHEREAS, the development of this state depends upon the expansion of opportunities afforded to Iowans; and
- WHEREAS, the people of the State of Iowa must be considered to be the state's most valuable resource; furthermore, the ability of this state to attract and retain people will have a direct impact on this state's ability to develop and grow; and
- WHEREAS, I, as Governor, deem it advisable to bring to bear the powers of this office to coordinate a Strategic Planning Council to outline a plan for future development throughout the state.

NOW, THEREFORE, I, THOMAS J. VILSACK, Governor of Iowa, do hereby order and proclaim that there shall be an organized commitment to develop a strategic plan outlining our goal to maximize the development of human and natural resources within the state, and this commitment shall be called THE GOVERNOR'S STRATEGIC PLANNING COUNCIL, to operate within the framework of objectives and guidelines hereinafter set forth below:

ARTICLE I PROGRAM MISSION AND OBJECTIVES

- A. The mission of the GOVERNOR'S STRATEGIC PLANNING COUNCIL shall be to address the economic and social trends that are limiting individual and economic development in the state. This Council shall also be charged with anticipating future trends that will effect the state over the next twenty (20) years.

- B. The goal of the Governor's Council shall be to identify the way in which Iowans would like the state to look in the year 2020. The Council shall then be charged with the responsibility of designing an effective strategic plan that will enable the state to achieve those stated goals.
- C. A comprehensive and effective strategic plan can only be designed with the full participation of private citizens and persons engaged in all levels of the local and state government.

ARTICLE II STRATEGIC PLANNING COUNCIL

- A. The Strategic Planning Council is hereby created. The design for the Governor's Strategic Plan shall be the responsibility of the Strategic Planning Council. The Council shall be composed of the following individuals:
 - 1. Co-Chairperson, David Oman;
 - 2. Co-Chairperson, Betty Brandsgard;

The co-chairpersons of this council may recommend, and the Governor may appoint, such additional members, and include such other persons in deliberations, as deemed beneficial for the furtherance of the Council's objectives.

ARTICLE III PROGRAMMING, STAFFING, AND BUDGET

A. Program Coordinator

The Co-Chairpersons shall recommend, and the Governor shall appoint, a person to serve as the Program Coordinator of the Strategic Planning Council. The Program Coordinator of the Strategic Planning Council shall be an employee of the State of Iowa, and who shall report directly to the Strategic Planning Council on all matters pertaining to the council. The Program Coordinator shall follow the directives of the Strategic Planning Council in the preparation of information collection, problem analysis, program structure, funding proposals, publication or other items as deemed necessary by the Strategic Planning Council. The Program Coordinator shall be responsible for the efficient operation of the Strategic Planning Subcommittee described below, and shall assist the Strategic Planning Council in establishing such subcommittees.

B. Strategic Planning Subcommittees

The Strategic Planning Council may create and structure such Strategic Planning Subcommittee as it may deem necessary to assist in accomplishing the objectives and guidelines set forth. The primary areas of focus shall include: Education; Children-Youth; Commerce; Agriculture; Drug Prevention; Building-Development; Cultural Diversity; Urban-Rural Balance; Law Enforcement; Environment; Recreation; Local Government (cities-counties); Labor; Insurance; Medical; Legal; Disabled Community.

The subcommittee may be composed of representatives from interested agencies, levels of government, universities, the private sector, and the general citizenry. On each subcommittee, one member shall be designated by the Program Coordinator to assume major staff responsibilities, with other members assisting as needed. The Program Coordinator shall be responsible for the overall coordination of the subcommittees' staff work.

C. Funding

Research, coordination, and program development costs shall be met by a variety of sources, including: private funding; appropriations for the Governor's study committees; and other such grants as may be available and approved by the Governor.

D. Methods and Schedule

The specific methodology and coordinating procedures shall be determined by the Strategic Policy Council, with advice from the Governor. The Governor's Strategic Planning Committee shall be appointed for a term to begin on February 2, 1999, and concluding on June 30, 1999. Each subsequent term shall be begin on July 1, 1999, and conclude on June 30th of the following year. All members of the planning council shall serve at the pleasure of the Governor.




Attest:

Chester J. Culver
Secretary of State

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines on this the 1st day of February in the year our Lord one thousand nine hundred and ninety-nine.

