IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies [continue to refer to General Information for drafting style and form].

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee," include summaries of Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [453.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; and Agricultural Credit Corporation Maximum Loan Rates [535.12].

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

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

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

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SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1990, to June 30, 1991	$199.00 plus $7.96 sales tax
Second quarter	October 1, 1990, to June 30, 1991	$149.15 plus $5.96 sales tax
Third quarter	January 1, 1991, to June 30, 1991	$103.35 plus $4.13 sales tax
Fourth quarter	April 1, 1991, to June 30, 1991	$ 49.75 plus $1.99 sales tax

Single copies may be purchased for $6.90 plus $0.27 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets and subscription basis only. All subscriptions for the Supplement (replacement pages) must be for the complete year and will expire on June 30 of each year.

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

Iowa Administrative Code - $906.30 plus $36.25 sales tax
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(Subscription expires June 30, 1991)

All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

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

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
1991

FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 7 '90	Dec. 26 '90	Jan. 15	Jan. 30	Feb. 20	Mar. 27	June 24
Dec. 21 '90	Jan. 9	Jan. 29	Feb. 13	Mar. 6	Apr. 10	July 8
Jan. 4	Jan. 23	Feb. 12	Feb. 27	Mar. 20	Apr. 24	July 22
Jan. 18	Feb. 6	Feb. 26	Mar. 13	Apr. 3	May 8	Aug. 5
Feb. 1	Feb. 20	Mar. 12	Mar. 27	Apr. 17	May 22	Aug. 19
Feb. 15	Mar. 6	Mar. 26	Apr. 10	May 1	June 5	Sep. 2
Mar. 1	Mar. 20	Apr. 9	Apr. 24	May 15	June 19	Sep. 16
Mar. 15	Apr. 3	Apr. 23	May 8	May 29	July 3	Sep. 30
Mar. 29	Apr. 17	May 7	May 22	June 12	July 17	Oct. 14
Apr. 12	May 1	May 21	June 5	June 26	July 31	Oct. 28
Apr. 26	May 15	June 4	June 19	July 10	Aug. 14	Nov. 11
May 10	May 29	June 18	July 3	July 24	Aug. 28	Nov. 25
May 24	June 12	July 2	July 17	Aug. 7	Sep. 11	Dec. 9
June 7	June 26	July 16	July 31	Aug. 21	Sep. 25	Dec. 23
June 21	July 10	July 30	Aug. 14	Sep. 4	Oct. 9	Jan. 6 '92
July 5	July 24	Aug. 13	Aug. 28	Sep. 18	Oct. 23	Jan. 20 '92
July 19	Aug. 7	Aug. 27	Sep. 11	Oct. 2	Nov. 6	Feb. 3 '92
Aug. 2	Aug. 21	Sep. 10	Sep. 25	Oct. 16	Nov. 20	Feb. 17 '92
Aug. 16	Sep. 4	Sep. 24	Oct. 9	Oct. 30	Dec. 4	Mar. 2 '92
Aug. 30	Sep. 18	Oct. 8	Oct. 23	Nov. 13	Dec. 18	Mar. 16 '92
Sep. 13	Oct. 2	Oct. 22	Nov. 6	Nov. 27	Jan. 1 '92	Mar. 30 '92
Sep. 27	Oct. 16	Nov. 5	Nov. 20	Dec. 11	Jan. 15 '92	Apr. 13 '92
Oct. 11	Oct. 30	Nov. 19	Dec. 4	Dec. 25	Jan. 29 '92	Apr. 27 '92
Oct. 25	Nov. 13	Dec. 3	Dec. 18	Jan. 8 '92	Feb. 12 '92	May 11 '92
Nov. 8	Nov. 27	Dec. 17	Jan. 1 '92	Jan. 22 '92	Feb. 26 '92	May 25 '92
Nov. 22	Dec. 11	Dec. 31	Jan. 15 '92	Feb. 5 '92	Mar. 11 '92	June 8 '92
Dec. 6	Dec. 25	Jan. 14 '92	Jan. 29 '92	Feb. 19 '92	Mar. 25 '92	June 22 '92
Dec. 20	Jan. 8 '92	Jan. 28 '92	Feb. 12 '92	Mar. 4 '92	Apr. 8 '92	July 6 '92

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

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

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
13	Friday, December 7, 1990	December 26, 1990
14	Friday, December 21, 1990	January 9, 1991
15	Friday, January 4, 1991	January 23, 1991

NOTICE

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

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

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]		
Iowa farmers market/women infants children program, new ch 50 IAB 12/12/90 **ARC 1530A**	Conference Room Second Floor—South Half Wallace State Office Bldg. Des Moines, Iowa	January 3, 1991 10 a.m.
ATTORNEY GENERAL[61]		
DNA profiling, ch 8 IAB 11/14/90 **ARC 1450A**	Conference Room — 2nd Floor Hoover State Office Bldg. Des Moines, Iowa	December 12, 1990 9 a.m.
Noncredit property insurance in consumer credit transactions, ch 20 IAB 11/14/90 **ARC 1447A**	Conference Room — 2nd Floor Hoover State Office Bldg. Des Moines, Iowa	December 12, 1990 10 a.m.
BLIND, DEPARTMENT FOR THE[111]		
Administrative organization and procedures, amendments to chs 1, 2, 12, 13 IAB 11/28/90 **ARC 1474A**	Conference Room—1st Floor 524 Fourth St. Des Moines, Iowa	December 18, 1990 1 p.m
CREDIT UNION DIVISION[189]		
Trust accounts, 8.5(3) IAB 12/12/90 **ARC 1542A**	Division Office 200 East Grand Ave. Suite 370 Des Moines, Iowa	January 14, 1991 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Productivity and quality enhancement, new ch 11 IAB 12/12/90 **ARC 1535A** (See ARC 1536A herein)	Main Conference Room 200 East Grand Ave. Des Moines, Iowa	January 2, 1991 10 a.m.
Riverfront development grant program, new ch 30 IAB 12/12/90 **ARC 1564A**	Main Conference Room 200 East Grand Ave. Des Moines, Iowa	January 4, 1991 10 a.m.
Iowa export trade assistance program, amendments to ch 61 IAB 12/12/90 **ARC 1531A**	Marketing Division Conference Room 200 East Grand Ave. Des Moines, Iowa	January 3, 1991 9 a.m.
EDUCATION DEPARTMENT[281]		
Innovative programs for at-risk early elementary students, amendments to ch 65 IAB 12/12/90 **ARC 1527A**	Conference Room—1st Floor Grimes State Office Bldg. Des Moines, Iowa	January 3, 1991 10 a.m.
Conservation education programs, 68.6(3), 68.9(1) IAB 12/12/90 **ARC 1528A**	State Board Room—2nd Floor Grimes State Office Bldg. Des Moines, Iowa	January 3, 1991 1 p.m.

ELDER AFFAIRS DEPARTMENT[321]

Contract eldercare, 1.7, 6.14 IAB 11/28/90 **ARC 1502A**	Conference Room 202 Jewett Bldg. 914 Grand Ave. Des Moines, Iowa	December 19, 1990 10 a.m.
Technical corrections in conformance with Older Americans Act and CFR 1.7, 2.7(6)"a," 3.4, 4.1(3), 4.1(4), 4.21(2) IAB 11/28/90 **ARC 1468A**	Conference Room 202 Jewett Bldg. 914 Grand Ave. Des Moines, Iowa	December 19, 1990 10 a.m.

HISTORICAL DIVISION[223]

Historic property rehabilitation tax exemption, new ch 47 IAB 11/28/90 **ARC 1463A** (See also ARC 1464A)	Classroom A New Historical Bldg. Capitol Complex Des Moines, Iowa	December 20, 1990 10 a.m.

HUMAN SERVICES DEPARTMENT[441]

Medicaid reimbursement policy, 78.3, 78.11(4), 79.1(5)"j" IAB 11/28/90 **ARC 1480A**	District Office Conference Room 201 City View Plaza 1200 University Des Moines, Iowa	December 20, 1990 10 a.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Health care facilities administration, 50.3(3) IAB 11/28/90 **ARC 1478A**	Conference Room Third Floor—Side 1 Lucas State Office Bldg. Des Moines, Iowa	December 18, 1990 2:30 p.m.

INSURANCE DIVISION[191]

Prearranged funeral contracts, amendments to ch 19 IAB 12/12/90 **ARC 1550A**	Conference Room—6th Floor Lucas State Office Bldg. Des Moines, Iowa	January 7, 1991 10 a.m.

INTERNATIONAL NETWORK ON TRADE (INTERNET)[497]

Organization and operation, new ch 1 IAB 12/12/90 **ARC 1563A**	312 Eighth St. Suite 120 Des Moines, Iowa	January 3, 1991 10 a.m.

LABOR SERVICES DIVISION[347]

General industry safety and health rules, 10.20 IAB 11/28/90 **ARC 1492A**	Labor Services Division 1000 E. Grand Ave. Des Moines, Iowa	December 20, 1990 9 a.m. (If requested)
Construction safety and health rules, 26.1 IAB 11/28/90 **ARC 1491A**	Labor Services Division 1000 E. Grand Ave. Des Moines, Iowa	December 20, 1990 9 a.m. (If requested)
Construction contractor registration, amendments to ch 150 IAB 11/28/90 **ARC 1490A**	Employment Services Dept. 1000 East Grand Ave. Des Moines, Iowa	December 20, 1990 1 p.m.

NATURAL RESOURCE COMMISSION[571]

General license requirements, 15.1(2) IAB 11/28/90 **ARC 1487A**	Conference Room Fourth Floor East Wallace State Office Bldg. Des Moines, Iowa	December 19, 1990 10 a.m.
Speed restrictions on the Greene Impoundment of the Shell Rock River, 40.35 IAB 11/28/90 **ARC 1486A**	Conference Room Fourth Floor East Wallace State Office Bldg. Des Moines, Iowa	December 19, 1990 9 a.m.

PERSONNEL DEPARTMENT[581]

Classification; pay; recruitment, application and examination; appointments; probationary period; grievances and appeals; leave; public records and fair information practices, amendments to chs 3, 4, 5, 8, 9, 12, 14, 17 IAB 12/12/90 **ARC 1559A**	Grimes Conference Room, South Grimes State Office Bldg. Des Moines, Iowa	January 24, 1991 10 a.m.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Appeals, new ch 17 IAB 12/12/90 **ARC 1562A**	Conference Room—6th Floor Lucas State Office Bldg. East 12th and Walnut St. Des Moines, Iowa	January 7, 1991 9 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Acquired immune deficiency syndrome(AIDS), amendments to ch 11 IAB 11/28/90 **ARC 1503A** (See also ARC 1506A)	Conference Room—3rd Floor Lucas State Office Bldg. Des Moines, Iowa	December 18, 1990 10 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Weapons, amendments to ch 4 IAB 12/12/90 **ARC 1558A**	Conference Room Third Floor—East Half Wallace State Office Bldg. Des Moines, Iowa	January 3, 1991 11 a.m.
Fire marshal, 5.301(9), 5.314 IAB 12/12/90 **ARC 1526A**	Conference Room Third Floor—East Half Wallace State Office Bldg. Des Moines, Iowa	January 3, 1991 9:30 a.m.
Law enforcement administrator's telecommunications advisory committee, amendments to ch 15 IAB 12/12/90 **ARC 1560A**	Conference Room Third Floor—East Half Wallace State Office Bldg. Des Moines, Iowa	January 3, 1991 10:30 a.m.
State of Iowa building code, amendments to ch 16 IAB 11/28/90 **ARC 1485A**	Conference Room—3rd Floor Wallace State Office Bldg. Des Moines, Iowa	December 20, 1990 1 p.m.
	Conference Room—2nd Floor Wallace State Office Bldg. Des Moines, Iowa	December 21, 1990 10 a.m.

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Organization, public records and fair information practices, new chs 1, 2 IAB 11/28/90 **ARC 1493A**	Human Rights Department Conference Room Lucas State Office Bldg. Des Moines, Iowa	December 21, 1990 11 a.m.

TRANSPORTATION DEPARTMENT[761]

Interest earned on retained funds, ch 27 IAB 11/14/90 **ARC 1417A**	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	January 8, 1991
RISE program, amendments to ch 163 IAB 11/28/90 **ARC 1476A**	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	January 8, 1991

Regulations applicable to carriers; license issuance; commercial driver licensing, 520.4, 605.1(2), 605.3 to 605.5, new ch 607 IAB 11/14/90 **ARC 1416A** (See also **ARC 1423A**)	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	March 5, 1991
UTILITIES DIVISION[199]		
Practice and procedure—attorneys, 7.2(7)"e" IAB 11/28/90 **ARC 1499A**	Hearing Room—1st Floor Lucas State Office Bldg. Des Moines, Iowa	January 3, 1991 10 a.m.
Energy efficiency cost recovery, 7.4(4), 35.12 IAB 11/14/90 **ARC 1412A**	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	December 19, 1990 10 a.m.
Service copies, 7.4(6)"e"(23) IAB 11/28/90 **ARC 1494A**	Hearing Room—1st Floor Lucas State Office Bldg. Des Moines, Iowa	January 15, 1991 10 a.m.
Utility audit workpaper documents, 16.9 IAB 11/28/90 **ARC 1497A**	Hearing Room—1st Floor Lucas State Office Bldg. Des Moines, Iowa	January 8, 1991 10 a.m.

AGENCY IDENTIFICATION NUMBERS

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

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

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

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in lowercase type at the left-hand margin, e.g., Beef Industry Council, Iowa [101].

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

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
- Agricultural Development Authority[25]
- Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

Beef Industry Council, Iowa[101]

Blind, Department For The[111]

CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

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- Credit Union Division[189]
- Insurance Division[191]
- Professional Licensing and Regulation Division[193]
  - Accountancy Examining Board[193A]
  - Architectural Examining Board[193B]
  - Engineering and Land Surveying Examining Board[193C]
  - Landscape Architectural Examining Board[193D]
  - Real Estate Commission[193E]
- Savings and Loan Division[197]
- Utilities Division[199]

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- Parole Board[205]

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- Historical Division[223]
- Library Division[224]
- Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
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- High Technology Council[267]

EDUCATION DEPARTMENT[281]
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- College Aid Commission[283]
- Higher Education Loan Authority[284]
- Iowa Advance Funding Authority[285]
- School Budget Review Committee[289]

Egg Council[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]
- Industrial Services Division[343]
- Job Service Division[345]
- Labor Services Division[347]

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LAW ENFORCEMENT ACADEMY[501]
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  Professional Licensure Division[645]
  Dental Examiners[650]
  Medical Examiners[653]
  Nursing Board[655]
  Pharmacy Examiners[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]
Sheep and Wool Promotion Board, Iowa[741]
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  Railway Finance Authority, Iowa[765]
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Veterinary Medicine Board[811]
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REORGANIZATION—NOT IMPLEMENTED

Agencies listed below are identified in the Iowa Administrative Code with white tabs. These agencies have not yet implemented government reorganization.

Citizen's Aide[210]
City Development Board[220]
Corrections Department[291]
Executive Council[420]
Iowa Advance Funding Authority[515]
Iowa Finance Authority[524]
Library Department[560]
Prison Industries Advisory Board[635]
Product Development Corporation[636]
Records Commission[710]
Veterans Affairs[841]

ARC 1530A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 159.5(11) and 1987 Iowa Acts, chapter 233, section 209, the Department of Agriculture and Land Stewardship gives Notice of Intended Action to adopt Chapter 50, "Iowa Farmers Market/Women Infants Children Program," Iowa Administrative Code.

This Notice of Intended Action creates a chapter establishing the rules and procedures governing the administration of a farmers market special supplemental food program.

Any interested person may submit written suggestions or comments on the rules proposed in this Notice of Intended Action. Comments conveyed by mail should be sent to the Administrator, Agricultural Diversification Bureau, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319, and must be received by the Bureau no later than 4:30 p.m., Thursday, January 3, 1991.

A public hearing will be held on Thursday, January 3, 1991, at 10 a.m. in the south half of the second floor conference room of the Wallace State Office Building, East Ninth and Grand Avenue, Des Moines, Iowa. Comments presented at the hearing may be offered either orally or in writing.

Rules set forth in this Notice are intended to implement 1990 Iowa Acts, chapter 1260, section 1, subsection 3, and Iowa Code chapter 159.

The following new chapter is proposed:

CHAPTER 50
IOWA FARMERS MARKET/WOMEN INFANTS CHILDREN PROGRAM

21—50.1(159) Authority and scope. This chapter establishes procedures governing the administration of a farmers market special supplemental food program by the department of agriculture and land stewardship for implementing the applicable agreement and guidelines set forth by the United States Department of Agriculture, Food and Nutrition Service Agreement, in accordance with 1990 Iowa Acts, chapter 1260, section 1, subsection 3.

Information may be obtained by contacting the Agricultural Diversification Bureau, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319, telephone (515)281-5402.

21—50.2(159) Severability. If any provision of a rule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and, to this end, the provisions of these rules are severable.

21—50.3(159) Program description and goals. The Iowa farmers market/women infants children program is jointly funded by the state of Iowa and the United States Department of Agriculture—Food and Nutrition Service. The intent of the program is to supply local grown fresh produce to recipients of the special supplemental food program through the distribution of vouchers that are redeemable only at designated farmers markets. The program is designed to provide both a supplemental source of fresh produce for the dietary needs of women, infants, and children who are judged to be at nutritional risk and to stimulate an increased demand for local grown fresh produce at Iowa farmers markets.

21—50.4(159) Definitions. For the purposes of this chapter:

"Application" means a request made by an individual to the department for vendor certification in IFM/WIC on a form provided by the agricultural diversification bureau of the department.

"Authorized farmers market" means a farmers market that operates within the service area and is a site authorized by the department for the exchange of vouchers and local grown fresh produce.

"Certified vendor" means an individual who has met all IFM/WIC conditions as outlined by the department and who is guaranteed payment on all vouchers accepted, provided compliance is maintained by that individual regarding all IFM/WIC rules and procedures as outlined in the vendor certification handbook.

"Certified vendor identification card" means a department-issued card that shall be presented by the certified vendor during each occurrence of voucher deposit in the financial institution of certified vendor choice. This card shall remain the sole property of the department with immediate forfeiture by the certified vendor to the department in the event of suspension.

"Certified vendor identification sign" means department-issued signage which shall be clearly displayed by the certified vendor at all times when accepting or intending to accept vouchers in an authorized farmers market. Signs shall remain the sole property of the department with immediate forfeiture by the certified vendor to the department in the event of suspension.

"Certified vendor number" means a personal number issued for a given season by the department and assigned to an individual who the department has identified as a certified vendor. The certified vendor number shall be affixed to the certified vendor identification card and the certified vendor identification sign, and the certified vendor will enter the number on each voucher that is submitted for deposit. An individual shall be assigned no more than one certification number for any given season.

"Certified vendor stall" means all of the area in an authorized farmers market that is dedicated to a certified vendor for the purpose of displaying and offering product for sale. The only exceptions permitted shall be:

1. If the certified vendor elects not to promote any of said area as IFM/WIC for an entire farmers market day; or

2. If the certified vendor elects to exclude a portion of the space by maintaining a distance of separation from the certified vendor stall by a minimum of two farmers market vendors who are neither affiliated with nor

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

related to the certified vendor and who are actively participating in the farmers market on the given day. An excluded area shall be operated independent of the certified vendor stall. Exceptions shall hold only if neither acceptance nor intent to accept vouchers exists.

"Department" means the Iowa department of agriculture and land stewardship.

"Designated distribution clinic" means a site authorized by the department for dispersal of vouchers by the local agency.

"Distribution" means the process outlined by the department and the means by which local agencies actually dispense vouchers to eligible recipients.

"Farmers market" means a cooperative or nonprofit enterprise or association that consistently occupies a given site throughout the season, which operates principally as a common marketplace for a group of farmers to sell local grown fresh produce directly to consumers, and where the majority of products sold are produced by the participating farmers with the sole intent and purpose of generating a portion of household income.

"Fresh produce" means fruits and vegetables that have not been processed in any manner. This term does not include such items as nuts, herbs, popcorn, vegetable plants/seedlings, dried beans/peas, seeds/grains, and flowers.

"IFM/WIC" means the Iowa farmers market supplemental food program for women, infants and children as administered by the department.

"Local agency" means an entity that administers local health programs and which has entered into contract for voucher distribution and related service with the department.

"Local grown" means produce that has a trackable point of origin either within Iowa or in an adjacent county to Iowa's border in a neighboring state.

"Posted hours and days" means the operational time frames stated in assurance submitted by a duly authorized representative of an authorized farmers market which includes a beginning and an ending date for each year of operation.

"Recipient" means a client of WIC who is at least five months of age, who possesses one of the WIC classification codes selected for inclusion by the department, and is an active participant in a designated distribution clinic.

"Season" means a clearly delineated period of time during a given year that has a beginning date and ending date, as specified by the department, which correlates with a major portion of the harvest period for local grown fresh produce, and does not exceed four months in any given calendar year.

"Secretary" means the secretary of agriculture for the state of Iowa.

"Service area" means the geographic areas that encompass all of the designated distribution clinics and authorized farmers markets within Iowa for a given season.

"USDA-FNS" means the United States Department of Agriculture—Food and Nutrition Service.

"Vendor certification handbook" means a publication by the department that is based on USDA-FNS mandates and guidelines, addresses all IFM/WIC rules and procedures applicable to a certified vendor, and provides the basis for vendor training. A copy of the publication shall be issued to each individual prior to application. New editions supersede all previous editions.

"Voucher" means a negotiable instrument issued by the department to recipients that is redeemable only for local grown fresh produce from certified vendors at authorized farmers markets, with a limited negotiable period that directly correlates to the season designated by the department.

"WIC" means the special supplemental food program for women, infants and children, as administered by the Iowa department of public health.

GENERAL PROVISIONS

21—50.5(159) Administration and agreements.

50.5(1) The program shall be administered by the secretary or by the secretary's designee.

50.5(2) The department shall maintain all conditions as outlined in the farmers market nutrition agreement entered into with USDA-FNS, as amended.

21—50.6(159) Distribution of benefits.

50.6(1) Iowa department of public health WIC client screening processes and records shall provide the basis for identifying recipients eligible for receipt of vouchers.