Robert J. White
Governor



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER THREE

- WHEREAS, the state's infrastructure is a vital asset to state government, to its political subdivisions, and to the public that the state serves; and
- WHEREAS, the infrastructure encompasses underlying information technology processes utilized by the state and its political subdivisions as well as traditional construction activities; and
- WHEREAS, the 1996 session of the General Assembly created the Rebuild Iowa Infrastructure Fund by adopting Iowa Code section 8.57 for the purpose of providing a consistent source of revenue for infrastructure improvements; and
- WHEREAS, appropriations from the Rebuild Iowa Infrastructure Fund should be carefully planned and coordinated to address the long-term infrastructure needs of state government; and
- WHEREAS, the state is undertaking studies to inventory the state's infrastructure, which will include an assessment of its condition, and document needed improvements for all state facilities and information processes; and
- WHEREAS, it is in the best long-term interest of the state to ensure adequate maintenance of existing facilities; and
- WHEREAS, information technology processes should be examined on an enterprise-wise basis; and
- WHEREAS, Iowa Code section 8.22 requires that the Governor annually submit to the General Assembly a priority listing of capital projects; and
- WHEREAS, Iowa Code chapter 18A establishes the Capitol Planning Commission and requires the commission to develop a five-year capitol complex modernization plan and to advise the General Assembly regarding new buildings or restoration of existing buildings on the capitol complex; and
- WHEREAS, Information Technology Services is charged with reviewing the state's technology initiatives; and
- WHEREAS, Iowa Code chapter 18 requires the Department of General Services to provide architectural and construction services to various state agencies regarding infrastructure needs and requires the Department to assume certain responsibilities regarding state property and capitol complex buildings; and

WHEREAS, the Constitution and the laws of the State of Iowa require the Governor to coordinate and transact the executive business of the State.

NOW THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and the laws of Iowa, do hereby order as follows:

- I. The Rebuild Iowa Infrastructure Advisory Council is established
- II. The Rebuild Iowa Infrastructure Advisory Council Shall be Composed of the Following Committees:
 - A. The Iowa Vertical Infrastructure Advisory Committee
 1. to oversee the inventory and assessment of the vertical infrastructure owned or under the control of the state.
 2. To make recommendations annually to the Governor regarding the use of the Rebuild Iowa Infrastructure Fund for the infrastructure needs of the state and its political subdivisions.

The vertical infrastructure under the control of the board of Regents shall remain the responsibility of the Board of Regents.
 - B. The Iowa Information Technology Infrastructure Advisory Committee
 1. to oversee the inventory and assessment of the information technology infrastructure owned or under the control of the state.
 2. To make recommendations annually to the Governor regarding the use of the Rebuild Iowa Infrastructure Fund for the technology infrastructure needs of the state and its political subdivisions.

The technology infrastructure under the control of the Board of Regents shall remain the responsibility of the Board of Regents.
- III. The Committees shall annually develop and submit to the Governor recommendations for maintaining and evolving the inventory and assessment of the state's infrastructure and shall, at least annually, report on the findings of the assessment.
- IV. The Committees shall annually develop and recommend guidelines, procedures, policies, and priorities for review of needs and proposals and for the development of comprehensive plans.
- V. The Committees shall develop and recommend methods for identifying, evaluating, and prioritizing infrastructure needs. The Iowa Vertical Infrastructure Advisory Committee shall place emphasis on maintaining existing facilities. The Iowa Information Technology Infrastructure Advisory Committee shall place emphasis on enterprise-wide solutions.
- VI. The Committees shall annually develop and submit to the Governor comprehensive five-year plans of recommendations, including the Committees suggested lists of priority projects. Recommendations shall include the level of funding necessary to complete each project recommended and a timetable for completion of the project if the project is anticipated to require more than one year to complete. The Iowa Vertical Infrastructure Advisory Committee shall consult with the Capitol Planning Commission. The Iowa Information Technology Infrastructure Advisory Committee shall consult with Information Technology Services.

- VII. The Committees may adopt rules as necessary to implement this executive order.
- VIII. The first recommended plans of the Committees shall be submitted to the Governor no later than December 15, 1999, and submitted annually thereafter no later than December 15 of each year.
- IX. Each Committee shall be composed of at least seven members, not more than four of whom shall be from the same political party. The Governor shall appoint the members of the Committees for a term of three years. The initial members of the Committees shall be appointed by the Governor to serve staggered terms of less than three years. The Governor shall annually designate one of the members to serve as chairperson. A vacancy on a Committee shall be filled in the same manner that regular appointments to each Committee are made. The Committees may appoint subcommittees, as deemed necessary, to advise on various aspects of infrastructure issues.
- X. The Department of Management and the Department of General Services shall provide staff assistance and support services for the Iowa Vertical Infrastructure Advisory Committee. The Department of Management shall utilize the Iowa Vertical Infrastructure Advisory Committee in fulfilling the Department's duties under Code section 8.6(14).
- XI. The Department of Management and Information Technology Services shall provide staff assistance and support services for the Iowa Information Technology Infrastructure Advisory Committee.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 5 day of February in the year of our Lord one thousand nine hundred and ninety-nine.

Thomas J. Vilsack

 GOVERNOR

ATTEST. *Christa J. Colver*

 SECRETARY OF STATE

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