50.6(2) Local agencies shall distribute vouchers at designated distribution clinics to recipients in the manner specified by the department in the program and procedures guide for distribution clinic staff. Local agency services shall include, but not be limited to, ensuring:

a. Vouchers are distributed only to recipients through verification that the client name and number printed on the voucher and distribution registry correspond with the client name and number printed on the WIC identification folder in the possession of the recipient.

b. Each recipient is issued five $2 vouchers during each distribution as authorized by the department, with no one recipient receiving a benefit value greater than $20 during a season.

c. The voucher serial numbers issued to the recipient correspond to the numbers in the distribution registry in which the recipient signature is affixed.

d. Each voucher issued and the distribution registry are properly signed by the recipient in the presence of local agency staff at the time of distribution.

e. A proxy is not allowed to act on behalf of a recipient, except in the case of a parent or legal guardian acting in behalf of a recipient child or infant, or in the case of a husband acting in behalf of his wife.

f. Each recipient shall be provided a thorough explanation of program guidelines and recipient responsibility as outlined by the department.

g. All IFM/WIC support materials are put into use as outlined by the department.

h. Accurate and complete records of all related IFM/WIC activities in the possession of a local agency will be maintained and retained for a minimum of four years. In the event of litigation, negotiation, or audit findings, the records shall be retained until all issues arising from such actions have been resolved or until the end of the regular four-year period, whichever is later.

i. All agency records pertaining to this program shall be made available for inspection to representatives of USDA, the comptroller general of the United States, the state auditor, the department, and the Iowa department of public health as necessary, at any time during normal business hours, and as frequently as is deemed necessary for inspection and audit. Otherwise, confidentiality of personal information shall be maintained on all recipients participating in the program at all times.

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

21—50.7(159) Recipient responsibilities. Recipients shall be responsible for, but not limited to, the following:

1. Qualifying under WIC program guidelines and attending a designated distribution clinic during the relevant distribution cycles when vouchers are dispersed.
2. Properly countersigning and dating voucher(s) at time of use in the presence of the certified vendor who is accepting each in exchange for fresh produce.
3. Using vouchers only to purchase local grown fresh produce from certified vendors who display IFM/WIC signs at authorized farmers markets.
4. Redeeming vouchers on or before the expiration date printed on the face of the voucher, or surrendering all claim to the value of vouchers that remain unredeemed.
5. Ensuring vouchers that are received are not assigned to any other party other than as outlined.
6. Reporting violations or problems to the department or the local agency.
7. Reporting all incidents of lost or stolen vouchers to the local agency.

21—50.8(159) Farmers market authorization and priority.

50.8(1) A farmers market shall be eligible for authorization provided such farmers market possesses a consistent good track record of operation known by the department which shall be based in part upon the submission of assurances by a duly authorized representative of the farmers market. Farmers market assurances shall be submitted in a manner outlined by the department and shall provide evidence as to whether a farmers market possesses the capability to service the additional demands brought about by distribution of vouchers in the area without causing undue harm to the existing farmers market consumer base and indications of willingness by persons associated with the farmers market to meet all IFM/WIC requirements. Information submitted by a farmers market shall include, but not be limited to:

a. The number of local grown fresh produce vendor participants,

b. Hours of operation to be maintained per week,

c. Season of operation, and

d. Accessibility and consistency of farmers market location.

50.8(2) The department shall give priority to a farmers market with previous involvement in IFM/WIC, provided the farmers market possesses a good track record for maintaining conditions outlined in its farmers market assurances, does not have a high incidence of certified vendor noncompliance or suspensions, and a voucher usage rate no less than 5 percent below the usage rate in the USDA-FNS agreement, as amended.

50.8(3) A principal factor in determining farmers market authorization shall pertain to the number of eligible applications received by the department prior to the first of March that indicate the intent to participate in the given farmers market. The standard for the authorization of a single or principal farmers market in a county shall be one eligible application for every 100 recipients who participate in the distribution clinic(s) in said county. A minimum of five eligible applications is required for a farmers market to receive authorization.

50.8(4) The number of farmers markets authorized for the season shall be determined by the department no later than the first day of March prior to each season.

21—50.9(159) Vendor certification.

50.9(1) Vendor certification shall not be in effect and vouchers shall not be accepted until receipt by the applicant of a certified vendor identification card, a certified vendor identification sign and the applicant copy of the department-vendor agreement.

50.9(2) Vendor certification expires at the end of each year of issuance. Individuals must annually apply and receive vendor certification in order to participate in IFM/WIC.

50.9(3) The department does not limit the number of vendors who may become certified under IFM/WIC. A vendor who satisfies all the following criteria shall be certified to accept vouchers.

a. Agrees to maintain at least 20 percent of all products on display in a certified vendor stall as local grown fresh produce.

b. Indicates an intent to participate in one or more authorized farmers markets.

c. Demonstrates participation in training on IFM/WIC rules and procedures, either through attendance in an entire session of one of the scheduled training meetings conducted by department staff or successfully responding to 90 percent of the questions on a test pertaining to certified vendor obligations.

d. Submits a signed statement of receipt of a vendor certification handbook.

e. Submits a completed application to the department prior to the deadline.

f. Submits completed and signed certified vendor agreements to the department.

21—50.10(159) Certified vendor obligations. A certified vendor shall be responsible for, but not limited to, the following:

1. Accept vouchers only for a transaction that takes place at an authorized farmers market and only in exchange for local grown fresh produce.
2. Identify self to recipients by prominently displaying a certified vendor identification sign as outlined in the certified vendor handbook.
3. Provide local grown fresh produce to recipients upon receipt of a valid and properly completed voucher, which is dated and countersigned with a matching signature at the time of sale.
4. Accept vouchers as payment for local grown fresh produce only if presented on or before the usage expiration date printed on the face of the voucher.
5. Handle transactions with recipients in the same manner as transactions with all other customers.
6. Not collect state or local taxes on purchases involving vouchers.
7. Charge recipients a price for local grown fresh produce that is equal to or less than the current price charged to nonrecipient customers.
8. Not levy a surcharge based on the use of vouchers by recipients.
9. Return no cash or issue credit in any form to recipients during sales transactions that involve vouchers only. In the event of a single transaction in which a recipient presents a combination of cash and vouchers for the purchase of local grown fresh produce, cash or credit up to the value of the cash portion of the payment shall be given to the recipient.
10. Participate in training as the department deems necessary to carry out the intent of IFM/WIC.

11. Cooperate with the department in the evaluation of each season by completely and accurately responding to a survey, with resubmission to the department in a specified and timely manner.

12. Immediately inform the department in the event of loss, destruction, or theft of either the certified vendor identification card or certified vendor identification sign so that a replacement may be issued.

13. Comply with all procedures and rules as herein outlined and as delineated in the department-vendor agreement, the certified vendor handbook, and official written notices of clarification issued by the department to the vendor.

21—50.11(159) Certified vendor noncompliance sanctions.

50.11(1) A voucher shall be returned to the certified vendor unpaid if the certified vendor identification number is not properly affixed to the face of the voucher, the certified vendor does not endorse the voucher, if either the recipient signature or the countersignature is missing on the face of the voucher, or if the two signatures do not match. A voucher may be resubmitted for payment in the event that the signature or vendor certification identification error can be properly and legally corrected by the certified vendor.

50.11(2) Violations of IFM/WIC procedures and rules applicable to a certified vendor shall be identified as Class I violations, Class II violations, and Class III violations.

Violations involving the use of multiple vouchers in a single sales transaction shall be considered as a single violation. Violations involving multiple sales transactions, regardless of time elapsed, shall be considered multiple violations at a standard of one violation per sales transaction.

a. Class I violations shall result in a warning letter from the department to the violating certified vendor. The following shall constitute Class I violations:

(1) Acceptance of three IFM/WIC checks without the redemption date entered on the face of the check.

(2) Failure to appropriately display the certified vendor identification sign.

b. Class II violations shall result in an official written citation of noncompliance from the department to the violating certified vendor. The following shall constitute Class II violations:

(1) Noncompliance with rules and procedures as outlined in the vendor certification handbook and in the department-vendor agreement, and which is not specifically identified as a Class I violation.

(2) Recipient is charged a price that is greater than that charged nonrecipients or is charged for items not received.

(3) Refusal to accept valid vouchers for local grown fresh produce.

(4) Failure to permit or comply with procedures regarding inspection of evidence by the department when point of origin of fresh produce on display or offered for sale in a certified vendor stall is in question.

(5) Abusive or discriminatory treatment of recipients or IFM/WIC staff.

(6) Failure to display and offer minimum required volumes of local grown fresh produce while participating as a certified vendor.

(7) Displaying or offering for sale nonlocal grown fresh produce in a certified vendor stall.

(8) Cashing vouchers for a noncertified vendor.

(9) An authorized farmers market is neither open nor staffed during posted hours and days during the season in which the certified vendor is a designated participant.

(10) Exchanging ineligible products or cash for vouchers.

(11) The second like instance of a Class I violation by a single certified vendor.

c. Class III violations shall result in the suspension of the violating vendor from participation in IFM/WIC. The following shall constitute Class III violations:

(1) The third like instance of a Class I violation by a single vendor.

(2) The second like instance of a Class II violation by a single vendor.

50.11(3) Official notice of noncompliance. A written official notice of noncompliance shall be issued to the certified vendor by the department within 72 hours of receipt of evidence involving an act of noncompliance.

50.11(4) Suspension. Suspension of a certified vendor from participation in IFM/WIC shall remain in effect for the remainder of the season. An exception shall occur when suspension occurs within 30 days of the expiration date for voucher usage by recipients. In such case, suspension shall also include the entire season of the following calendar year.

In the event of a suspension, the department shall have the right to reimbursement from the vendor an amount equal in value to vouchers deposited and paid upon after the official date of suspension notification.

At the conclusion of a suspension period, the vendor must reapply for and receive certification in order to resume participation in IFM/WIC.

50.11(5) Probationary status. Any vendor successfully recertified following a suspension will be on probationary status for one full season.

Recurrence of a Class II violation during the probationary period and for which the certified vendor has been cited shall be sufficient grounds for immediate and automatic suspension.

21—50.12(159) Appeal. A written notice of noncompliance or suspension from the department shall be pending for 72 hours of receipt by the certified vendor. The certified vendor shall be granted the pending period for presenting sufficient evidence to the department to substantiate a reversal.

Remedies undertaken in response to receipt of written notice of a pending citation of noncompliance or suspension shall not constitute evidence in defense of such citation.

Failure to present any evidence to the department within the specified pending period shall constitute acceptance of the citation of noncompliance or suspension by the certified vendor. Submission of insufficient evidence by the certified vendor for determination of reversal on the pending citation by the department shall result in an official citation of noncompliance or suspension upon completion of the pending period.

Subsequent to the exhaustion of all remedies as outlined in this chapter and as stated in the vendor certification handbook, a vendor shall be entitled to use the provisions of 21—Chapter 2.

21—50.13(159) Deadlines.

50.13(1) Submission of farmers market assurances. Assurances, on forms provided by the department, must

be submitted no later than the last day of February in order for the farmers market to receive consideration of authorization for the upcoming season.

50.13(2) Submission of vendor application. All applications shall be submitted no later than one month preceding the last date in which vouchers may be used by recipients at authorized farmers markets.

50.13(3) Recipient voucher usage expiration. Vouchers shall be valid for recipient use from the time of issue through the season ending date as designated by the department. Such date shall be clearly printed on the voucher face. Voucher usage shall be null and void after expiration date.

50.13(4) Certified vendor voucher reimbursement. All vouchers accepted by a certified vendor shall be deposited on or before 14 days following the date of expiration for voucher usage by recipients. Such date shall be clearly printed in the endorsement space on the back of the voucher. Any claim to voucher payment beyond the voucher reimbursement expiration date is not valid and shall be denied.

50.13(5) Submissions by local agency. Deadlines for submission of records, reports, survey instruments and undistributed vouchers by local agencies shall be established by the department and specified in the agreement entered into with the local agency.

50.13(6) Operations report to USDA-FNS. The department shall develop and submit a completed operations report in January in a manner prescribed by USDA-FNS which summarizes the IFM/WIC operations for the previous year.

These rules are intended to implement 1990 Iowa Acts, chapter 1260, section 1, subsection 3, and Iowa Code chapter 159.

ARC 1517A

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to adopt an amendment to Chapter 1, "Organization and Operation," Iowa Administrative Code.

The amendment implements a name change as mandated by the 1990 Iowa Legislature.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone (515)281-3501, on or before January 10, 1991.

This rule is intended to implement Iowa Code chapter 261.

Amend rule 283—1.1(261) as follows:

283—1.1(261) Purpose. This chapter describes the organization and operation of the Iowa college *student* aid commission (hereinafter *generally* referred to as the commission, *or the ICSAC, or the Iowa student aid commission)* including the offices where, and the means by which, any interested person may obtain information and make submittals or requests.

This rule is intended to implement Iowa Code chapter 261.

ARC 1521A

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 18, "Iowa Work-Study Program," Iowa Administrative Code.

The proposed amendment incorporates the Iowa Heritage Corps into the Iowa Work-Study Program.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone (515)281-3501, on or before January 10, 1991.

This rule is intended to implement Iowa Code Supplement section 261.81A.

Amend 283—Chapter 18 by adding a new rule as follows:

283—18.14(261) Iowa heritage corps.

18.14(1) Iowa heritage corps agreement. Institutions are required to enter into an agreement with the commission which defines the manner in which the Iowa heritage corps program is to be administered. Agreements will be provided each March to eligible nonparticipating institutions, and institutions will have 60 days to sign and return the document to the commission in order to receive funds for the following school year.

18.14(2) Annual application. Institutions are required to submit annual applications which are distributed each spring for the following school year. Institutions must submit the applications to the commission by April 30. The application will collect pertinent information the commission deems necessary to administer the program.

18.14(3) Award notices. The commission will annually provide award information by May 30. Allocations will be based on the institutions' application, the institutions' relative need for funding, and the program's appropriation.

18.14(4) Eligibility. An eligible student participating in this program will be entitled to receive wages,

COLLEGE STUDENT AID COMMISSION[283] *(cont'd)*

academic credit, and costs for all materials, supplies, travel, and other work-related expenses of the project.

18.14(5) Institutional obligation. The institution will pay, out of the funds allocated, 80 percent of the student's wage and cost of tuition for credits earned.

18.14(6) Agency obligation. The eligible agency that the student is placed with will match the remaining 20 percent of the student's wage, cost of tuition for credits earned, and the cost of materials, supplies, travel, and other work-related expenses of the project.

18.14(7) Final report. Institutions must submit final reports by October 31 of each year in a format prescribed by the commission. This information will be included in the institutions' annual work-study reports.

This rule is intended to implement Iowa Code Supplement section 261.81A.

ARC 1518A

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to adopt a new Chapter 23, "Physician Loan Payments Program," Iowa Administrative Code.

The proposed chapter will summarize the procedures to be followed in the administration of the physician loan payments program.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone (515)281-3501, on or before January 10, 1991.

These rules are intended to implement Iowa Code Supplement section 261.50 as amended by 1990 Iowa Acts, chapter 1272, section 57.

The following new chapter is proposed:

CHAPTER 23

PHYSICIAN LOAN PAYMENTS PROGRAM

283—23.1(261) Purpose. This chapter establishes guidelines for a state-supported loan reimbursement program for physicians who live and work in Iowa.

283—23.2(261) Definition. As used in this chapter:

"Eligible community" means a community which agrees to provide an eligible physician with a first-year income guarantee, malpractice insurance coverage for four years, family health insurance, reimbursement for moving expenses, two weeks of vacation for each of the first four years, and one week of continuing medical education per year for four years.

283—23.3(261) Recipient eligibility.

23.3(1) An eligible applicant shall be a physician licensed to practice medicine under Iowa Code chapter 148 or 150A.

23.3(2) An eligible physician shall have an outstanding student loan debt with an eligible lender under the Stafford/guaranteed student loan program, supplemental loans for students program, or have parent(s) with an outstanding debt with an eligible lender under the PLUS program from which the physician benefited.

23.3(3) The maximum annual reimbursement from state funds to an eligible physician is $5,000 or the remainder of the physician's and parents' loans, whichever is less.

23.3(4) Total payments from state funds for an eligible physician are limited to a four-year period and shall not exceed a total of $20,000.

23.3(5) Eligible applicants must agree to practice in an eligible community with fewer than 5,000 residents, or a federally designated health manpower shortage area for a minimum period of four consecutive years. If the physician fails to practice in an eligible community for a time period of less than 12 months, the individual shall not be reimbursed for payments made during that year.

23.3(6) A physician who is in default on a Stafford/guaranteed student loan, supplemental loan to students, PLUS loan, Perkins loan, Health Profession Student Loan (HPSL), Health Assistance Loan (HEAL), or who owes a repayment on any Title IV grant assistance shall be ineligible for loan payments. If a physician's parents are in default on a loan, those loans are not eligible for reimbursement and will not be considered in the calculation of total debt for the applicant.

23.3(7) Any payment made more than 60 days after the due date is not eligible for reimbursement.

283—23.4(261) Criteria for selection of recipients.

23.4(1) Priority shall be given to eligible physicians practicing in an eligible community of fewer than 5,000 residents that is in a federally designated health manpower shortage area.

23.4(2) If funds are insufficient to repay all qualified applicants, further priority shall be provided based on the date applications are submitted to the commission. Applications shall be ranked according to the date applications are received in the offices of the commission.

283—23.5(261) Application for loan payment reimbursement.

23.5(1) Application forms shall be provided by the commission through approved medical schools. Community participation agreements and information summarizing the program will be provided by the commission to public officials of all rural communities and communities located in a health manpower shortage area.

23.5(2) Eligible students may enter into a contract with an eligible community, which has negotiated a participation agreement with the commission, at or after the time of loan origination to ensure loan repayment.

23.5(3) Eligible physicians who have entered into an agreement will receive a request for loan repayment form one year after completion of their medical training.

23.5(4) In the appropriate section of the request for loan repayment form, the state department of health must certify the employment status of the physician.

23.5(5) The eligible physician shall file the completed request for repayment by a deadline designated by the commission.

COLLEGE STUDENT AID COMMISSION[283] *(cont'd)*

283—23.6(261) Certification required for reimbursement of loan payments.

23.6(1) After 12 months of eligible physician employment in Iowa, the state department of health will certify that the eligible physician has been employed full-time for the entire 12-month period.

23.6(2) On the request for repayment form, the lending institution which holds the eligible physician's student loan notes or parent notes shall certify to the commission the total amount paid on principal and interest during the preceding 12-month period. The form provided by the commission for this purpose shall also include a section to report any delinquencies in loan payment. If two or more lenders are holders of the eligible loan notes, all lenders must provide certification.

283—23.7(261) Reimbursement of loan payments. Upon receipt of the necessary certifications, the commission shall reimburse the physician for eligible loan payments made during the year of employment within the limitations of the maximum amount specified by law and the funds available for the program.

This rule is intended to implement Iowa Code Supplement section 261.50 as amended by 1990 Iowa Acts, chapter 1272, section 57.

ARC 1519A

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 261.88, the College Student Aid Commission proposes to adopt a new Chapter 31, "Iowa Work for College Program," Iowa Administrative Code.

The proposed chapter establishes student eligibility and participation in the Iowa Work for College Program which was established by the 1990 Iowa Legislature.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309, telephone (515)281-3501, on or before January 10, 1991.

This rule is intended to implement Iowa Code Supplement section 261.88.

The following new chapter is proposed:

CHAPTER 31

IOWA WORK FOR COLLEGE PROGRAM

283—31.1(261) Purpose. A state-supported college tuition voucher program for volunteer work that raises the participants' awareness of pressing social problems.

283—31.2(261) Definitions. As used in this chapter:

"Academic semester" means an academic term of 12 semester hours in length or its equivalent.

"Accredited private institution" means an institution of higher education which is accredited by the North Central Association of Colleges and Secondary Schools.

"Commission" means the college student aid commission.

"Cost of attendance" means the cost of tuition, room, and board at a public higher education institution attended by a volunteer or, in the case of attendance at an accredited private institution, the highest cost for tuition, room, and board for attendance at a regents' university.

"Department" means the department of human services.

"Eligible higher education institution" means an accredited private institution, merged area school, or regents' university.

"Merged area school" means an area school as defined under Iowa Code section 280A.2, subsection 10.

"Public and nonprofit entities" is any agency or organization whose mission addresses one of the following areas: health, education, literacy, child care, hunger, adequate housing, homelessness, or conservation of natural resources. In the event of limited funding, priority will be given to the Federal Volunteers in Service to America (VISTA) program.

"Regents' university" means an institution governed by the state board of regents, as defined under Iowa Code section 262.7, subsections 1, 2, and 3.

"Volunteer" means a person who has been accepted for participation in the Iowa work for college program based on the person's financial need.

"Voucher" means a service and education opportunity voucher issued by the commission.

283—31.3(261) Eligibility and limitations.

31.3(1) Selection. Participant selection will be based on financial need, proof of inability to attend college without acceptance into the program, or the likelihood of the individual to incur heavy debt repayment obligations while attending college, based on the individual's anticipated financial assistance alternatives. The employing organization shall arrange for qualified participants. Participants shall submit a completed financial statement in a form acceptable to the commission for verification of financial need.

The commission shall contract with the public or nonprofit entity for administration of the volunteer assignment. The volunteers shall be employees of the public or nonprofit entity.

31.3(2) Agreement. Volunteers shall agree to make a full-time commitment to an approved work assignment. Volunteers shall be available to work at least 40 hours per week, except for authorized periods of leave. The volunteers shall be employees of the public or nonprofit entity. Volunteers may be assigned to work for any public or nonprofit entity for a period of either one or two years. The work assignments shall not be made to replace regular employees or for participation in religious or political activities.

31.3(3) Additional benefits. The public or nonprofit entity to which an individual is assigned shall supervise and direct that individual in the same manner as other employees and shall pay for all necessary work materials, supplies, and transportation costs. The volunteers are exempt from unemployment, workers' compensation and retirement benefits as outlined in Iowa Code section 96.19(6)"a"(6)(e), and are exempt from the provisions of the department of personnel under the Iowa public

COLLEGE STUDENT AID COMMISSION[283] *(cont'd)*

employees' retirement system under Iowa Code chapters 19A and 97B, and civil service provisions under Iowa Code chapter 400.

283—31.4(261) Awards. Upon completion of the service, the volunteer shall receive vouchers entitling the volunteer to educational benefits. Each voucher shall have a value equal to the cost of attendance for one academic semester. Vouchers may be redeemed at an eligible higher education institution. A participant shall receive four vouchers for each year of service completed. Vouchers shall not be provided for partial years of service. Only one voucher may be redeemed per semester of attendance at an eligible higher education institution. Vouchers must be redeemed within ten years of the date of issuance and are not transferable.

This rule is intended to implement Iowa Code Supplement section 261.88.

ARC 1542A

CREDIT UNION DIVISION[189]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 533.1, the Superintendent of Credit Unions hereby gives Notice of Intended Action to amend Chapter 8, "Accounts," Iowa Administrative Code.

Subrule 8.5(3) is being rewritten for the following reasons:

1. The subrule contained an apparent "statute of limitation" which appeared to eliminate a credit union's liability to creditors of a decedent by the credit union holding a payable-upon-death account for six months after the death of the owner. If the credit union declined to release the funds for six months, the purpose behind creating the payable-upon-death account is defeated.
2. Since an executor may not be appointed within 14 days of the death of an owner, the 14-day requirement was removed from subrule 8.5(3). It is not significant who is notified of the existence of the account, as long as either the executor or the beneficiary is notified.
3. The reference to "claims" was also removed, since the Credit Union Division lacks authority to make funds subject to "claims" against an owner. It is sufficient to state that the funds held in trust shall be subject to debts and inheritance taxes as required by law.
4. The rewritten subrule is now applicable to both revocable trust accounts and to testamentary accounts, as both are generally considered part of the decedent's estate.

Persons who want to orally convey their views should contact James E. Forney, Superintendent of Credit Unions, Credit Union Division, at (515)281-6514 by January 14, 1991.

Written comments must be received by the Division by January 14, 1991, and should be sent to:

James E. Forney
Superintendent of Credit Unions
Credit Union Division
200 East Grand Avenue, Suite 370
Des Moines, Iowa 50309

A public hearing to receive comments has been scheduled for January 14, 1991, at 10 a.m. at the Credit Union Division Office, 200 East Grand Avenue, Suite 370, Des Moines, Iowa.

This rule is intended to implement Iowa Code chapter 533.

The following amendment is proposed:

Rescind subrule 8.5(3) and insert in lieu thereof the following:

8.5(3) Funds held in revocable trust accounts and testamentary accounts shall be subject to the debts of the owner of the account and to inheritance tax as required by law. Within 30 days of notice of the death of an owner of funds held in a revocable trust account or a testamentary account, the credit union shall notify the executor of the deceased owner's estate, or the beneficiary, of the existence and current balance of the account.

ARC 1544A

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners gives Notice of Intended Action to amend Chapter 11, "Applications," Iowa Administrative Code.

The purpose of these amendments is to correct the address of the Central Regional Dental Testing Service, Inc.

Any interested person may make written suggestions or comments on these proposed amendments prior to January 1, 1991. Such written comments should be directed to Constance L. Price, Executive Director, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.

The proposed amendments are intended to implement Iowa Code section 147.34.

The following amendments are proposed.

ITEM 1. Amend rule 650—11.1(153) as follows:

650—11.1(153) Examination required for licensure to practice dentistry. Any person desiring to take the examination to qualify for licensure to practice dentistry in this state must make application to the Central Regional Dental Testing Service, Inc. (CRDTS), ~~5200 Huntoon,~~ *1725 Gage Blvd.*, Topeka, Kansas 66604, and meet such other requirements as CRDTS may establish for purposes of the examination.

DENTAL EXAMINERS BOARD[650] *(cont'd)*

ITEM 2. Amend rule 650—11.4(153) as follows:

650—11.4(153) Examination required for licensure to practice dental hygiene. Any person desiring to take the examination to qualify for licensure to practice dental hygiene in this state must make an application to the Central Regional Dental Testing Service, Inc. (CRDTS), ~~5200 Huntoon,~~ *1725 Gage Blvd.*, Topeka, Kansas 66604, and meet such other requirements as CRDTS may establish for purposes of the examination.

ARC 1543A

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners gives Notice of Intended Action to amend Chapter 27, "Principles of Professional Ethics," Iowa Administrative Code.

The purpose of these amendments is to clarify the allowable date for billing an insurance company on procedures which typically take more than one appointment for completion.

Any interested person may make written suggestions or comments on these proposed amendments prior to January 1, 1991. Such written comments should be directed to Constance L. Price, Executive Director, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

The proposed amendments are intended to implement Iowa Code sections 153.34(7) and 258A.3.

The following amendments are proposed:

ITEM 1. Amend subrule 27.7(5) as follows:

27.7(5) A dentist who submits a claim form to a third party reporting incorrect treatment dates ~~for the purpose of assisting a patient in obtaining benefits under a dental plan, which benefits would otherwise be disallowed,~~ is engaged in making ~~an~~ unethical, false or misleading ~~representation~~ *representations* which ~~is~~ *are* fraudulent. ~~to the third party. The reported treatment date of record shall be the date on which the procedure is completed, i.e., the date on which a crown is seated, a fixed or removable prosthesis inserted, or a root canal filled. Claims filed for payment, by third party payers, shall consist of charges for completed services.~~

ITEM 2. Amend rule 650—27.7(153) by renumbering subrules 27.7(6) to 27.7(8) as **27.7(7)** to **27.7(9)** and adding the following new subrule.

27.7(6) Payments received by a dentist from a third party payer for work which has not been completed(e.g., crown seated, prosthesis inserted, root canal filled) must be promptly and completely refunded to the third party involved. Keeping such moneys constitutes unethical and fraudulent behavior.

ARC 1545A

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners gives Notice of Intended Action to adopt a new Chapter 32, "Mediation of Disputes," Iowa Administrative Code.

This chapter will implement new statutory authority for the Board to provide for mediation of disputes between licensees and their patients when specifically recommended by the Board.

Any interested person may make written suggestions or comments on these proposed rules prior to January 1, 1991. Such written comments should be directed to Constance L. Price, Executive Director, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

These proposed rules are intended to implement Iowa Code section 153.33 as amended by 1990 Iowa Acts, chapter 1112 and Iowa Code chapter 679.

The following new chapter is proposed:

CHAPTER 32

MEDIATION OF DISPUTES

650—32.1(153) Definitions.

"Board" means the Iowa board of dental examiners.

"Center" or "mediation center" means an approved dispute resolution center that has applied for and received approval from the executive director of the prosecuting attorneys training coordination council provided for in Iowa Code section 679.3.

"Mediation" means an informal dispute resolution process by which the parties involved in a minor dispute voluntarily agree to enter into informal discussion and negotiation with the assistance of a mediator.

650—32.2(153) Mediation authorized. The board has the authority to provide for mediation of disputes between licensees and their patients when specifically recommended by the board and agreed to by the parties.

32.2(1) The board may recommend for mediation those cases that are appropriate, which could include, but are not limited to, cases involving fee disputes.

32.2(2) The board's referral of a matter to mediation shall not preclude the board from taking disciplinary action against the affected licensee. There is no obligation that the licensee participate in mediation and the licensee shall not be subject to disciplinary action for failure to participate in a board recommended mediation.

650—32.3(153) Mediation process.

32.3(1) Subsequent to an investigation by the board, the board may recommend mediation to address a dispute between a licensee and a patient.

32.3(2) If mediation is recommended by the board, the board shall notify the licensee, the patient and a mediation center of the recommendation.

32.3(3) Upon receipt of a mediation request from the board, the mediation center shall provide the parties with

DENTAL EXAMINERS BOARD[650] *(cont'd)*

a written statement setting forth the center's established procedures and the cost, if any, prior to each mediation session.

32.3(4) If mediation is agreed upon by the parties involved, the mediation center shall schedule a mediation at a time and place convenient and neutral to the parties and the mediator.

650—32.4(153) Assignment of mediator. The assignment of a mediator shall be made by the mediation center. At the request of either party, and upon a showing of good cause, the director of the mediation center shall review the assignment of the mediator and shall, upon a showing of good cause, remove a mediator and assign another mediator to the case. Good cause includes partiality, bias, or the existence of a personal or professional relationship with any of the parties.

650—32.5(153) Cancellation. If mediation is scheduled, either party may contact the mediation center to cancel the mediation meeting or reschedule the mediation meeting.

650—32.6(153) Mediation meetings. In addition to any duties imposed by statute or rule, each mediator shall:

32.6(1) Clarify the names of all participating parties present and facilitate agreement on the attendance of assisting parties at the mediation meeting, as well as the extent to which such persons may participate in the proceedings.

32.6(2) Ensure that the parties understand that the mediator does not legally represent any of the parties and is neutral in the proceedings.

32.6(3) Help the parties review any proposed solution to determine if it can be effectively implemented and to help the parties understand the consequences of the proposed solution.

650—32.7(153) Mediation report. The mediation center shall report to the board whether or not the parties agreed to participate in mediation and whether or not the mediation was successful. The mediation center shall not, however, disclose the terms of the mediation to the board. The mediation shall make such report within 15 days of the conclusion of the mediation.

650—32.8(679) Mediation agreement. If the parties involved in the dispute reach agreement, the agreement may be reduced to writing setting forth the settlement of the issues and the future responsibilities of each party.

650—32.9(679) Mediation confidential. All verbal or written information relating to the subject matter of mediation or a mediation agreement transmitted between any party to a dispute and a mediator or the staff of an approved center or any other person present during any stage of mediation, whether reflected in notes, memoranda, or other work products in the case files, is confidential communications except as otherwise expressly provided for in Iowa Code chapter 679. Mediators and center staff members shall not be examined in any judicial or administrative proceeding regarding confidential communications and are not subject to judicial or administrative process requiring the disclosure of confidential communications. This rule does not apply when a mediator or center staff member has reason to believe that a party to a dispute has given perjured evidence.

650—32.10(679) Mediator immunity. No mediator, employee or agent of a center, or member of a center's board may be held liable for civil damages for any statement or decision made in the process of mediation unless the mediator, employee, agent or member acted in bad faith, with malicious purpose or in a manner exhibiting willful and wanton disregard of human rights, safety or property.

These rules are intended to implement Iowa Code section 153.33 as amended by 1990 Iowa Acts, chapter 1112 and Iowa Code chapter 679.

ARC 1535A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt a new Chapter 11, "Productivity and Quality Enhancement," Iowa Administrative Code.

The new chapter defines procedures by which community colleges may receive grants for productivity and quality enhancement training authorized by Iowa Code section 15.251 and to define procedures and allowable costs to conduct productivity and quality enhancement activities authorized by 1990 Iowa Acts, chapter 1262.

A public hearing will be held on January 2, 1991, at 10 a.m. in the Main Conference Room at the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, to receive comments on the proposed new chapter. Interested parties may submit oral or written comments until January 2, 1991, to: JoAnn Callison, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4784.

These rules are intended to implement Iowa Code section 15.251 and 1990 Iowa Acts, chapter 1263.

These rules were Adopted and Filed Emergency and are published herein as **ARC 1536A**. The content of that submission is incorporated here by reference.

ARC 1564A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to establish a new Chapter 30, "Riverfront Development Grant Program," Iowa Administrative Code.

The proposed new rules outline program parameters, establish procedures for applying for funds, and set up administrative processes upon grant award. The purpose of the program is to provide grants for restoration of existing structures or construction of new facilities that enhance the historic, educational, or recreational value of a community's riverfront area.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on January 4, 1991. Interested persons may submit written or oral comments by contacting: Roselyn McKie Wazny, Division of Financial Assistance, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed new chapter will be held on January 4, 1991, at 10 a.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on January 3, 1991, to be placed on the hearing agenda.

The following new chapter is proposed:

CHAPTER 30
RIVERFRONT DEVELOPMENT GRANT PROGRAM

261—30.1(15) Riverfront development grant program. The program provides grants to assist in the development and restoration of community riverfronts. The grants are to be used for construction, renovation, or restoration of existing or new structures that enhance the historic, educational, or recreational value of the riverfront areas.

261—30.2(15) Definitions. When used in this chapter, unless the context requires otherwise:

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

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

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

"Project" means the activity or set of activities proposed by the applicant that meet the objective of the program and which will require assistance to accomplish.

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

"Substantial local effort" means eligible local effort contributions that are greater than the minimum one-to-one match required.

261—30.3(15) Eligibility. Any city or county in the state of Iowa with a riverfront area is eligible to apply for grants.

261—30.4(15) Eligible project activities. Activities eligible for funding under this program are limited to construction, renovation or restoration of existing or new structures that make physical improvements which enhance the historic, educational or recreational value of riverfront area.

261—30.5(15) Application—general policies.

1. An applicant may submit one application per year under this program.
2. No single project may be awarded more than $50,000 per year.
3. Applications must be for projects seeking funds to improve the physical assets of a riverfront.
4. The applicant shall provide evidence that the project can be completed with the funds requested.

261—30.6(15) Application procedures.

1. Applications will be solicited at least annually at the discretion of the director of the department, contingent upon the availability of state funding for this program.
2. Applications shall be submitted to the following address: Iowa Department of Economic Development, Division of Financial Assistance, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address or by calling (515) 281-3982.
3. Application contents. Required contents of the application will be described within the application package itself. In addition to the application form, the city or county shall submit evidence of a matching contribution of at least one-to-one dollar match of private or eligible public funds to grant funds requested.
4. Each eligible application will be reviewed by the department. The department may request additional information from the applicant or perform other activities to obtain needed information.
5. The department will rate and rank applications according to the criteria described in rule 30.7(15). The highest ranked projects will be funded dependent upon availability of funds. The department may negotiate with the applicant concerning the dollar amounts and other elements of the application to determine the final award conditions.
6. The department may approve, reject, table or defer action on an application.

261—30.7(15) Selection criteria. In ranking and scoring applications for funding, the following criteria and point system of 425 points possible shall be utilized:

1. Level of need (financial, service provision, etc.) of the political subdivision, 100 points possible;
2. Impact of project on the community, 100 points possible;
3. Cost/benefit of the project, 100 points possible;
4. Local matching funds, 75 points possible;
5. Ability to administer the project, 25 points possible; and

6. Certification under the community builder program, 25 points possible.

261—30.8(15) Grant administration.

30.8(1) Award process. Applicants for projects under riverfront development programs will be notified in writing of the disposition of their application no later than 60 days after the due date.

Successful applicants will enter into a contract with the department which clarifies their responsibilities as a grantee for oversight of the project, reporting to the department, and responsibilities in return for the provision of funds.

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

30.8(2) Eligible and ineligible local effort. This subrule provides the general policies for determining the eligibility or ineligibility of local effort funds.

a. Eligible local effort.

(1) Public or private funds (cash or loans) to be used to directly support the costs of program activities contained in an application will generally be considered as eligible local effort if those funds can be considered as discretionary or not restricted to specific purposes. Types of cash or loans that can be considered as eligible local effort include, but are not limited to:

- General funds or other cash;
- General obligation or revenue bonds;
- Loans;
- Certain federal funds such as federal aid to urban systems funds or road tax funds;
- Certain state funds such as municipal assistance funds, beer and liquor control funds, state road use funds; and
- Farmers Home Administration loans.

(2) The value of land that is provided by public or private sources to be used to directly support program activities contained in an application can be considered as eligible local effort. The value of the land will not exceed its assessed value unless an appraisal is conducted to determine the fair market value. The appraisal will be considered valid if conducted by a certified appraiser.

(3) The value of the building(s) provided by public or private sources which are used to directly support program activities contained in an application can be considered as eligible local effort. The value of the building(s) will not exceed its assessed value unless an appraisal is conducted to determine its fair market value. The appraisal will be considered valid if conducted by a certified appraiser.

(4) Force account labor provided by the community to directly support program activities contained in an application can be considered as eligible local effort. The value of force account labor used as local effort is determined by the actual, documentable cost to the community, such as an individual's hourly rate of pay multiplied by the number of hours contributed.

b. Ineligible local effort.

(1) Public or private funds will generally be considered as ineligible local effort if those funds are nondiscretionary or restricted to specific purposes. Types of funds considered as ineligible local effort include, but are not limited to:

- Environmental protection agency of the Iowa department of natural resources grant funds;
- Community development block grant funds (CDBG);
- Rural community 2000 (RC2000) grant funds;
- Economic development administration grant funds;
- Revitalize Iowa's sound economy grant funds; and
- Farmers Home Administration grant funds.

(2) Public or private funds used to directly support the costs of activities that are not proximate and integrally related to the other activities contained in an application will be considered as ineligible local effort.

(3) Public or private funds used to directly support the costs of activities that are considered as ineligible activities will be considered as ineligible local effort.

30.8(3) Amendments. Any substantive change to a funded project will require a contract amendment. Changes could include contract time extensions, budget revisions, and significant alterations to existing activities. The amendment shall be requested in writing. No amendment will be valid until approved in writing by the department.

30.8(4) Financial management.

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

b. Record-keeping and retention requirements.

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

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

c. Performance reports and reviews.

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

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

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

ARC 1531A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 61, "Iowa Export Trade Assistance Program," Iowa Administrative Code.

The proposed amendments are designed to encourage participants to use the program to enter new markets. We are proposing to restrict the number of times a company can use the program to participate in the same show to two, and to limit the number of shows in a specific country to one per year. Also, we are restricting access to the program to two trade shows and one trade mission per year.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on January 3, 1991. Interested persons may submit written or oral comments by contacting: Michael Doyle, Bureau Chief, International Marketing, Department of Economic Development, 200 E. Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4729.

A public hearing to receive comments on the proposed amendments will be held from 9 a.m. until 10 a.m. on January 3, 1991, at the above address in the Marketing Division conference room. Individuals interested in providing comments at the hearing should contact Michael Doyle by 4 p.m. on January 2, 1991, to be placed on the hearing agenda.

The following amendments are proposed:

ITEM 1. Amend **261—61.2(72GA,ch1273)**, definition of "Trade mission," as follows:

"Trade mission" means a mission event ~~sanctioned~~ *led* by the department of economic development ~~or the~~, the U.S. Department of Commerce, *or the Iowa department of agriculture and land stewardship.*

ITEM 2. Amend subrule 61.4(1) as follows:

61.4(1) Trade shows.

a. Space rental.

~~b. Booth design.~~

~~e~~*b.* Booth construction *at show site.*

~~d~~*c.* Booth equipment or furniture rental.

~~e~~*d.* Freight costs associated with shipment of equipment or exhibit materials to the participant' s booth and return.

~~f~~*e.* Booth utility costs.

~~g~~*f.* Per diem (lodging and meals) for the day immediately before the opening day of the trade show through the day immediately after the closing day of the trade show.; ~~Per~~ *per* diem is determined by rate schedules provided by the U.S. Department of State for travel in foreign areas; and *per diem* will be paid for only one employee.

ITEM 3. Amend 261—61.6(72 GA,ch1273) as follows:

261—61.6(72GA,ch1273) Selection process. Applications will be reviewed in the order received by the bureau. Successful applicants will be funded on a first-come, first-served basis to the extent funds are available. *When all funds have been committed, subsequent applications shall be held in the order they are received. In the event that committed funds are subsequently available, the applications shall be processed in the order they were received for events that have not yet occurred.*

ITEM 4. Amend 261—61.7(72GA,ch1273) as follows:

261—61.7(72GA,ch1273) Limitations. A participant in the export trade assistance program shall not utilize the program's benefits more than three times during the state's fiscal year, July 1 to June 30, nor may a participant access the program's benefits for more than $15,000 during the same fiscal year. *Participants shall not utilize export trade assistance program funds for participation in the same trade show during two consecutive state fiscal years, or for participation in the same trade show more than two times. Participants shall not utilize export trade assistance program funds for participation in multiple trade shows in the same country during the same state fiscal year. Participant's utilization of export trade assistance program funds will be limited to two trade shows during a state fiscal year.*

ARC 1527A

EDUCATION DEPARTMENT[281]

Notice of Termination
and
Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 17A.3 and Iowa Code Supplement section 279.51(5), the Department of Education hereby gives Notice of Intended Action to amend Chapter 65, "Innovative Programs for At-Risk Early Elementary Students," Iowa Administrative Code.

Amendments to Chapter 65 were published as a Notice of Intended Action in the Iowa Administrative Bulletin on September 5, 1990, as **ARC 1206A.** A public hearing was held on September 25, 1990. Oral and written comments received made substantive amendments to the Notice necessary. Therefore, the original Notice of Intended Action is hereby terminated and the following amendments are proposed:

Item 1 inserts definition of "at-risk" students and clarifies grant award criteria.

EDUCATION DEPARTMENT[281] *(cont'd)*

Item 2 clarifies definition of "early elementary grades."

Item 3 expands definition of "low-income family."

Item 4 removes eligibility language and inserts new language for primary risk factors.

Item 5 clarifies language for secondary risk factors.

Item 6 substitutes language for secondary risk factors.

Item 7 substitutes and expands language for grant awards criteria.

Item 8 removes language for applicant information.

Item 9 expands grant process and grant award distribution and clarifies point weighting system and funding allocation.

Item 10 removes contract language.

Item 11 inserts new appeal language.

Interested persons may make oral or written suggestions or comments on these proposed rules prior to January 3, 1991. Written materials should be directed to Susan Andersen, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or oral comments made by calling (515)281-4747.

A public hearing on these rules is scheduled for January 3, 1991, at 10 a.m. in the Grimes Conference Room, First Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, to receive public comment on the proposed rules.

The substance of these amendments was Adopted and Filed Emergency and is published herein as **ARC 1522A**. The content of that submission is incorporated here by reference.

These rules are intended to implement Iowa Code Supplement section 279.51.

ARC 1528A

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby gives Notice of Intended Action to amend Chapter 68, "Conservation Education," Iowa Administrative Code.

The May 15 grant due date deadline will permit the grantees to have the benefit of a full 12 months during the fiscal year to complete their project. Grants will be evaluated and acted upon for a July 1 start-up date.

Certain development grants may require longer than 12 months to complete. Grantees may request in their proposals a longer time period if this merits consideration by the Conservation Education Program Board.

These actions should expand the time periods grantees will have at their disposal to expedite the activities outlined in the grant.

Any interested person may make written or oral suggestions or comments on these proposed amendments on or before January 2, 1991. Comments should be addressed to Duane Toomsen, Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, telephone (515)281-3146.

A public hearing on the proposed amendments will be held on January 3, 1991, at 1 p.m. in the State Board Room, Second Floor, at the above address.

These amendments are intended to implement Iowa Code Supplement sections 256.34 and 455A.19.

The following amendments are proposed:

ITEM 1. Amend subrule 68.6(3), first sentence, as follows:

68.6(3) Applications shall be postmarked on or before the April 1, 1990, deadline for FY90 grants and ~~July 15~~ *May 15* and November 1 for subsequent fiscal years in which funds are provided.

ITEM 2. Amend subrule 68.9(1) by rescinding the current subrule and inserting in lieu thereof the following:

68.9(1) Timely completion of projects. Grants are expected to be completed in a 12-month time period; however, up to 18 months will be considered for board approval for grants difficult to accomplish in 12 months.

ARC 1539A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 56, "Burial Benefits," appearing in the Iowa Administrative Code.

Under current policy application for burial benefits must be made prior to interment or, if the Department is not open for business, application must be made within three working days of the date of interment. The local office must issue a decision to approve or deny the application within one working day of the date of the application.

These amendments change the time frames for applying for burial benefits to allow the family or those responsible 15 calendar days from the date of death. In addition, the local office is given five working days to process the application.

These changes will give the responsible person time to deal with the family member's death and eliminate some denials where the family is not aware of state burial benefits until after interment. The Department did receive input from the Iowa Funeral Directors Association.

HUMAN SERVICES DEPARTMENT[441] *(cont'd)*

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 January 2, 1991.

This rule is intended to implement Iowa Code sections 239.9 and 249.9.

The following amendments are proposed:

Amend subrules 56.1(2) and 56.1(3) as follows:

56.1(2) ~~Application shall be made prior to the interment of the deceased, except when interment takes place on a day when the local office of the department is not open for business. In that instance, an~~ *An* application for burial benefits shall be filed within ~~three (3) working~~ *15 calendar* days of the date of ~~interment~~ *death.*

56.1(3) The decision to approve or deny the application shall be made and the notice mailed or given to the applicant and the funeral director within ~~one (1)~~ *five* working ~~day~~ *days* of the date the application is filed.

ARC 1541A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 135H.10, the Department of Inspections and Appeals proposes to amend Chapter 41, "Psychiatric Medical Institutions for Children," Iowa Administrative Code.

The amendment establishes an independent team to complete the certification of need for services, making the rules consistent with federal requirements in 42 CFR 441.150 to 441.156. Additionally, the amendment provides clarification to distinguish the type of team necessary to complete the certification of need under different circumstances.

Consideration will be given to all written comments received by the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083, if received by January 1, 1991.

This amendment is intended to implement Iowa Code Supplement section 135H.6(3).

The following amendment is proposed:

Amend rule **481—41.9(135H)**, first unnumbered paragraph, as follows:

Certification of need shall be completed by the team described in ~~rule 41.13(135H).~~ *subrules 41.13(2) and 41.13(3).* Certification must be made at the time of admission *by an independent team for Medicaid recipients. For emergency admissions, the certification must be made by the team described in 41.13(135H) within 14 days after admission.* If an individual applies for Medicaid while in a ~~hospital,~~ *PMIC,* certification of need must be made *by the team described in 41.13(135H)* before a Medicaid agency authorized payment.

ARC 1550A

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 523A.16 and 1990 Iowa Acts, chapter 1213, section 26, the Iowa Division of Insurance hereby gives Notice of Intended Action to amend Chapter 19, "Prearranged Funeral Contracts," Iowa Administrative Code.

These proposed amendments add definitions of "Establishment" and "Burial account" and amend the definition of "Seller" to specifically include any establishment identified as the provider of the funeral merchandise, funeral services or cemetery merchandise under a burial account. Also, subrule 19.4(1) is amended to clarify that Iowa Code chapter 523A applies to any burial account that identifies an establishment as the provider of funeral merchandise, funeral services or cemetery merchandise.

To ensure that the information filed with the Application for Establishment Permit remains current, proposed rule 19.24(523A,73GA,ch 1213) establishes a biennial informational filing to update the establishment's permit application. The filing will not require any filing fee, and a Certificate of Authority will be issued to document that the establishment's permit remains in good standing.

Subrule 19.33(2) is amended to clarify the situations under which the per-contract fee would not apply.

Proposed rule 19.44(523A) lists the Consumer Price Index Adjustments for 1987, 1988 and 1989 and provides guidelines for calculating the amounts of the adjustments and the amounts of any permissible withdrawals.

Proposed rule 19.45(523A,73GA,ch 1213) establishes prohibitions and requirements for the regulation of burial accounts.

The other proposed amendments make technical changes in the language of the rules to delete references to 1987 Iowa Acts, House File 614 and to implement 1990 Iowa Acts, chapter 1213. Since the revised rules relate to two separate statutes, the rules have been divided into three sections clarifying which rules apply to both statutes, which rules apply only to Iowa Code chapter 523A and which rules apply only to 1990 Iowa Acts, chapter 1213, sections 13 to 30.

As a result of 1990 Iowa Acts, chapter 1213, the Insurance Division may now approve warehouse or storage facilities which are not under the control of the seller. The Division requests comments on that approval

INSURANCE DIVISION[191] *(cont'd)*

process. Specifically, the Division requests comments on the nature of any general standards that should be applied in determining whether to approve a warehouse or storage facility that is not under the control of the seller.

The Division seeks comments on the following questions:

1. Should the Insurance Division approve facilities not located in the state of Iowa?

2. What authorization should the Insurance Division require from establishments and storage facilities to ensure the ability of the Division to audit and inspect warehoused merchandise? Should the Division require independent audits by accountants? Should the Division coordinate audits and inspections with other organizations or agencies of other states if possible?

3. What method of funding should be utilized to pay the costs of Insurance Division audits? If costs are prorated among establishments who have merchandise stored at an audited facility, should costs be prorated by the number of establishments, on a volume basis (the number of items in storage), or some alternative method?

4. Should storage facilities be required to submit annual reports to the Insurance Division?

5. What protection should be provided to the purchaser against the possibility of bankruptcy or financial distress of the storage facility? The statute already requires (a) a receipt of ownership in the name of the purchaser that must be delivered to the purchaser and (b) appropriate identifications and descriptions in a manner that each item of merchandise can be distinguished from other similar items of merchandise.

6. What protection to the purchaser should be provided against the possibility of loss or damage? The statute already requires (a) insurance against loss and (b) a manner of storage that protects against damage. Should the Insurance Division accept general insurance policies or require a separate policy for Iowa liabilities? If a general policy is accepted, what method should be utilized to ensure that the amount of insurance is adequate? What type of insurance policy should the Division require? What types of risks and perils should be insured against?

7. Should the Insurance Division require storage only at bonded and licensed warehouses? If so, should minimum standards be established or should the Division rely upon the standards established by the state where the facility is located? Should a separate bond be required for the state of Iowa? If not, what method should be utilized to ensure that the amount of the bond is adequate?

8. To what degree should the manufacturing process for the merchandise be complete and the merchandise ready for shipping?

9. Should the Insurance Division require that establishments place funds in trust equal to the amount they will incur for the delivery of the merchandise and any installation costs, if applicable? If the cost of delivery is guaranteed by the storage facility, should that facility be required to place funds in trust for the cost of delivery?

10. In the event that it is not currently practical to finish the merchandise, should the Insurance Division require that an appropriate amount to fund finishing costs be placed in trust by either the establishment or the storage facility?

11. In the event that the Insurance Division requires trust accounts for certain anticipated expenses (finishing, delivery, installation, etc.), what process or method should be utilized to certify or establish the required amounts that must be deposited in trust?

The Insurance Division has concluded that these rules may have an impact on small business pursuant to Iowa Code section 17A.31.

These rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

There will be a public hearing on January 7, 1991, at 10 a.m. in the Sixth Floor Conference Room of the Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319. Any interested person may make written suggestions or comments on the proposed rules on or before January 1, 1991. Persons who wish to present their views orally at the hearing should so advise the Securities Bureau in advance by telephoning (515) 281-4441 so that adequate time can be scheduled.

Written comments on the proposed rules should be addressed to: Dennis Britson, Iowa Securities Bureau, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code chapter 523A and 1990 Iowa Acts, chapter 1213, sections 13 to 30.

The following amendments are proposed:

ITEM 1. Insert the following subtitle immediately prior to rules appearing in **191—Chapter 19**:

RULES OF GENERAL APPLICABILITY

ITEM 2. Amend rule 191—19.1(523A) as follows:

191—19.1(523A,*73GA, ch 1213*) Purpose. The following chapter is promulgated for the purpose of administering the provisions of ~~1987 Iowa Acts, House File 614,~~ *Iowa Code chapter 523A*, the Iowa prearranged funeral contracts Act, relating to sales of funeral services, funeral merchandise, or a combination of funeral services and merchandise, pursuant to a prearranged funeral contract *and 1990 Iowa Acts, chapter 1213, sections 13 to 30, the Iowa sales of cemetery merchandise Act, relating to the sale of cemetery merchandise.*

ITEM 3. Amend rule 191—19.2(523A) as follows:

191—19.2(523A, *73GA, ch 1213*) Definitions. As used in the ~~Act~~ *Acts* and this chapter, unless the context otherwise requires:

~~"Acts"~~ *"Acts"* means ~~1987 Iowa Acts, House File 614,~~ *Iowa Code chapter 523A*, the Iowa prearranged funeral contracts Act *and 1990 Iowa Acts, chapter 1213, sections 13 to 30, the Iowa sales of cemetery merchandise Act.*

"Beneficiary" means any natural person specified or included in a prearranged funeral contract, upon whose death funeral services, funeral merchandise, *cemetery merchandise* or a combination of funeral services and merchandise shall be performed, provided, or delivered.

"Burial account" means an account established at a financial institution for the purpose of funding the future purchase of funeral services, funeral merchandise, cemetery merchandise, or combination of funeral services and merchandise.

"Cemetery merchandise" means grave markers, tombstones, ornamental merchandise, and monuments if the agreement does not require installation within 12 months of the purchase.

"Commissioner" means the commissioner of insurance for the state of Iowa.

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"Establishment" means each business facility located in or doing business in the state of Iowa (which includes issuing or performing wholly or in part in the state of Iowa any incident of a prearranged funeral contract) that sells, promotes or offers funeral services, funeral merchandise, cemetery merchandise, or a combination of funeral services and merchandise on a preneed basis or which provides funeral services or funeral merchandise pursuant to a prearranged funeral contract.

"Financial institution" means a state or federally insured bank, savings and loan association, ~~or~~ credit union, *trust department thereof, or a trust company* authorized to do business in the state of Iowa.

"Funds" means money paid pursuant to a prearranged funeral contract.

"Funeral merchandise" means one or more types of personal property to be used at the time of the final disposition of a dead *human* body, including but not limited to clothing, caskets, vaults, and interment receptacles.

"Funeral services" means one or more services to be provided at the time of the final disposition of *a* dead human body, including but not limited to services necessarily or customarily provided in connection with a funeral, or services necessarily or customarily provided in connection with the interment, entombment, or cremation of a dead human body, or a combination of services.

"Insolvent" means the inability to pay debts, as they become due, in the usual course of business.

"Interest or income" shall mean, for the purpose of determining pursuant to Iowa Code section 523A.1 ~~as amended by 1987 Iowa Acts, House File 614~~, the amount of interest or income earned on amounts deposited in trust, the aggregate of any payments received by the trust for the use of its money (interest earned on loans, bank deposits, etc.) and any income realized with respect to trust assets (gains from the sale of stock, dividends, etc.) net of losses and expenses and shall not include any appreciation or depreciation in the value of assets which does not affect the trust's current tax liability, which are commonly known as "paper" gains or losses.

"Person" means an individual, corporation, trust, partnership or association, or any other legal entity.

"Prearranged funeral contract" means an oral or written agreement to furnish, upon the future death of a person named or implied in the agreement, funeral services, funeral merchandise, *cemetery merchandise* or a combination of funeral services and merchandise.

"Purchaser" means any person (the person may or may not be a beneficiary) who purchases funeral services, funeral merchandise, *cemetery merchandise* or a combination of funeral services and merchandise on a preneed basis.

"Seller" means any ~~person residing~~ *establishment located* in or doing business in the state of Iowa (which includes issuing or performing wholly or in part in the state of Iowa any incident of a prearranged funeral contract) ~~who~~ *that* sells, promotes or offers funeral services, funeral merchandise, *cemetery merchandise* or a combination of funeral services and merchandise on a preneed basis *and includes any establishment identified under a burial account as the establishment which will provide funeral services, funeral merchandise, cemetery merchandise or a combination of funeral services and merchandise.*

"Trustee" means any state or federally insured bank, savings and loan, credit union, or trust department thereof, *or trust company authorized to conduct business in this state,* to the extent that the financial institution has been granted trust powers under the laws of this state or the United States, who holds funds pursuant to a trust agreement. The term "trustee" shall not include:

1. ~~A seller~~ *An establishment*; or

2. Anyone employed by or directly involved with the ~~seller~~ *establishment* in the ~~seller's~~ *establishment's* business of selling prearranged funeral plans.

"Trust funds" means funds deposited by ~~a seller~~ *an establishment* in a financial institution.

"Trust instrument" means the document(s) pursuant to which a trustee receives, holds, invests, and disburses trust funds.

ITEM 4. Amend rule 191—19.3(523A) as follows:

191—19.3(523A,*73GA, ch 1213*) Titles. The ~~Act~~ *Acts* may be cited as the "Iowa prearranged funeral contracts *Act" and the "Iowa sales of cemetery merchandise* Act."

ITEM 5. Amend rule 191—19.4(523A) as follows:

191—19.4(523A,*73GA, ch 1213*) Scope.

19.4(1) This chapter shall apply to any agreement, oral or written, made by any person to furnish, upon the future death of a person named or implied in the agreement, funeral services, or funeral merchandise, *cemetery merchandise or a combination of funeral services and merchandise sold on a preneed basis, which shall include burial accounts if the account records or related agreements identify the establishment which will provide the funeral services, funeral merchandise or cemetery merchandise.*

19.4(2) This chapter shall apply when an agreement is made in this state or an offer to sell a prearranged funeral contract is made or accepted in this state. An offer to sell is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offerer to this state and received by the offeree in this state.

ITEM 6. Rescind rule **191—19.5(523A).**

ITEM 7. Amend rule 191—19.10(523A) as follows:

191—19.10(523A,*73GA, ch 1213*) Administration.

19.10(1) The ~~Act~~ *Acts* shall be administered by the commissioner of insurance of the state of Iowa. As deputy administrator, the Iowa superintendent of securities shall be the principal operations officer responsible to the commissioner for the routine administration of the ~~Act~~ *Acts* and management of the administrative staff of the Iowa securities bureau.

19.10(2) In the absence of the commissioner, whether because of vacancy in the office, by reason of absence, physical disability or other cause, the superintendent of securities shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the superintendent of securities any or all of the functions assigned to the commissioner in the ~~Act~~ *Acts.*

19.10(3) The superintendent of securities shall employ officers, attorneys, accountants, investigators, and other employees as shall be needed for the administration of the ~~Act~~ *Acts.*

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19.10(4) Upon request the commissioner may honor requests from interested persons for interpretative opinions.

ITEM 8. Amend rule 191—19.11(523A) as follows:

191—19.11(523A,*73GA, ch 1213*) Misrepresentations of government approval. It is unlawful for any permit holder under the ~~Act~~ *Acts* to represent or imply in any manner that the permit holder has been sponsored, recommended, or approved or that the permit holder's abilities or qualifications have in any respect been passed upon by the Iowa securities bureau, the Iowa insurance division or the state of Iowa.

ITEM 9. Amend rule 191—19.12(523A) as follows:

191—19.12(523A,*73GA, ch 1213*) Public access to hearings. Every hearing in an administrative proceeding shall be open to the public.

ITEM 10. Amend rule 191—19.13(523A) as follows:

191—19.13(523A,*73GA, ch 1213*) Public access to records.

19.13(1) The commissioner shall keep a register of all applications for permits which are or have been effective under the ~~Act~~ *Acts* and all denial, suspension, or revocation orders which have been entered under the ~~Act~~ *Acts*. The register shall be open for public inspection.

19.13(2) Upon request and for *a* reasonable ~~charges~~ *fee not to exceed the cost of providing the service* the commissioner shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document which is a matter of public record. In any administrative proceeding or prosecution under the ~~Act~~ *Acts*, any copy so certified is prima facie evidence of the contents of the entry or document certified.

19.13(3) All records maintained by the commissioner pursuant to Iowa Code subsection 523A.2(1) as amended by ~~1987~~ *1990* Iowa Acts, ~~House File 614,~~ *chapter 1213, and 1990 Iowa Acts, chapter 1213, section 14,* shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

19.13(4) The commissioner and the attorney general may keep confidential certain information obtained in the course of an investigation or audit pursuant to Iowa Code chapter 22 as follows:

a. Information consisting of records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body;

b. Information consisting of a peace officer's investigative report; provided, however, that the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual; or

c. Information consisting of a report to a governmental agency, which, if released, would give advantage to competitors and serve no public purpose.

d. Information consisting of communications not required by law, rule, or procedure that are made to the insurance division or to any of its employees by identified persons outside of government, to the extent that the division could reasonably believe that those persons would be discouraged from making them if they were available for general public examinations. Notwithstanding this provision:

(1) The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

(2) Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

(3) Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the insurance division to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the insurance division to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

19.13(5) If the commissioner or the attorney general determines that it is necessary or appropriate, in the public interest, the commissioner or attorney general may share information with other administrators, regulatory authorities, or governmental agencies or may publish information concerning a violation of the ~~Act~~ *Acts*, this chapter, or an order issued pursuant to the ~~Act~~ *Acts* or this chapter.

ITEM 11. Amend rule 191—19.14(523A) as follows:

191—19.14(523A, *73GA, ch 1213*) Procedure for public complaints.

19.14(1) The ~~Iowa attorney general~~ *commissioner* may receive and process each complaint made against any permit holder, or any unlicensed individual or entity, which alleges certain acts or practices which may constitute one or more violations of the provisions of Iowa Code chapter 523A as amended by ~~1987~~ *1990* Iowa Acts, ~~House File 614,~~ *chapter 1213,* the Iowa prearranged funeral contracts Act *or 1990 Iowa Acts, chapter 1213, sections 13 to 30, the Iowa sales of cemetery merchandise Act.* Any member of the public or the profession, or any federal, state, or local officials, may make and file a complaint with the ~~attorney general~~ *commissioner.* Complaints may be received from sources outside the state of Iowa and processed in the same manner as those originating in Iowa.

19.14(2) Complaints may be mailed or delivered to the following address: *Regulated Industries Unit, Iowa Securities Bureau,* ~~Department of Justice, Consumer Protection Division, Hoover~~ *Lucas State Office* Building, Second Floor, ~~1300 East Walnut,~~ Des Moines, Iowa 50319.

19.14(3) All complaints shall be made in writing and shall fully identify the complainant by name and address. If required by the ~~consumer protection division~~ *commissioner,* complaints shall be made on forms prescribed and provided by that division.

19.14(4) Oral or telephone communications will not be considered or processed as complaints. However, any member of the administrative staff of the ~~Iowa attorney general~~ *commissioner* may make and file a complaint

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based upon information and belief, in reliance upon oral, telephone, or written communications received by the office of the ~~Iowa attorney general~~ *commissioner*.

ITEM 12. Amend rule 191—19.15(523A) as follows:

191—19.15(523A,*73GA, ch 1213*) Compliance with other laws.

19.15(1) All prearranged funeral contracts must conform to Iowa Code chapter 82, the door-to-door sales Act, as follows:

a. Contract. Every seller shall furnish the buyer with a fully completed receipt or copy of any contract pertaining to the sale of *cemetery merchandise*, funeral merchandise or *funeral* services at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer and in boldfaced type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

b. to d. No change.

19.15(2) In the event of a *consumer* credit sale, a prearranged funeral contract must conform to Iowa Code chapter 537, the Iowa consumer credit code.

ITEM 13. Amend rule 191—19.16(523A) as follows:

191—19.16(523A, *73GA, ch 1213*) Fees. The following fees are hereby established by the commissioner.

~~1.~~	~~Application packet~~	~~$ 5.00~~
1 2.	Certification	$ 5.00
2 3.	Duplicate ~~Duplicative~~ permit fee	$ 5.00
3 4.	Establishment permit fee	$50.00
4 5.	Filing fee (Establishment's annual report)	$10.00 per contract
5 6.	Filing fee (Establishment's initial report)	$25.00
6 7.	Name change	$10.00
7 8.	Photocopies of records (per page)	$ 0.50
8 9.	Printout of permit holders	$10.00
*9*10.	Sales permit fee	$ 5.00

All fees are nonrefundable.

ITEM 14. Amend rule 191—19.17(523A) as follows:

191—19.17(523A,*73GA, ch 1213*) Forms — *content.*

~~19.17(1) Content.~~ Copies of all necessary forms and instructions may be obtained from the Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319. The list which follows describes the forms which members of the public shall use when dealing with the bureau, unless waived by the commissioner, and computer-generated information may be accepted. Each direction shall be complied with and each question in the forms shall be answered in the same manner as if the forms and instructions were embodied in these rules.

FORM NUMBER	DESCRIPTION
P-1	Application For Establishment Permit. Used by applicants when filing for an establishment permit under the ~~Act~~ *Acts*.
P-2	Application For Sales Permit. Used by applicants when filing for a sales permit under the ~~Act~~ *Acts*.
P-3	Establishment's Initial Report. Transitional report must be filed before an application for an establishment permit under the ~~Act~~ *Acts*.
P-4	Establishment's Annual Report. Used by establishments when filing their annual report under the ~~Act~~ *Acts*.
P-5	Financial Institutions Annual Report. Used by financial institutions when filing their annual report under the ~~Act~~ *Acts*.
P-6	Surety Bond. Required form of surety bond that a seller may file with the commissioner in lieu of the trust fund required by Iowa Code sections 523A.1 and 523A.2 as amended by ~~1987~~ *1990* Iowa Acts, ~~House File 614~~ *chapter 1213 or 1990 Iowa Acts, chapter 1213, sections 13 and 14*.
P-7	Establishment Permit.
P-8	Sales Permit.

~~19.17(2) Cost. The forms listed above are available upon request at reasonable charges prescribed by the commissioner. An application packet, containing one copy of each of the Act, this chapter and all of the application and report forms, shall be available for a $5 charge. Individual forms may be acquired as follows:~~

~~FORM NUMBER~~	~~QUANTITY~~	~~COST~~
~~P-1~~	~~10~~	~~$1.00~~
~~P-2~~	~~10~~	~~$1.00~~
~~P-3~~	~~10~~	~~$1.00~~
~~P-4~~	~~10~~	~~$1.00~~
~~P-5~~	~~10~~	~~$1.00~~
~~P-6~~	~~10~~	~~$1.00~~

19.18 and **19.19** Reserved.

ITEM 15. Amend rule 191—19.20(523A) as follows:

191—19.20(523A,*73GA, ch 1213*) Establishment permits. A person shall not engage in the business of selling, promoting, or otherwise entering into agreements to furnish, upon the future death of a person named or implied in the agreement, funeral services, property for use in funeral services, or funeral or *cemetery* merchandise until the person has procured an establishment permit from the Iowa securities bureau. A permit must be held for each location.

ITEM 16. Amend rule 191—19.21(523A) as follows:

191—19.21(523A, *73GA, ch 1213*) Sales permits. An individual (including anyone selling insurance) shall not offer, advertise, sell, promote, or otherwise engage in the solicitation of an agreement to furnish, upon the future death of a person named or implied in the agreement funeral services, ~~or~~ funeral merchandise *or cemetery merchandise* without a sales permit from the Iowa securities bureau. If the individual is an employee or agent of more than one establishment, an additional

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sales permit must be acquired for each establishment unless the establishments are affiliated by direct or indirect common control.

ITEM 17. Amend rule 191—19.22(523A) as follows:

191—19.22(523A,*73GA, ch 1213*) Denial, suspension or revocation of permits.

19.22(1) Denial of establishment permit. The commissioner may refuse to issue an establishment permit if the commissioner finds that the applicant:

a. Has been convicted of a criminal offense involving dishonesty or false statement~~, or~~;

b. Cannot provide the funeral services, ~~or~~ funeral *or cemetery* merchandise that the applicant purports to sell~~.~~;

c. The applicant is insolvent; or

d. The applicant has failed to comply with any terms or conditions of this chapter and such failure is deemed by the commissioner to substantially impede the applicant's ability to abide by the provisions of this chapter.

19.22(2) Revocation of sales permit. The commissioner may revoke a sales permit if the commissioner finds:

a. That the permit holder is not an employee of an establishment which holds a permit pursuant to the ~~Act~~ *Acts*,

b. That the permit holder has been convicted of a criminal offense involving dishonesty or false statement, or

c. That the establishment of which the permit holder is an employee or agent cannot provide the funeral services or merchandise the establishment purports to sell.

19.22(3) The commissioner may, pursuant to Iowa Code chapter 17A, the Iowa administrative procedure Act, suspend or revoke any permit issued pursuant to the ~~Act~~ *Acts* if the commissioner finds any of the following:

a. The permit holder has violated any provisions of the ~~Act~~ *Acts* or this chapter or any other state or federal law applicable to the conduct of the permit holder's business.

b. Any fact or condition exists which, if it had existed at the time of the original application for the permit, would have warranted the commissioner's refusing originally to issue the permit.

c. The permit holder is found upon investigation to be insolvent, in which case the permit shall be revoked immediately.

d. The permit holder, for the purpose of avoiding the trusting requirement for funeral services under Iowa Code section 523A.1, as amended, attributes amounts paid pursuant to the agreement to funeral merchandise *or cemetery merchandise* that is delivered under Iowa Code section 523A.1, as amended, *or 1990 Iowa Acts, chapter 1213, section 13,* rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of funeral merchandise *or cemetery merchandise* to be delivered pursuant to *Iowa Code* section 523A.1, as amended, *or 1990 Iowa Acts, chapter 1213, section 13,* than the services are regularly and customarily sold for when not sold in conjunction with funeral merchandise *or cemetery merchandise* is evidence that the permit holder is acting with the purpose of avoiding the trusting requirement for funeral services under section 523A.1.

19.22(4) Temporary suspension. The commissioner may, on good cause shown, suspend any permit for a period not exceeding 30 days, pending investigation.

19.22(5) Procedure. Chapter 3 of the Iowa insurance division's administrative rules printed in the Iowa Administrative Code and entitled "Administrative Hearings of Contested Cases," shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, reviews and licensing. *See 191 IAC 3.1 (17A, 502, 505) et seq.*

ITEM 18. Amend rule 191—19.23(523A) as follows:

191—19.23(523A, *73GA, ch 1213*) Permits not transferable.

1. Permits shall not be transferable.

2. An establishment permit holder selling a business shall cancel the permit, and the purchaser of the business shall apply for a new permit in the purchaser's own name.

ITEM 19. Amend 191—Chapter 19 by adding the following new rule:

191—19.24(523A, 73GA, ch 1213) Certificates of authority.

19.24(1) The commissioner may issue certificates of authority to confirm the existence of an effective establishment permit. The commissioner may set renewal dates of not less than two years from the effective date for the initial certificates of authority, after which certificates of authority shall be renewable biennially on or before January 1.

19.24(2) An applicant for a certificate of authority shall submit to the commissioner an application on a form provided by the commissioner. The application shall include at a minimum the following information:

a. The name and location of the applicant's business.

b. The name and location of the establishment that will provide the funeral services, funeral merchandise or cemetery merchandise.

c. The name and address of each owner, officer or other official of the applicant's business, or in the event that the applicant is a corporation, the names and addresses of the chief executive officer and the members of the board of directors.

d. The types of professional services, funeral merchandise or cemetery merchandise to be sold.

e. A copy of each sales agreement the permit holder will use for sales of funeral services, funeral merchandise, or cemetery merchandise under Iowa Code section 523A.1.

19.24(3) Upon a determination by the insurance division that the permit holder continues to meet the requirements of Iowa Code chapter 523A and 1990 Iowa Acts, chapter 1213, sections 13 to 30, the division shall issue a renewal certificate. The commissioner may, pursuant to Iowa Code chapter 17A, suspend any permit if the permit holder does not file for renewal of the certificate of authority with the insurance division within 30 days of the certificate of authority's expiration date.

19.25 to **19.29** Reserved.

ITEM 20. Amend rule 191—19.30(523A) as follows:

191—19.30(523A,*73GA, ch 1213*) Termination of business — records. An establishment permit holder discontinuing business shall maintain records for a

period of five years from the date of discontinuing the business, unless a release from this provision is given by the commissioner.

ITEM 21. Amend rule 191—19.31(523A) as follows:

191—19.31(523A,*73GA, ch 1213*) Records.

19.31(1) All establishments and trustees shall keep accurate accounts, books, and records concerning transactions regulated under the ~~Act~~ *Acts*.

19.31(2) An establishment's accounts, books, and records shall include:

a. Copies of all contracts;

b. The name and address of each purchaser;

c. The name of the contract beneficiary of each preneed contract;

d. The name and address of the trustee holding the trust funds received under each contract;

e. The dates and amounts of all receipts (including interest and earnings received or reported to the establishment) and expenditures for each purchaser; and

f. The dates and amounts of any disbursements relating to funds held in trust.

19.31(3) A financial institution's accounts, books, and records shall include:

a. The name of the establishment;

b. The names of the contract beneficiaries;

c. The amount and date of receipt of all funds received from the establishment; and

d. A record of the amount and date of interest or income deposited in trust and all disbursements.

19.31(4) An establishment shall retain all required accounts, books, and records pertaining to each prearranged funeral contract for at least two years after the date of performance or termination, unless a release from this provision is given by the commissioner.

19.31(5) Inspection.

a. The accounts, books, and records pertaining to a purchaser's prearranged funeral contract shall be available for inspection by purchasers during normal business hours at the establishment's place of business.

b. All establishments and trustees shall make all accounts, books, and records concerning transactions regulated under the ~~Act~~ *Acts* available to the commissioner or the attorney general upon request, for the purpose of examination.

ITEM 22. Amend rule 191—19.32(523A) as follows:

191—19.32(523A,*73GA, ch 1213*) Initial reports. All establishments shall, at least 30 days prior to filing their first establishment permit application, file an initial report with the Iowa securities bureau on the form prescribed by the commissioner.

ITEM 23. Amend rule 191—19.33(523A) as follows:

191—19.33(523A,*73GA, ch 1213*) Annual reports.

19.33(1) All holders of an establishment permit, trustees and financial institutions shall, no later than March 1 of each year, file an annual report with the Iowa securities bureau on the forms prescribed by the commissioner. Any person holding more than one establishment permit, as the result of multiple locations, may elect to file only one annual report.

19.33(2) Every establishment filing an annual report shall pay a filing fee of $10 per prearranged funeral contract sold during the year covered by the report.

ITEM 24. Rescind rule **191—19.40(523A)**.

ITEM 25. Amend rule 191—19.41(523A) to read as follows:

191—19.41(523A,*73GA, ch 1213*) Trust instruments.

19.41(1) Each instrument shall specify:

a. The trustee's duties in conformance with the provisions of the ~~Act~~ *Acts* and this chapter;

b. The basis for determining the trustee's fee (if any); and

c. Any other appropriate terms of trusteeship.

19.41(2) The commissioner may require alterations or additions to a trust agreement if it is not in accord with the provisions of this chapter.

ITEM 26. Amend rule 191—19.42(523A) as follows:

191—19.42(523A,*73GA, ch 1213*) Investment of trust funds.

19.42(1) A financial institution acting as a trustee of trust funds under this chapter shall invest the funds in accordance with applicable law. In so investing, the trustee shall exercise the judgment and care under the circumstances then prevailing, which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to the speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

19.42(2) Subject to contractual agreement between the parties, the trustee may receive a reasonable fee for services rendered as a trustee from the trust funds.

ITEM 27. Amend rule 191—19.43(523A) as follows:

191—19.43(523A,*73GA, ch 1213*) Bond in lieu of trust fund. An establishment permit holder may, in lieu of the trust fund required by *Iowa Code sections 523A.1 and 523A.2* ~~1987 Iowa Acts, House File 614~~, file with the commissioner a surety bond, pursuant to *Iowa Code* section 523A.7 *or 1990 Iowa Acts, chapter 1213, section 17*, that is issued by a surety company authorized to do business in this state and that is conditioned on the faithful performance by the seller of agreements subject to the ~~Act~~ *Acts*.

ITEM 28. Amend 191—Chapter 19 by adding the following new rule:

191—19.45(523A, 73GA, ch 1213) Burial accounts. If a burial account identifies, either in the account records or in related agreements, the establishment which will provide the funeral services, funeral merchandise or cemetery merchandise, the account records or the related agreement must contain a statement signed by an authorized representative of the establishment agreeing to furnish that funeral merchandise and services or cemetery merchandise upon the death of a person named in the burial account's records or the related agreement. The burial account shall not identify a specific establishment as payee unless the account records or the related agreement, if any, contains the signature of an authorized representative of the establishment and, if the agreement is for funeral services as defined in Iowa Code chapter 156, provided by a funeral director licensed to deliver those services.

ITEM 29. Amend rule 191—19.50(523A) as follows:

191—19.50(523A,*73GA, ch 1213*) Orders. The commissioner may, by order, take actions which are necessary or appropriate for the protection of purchasers and to implement the purposes of the ~~Act~~ *Acts*.

ITEM 30. Amend rule 191—19.51(523A) as follows:

191—19.51(523A,*73GA, ch 1213*) Investigations and subpoenas.

19.51(1) The commissioner or the attorney general may:

a. Make private and public investigations within or outside of this state as the commissioner or the attorney general deems necessary to determine whether a person has violated any provision of the ~~Act~~ *Acts* or any rule or order hereunder or to aid in the enforcement of the ~~Act~~ *Acts*;

b. Require or permit any person to file a statement, under oath or otherwise as the commissioner or the attorney general determines as to all the facts and circumstances concerning the matter to be investigated; and

c. Publish information concerning any violation of the ~~Act~~ *Acts* or any rule or order hereunder.

19.51(2) For the purpose of any investigation or proceeding under the ~~Act~~ *Acts*, the commissioner, the attorney general, or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

ITEM 31. Amend rule 191—19.52(523A) as follows:

191—19.52(523A,*73GA, ch 1213*) Audits.

19.52(1) The commissioner shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a permit holder, trustee or financial institution for the purpose of verifying compliance with the ~~Act~~ *Acts* and this chapter. When a permit holder fails or refuses to produce the records for examination when requested by the commissioner, the commissioner shall have the authority to require, by a subpoena, the attendance of the permit holder, or its representatives, and any other witness(es) whom the commissioner deems necessary or expedient to examine and compel the permit holder and witnesses to produce books, papers, records, memoranda or documents relating in any manner to compliance with the ~~Act~~ *Acts* or this chapter.

19.52(2) Unless waived by the commissioner, the audit shall be paid for by the seller(s), and a copy of the report of audit shall be delivered to the commissioner and to the seller(s). In the event of an audit involving more than one seller the cost shall be prorated among the sellers on any reasonable basis determined by the commissioner.

19.53 to **19.59** Reserved.

ITEM 32. Insert the following subtitle, rescind rule 191—19.60(523A), and insert in lieu thereof the following new rules:

RULES THAT APPLY ONLY TO
IOWA CODE CHAPTER 523A

191—19.60(523A) Funds deposited at financial institutions. Unless a surety bond has been filed with the commissioner, the related merchandise has been delivered or warehoused, or the services and merchandise have been insurance-funded, at least 80 percent of all funds shall be deposited at a financial institution no later than 15 days after the close of the month of receipt of the funds in a manner consistent with one of the following:

1. The payments will be deposited directly by the purchaser in an irrevocable interest-bearing burial account in the name of the purchaser;

2. The payments will be deposited directly by the purchaser in a separate account in the name of the purchaser. The account may be made payable to the seller on the death of the purchaser or the designated beneficiary, provided that, until death, the purchaser retains the exclusive power to hold, manage, pledge, and invest the funds in the account and may revoke the trust and withdraw the funds, in whole or in part, at any time.

3. The payments will be deposited by the purchaser or the seller in a separate burial trust account in the name of the purchaser, as trustee, in trust for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the person for whose benefit the funds were paid. The depositor shall notify the financial institution of the existence and terms of the trust, including at a minimum the name of each party to the agreement, the name and address of the trustee, and the name and address of the beneficiary. The account may be made payable to the seller upon the death of the designated beneficiary; or

4. The payments will be deposited in the name of the trustee, as trustee, under the terms of a master trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund for the benefit and protection of the person for whose benefit the funds were paid.

191—19.61(523A) Consumer price index adjustment.

19.61(1) Pursuant to Iowa Code section 523A.1, the commissioner sets the following amounts for the purpose of calculating the amount of interest or income earned on amounts deposited in trust that must remain trust funds as an adjustment for inflation:

1989 .....4.6%
1988 .....4.4%
1987 .....4.4%

19.61(2) The calculation of the consumer price index adjustment shall be on an annualized basis. The resulting amount of interest and income deemed to be necessary to adjust for inflation shall become part of the trust principal and shall be used for purposes of calculating the consumer price index adjustment in subsequent years.

19.61(3) Any amount of income or interest that could be withdrawn in the year of calculation may be withdrawn in a subsequent year. However, until the time such amounts are withdrawn, they shall become part of the trust principal for purposes of calculating the consumer price index adjustment in subsequent years.

19.61(4) Any amount of income or interest that could not be withdrawn in the year of the calculation shall become part of the trust principal and shall be used for purposes of calculating the consumer price index adjustment in subsequent years.

ITEM 33. Amend 191—Chapter 19 by inserting the following subtitle and the following new rule:

RULES THAT APPLY ONLY TO
1990 IOWA ACTS, CHAPTER 1213,
SECTIONS 13 to 30

191—19.70(73GA, ch 1213) Funds deposited at financial institutions.

19.70(1) Unless a surety bond has been filed with the commissioner, the related merchandise has been

delivered or warehoused, or the services and merchandise have been insurance-funded, at least 125 percent of the wholesale cost of the cemetery merchandise, based upon the current advertised prices available from a manufacturer or wholesaler who has delivered the same or substantially the same type of merchandise to the establishment during the last 12 months, shall be deposited at a financial institution no later than 15 days after the close of the month of receipt of the funds in a manner consistent with one of the following:

a. The payments will be deposited directly by the purchaser in an irrevocable interest-bearing burial account in the name of the purchaser;

b. The payments will be deposited directly by the purchaser in a separate account in the name of the purchaser. The account may be made payable to the seller on the death of the purchaser or the designated beneficiary, provided that, until death, the purchaser retains the exclusive power to hold, manage, pledge, and invest the funds in the account and may revoke the trust and withdraw the funds, in whole or in part, at any time.

c. The payments will be deposited by the purchaser or the seller in a separate burial trust account in the name of the purchaser, as trustee, in trust for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the person for whose benefit the funds were paid. The depositor shall notify the financial institution of the existence and terms of the trust, including at a minimum the name of each party to the agreement, the name and address of the trustee, and the name and address of the beneficiary. The account may be made payable to the seller upon the death of the designated beneficiary; or

d. The payments will be deposited in the name of the trustee, as trustee, under the terms of a master trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund for the benefit and protection of the person for whose benefit the funds were paid.

19.70(2) The establishment shall keep copies of all price advertisements upon which the establishment relies to determine the wholesale cost. The copies of price advertisements so maintained shall be made available to the commissioner upon request. The establishment shall review wholesale costs no less than annually and make additional deposits as necessary to ensure that the amount held in trust is always equal to or in excess of 125 percent of the wholesale cost of the merchandise. The establishment and the manufacturer or wholesaler upon whose price the seller relies to determine the wholesale cost shall not be commonly owned or affiliated.

19.70(3) Interest or income earned on amounts deposited in trust under this rule shall remain in trust under the same terms and conditions as the payments made under the agreement and purchasers shall have the right to a total refund of principal and interest or income in the event of nonperformance.

19.70(4) If an establishment deposits additional funds in order to comply with the requirements of subrule 19.70(2), those additional funds may be withdrawn at a later time if the withdrawal will not result in a violation of the requirements of subrule 19.70(2) at the time of that withdrawal. Furthermore, all withdrawals must be reported to the commissioner on the annual report.

ARC 1563A

INTERNATIONAL NETWORK ON TRADE (INTERNET)[497]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 18B.9(21), the International Network on Trade (INTERNET) gives Notice of Intended Action to adopt Chapter 1, "Organization and Operation," Iowa Administrative Code.

INTERNET was created by the Iowa Legislature in 1989 to conduct long-range market research which identifies geographical opportunities in the global marketplace for Iowa producers, to recommend international trade development policies, strategies, and tactics to Iowa's governmental and business policymakers, and to facilitate the delivery of information, resources, and programs to Iowa businesses with emphasis on assisting small- to medium-sized businesses.

Any interested person may make written suggestions or comments on the proposed chapter prior to Thursday, January 3, 1991. Such written materials should be directed to the Executive Director, INTERNET, 312 Eighth Street, Suite 100, Des Moines, Iowa 50309, FAX (515)246-6091.

There will be a public hearing at 10 a.m. on Thursday, January 3, 1991, at 312 Eighth Street, Suite 120, Des Moines, Iowa. At this time persons may present their views 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 rules.

This chapter is intended to implement Iowa Code Supplement chapter 18B.

The following chapter is adopted:

CHAPTER 1
ORGANIZATION AND OPERATION

497—1.1(18B) Mission statement. The International Network on Trade (INTERNET) was established pursuant to Iowa Code Supplement chapter 18B to conduct long-range market research which identifies geographical opportunities in the global marketplace for Iowa producers, to recommend international trade development policies, strategies, and tactics to Iowa's governmental and business policymakers, and to facilitate the delivery of information, resources, and programs to Iowa businesses with emphasis on assisting small- to medium-sized businesses.

497—1.2(18B) Organization and operation.

1.2(1) Authorized corporation. INTERNET was established as a nonprofit corporation under Iowa Code chapter 504A pursuant to Iowa Code Supplement chapter 18B and is not a state agency except for the purposes of Iowa Code chapter 17A.

1.2(2) INTERNET board. INTERNET is governed by an 18-member board of directors composed of six business members active in international trade, one

INTERNATIONAL NETWORK ON TRADE (INTERNET)[497] *(cont'd)*

representative from each of the three public state universities, three representatives from Iowa's community colleges, three representatives from Iowa's private colleges, one representative each from the Iowa department of economic development, Iowa department of agriculture and land stewardship, and the agricultural products advisory council (ex officio).

a. The board meets quarterly or more often as needed. The board's operation is governed by its bylaws, copies of which may be obtained from its principal office of doing business.

b. The board must approve any contract or agreement committing INTERNET to the substantial expenditure of INTERNET assets.

1.2(3) Administrative officer and address. The day-to-day operation of INTERNET is under the direction of INTERNET'S executive director at 312 Eighth Street, Suite 100, Des Moines, Iowa 50309. The telephone number is (515)246-6176.

1.2(4) Operations. INTERNET operates with a small staff but purchases many services to fulfill its mission. While INTERNET may award certain grants for training Iowans and enhancing their skills in international trade development, INTERNET primarily uses its available project dollars to purchase services through solicited or unsolicited proposals. To respond to rapidly changing global conditions and opportunities for Iowa, INTERNET welcomes unsolicited proposals for market research projects which would benefit Iowa businesses.

1.2(5) Memberships. INTERNET solicits business memberships to help defray some of the costs of its market research activities. Information concerning such memberships may be obtained from its principal office.

497—1.3(18B) Definitions of terms for INTERNET operations.

"Competitive basis" means a process for awarding grants as defined below which includes notification to the general public and to qualified Iowa institutions or companies about the scope of the program sought by INTERNET, the process for application, and the deadline for the application.

"Grant" means an award made by INTERNET to a party(ies) or entity(ies) for the research of or implementation of a program designed to train Iowans in the methods of international trade development.

"Purchase of service contract" means a contract entered into by INTERNET with another party(ies) or entity(ies) for the purpose of INTERNET acquiring a service.

"Request for proposal" means a letter or other written document from INTERNET requesting a party(ies) or entity(ies) to submit a written proposal to INTERNET for a purchase of service contract or grant.

"Solicited proposal" means a proposal submitted to INTERNET, in response to a request from INTERNET, which proposes a service for INTERNET and outlines the costs for such service.

"Substantial expenditure of INTERNET assets" means an amount in excess of $50,000.

"Unsolicited proposal" means a proposal submitted to INTERNET which proposes a service for INTERNET and outlines the costs for such service.

ARC 1559A

PERSONNEL DEPARTMENT[581]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Department of Personnel proposes to amend Chapter 3, "Classification"; Chapter 4, "Pay"; Chapter 5, "Recruitment, Application and Examination"; Chapter 8, "Appointments"; Chapter 9, "Probationary Period"; Chapter 12, "Grievances and Appeals"; Chapter 14, "Leave"; and Chapter 17, "Public Records and Fair Information Practices," Iowa Administrative Code.

Revisions to Chapter 3 include the following:

1. Clarifies the meaning and purpose of classification descriptions, guidelines, and position description questionnaires; and

2. Clarifies the classification review and classification appeal hearing process.

Revisions to Chapter 4 include the following:

1. Requires that a pay increase eligibility date be established for all employees who are at the maximum rate of their pay grade and who subsequently receive a promotional pay increase;

2. Allows the appointing authority to grant change in duty station pay for employee demotions;

3. Clarifies the requirement that compensatory leave may only be accumulated to a maximum of 80 hours in a fiscal year; and

4. Changes the method of compensation for call back pay.

Revisions to Chapter 5 include the following:

1. Clarifies one of the reasons for disqualifying or removing an applicant from a list of eligibles; and

2. Clarifies the purposes for conducting examinations.

Rule 581—8.3(19A) was changed to denote other possible employee statuses for project appointments; clarifies the personnel actions that may occur when project appointments expire.

Rule 581—9.1(19A) was amended to require an appointing authority to notify an employee and the director if the employee is terminated during the probationary period.

Chapter 12 was revised to note that grievance meetings are not contested cases and to identify the parameters by which an employee may choose to be represented by another employee at a grievance meeting.

Revisions to Chapter 14 include the following:

1. Permits the use of sick leave for "necessary attention" to members of the employee's immediate family; and

2. Corrects the period of time for granting premium holiday pay for overtime-covered employees.

Revisions to Chapter 17 include the following:

1. Requires a person to sign a certified statement or affidavit when requesting access to a confidential record.

2. Requires the custodian of record to make reasonable efforts to notify any person who is a subject of that record and allow that person a reasonable opportunity to seek an injunction under Iowa Code section 22.8.

PERSONNEL DEPARTMENT[581] *(cont'd)*

Interested persons may submit written comments on these proposed amendments through January 23, 1991, to the Director's Secretary, Iowa Department of Personnel, Grimes State Office Building, Des Moines, Iowa 50319-0150.

There will be a public hearing on Thursday, January 24, 1991, at 10 a.m. in the Grimes Conference Room, South, Grimes State Office Building, East 14th Street at Grand Avenue, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing must contact the Director's Secretary prior to the date of the public hearing in order to be scheduled for an appearance.

These rules are intended to implement Iowa Code chapter 19A.

The following amendments are proposed:

ITEM 1. Amend 581—Chapter 3 as follows.

Amend subrule 3.2(1), introductory paragraph, as follows:

3.2(1) When new job classifications are added, classification descriptions are published *by the department* as needed. They *may* contain ~~general~~ information about the job classification such as examples of duties and responsibilities assigned, knowledges, abilities and skills required, and qualifications. They may be used to give applicants a general idea about the nature of the work and the qualifications required ~~to assist them in making career choices~~. They may also be used by department staff as one of several resources in arriving at position classification decisions.

Amend subrule 3.2(2) as follows:

3.2(2) *Position* ~~Classification~~ *classification* guidelines are developed and published by the department as needed. Their purpose is to document ~~detailed~~ information about the duties and responsibilities *that may be* typically associated with a job classification or a series of job classifications. They may describe the kind and level of duties assigned, as well as the skill, effort, and working conditions associated with job performance. Where the job classification being described is one of a series, the position classification guideline may compare and contrast the similarities and differences among levels in the series.

Position classification guidelines are intended for use by department staff as one of several resources in arriving at position classification decisions. *and* ~~They~~ *they* are ~~also designed~~ *intended* to be compatible with the department's job evaluation system.

Amend subrule 3.2(3) as follows:

3.2(3) Nothing in a classification description or *position classification* guideline shall limit an appointing authority's ability to assign, *delete,* or alter the duties of a position.

Amend rule 581—3.3(19A) as follows:

581—3.3(19A) Position description questionnaires. Position description questionnaires shall be submitted to the director and kept current *on forms prescribed by the director* ~~by the appointing authority~~ for each position under ~~its~~ *an appointing authority's* jurisdiction ~~on forms prescribed by the director~~. The appointing authority shall assign duties to a position and may add *to,* ~~or~~ delete *or alter the* duties ~~from the~~ *of a* position. An updated position description questionnaire shall be submitted whenever changes in responsibilities occur that may impact the position's job classification. Position description questionnaires are a public record.

Amend subrules 3.4(2), 3.4(3), and 3.4(4) as follows:

3.4(2) The director may initiate specific or general position classification reviews. An appointing authority or an incumbent may also submit a request to the director to review a specific position's classification. Reviews shall be completed *and a tentative decision issued* within 90 calendar days after the request is received unless additional information is required *by the department.* When additional information is required, it shall be submitted ~~by the appointing authority or the incumbent~~ within 30 calendar days *following the date of the written request. Until the requested information is received, the 90-calendar-day review period shall be suspended. Upon receipt of the additional information, the* ~~90 calendar day completion~~ *review* period shall ~~begin~~ *resume. The review period shall be suspended each time additional information is requested by the department.*

3.4(3) Notice of the position classification review decision shall be given to the incumbent requesting the review and to the appointing authority. The decision shall become final unless the appointing authority or the incumbent submits a request for reconsideration. The request for reconsideration shall be in writing, state the reasons for the request *including the specific class requested,* and must be received in the department within 30 calendar days following the date the decision was issued. The final position classification decision in response to a request for reconsideration shall be issued within 30 calendar days following receipt of the request.

3.4(4) The maximum time periods at any step in the position classification review process may be extended when mutually agreed to *in writing and signed* by ~~the~~ *both* parties.

Amend rule 581—3.4(19A) by adding the following subrule.

3.4(6) The position classification review process is not a contested case.

Amend subrule 3.5(1) as follows:

3.5(1) If, following a position classification review request, a decision is not issued within the ~~prescribed~~ time limits *provided for in these rules,* or the appointing authority or the incumbent does not agree with the final position classification decision, the appointing authority or the incumbent may request a classification appeal committee hearing. *The request shall be in writing and shall be mailed to: Chair, Classification Appeal Committee, c/o Iowa Department of Personnel, Grimes State Office Building, East 14th at Grand Avenue, Des Moines, Iowa 50319-0150. The classification appeal hearing process is a contested case.*

Amend subrule 3.5(4) as follows:

3.5(4) *The* ~~Classification~~ *classification* appeal committee ~~hearings~~ *hearing* shall be scheduled within 30 calendar days following ~~the~~ receipt of ~~a~~ *the* request for a hearing unless otherwise *mutually* agreed to *in writing and signed* by the parties. *The* ~~Hearings~~ *hearing* shall be held at the Grimes State Office Building during the regular business hours of the department. The committee shall affirm or deny the job classification requested, or remand the request to the director. The committee's decision shall be issued within 30 calendar days following the close of the hearing and the receipt of any posthearing submissions. If the appeal is remanded, the director's review shall proceed as provided for in rule 581—

PERSONNEL DEPARTMENT[581] *(cont'd)*

3.4(19A). Further appeal shall be in accordance with this rule.

Amend subrule 3.5(5) as follows:

3.5(5) Decisions of the committee shall be final unless the appellant petitions ~~for a~~ *the commission to* review ~~of~~ the hearing record ~~by the commission~~. The petition must be in writing, submitted by registered mail *to: Iowa Personnel Commission, c/o Iowa Department of Personnel, Grimes State Office Building, East 14th Street at Grand Avenue, Des Moines, Iowa 50319-0150,* and postmarked within 30 calendar days following the date *that* the committee's decision was issued. The commission's review shall be solely on the record. The commission shall have the discretion to grant or deny the request for review. The appellant shall be notified of the decision to grant or deny the review within 30 calendar days following receipt of the petition by the commission. If granted, the commission's decision authority shall be to sustain the committee's decision or remand it to the director. That decision shall be made at the commission's next regularly scheduled meeting *following receipt of the petition.* If remanded, the director's review shall proceed as provided for in rule 581—3.4(19A), and copies of the director's decision shall be sent to the commissioners, *as well as the appointing authority and the incumbent.* Further appeal shall be in accordance with this rule.

Amend subrule 3.6(1) as follows:

3.6(1) Position classification changes shall become effective only after approval by the director. Position classification changes that will ~~also~~ have a ~~funding~~ *budgetary* impact shall also be approved by the department of management before becoming effective. If the department of management determines that funds are not available for the change, duties commensurate with the previous job classification shall be restored within three pay periods following that decision. Position classification changes approved by the director that are not made effective by the appointing authority within 90 days following the date approved shall be void.

Amend subrule 3.6(4) as follows:

3.6(4) In all instances of reclassification where licensure, certification, or passing a ~~performance~~ *keyboard* test is required, that requirement shall be met by the employee within the time limits set forth by the director. ~~Where~~ *If* this requirement is not met, the provisions of rule 581—11.3(19A) shall apply.

Rescind subrule **3.6(5)**.

ITEM 2. Amend 581—Chapter 4 as follows.

Amend subrule **4.5(4)**, paragraph "a," as follows:

a. The pay of an employee promoted to a class covered by a different pay plan with steps shall first be adjusted to the nearest step amount in the new pay plan that is no less than the employee's current pay. If applicable, pay shall be further adjusted in accordance with this subrule.

A new pay increase eligibility date shall be set ~~if~~ *when* the employee receives an increase in pay of at least one step or 5 percent. An employee who does not receive at least 5 percent shall retain their current eligibility date except that if the period of time until the employee's *current* eligibility date ~~in the previous class~~ exceeds the period of time required for progression *in the new pay grade,* a new pay increase eligibility date shall be set. *An employee who is at or exceeds the maximum rate of the pay grade in the previous class shall have a new pay increase eligibility date set regardless of the amount of the promotional increase in pay.*

Amend subrule **4.5(7)** by adding the following paragraph:

c. If the demotion is for the convenience of the appointing authority and involves a change in duty station beyond 25 miles, the director may approve a one-step or 5 percent increase in pay for the employee. An increase in pay given an employee as a result of a change in duty station beyond 25 miles may be granted even if it would cause the employee's base pay to exceed the maximum rate of pay for the pay grade. Rules pertaining to red-circling in subrule 4.5(17) apply to employees covered by this subrule except for those provisions pertaining to expiration. Employees are entitled to any pay adjustments for which they would otherwise be eligible. Subsequent changes in the location of the duty station may justify a request to the director to remove the extra pay previously granted under this paragraph.

Amend subrule **4.6(3)**, paragraph "c," as follows:

c. Compensatory leave may accrue to a maximum of ~~eighty~~(80) hours *each fiscal year.* Thereafter, the employee shall receive pay for overtime. Accrued compensatory leave may be paid out at the appointing authority's discretion, and when paid shall be at the regular rate of pay the employee is earning at the time of payment.

Amend rule 581—4.11(19A) as follows.

581—4.11(19A) Call back. When an overtime-covered employee is directed by the appointing authority to report to the work site for hours other than those scheduled, ~~with less than 48 hours' prior notice,~~ the employee shall be compensated for ~~the actual time worked except that the employee must be compensated for~~ a minimum of three hours ~~if the time worked is less than three hours~~. Compensation shall be based on the employee's current regular rate of pay. Compensation for call back shall either be in pay or compensatory leave ~~at the discretion of the appointing authority~~. *The employee shall choose the method of compensation except that the appointing authority may require pay.* The maximum amount of compensatory leave that may be accrued for all reasons is 80 hours. Thereafter, the employee shall receive pay. The appointing authority may pay out accrued compensatory leave at any time at the employee's regular rate of pay. ~~If call back results in the employee working overtime, compensation for those hours shall be at a premium rate, except that any hours in the pay period that have already been compensated at a premium rate for other reasons shall not be counted when determining the 40 hour base for calculating overtime.~~ *Any call back hours actually worked that cause the employee to exceed 40 paid hours in a work week shall be paid at the premium rate unless already compensated at the premium rate for other reasons. Any nonworked call back hours shall be paid at the employee's regular rate of pay. An employee shall not be paid standby for paid call back hours.* Upon separation from state employment, transfer to a different agency, or movement to a class with a different overtime designation, all accrued compensatory leave shall be paid to the employee.

To be eligible for call back compensation, the time worked may not be contiguous to the beginning or the end of the employee's *assigned* work hours.

Overtime exempt employees may be eligible to be compensated for call back at the discretion of the

PERSONNEL DEPARTMENT[581] *(cont'd)*

appointing authority with prior approval from the director.

ITEM 3. Amend 581—Chapter 5 as follows.

Amend subrule **5.2(6)**, paragraph "c," as follows:

c. ~~Has knowingly made a false statement on the application which led to erroneous qualification or to an inaccurate score.~~ *Has attempted any misrepresentation or deception in connection with the application or examination process.*

Amend rule 581—5.2(19A) by adding the following subrule:

5.2(7) Qualifications. Applicants must meet the qualifications for the class as well as any requirements necessary to meet any selective certification associated with a particular class or position as indicated in the class description.

Applicants and employees may, as a condition of the job, be required to have a current license, certificate, or other evidence of eligibility or qualification. Employees who fail to maintain this requirement shall be subject to discharge in accordance with rule 581—8.13(19A) or subrule 11.2(4).

Any fees charged to obtain and renew a license, certificate or other evidence of eligibility or qualifications shall be the responsibility of the applicant or employee unless otherwise provided by statute.

Amend subrule 5.3(1) as follows:

5.3(1) The director may conduct examinations ~~as necessary for the purpose of~~ *to determine the* ranking *of* applicants on nonpromotional eligible lists *or, in the case of keyboard tests, to determine if an applicant meets the minimum qualifications.* Unless otherwise indicated, all references to examinations in this chapter shall apply only to positions covered by merit system provisions. Possession of a valid license, certificate, registration, or work permit required by the Iowa Code or the Iowa Administrative Code in order to practice a trade or profession and issued by an appropriate authority ~~shall~~ *may* qualify as evidence of an applicant's basic skills. Where these basic skills constitute the primary requirement for job performance, the names of all applicants meeting the minimum qualifications shall be placed on the appropriate eligible list without further examination.

Amend subrule **5.4(2)**, paragraph "a," as follows:

a. Examination of persons with disabilities. Persons with disabilities may request specific examination accommodations. Persons in the certified disability program shall be exempt from ~~examination~~ *examinations used for the purpose of ranking qualified applicants on the nonpromotional list of eligibles.*

ITEM 4. Amend rule 581—8.3(19A) as follows.

581—8.3(19A) Project appointment. The director may approve a project appointment to an unauthorized position when a particular job, project, grant, contract, or other ~~temporary~~ employment situation is of limited duration or funding, provided funds are available. Certification shall be in accordance with *581*—Chapter 7 when applicable. Persons hired shall be given either probationary, intermittent, *statutory, temporary,* or permanent status according to the provisions of these rules and shall be subject to these rules and acquire benefits in accordance with ~~that~~ *the* status *assigned.* The initial appointment of an individual to any one particular project will be approved for no more than one year. The director may extend the appointment. At the expiration of the appointment an employee with permanent status ~~shall~~ *may* be transferred, demoted, or promoted to ~~a permanent~~ *an established* position or to another project appointment ~~or the employee is subject to reduction in force~~. *Otherwise, an employee covered by merit system provisions shall be subject to a reduction in force or an employee not covered by merit system provisions shall be terminated.*

Amend rule 581—8.13(19A) as follows:

581—8.13(19A) Rescinding appointments. If, after being appointed, it is found that an employee should have been disqualified or removed as provided for in subrules 5.2(6), *5.2(7),* 6.5(2), ~~paragraph~~ "d," or rule 581—7.7(19A), the director may rescind the appointment. An employee with permanent status may appeal the director's decision to the public employment relations board. The appeal must be filed within 30 calendar days after the date the director's decision was issued. Decisions by the public employment relations board constitute final agency action.

ITEM 5. Amend rule 581—9.1(19A) as follows:

581—9.1(19A) Duration. All original full-time or part-time appointments to permanent positions shall require a six-month period of probationary status. Employees with probationary status shall not be eligible for promotional certification, reinstatement upon termination, or other rights to positions ~~covered by merit system provisions~~ unless provided for in this chapter, nor have reduction in force, recall, or appeal rights. If, during the period of probationary status in a position covered by merit system provisions, the conditions change under which the employee was originally certified, the employee must be eligible for certification in accordance with subrule 7.3(2).

At least ten work days prior to the expiration of the six-month period of probationary status, the appointing authority must notify the employee, with a copy to the director, if the employee is to be terminated.

A *six-month* period of probationary status ~~of six months~~ may, at the discretion of the appointing authority with notice to the employee and the director, be required upon reinstatement, and all rules regarding probationary status shall apply during that period.

The provisions of this chapter shall apply to all executive branch employees, except employees of the board of regents, unless collective bargaining agreements provide otherwise.

ITEM 6. Amend 581—Chapter 12 as follows:

Amend rule 581—12.1(19A), introductory paragraph, as follows:

581—12.1(19A) Grievances. *The grievance procedure is an informal process. It is not a contested case.* All employees shall have the right to file grievances. ~~Employees covered by a collective bargaining agreement shall use this grievance procedure for any issue not covered by their agreement. This~~ *The* right *to file a grievance* and the grievance ~~procedures~~ *procedure* provided for in these rules shall be made known and available to employees throughout the agency by the appointing authority through well-publicized means. *Employees covered by a collective bargaining agreement may use this grievance procedure for issues that are not covered by that agreement.*

Amend subrule **12.1(4)**, by adding a new paragraph "b" as follows and relettering the current "b" and "c" as "c" and "d," respectively:

PERSONNEL DEPARTMENT[581] *(cont'd)*

b. The grievant may be represented at a grievance meeting by an employee of the grievant's choosing except where that would constitute a conflict of interest. A grievant who wishes to be represented and whose class is covered by a collective bargaining agreement may only be represented by an appointed or elected union representative from the same employee organization as the grievant. A grievant who wishes to be represented and whose class is not covered by a collective bargaining agreement may only be represented by an employee with the same bargaining status as the grievant.

ITEM 7. Amend 581—Chapter 14 as follows:

Amend subrule **14.3(11)**, paragraph "b," as follows:

b. For the temporary care of, *or necessary attention to* members of the immediate family.

This leave shall be granted at the convenience of the employee whenever possible and consistent with the staffing needs of the appointing authority.

Amend subrule 14.8(4) as follows:

14.8(4) When the holiday falls on an overtime-covered employee's scheduled workday, and the employee does not get the day off, the employee shall be compensated for the holiday in accordance with subrule 14.8(1) in addition to a premium rate for time worked. The premium rate shall be paid for hours worked during the 24-hour period between ~~12:01 a.m. to 12 p.m. (midnight)~~ *12 a.m. (midnight) through 11:59 p.m.* on the holiday. However, hours compensated at the premium rate shall not be counted as part of the 40 hours when calculating overtime pay.

When the holiday falls on an overtime-covered employee's day off, the employee shall be compensated for the holiday to a maximum of eight hours.

ITEM 8. Amend 581—Chapter 17 as follows:

Amend subrule **17.3(7)**, paragraph "b," as follows:

b. Copying and postage costs. Price schedules for regularly published records and for copies of records supplied by the ~~department~~ *agency* shall be posted in the ~~department~~ *agency*. Copies of records may be made by or for members of the public at cost as determined by and posted in the ~~department~~ *agency. Charges assessed to current employees for copying their own records shall not exceed $5 per request.* When the mailing of copies of records is requested, the actual costs of mailing may also be charged to the requester.

Amend rule 581—17.4(19A) as follows:

581—17.4(19A) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination ~~and~~ *or* copying of a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in subrule 17.3(3).

Amend subrule 17.4(2) as follows:

17.4(2) Requests. A request to review a confidential record shall be on a form provided by the department. A person requesting access to a confidential record ~~may~~ *shall* be required to sign a certified statement or affidavit enumerating the specific grounds justifying access and to provide any proof necessary to establish relevant facts.

Amend subrule 17.4(3) as follows:

17.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian ~~may~~ *shall* make reasonable efforts to notify any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is ~~practicable~~ *practical* and in the public interest, the custodian ~~may~~ *shall* give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specified period of time during which disclosure will be delayed for that purpose.

ARC 1562A

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 455G.4, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (UST Board) gives Notice of Intended Action to adopt Chapter 17, "Appeals," Iowa Administrative Code.

These rules deal with procedures on handling contested cases. In accordance with authority granted, the UST Board proposes to set forth requirements for the appeal of decisions as provided under these rules and Iowa Code chapter 17A.

Interested persons may provide written comments not later than January 7, 1991, by writing to Robb Hubbard, Administrator, UST Program, P.O. Box 9401, Sioux City, Iowa 51102.

In addition, a public hearing will be held on these rules on January 7, 1991, at 9 a.m., in the Sixth Floor Conference Room of the Lucas State Office Building, East 12th and Walnut, Des Moines, Iowa.

These rules are intended to implement Iowa Code Supplement chapter 455G.

The following rules are proposed:

CHAPTER 17

APPEALS

591—17.1(455G) Definitions. As used in this chapter:

"Administrator" means the Iowa comprehensive underground storage tank program administrator as provided for in Iowa Code Supplement section 455G.5.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

"Agency" means the UST board or the administrator, as appropriate, having statutory jurisdiction over a particular contested case.

"Benefit" means any of the benefits provided under Iowa Code Supplement chapter 455G and subject to board authority.

"Party" means a person named and admitted as a party on the appeal.

"UST board" means the Iowa comprehensive underground storage tank fund board as provided for in Iowa Code Supplement section 455G.4.

591—17.2(455G) Scope and applicability. This chapter shall govern procedures in contested cases as defined under Iowa Code chapter 17A. Contested cases include appeals from rulings made by the administrator on remedial claims as defined under Iowa Code Supplement section 455G.9, guaranteed loans as defined under section 455G.10, insurance as defined under section 455G.11, and the installer program and rules as defined under sections 455G.10 and 455G.16.

591—17.3(455G) Waiver of procedures. The parties to a contested case may, by written stipulation representing an informed mutual consent, waive any provision of this chapter or of the Iowa Code relating to contested case proceedings.

591—17.4(455G) Informal procedure prior to hearing. Any party may pursue an informal settlement of any contested case by meeting with the administrator. The request shall be in writing and shall be delivered to the administrator, with a copy for the UST board. Upon receipt of the request, all formal contested case procedures are stayed. If the informal settlement is unsuccessful, formal contested case procedures may be instituted as provided herein.

591—17.5(455G) Commencement of cases.

17.5(1) Contested case. A contested case begins when a notice of a benefit denial is delivered to a party. Mailing at the last known address shall be deemed to be sufficient for the purposes of notice. A notice of hearing will be prepared and issued by the administrator when a notice of appeal from a party is received.

17.5(2) Notice of appeal. Any party appealing an action of the administrator shall file a written notice of appeal within 30 days of receipt of notice from the administrator. The notice shall state the name and address of the appellant, identify the specific portion or portions of the action of the administrator that are being appealed, and include a short and plain statement of the reasons the specific action is being appealed.

591—17.6(455G) Notice of hearing.

17.6(1) Content. The notice of hearing shall contain:

a. The names of the parties,

b. A statement of the time, place and nature of the hearing,

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

d. A reference to the particular section of the statutes and rules involved,

e. A short and plain statement of the matters asserted, and

f. The time within which a petition answer must be filed.

17.6(2) Delivery. Delivery of the notice of hearing shall be by ordinary mail.

591—17.7(455G) Presiding officer — administrative law judges. Upon receipt of an appeal from the aggrieved party by the administrator, notice to the department of insurance for assignment of an administrative law judge, or, if not available, to the department of personnel for assignment shall be made by the administrator. The administrative law judge assigned shall be the presiding officer for the purposes of hearing the appeal. Expenses generated will be shared equally between the parties to the appeal.

591—17.8(455G) Subpoenas — discovery. As provided under the Iowa administrative procedure Act, rules are as proscribed under Iowa Code section 17A.13.

591—17.9(455G) Rules of evidence—official notice. As provided under the Iowa administrative procedure Act, rules are as proscribed under Iowa Code section 17A.14.

591—17.10(455G) Final decision—administrative law judge. The ruling of the administrative law judge is a proposed ruling which will become a final decision without further proceedings unless there is an appeal. The appeal shall be made to the UST board with the notice of appeal to be mailed to the administrator within 30 days of receipt of the administrative law judge's proposed decision. Notice of appeal shall contain information as outlined herein, stating the reasons for the objections and in the format required in Iowa Code sections 17A.5(1) and (2) and 17A.6(1) and (2).

591—17.11(455G) Ex parte communications and separation of functions. As provided under the Iowa administrative procedure Act, rules are as proscribed under Iowa Code section 17A.17.

591—17.12(455G) Final agency action. The UST board shall be the final agency for appeal. Final UST board actions will be in writing and outline the basis of its decision relative to the contested case. The administrator will write the final UST board decision as instructed by the UST board. The decision of the UST board shall be final unless appealed as provided under Iowa Code section 17A.19 for judicial review.

591—17.13(455G) Appeal process for licenses, installers and inspectors of underground storage tanks.

17.13(1) The appeal procedures outlined in this chapter shall also apply to the installers and inspectors subject to board licensing regulation as noted in 591—Chapter 15.

17.13(2) As provided under the Iowa administrative procedure Act, rules are as proscribed under Iowa Code section 17A.18.

ARC 1556A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF OPTOMETRY EXAMINERS

Notice of Termination

Pursuant to the authority of Iowa Code subsection 17A.4(1), paragraph "b," and section 258A.2, the Board of Optometry Examiners hereby terminates the rule-

making proceedings initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as ARC 797A on April 4, 1990. The subject of the Notice was Chapter 180, "Board of Optometry Examiners," Iowa Administrative Code.

This Notice is being terminated due to a change in the statute. A license is no longer required to be displayed in a branch office.

ARC 1555A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF OPTOMETRY EXAMINERS

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 258A.2, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 180, "Board of Optometry Examiners," Iowa Administrative Code.

The proposed amendments change the dates to correctly reflect the continuing education compliance period, establish the average attendance required to maintain a study group, require a certificate of attendance for attendance at a study group and establish the procedure to receive continuing education credit for attending a study group meeting. The amendments also eliminate the written notice of all local study groups approved by the Board.

Any interested person may make written comments on the proposed amendments no later than January 1, 1991, addressed to Kathy Williams, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendments are intended to implement Iowa Code section 154.6.

ITEM 1. Amend subrule 180.13(5) as follows:

180.13(5) No study group will be recognized that does not maintain a minimum membership of eight optometrists. *The average attendance must be six optometrists per meeting.* Each study group shall meet a minimum of six times per year. A maximum of one hour credit per meeting shall be given for each meeting unless prior approval is ~~rendered~~ *granted* by the board for an additional amount of credit. *A certificate of attendance shall be provided at each meeting by the study group to each optometrist in attendance. The certificate shall include the name of the study group, the date of the meeting, the topic of study, the name of the speaker, and the signature of the study group chairperson or secretary. To obtain continuing education credit, a form provided by the board shall be signed by each member in attendance and returned to the board within 30 days of each meeting.*

ITEM 2. Rescind subrule **180.13(6)**.

ARC 1558A

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 17A.3, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 4, "Weapons," Iowa Administrative Code.

These amendments are being proposed to specify the procedures to be followed in obtaining permits to acquire pistols or revolvers, or permits to carry weapons, as required by Iowa Code chapter 724 as amended by 1990 Iowa Acts, chapter 1147.

A public hearing on these proposed amendments will be held on January 3, 1991, in the third floor conference room (east half) of the Wallace State Office Building at 11 a.m. Persons may present their views orally or in writing at this public hearing. Persons who wish to make oral presentations at the public hearing should contact the Research and Development Bureau, Iowa Department of Public Safety, 613 East Locust, Des Moines, Iowa 50319, or by telephone at (515)281-5524 at least one day prior to the public hearing. Any written material should be directed to the Research and Development Bureau at the above address. Persons who wish to convey their views orally may contact the Research and Development Bureau at (515)281-5524 or at the Bureau office at 613 East Locust, Des Moines, Iowa 50319.

The following amendments are proposed:

These amendments are intended to implement Iowa Code chapter 724 as amended by 1990 Iowa Acts, chapter 1147.

ITEM 1. Amend rule **661—4.1(17A,724)** as follows:

Amend the definition of "Completed fingerprint card" as follows:

"Completed fingerprint card" means a standard fingerprint card with two sets (every finger and thumb) of fully rolled fingerprint impressions and all information required to check the ~~FBI~~ *Federal Bureau of Investigation (FBI)* and ~~BCI~~ *Iowa division of criminal investigation (DCI)* records for a felony conviction.

Further amend rule **661—4.1(17A,724)** by adding the following new definitions:

"Identification card" means any of the following:

1. Nonoperator's identification card issued by the Iowa department of transportation.
2. Motor vehicle license issued by the Iowa department of transportation.
3. Nonresident motor vehicle license, which is a motor vehicle license issued by a state other than Iowa, presented by an applicant for a nonresident permit to carry weapons.
4. Private investigator or private security officer identification card issued by the Iowa department of public safety.

"I.O.W.A. system" means the Iowa On-line Warrants and Articles Criminal Justice Information System

PUBLIC SAFETY DEPARTMENT[661] *(cont'd)*

operated by the Iowa department of public safety for use by law enforcement and criminal justice agencies in the exchange of criminal history and other criminal justice information.

ITEM 2. Amend rule 661—4.4(17A,724) as follows:

Amend subrule **4.4(1)** by adding the following new paragraph:

g. Display an identification card as defined in rule 661—4.1(17A,724).

Amend subrule 4.4(2) as follows:

4.4(2) The sheriff may use discretion in *determining whether or not to issue* ~~issuing~~ the permit. *Prior to issuing the permit, the sheriff shall determine that the applicant is not a convicted felon by obtaining criminal history data through the I.O.W.A. system from the department and the Federal Bureau of Investigation.* The permit shall be issued on Forms WP1, WP2, WP7 ~~and~~ *or* WP9 and the sheriff may restrict or limit the authority granted by ~~the permit~~ *permits issued on form WP1 or WP2.*

Amend subrule **4.4(4)** by adding the following new paragraph:

g. Display an identification card as defined in rule 661—4.1(17A,724).

Amend subrule 4.4(6) as follows:

4.4(6) Nonresidents who wish to ~~review~~ *renew* a permit to carry weapons shall reapply for the permit in the same manner and by the same procedures as provided in *subrule* 4.4(4). The renewal fee is established by the Code.

Amend subrule **4.4(7)** by adding the following new paragraph:

h. Display an identification card as defined in rule 661—4.1(17A,724).

ITEM 3. Amend rule 661—4.5(17A,724) as follows:

Amend subrule 4.5(1) as follows:

4.5(1) The application ~~(Form WP3)~~ for an annual permit to acquire pistols or revolvers shall be made to the sheriff of the county of the applicant's residence. *The applicant shall:*

a. Submit a fully completed application form (Form WP3);

b. If requested by the sheriff, submit two completed fingerprint cards, Form WP10;

c. Display an identification card as defined in rule 661—4.1(17A,724).

Add a new subrule 4.5(2) to read as follows:

4.5(2) Prior to issuing the permit to acquire pistols or revolvers, the sheriff shall determine that the applicant is not a convicted felon by obtaining criminal history data through the I.O.W.A. system from the Iowa department of public safety and the Federal Bureau Of Investigation.

Renumber existing subrule 4.5(2) as 4.5(3) and amend the renumbered subrule as follows:

4.5(3) The annual permit (Form WP4) to acquire pistols or revolvers shall be issued to the person applying for the permit immediately upon submission to the sheriff of the completed application *and determination by the sheriff that the applicant is not a convicted felon.*

These rules are intended to implement Iowa Code chapter 724 as amended by 1990 Iowa Acts, chapter 1147.

ARC 1526A

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 101.1 and Iowa Code Supplement section 101.28, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 5, "Fire Marshal," Iowa Administrative Code.

These amendments are being proposed to comply with requirements for the State Fire Marshal to adopt rules governing the handling of flammable liquids and to set fees for underground storage tank certification inspections.

A public hearing on these proposed rules will be held on January 3, 1991, at 9:30 a.m., in the third floor conference room (east half) of the Wallace State Office Building. Persons may present their views orally or in writing at this public hearing. Persons who wish to make oral presentations at the public hearing should contact the Research and Development Bureau, Iowa Department of Public Safety, 613 East Locust, Des Moines, Iowa 50319; or by telephone at (515)281-5524, at least one day prior to the public hearing. Any written material regarding these rules should be directed to the Research and Development Bureau at the above address. Persons who wish to convey thier views orally may contact the Research and Development Bureau by phone or in person at the Bureau office.

These amendments are intended to implement Iowa Code section 101.1 and Iowa Code Supplement section 101.28.

The following amendments are proposed:

ITEM 1. Amend rule 661—5.301(101) by adding the following new subrule:

5.301(9) When the state fire marshal or the state fire marshal's designee authorized to conduct underground storage tank inspections under Iowa Code section 455G.11, subsection 6, conducts such an inspection, the person requesting certification of the underground storage tank shall pay a fee in the amount of $55 per hour for the actual work performed, including travel time to and from the site. The inspection shall consist of a minimum of three on-site visits, and shall include the witnessing of tank and piping testing, the precision final test, and written assurance from the installer of the tank that the installation complies with applicable technical standards and the manufacturer's instructions.

ITEM 2. Amend 661—Chapter 5 by adding the following new rule:

661—5.314(101) Crankcase drainings. Tanks installed for crankcase drainings shall be installed in accordance with the requirements for Class I flammable liquid storage. In addition, each drainage line for crankcase drainings which terminates inside a building shall be equipped with a hinged or other nonremovable type cap.

PUBLIC SAFETY DEPARTMENT[661] *(cont'd)*

EXCEPTION: Containers with an aggregate capacity not exceeding 660 gallons, UL approved for indoor use and having approved spill containment, may be permitted inside buildings.

This rule is intended to implement Iowa Code section 101.1 and Iowa Code Supplement section 101.28.

ARC 1560A

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 80.9, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 15, "Law Enforcement Administrator's Telecommunications Advisory Committee (LEATAC)," Iowa Administrative Code.

These amendments are being proposed to update the membership of LEATAC to reflect current operations and responsibilities of the committee and of the agencies represented on it.

A public hearing on these proposed amendments will be held on January 3, 1991, in the third floor conference room (east half) of the Wallace State Office Building at 10:30 a.m. Persons may present their views orally or in writing at this public hearing. Persons who wish to make oral presentations at the public hearing should contact the Research and Development Bureau, Iowa Department of Public Safety, 613 East Locust, Des Moines, Iowa 50319, or by telephone at (515) 281-5524 at least one day prior to the public hearing. Any written material should be directed to the Research and Development Bureau at the above address. Persons who wish to convey their views orally may contact the Research and Development Bureau at (515) 281-5524 or at the Bureau office at 613 East Locust, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 693.7.

The following amendments are proposed:

ITEM 1. Amend rule 661—15.2(693) as follows:

Amend subrule 15.2(3) as follows:

15.2(3) Three members of the ~~Iowa state patrol communications~~ *division of communications, Iowa department of public safety,* appointed by the commissioner of public safety.

Rescind subrule **15.2(4)**.

Amend subrule 15.2(6) as follows:

15.2(6) One member of the Iowa chiefs of police and peace officers' association appointed by the president *of the association.*

Amend subrule 15.2(7) as follows:

15.2(7) One member ~~of~~ *representing* the ~~Iowa~~ disaster services division of the *Iowa* department of public defense appointed by the ~~division's director~~ *administrator of the disaster services division.*

Amend subrule 15.2(8) as follows:

15.2(8) Two members of the Iowa state sheriffs' and deputies' association appointed by the president *of the association.*

Amend subrule 15.2(9) as follows:

15.2(9) One member representing ~~the~~ emergency medical services appointed by the ~~commissioner~~ *director* of public health.

Amend subrule 15.2(11) as follows:

15.2(11) One member representing the Iowa department of natural resources appointed by the ~~department's director~~ *director of the department of natural resources.*

Further amend rule 661—15.2(693) by adding the following new subrules:

15.2(12) One member representing the Iowa department of corrections appointed by the director of the department of corrections.

15.2(13) The state frequency coordinator shall be an ex officio member.

ITEM 2. Amend rule **661—15.3(693)** by inserting the following as the first unnumbered paragraph:

If an agency is not represented at three consecutive meetings, the appointing authority for that representative shall be notified in writing by the chairperson. If two more consecutive meetings are held with no one from the agency in question attending, the affected agency representative may be removed from the membership by majority vote of the committee, and the affected position declared vacant.

ITEM 3. Amend rule 661—15.6(693), introductory paragraph, as follows:

661—15.6(693) Duties. ~~This committee~~ *LEATAC* shall be an advisory committee and shall make recommendations to the commissioner of public safety, the ~~legislative police communications review committee~~ *legislature* and the Iowa criminal and juvenile justice ~~planning agency~~ *advisory council* concerning the following:

These rules are intended to implement Iowa Code section 693.7.

ARC 1549A

REVENUE AND FINANCE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 51, "Administration," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 53, "Determination of Net Income," Iowa Administrative Code.

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

The amendment to rule 701—51.1(422) defines the terms "consolidation" and "merger" in the context of corporate reorganizations.

The amendment to Chapter 52 creates a new rule 701—52.10 which establishes a sequence for deducting credits against the corporation income tax liability. The credits are deducted such that those with the shortest carryforward time are used first, then the credits with an unlimited carryforward period and finally those credits which are refundable are deducted last. By following this sequence, it ensures that taxpayers will get maximum use of the various credits they earn.

The amendment to rule 701—53.12(422) sets forth the Department's position that the federal environmental tax is an income tax in that it is imposed on a modified alternative minimum taxable income. Because the federal environmental tax is deductible in computing the federal taxable income, the federal environmental tax must be added to federal taxable income and then a deduction of 50 percent is allowed under Iowa Code section 422.35(4).

This amendment is made prospective in that some corporations were allowed a deduction of 100 percent of the federal environmental tax in computing federal taxable income, rather than only 50 percent as a deduction for federal income taxes, for tax years commencing before January 1, 1990.

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

The Department has determined that this proposed rule 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 January 2, 1991, to the Policy Section, Technical Services Division, Iowa 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 this proposed amendment on or before January 11, 1991. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa 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, Technical Services Division, Iowa Department of Revenue and Finance, telephone (515)281-4250 or at 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 January 4, 1991.

The amendments are intended to implement Iowa Code chapter 422.

The following amendments are proposed.

ITEM 1. Amend rule **701—51.1(422)** by adding the following new subrule:

51.1(5) The terms "consolidation" and "corporate merger" have the following meaning in regards to corporate reorganizations. A "consolidation" is unification of two or more constituent corporations into a single newly existing corporation in which new corporation takes over assets and assumes liabilities of constituent corporations which pass out of existence; a "corporate merger" is distinguished by continuing existence of one of the constituent corporations into which other corporations are merged. Handley v. Wyandotte Chemicals Corp., 352 N.W.2d 447, 450, 118 Mich. App. 423.

ITEM 2. Amend Chapter 52 by adding the following new rule 701—52.10(422) and renumbering the existing rule 701—52.10(422) as rule 701—52.11(422).

701—52.10(422) Deduction of credits. The credits against computed tax set forth in Iowa Code section 422.33 shall be deducted in the following sequence.

1. Seed capital credit.
2. New jobs credit.
3. Alternative minimum tax credit.
4. Research activities credit.
5. Motor fuel credit.
6. Estimated tax and payments with extensions.

ITEM 3. Amend the introductory paragraph of rule 701—53.12(422) to read as follows:

701—53.12(422) Federal income tax deduction. "Federal income taxes" shall mean those income taxes paid or payable to the United States Government and shall not include taxes paid or payable or taxes deemed to have been paid to a foreign country. Construction Products, Inc. v. Briggs, State Board of Tax Review, Case No. 25, February 1, 1972. *"Federal income taxes" includes the federal alternative minimum tax. For tax years beginning on or after January 1, 1990, "Federal income taxes" includes the federal environmental tax. Because the federal environmental tax is deducted in computing federal taxable income and Iowa Code section 422.35(4) only allows a deduction for 50 percent of the federal income tax paid or accrued, the federal environmental tax deducted in computing federal taxable income must be added to federal taxable income.*

NOTICE — USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

May 1, 1988 — May 31, 1988	10.25%
June 1, 1988 — June 30, 1988	10.75%
July 1, 1988 — July 31, 1988	11.00%
August 1, 1988 — August 31, 1988	11.00%
September 1, 1988 — September 30, 1988	11.00%
October 1, 1988 — October 31, 1988	11.25%
November 1, 1988 — November 30, 1988	11.00%
December 1, 1988 — December 31, 1988	10.75%
January 1, 1989 — January 31, 1989	11.00%
February 1, 1989 — February 28, 1989	10.75%
March 1, 1989 — March 31, 1989	11.00%
April 1, 1989 — April 30, 1989	11.25%
May 1, 1989 — May 31, 1989	11.25%
June 1, 1989 — June 30, 1989	11.25%
July 1, 1989 — July 31, 1989	10.75%
August 1, 1989 — August 31, 1989	10.25%
September 1, 1989 — September 30, 1989	10.00%
October 1, 1989 — October 31, 1989	10.00%
November 1, 1989 — November 30, 1989	10.25%
December 1, 1989 — December 31, 1989	10.00%
January 1, 1990 — January 31, 1990	9.75%
February 1, 1990 — February 28, 1990	9.75%
March 1, 1990 — March 31, 1990	10.25%
April 1, 1990 — April 30, 1990	10.50%
May 1, 1990 — May 31, 1990	10.50%
June 1, 1990 — June 30, 1990	10.75%
July 1, 1990 — July 31, 1990	10.75%
August 1, 1990 — August 31, 1990	10.50%
September 1, 1990 — September 30, 1990	10.50%
October 1, 1990 — October 31, 1990	10.75%
November 1, 1990 — November 30, 1990	11.00%
December 1, 1990 — December 31, 1990	10.75%

ARC 1536A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development emergency adopts and implements a new Chapter 11, "Productivity and Quality Enhancement," Iowa Administrative Code. On November 15, 1990, the IDED Board adopted this new chapter.

The emergency adopted and implemented new chapter defines allowable activities and provides procedures to provide grants to community colleges pursuant to Iowa Code section 15.251.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The new chapter allows immediate implementation of authorized activities. These changes will benefit the public by permitting additional services to be provided to businesses to increase their productivity and quality of products and services.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b," that the normal effective date of the rules, 35 days after publication, should be waived and the rules made effective on November 20, 1990, upon filing with the Administrative Rules Coordinator. The Department finds that the rules confer a benefit by allowing the community colleges access to money specifically designated for their use to service Iowa businesses.

Notice of Intended Action is published herein as **ARC 1535A** to allow for public comment.

The following new chapter is adopted:

CHAPTER 11
PRODUCTIVITY AND QUALITY ENHANCEMENT

DIVISION 1
GRANTS TO COMMUNITY COLLEGES

261—11.1(15) Purpose. The 1989 Iowa Code Supplement section 15.251 provides that the department may charge community colleges 1 percent of the bonds sold under Iowa Code chapter 280B to defray administrative costs of the department and support other efforts by the community colleges related to productivity and quality enhancement training.

261—11.2(15) Allowable activities. Allowable activities include training for businesses in quality and productivity enhancement techniques by individual or consortia of community colleges and purchase of training materials/packages to increase the capacity of community colleges to provide quality and productivity enhancement training to businesses. Special consideration shall be given to small and rural businesses in the provision of such services.

261—11.3(15) Allocation of funds.

11.3(1) An amount, determined in consultation with the community college economic developers, depending on funding availability in any given fiscal year, will be divided equally among the 15 community colleges to provide quality and productivity enhancement training to businesses within their community college area.

11.3(2) The balance of funds remaining, after administrative costs and funds identified in 11.3(1) have been deducted from the funds available during any given fiscal year, shall be used for grants to consortia of community colleges to jointly purchase and receive training in techniques of quality and productivity enhancement to build the capacity of the community colleges to deliver such training to businesses in their area.

261—11.4(15) Application procedures.

11.4(1) To apply for funds identified in 11.3(1), each community college must submit to the department a plan describing the training it will conduct, how businesses will access the training, and how the training will be evaluated. Based upon the approved plan, a contract will be developed between the department and each community college. As specific companies are identified to receive the training, the community college will notify the department of the specific company, provide the training identified, and submit a request for reimbursement of funds to receive payment for the training provided. All funds must be expended during the fiscal year in which they are awarded.

11.4(2) To apply for funds identified in 11.3(2), two or more community colleges shall jointly submit an application to the department for review by the department in conjunction with the Iowa quality coalition. If approved, a contract will be developed between the department and the community colleges involved in the joint application which will detail contract conditions and payment provisions. All funds must be expended during the fiscal year in which they are awarded.

261—11.5(15) Reporting requirements. An annual report shall be submitted by the community college or consortia of community colleges for each contract received through 1 percent funding. The report shall include a final financial statement of actual expenses incurred, training programs provided, number of companies and employees trained, and a summary of training evaluations.

261—11.6(15) Limit on use of funds. During fiscal year 1991, funds available through 1 percent funding will be utilized to continue productivity and quality grants to community colleges funded during fiscal year 1990 by the Iowa quality coalition, with consultation of the department, and fund additional grants to community colleges not previously funded.

DIVISION 2
IOWA QUALITY COALITION

261—11.7(73GA,ch1262) Purpose. The 1990 Iowa legislature appropriated funds to the Iowa department of economic development to establish a program to increase Iowa's capacity to provide training to Iowa firms, especially smaller businesses in rural areas of the state, designed to improve the quality of their products and services and to increase their productivity.

261—11.8(73GA,ch1262) Definitions.

"Coalition" means the Iowa quality coalition described in 261—11.9(73GA,ch1262).

"IDED" means the Iowa department of economic development.

"Fiscal agent" means the entity chosen by the Iowa quality coalition and approved by IDED to assist in the

administration of the productivity enhancement activities.

261—11.9(73GA,ch1262) Quality coalition. The Iowa quality coalition is composed of representatives of private business, government, labor, and education and is established to provide policy guidance, review and recommend grant awards, recognize Iowa firms for their excellence in continual improvement of the quality of products and services, promote and provide training, coordinate resources, and provide technical assistance to local quality committees.

261—11.10(73GA,ch1262) Fiscal agent. Funds for Iowa quality coalition activities shall be administered by the coalition or a fiscal agent chosen by the Iowa quality coalition and approved by IDED.

261—11.11(73GA,ch1262) Allowable activities. Allowable activities shall include executive awareness sessions, training sessions to expand the capacity of the community colleges to deliver quality and productivity enhancement training to small businesses, technical assistance to government and businesses to implement quality and productivity enhancement programs, promotional videos and brochures to increase participation in and awareness of quality and productivity enhancement techniques, and other activities which will increase Iowa's productivity and quality of products and services to remain competitive in a global economy.

261—11.12(73GA,ch1262) Funding. Funding will be provided to the coalition directly or to its fiscal agent provided funds are available to IDED for such purposes.

261—11.13(73GA,ch1262) Reporting requirements.

11.13(1) The coalition or its fiscal agent shall submit monthly financial reports of actual costs incurred and a monthly request for funds. The coalition or its fiscal agent shall also submit a final financial report covering actual expenses for the full fiscal year.

11.13(2) The coalition or its fiscal agent shall submit quarterly reports detailing tasks accomplished during the quarter, compared to the annual work plan, and an annual report detailing all activities accomplished plus a copy of any videos, brochure or other products produced.

[Filed Emergency 11/20/90, effective 11/20/90]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1522A

EDUCATION DEPARTMENT[281]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 17A.3 and Iowa Code Supplement section 279.51(5), the Department of Education hereby adopts the following amendments to Chapter 65, "Innovative Programs for At-Risk Early Elementary Students," Iowa Administrative Code.

Amendments to Chapter 65 were published as a Notice of Intended Action in the Iowa Administrative Bulletin on September 5, 1990, as **ARC 1206A**. A public hearing was held on September 25, 1990. Oral and written comments received made substantive amendments to the Notice necessary. Therefore, the original Notice of Intended Action is being terminated and the following amendments are renoticed herein as **ARC 1527A** to allow for public comment.

Item 1 inserts definition of "at-risk" students and clarifies grant award criteria.

Item 2 clarifies definition of "early elementary grades."

Item 3 expands definition of "low-income family."

Item 4 removes eligibility language and inserts new language for primary risk factors.

Item 5 clarifies language for secondary risk factors.

Item 6 substitutes language for secondary risk factors.

Item 7 substitutes and expands language for grant awards criteria.

Item 8 removes language for applicant information.

Item 9 expands grant process and grant award distribution and clarifies point weighting system and funding allocation.

Item 10 removes contract language.

Item 11 inserts new appeal language.

Pursuant to Iowa Code section 17A.4(2), the Department finds that public notice and participation are impracticable and contrary to the public interest since Iowa Code Supplement section 279.51 provides appropriations for $1,000,000 to be awarded as grants to school districts for innovative programs for at-risk early elementary students beginning July 1, 1991.

It is necessary to distribute the request for proposal in December 1990, thus allowing school personnel adequate time to prepare the grant application. Requests for proposals will be due in February 1991, then reviewed and awards made in March 1991.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of these rules, 35 days after publication, should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on November 14, 1990, as they confer a benefit upon the public to ensure that applicants will be apprised of the award criteria and procedure prior to making their applications and awards can be made in time for schools to make staffing and budget decisions for the ensuing school year.

The State Board of Education adopted these rules on November 14, 1990.

These rules are intended to implement Iowa Code Supplement section 279.51.

The following amendments are adopted:

ITEM 1. Amend rule **281—65.2(279)** by inserting the following new paragraph in alphabetical order:

"At-risk student" means a student who meets one or more of the primary and secondary risk factors stated in rule 65.4(279) and 65.5(279)

ITEM 2. Amend rule **281—65.2(279)**, third paragraph, as follows:

"Early elementary grades" means ~~programs found in~~ kindergarten through grade three.

ITEM 3. Amend rule **281—65.2(279)**, sixth paragraph, as follows:

"Low-income family" means a family who meets the current income eligibility guidelines for free and reduced price meals in a local school *as documented in the year in which the application is made.*

EDUCATION DEPARTMENT[281] *(cont'd)*

ITEM 4. Rescind rule 281—65.4(279) and insert the following in lieu thereof:

281—65.4(279) Primary risk factor. In identifying the at-risk population of a school district or building, the applicant shall give primary consideration to students in low-income families.

ITEM 5. Amend rule 281—65.5(279), introductory paragraph, as follows:

281—65.5(279)~~Secondary eligibility. The available funds shall be directed to serve children in secondary eligibility categories as follows:~~ *Secondary risk factors.* *In identifying the at-risk population of a school district or building, the applicant shall also give consideration to students who are:*

ITEM 6. Amend rule **281—65.5(279)**, fifth numbered paragraph, as follows:

5. ~~Having~~ *Subject to* other special circumstances, such as *being in* foster care or being homeless.

ITEM 7. Amend rule 281—65.6(279) as follows:

281—65.6(279) Grant awards ~~procedures~~ *criteria.*

65.6(1) Criteria points. The following information shall be provided and ~~grants~~ *points* shall be awarded to applicants based on the following criteria *as stated in the request for proposal:*

1. Integration of at-risk children with the rest of the school population.
2. Limited class size.
3. Limited pupil-teacher ratios.
4. Provision of parental involvement.
5. Demonstration of community support.
6. Utilization of services provided by other community agencies.
7. Provision of appropriate guidance counseling services.
8. Use of teachers with an early childhood endorsement.
9. Innovation and comprehension in program design.
10. Existence of a plan for program evaluation including, but not limited to, measurement of student outcomes.
11. Developmentally appropriate practices.

65.6(2) *Additional grant components. The following information shall be provided and points shall be awarded to applicants based on the following additional components:*

1. Program summary.
2. Research documentation.
3. Identification and documentation of local at-risk population.
4. Letters of community support.
5. Program budget (administrative costs not to exceed 10 percent of total award).

ITEM 8. Amend rule 281—65.8(279) as follows:

281—65.8(279) Request for proposals. Applications for the early elementary grants shall be on forms provided by the department upon request. ~~The applicants shall provide the following information:~~
~~1. Applicant identification (applicant's name and address).~~
~~2. Project summary.~~
~~3. Program goals, activity objectives, timelines, person(s) responsible for the activity, and evidence of completion of the activity.~~
~~4. Documentation of assurances of community support from cooperating agencies.~~
~~5. Documentation of services provided by other community agencies.~~
~~6. Project budget (administrative costs not to exceed 10 percent of total award).~~
~~7. Project management.~~
~~8. A plan for program evaluation including, but not limited to, measurement of student outcomes.~~

Proposals not containing the specified information or not received by the specified date may not be considered.

ITEM 9. Amend rule 281—65.9(279) as follows:

281—65.9(279) Grant process.

65.9(1) An applicant shall make formal response using forms issued and procedures established by the department.

65.9(2) A rating team comprised of persons with expertise in early elementary school programs, understanding of the at-risk population, and fiscal management shall review and rank the proposals.

65.9(3) *Additional weighting not to exceed 30 percent of the total grant points shall be given to applicant buildings based on the percentage of low-income families within each district-size category. The weighting points shall be based on the free and reduced price lunch percentage of the individual applicant building or of the district, whichever is higher.*

65.9~~(3)~~*(4)* The department shall have the final discretion to award funds.

65.9(5) *Grants shall be awarded to applicant buildings in districts not currently funded for innovative programs.*

65.9(6) *New program requests may be funded up to $200,000 per building or up to $1,000 per K-3 child in buildings with K-3 enrollment of less than 200.*

65.9(7) *A minimum of one grant will be funded in each of the following five district-size categories for new innovative grants beginning July 1, 1991, if acceptable application is made and the proposed program meets all program criteria:*

- *less than 401*
- *401-600*
- *601-1,000*
- *1,001-2,500*
- *2,501 and larger*

Additional programs may be funded within these categories depending upon available funds and requests within each category.

ITEM 10. Rescind and reserve rule **281—65.10(279).**

ITEM 11. Rescind rule 281—65.19(279) and insert the following new rules in lieu thereof:

281—65.19(279) Appeals from terminations. Any grantee aggrieved by a unilateral termination of a contract pursuant to 65.17(279) may appeal the decision to the director of the department in writing within 30 days of the decision to terminate. The hearing procedures found at 281 IAC 6 shall be applicable to appeals of terminated grantees.

In the notice of appeal, the grantee shall give a short and plain statement of the reason for the appeal.

The director shall issue a decision within a reasonable time, not to exceed 120 days from the date of hearing.

281—65.20(279) Refusal to issue ruling. The director may refuse to issue a ruling or decision upon an appeal for good cause. Good cause includes, but is not limited to, the following reasons:

1. The appeal is untimely;
2. The appellant lacks standing to appeal;

EDUCATION DEPARTMENT[281] *(cont'd)*

3. The appeal is not in the required form or is based upon frivolous grounds;
4. The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties;
5. The termination of the grant was beyond the control of the department because it was due to lack of funds available for the contract.

281—65.21(279) Requests for Reconsideration. A disappointed applicant who has not been approved for funding may file a Request for Reconsideration with the director of the department in writing within ten days of the decision to decline to award a grant. In order to be considered by the director, the request shall be based upon one of the following grounds:
1. The decision process was conducted in violation of statute or rule;
2. The decision violated state or federal law, policy, or rule (to be cited in the request);
3. The decision process involved a conflict of interest.

Within 20 days of filing a Request for Reconsideration, the requester shall submit all written documentation, evidence, or argument in support of the request. The director shall notify the department of the request and shall provide the department an opportunity to defend its decision by submitting written documentation, evidence, or argument within 20 days of receipt of the request. The department shall provide copies of all documents to the requester at the time the items are submitted to the director.

The director shall issue a decision granting or denying the Request for Reconsideration within 30 days of the receipt of the evidence, or no later than 60 days from the date of Request for Reconsideration, unless a later date is agreeable to the requester and the department.

281—65.22(279) Refusal to issue decision on request. The director may refuse to issue a decision on a Request for Reconsideration upon good cause. Good cause includes, but is not limited to, the following reasons:
1. The request was untimely;
2. The requester lacks standing to seek reconsideration;
3. The request is not based on any of the available grounds above, or is merely frivolous or vexatious;
4. The requester failed to provide documentation, evidence, or argument in support of its request;
5. The request is moot due to negotiation and settlement of the issue(s).

281—65.23(279) Granting a Request for Reconsideration. If the director grants a Request for Reconsideration, the department shall reconsider the grantee's application in accordance with the director's findings and decision.

[Filed Emergency 11/21/90, effective 11/21/90]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1529A

EDUCATION DEPARTMENT [281]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 256.7(5), the Department of Education hereby rescinds Chapter 84, "Information and Requirements for Certification," with the exception of rules 84.18 to 84.22, which will be transferred to and accepted by the Board of Educational Examiners; Chapter 85, "Classification of Certificates"; Chapter 86, "Endorsements"; Chapter 87, "Approvals"; Chapter 88, "Conversion and Renewal of Certificates"; and Chapter 89, "Standards for Teacher Education Programs," Iowa Administrative Code.

The filing of the emergency rules rescinds previous rules for teacher education and certification which were in effect prior to October 1, 1988, the date on which the current certification and teacher education rules became effective. This rescission will reduce possible confusion about which rules are in force and effect.

The transfer implements changes in licensing and rule-making authority relating to practitioner licensure mandated by Iowa Code Supplement chapter 260 and retains for the Board of Educational Examiners the rules for the human relations requirement.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are impracticable since these rules have not been in effect since September 30, 1988, and this transfer and rescission make no substantive changes.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment be made effective upon filing with the Administrative Rules Coordinator on November 14, 1990.

The State Board of Education rescinded these rules on November 14, 1990.

These rescissions are intended to implement Iowa Code section 256.7(5).

These amendments became effective November 14, 1990.

The following rescissions are adopted.

Rescind rules **281—84.1(256)** to **84.17(256)** and rule **84.23(256)**. (Rules 84.18(256) to 84.22(256) will be transferred to 282— Board of Educational Examiners in a subsequent filing). **Chapters 85 to 89** are also rescinded.

This rescission implements Iowa Code section 256.7(5).

[Filed Emergency 11/14/90, effective 11/14/90]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1523A

HUMAN SERVICES DEPARTMENT [441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 81, "Nursing Facilities," appearing in the Iowa Administrative Code.

These amendments implement the following change and corrections to the nursing facility policies:

1. Nursing home reform policies which were adopted effective October 1, 1990, contained a requirement that nursing facilities provide six hours of in-service training per quarter. The Administrative Rules Review Committee voted to delay that requirement as they felt the requirement was excessive. The Department agrees and has received indication that final federal policy will also require less than six hours of in-service training per quarter. Therefore, this amendment lowers the in-service training requirement for nursing facilities to 12 hours per year.

2. At the time the nursing home reform policies were adopted, the Department inadvertently deleted a rule (subrule 81.13(3)"j") which it had adopted previously in response to 1989 Iowa Acts, chapter 304, section 903, which requires the Department to adopt rules which require all intermediate care facilities (nursing facilities) to execute separate written contracts for pharmaceutical vendor services and consultant pharmacist services. The consultant pharmacist contract shall require monthly drug regimen review reports and shall provide for reimbursement on the basis of fair market value. These amendments reinstate the rule which was rescinded in error.

3. These amendments also correct the implementation clauses to the rules in 441—Chapter 81.

The Department of Human Services finds that notice and public participation on the amendment regarding in-service training are impracticable because it appears the federal government will settle on 12 hours a year and notice would unduly delay implementation. Notice and public participation on the amendments correcting the inadvertent rule deletion and the implementation clauses are unnecessary because the rule is mandated by statute and has previously been through the rule process and the implementation clause corrections are merely technical and do not affect any program provisions. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these rules confer a benefit by removing an unduly restrictive in-service training requirement and by eliminating confusion over unstated policy and incorrect references. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these rules November 14, 1990.

These rules are intended to implement Iowa Code sections 249A.2, 249A.3(2)"a," and 249A.4, and 1989 Iowa Acts, chapter 304, section 903.

These rules became effective December 1, 1990.

The following amendments are adopted:

ITEM 1. Amend rule **441—81.4(249A)** by inserting the following implementation clause at the end of the rule:

This rule is intended to implement Iowa Code sections 249A.2, 249A.3(2)"a," and 249A.4.

ITEM 2. Amend rule **441—81.5(249A)** by inserting the following implementation clause at the end of the rule:

This rule is intended to implement Iowa Code sections 249A.2, 249A.3(2)"a," and 249A.4.

ITEM 3. Amend rule **441—81.10(249A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 249A.2~~(6)~~, 249A.3(2)"a," *and* 249A.4~~, and 249A.12 and 1990 Iowa Acts, Senate File 2435, section 31, subsection 1~~.

ITEM 4. Amend rule 441—81.13(249A) as follows:

Amend subrule **81.13(16)** by adding the following new paragraph:

f. Consultant pharmacists. When the facility does not employ a licensed pharmacist, it shall have formal arrangements with a licensed pharmacist to provide consultation on methods and procedures for ordering, storage, administration and disposal and record keeping of drugs and biologicals. The formal arrangements with the licensed pharmacist shall include separate written contracts for pharmaceutical vendor services and consultant pharmacist services. The consultant's visits are scheduled to be of sufficient duration and at a time convenient to work with nursing staff on the resident care plan, consult with the administrator and others on developing and implementing policies and procedures, and planning in-service training and staff development for employees. The consultant shall provide monthly drug regimen review reports. The facility shall provide reimbursement for consultant pharmacists based on fair market value. Documentation of consultation shall be available for review in the facility.

Amend rule **441—81.13(249A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 249A.2~~(6)~~, 249A.3(2)"a," and 249A.4, ~~1984 Iowa Acts, chapter 1310, section 3,~~ and 1989 Iowa Acts, chapter 304, section 903.

ITEM 5. Amend rule **441—81.14(249A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 249A.2~~(6)~~, 249A.3(2)"a" and ~~249A.12~~ *249A.4*.

ITEM 6. Amend subrule 81.16(4) as follows:

81.16(4) In-service training. Each nurse aide shall receive and be compensated for ~~six~~ *12* hours of in-service training each ~~quarter~~ *year*. In-service training shall be provided by the facility. Training may be offered for groups or individuals. Training for individuals may be performed on the unit as long as it is directed toward specific skill improvement, is provided by trained staff, and includes a return demonstration recorded on a checklist. In-service programs shall include training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

ITEM 7. Rescind the implementation clause following **441—Chapter 81.**

[Filed Emergency 11/14/90, effective 12/1/90]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1510A

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 10, "Iowa Stafford Loan Program," Iowa Administrative Code.

This amendment reduces the guarantee fee charged to borrowers from 1.5 percent of the loan amount to 1 percent of the loan amount.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 3, 1990, as **ARC 1309A**. This rule is identical to that published under Notice of Intended Action.

The amendment was adopted in final form on November 13, 1990, and will become effective on January 16, 1991.

This amendment is intended to implement Iowa Code section 261.3.

Amend rule **283—10.24(261)**, first unnumbered paragraph, as follows:

The guarantee fee for an Iowa ~~Guaranteed~~ *Stafford* ~~Student~~ Loan with a period of instruction beginning prior to May 1, 1987, is three-fourths of one percent (.75%) per year calculated for the period between disbursement and ten months following a student's anticipated completion date. The guarantee fee for an Iowa ~~Guaranteed~~ *Stafford* ~~Student~~ Loan for a period of instruction beginning on or after May 1, 1987, *and prior to January 1, 1991,* is one and one-half percent (1.5%) of the loan amount. *The guarantee fee for an Iowa Stafford Loan for a period of instruction beginning on or after January 1, 1991, is one percent (1%) of the loan amount.* The amount of the guarantee fee is computed by the ICAC and reported to a lender on the Notice of Loan Guarantee and Disclosure Statement. Assistance with calculation of guarantee fees is available from the College *Student* Aid Commission office.

This rule is intended to implement Iowa Code section 261.3.

[Filed 11/14/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1516A

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission adopts amendments to Chapter 10, "Iowa Stafford Loan Program," Iowa Administrative Code.

This amendment expands the eligible lender definition to include the Iowa Student Loan Liquidity Corporation as an eligible lender under the Iowa PLUS and Supplemental Loans for Students (SLS) Programs for borrowers whose initial PLUS and SLS Loans are held by the Corporation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 30, 1990, as **ARC 932A**. In addition, a public hearing was held concerning this rule on June 11, 1990. This rule is identical to that published under Notice of Intended Action with the exception of minor clarification as recommended by the Attorney General's office.

The rule was adopted in final form on November 13, 1990, and will become effective on January 16, 1991.

This rule is intended to implement Iowa Code section 261.37.

Amend subrule **10.42(2)**, the first full paragraph, as follows:

Banks, savings and loan associations, credit unions, pension funds, insurance companies, and schools that meet the requirements outlined in 34 CFR 683.10 are eligible to be lenders under the Iowa PLUS/SLS Program. A single agency of the state of Iowa or a single nonprofit, private agency designated by the state of Iowa also qualifies. A school must meet the requirements specified in subrule 10.2(2). For the purposes of purchasing, holding, and consolidating loans made by other lenders under the program, the Student Loan Marketing Association and the Iowa Student Loan Liquidity Corporation are lenders. *The Iowa Student Loan Liquidity Corporation is also considered a lender only for the purpose of originating PLUS and SLS Loans for borrowers who have obtained prior PLUS and SLS Loans which are held by the Iowa Student Loan Liquidity Corporation.*

This rule is intended to implement Iowa Code section 261.37.

[Filed 11/14/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1511A

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 13, "Iowa Vocational-Technical Tuition Grant Program," Iowa Administrative Code.

This rule defines student eligibility under this program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 3, 1990, as **ARC 1307A**. This rule is identical to that published under Notice of Intended Action.

The rule was adopted in final form on November 14, 1990, and will become effective on January 16, 1991.

This rule is intended to implement Iowa Code Supplement section 261.17.

Amend subrule 13.1(2) as follows:

13.1(2) ~~Iowa residency.~~ *Student eligibility.*

COLLEGE STUDENT AID COMMISSION[283] *(cont'd)*

a. A recipient must be an Iowa resident. The criteria used by the state board of regents to determine residency for tuition purposes, IAC 681–1.4(262), are adopted for this program.

b. A recipient may receive moneys under this program for not more than four semesters, eight quarters, or the equivalent of two full years of study.

c. A recipient may again be eligible for moneys under 13.1(2)"b" if the recipient resumes study after at least a two-year absence, except for course work for which credit was previously received.

[Filed 11/14/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1512A

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 14, "Osteopathic Subvention Program," Iowa Administrative Code.

These amendments outline changes in the program which were enacted by the 1990 Session of the General Assembly and provide clarification on previous rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 3, 1990, as **ARC 1301A**. This rule is identical to that published under Notice of Intended Action.

The rule was adopted in final form on November 13, 1990, and will become effective on January 16, 1991.

This rule is intended to implement Iowa Code Supplement section 261.18.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [14.1] is being omitted. This rule is identical to that published under Notice as **ARC 1301A**, IAB 10/3/90.

[Filed 11/14/90, effective 1/16/91]
[Published 12/12/90]

[For replacement pages for IAC, see IAC Supplement, 12/12/90.]

ARC 1513A

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission amends Chapter 19, "Occupational Therapist Loan Payments Program," Iowa Administrative Code.

This amendment redefines funds allocations if funds are insufficient to repay loans to all qualified applicants.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 3, 1990, as **ARC 1305A**. This rule is identical to that published under Notice of Intended Action.

The rule was adopted in final form on November 13, 1990, and will become effective on January 16, 1991.

This rule is intended to implement Iowa Code sections 261.2(10) and 261.46.

Amend subrule **19.1(3)**, paragraph "a," as follows:

a. Priority will be given to eligible therapists who have entered into an agreement with the commission while completing their occupational therapist program and who have returned to Iowa to begin their careers. Requests for loan repayment received before the designated deadline will be honored to the extent that funds are available. ~~A lottery or other priority plan approved by the commission will determine awards if~~ *If* funds are insufficient to honor all requests, *the commission shall repay loans to students demonstrating the greatest financial need.*

[Filed 11/14/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1509A

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission adopts Chapter 21, "Iowa Nursing Loan Payments Program," Iowa Administrative Code.

The adopted amendment clarifies funds allocations if funds are insufficient to repay loans to all qualified applicants.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 3, 1990, as **ARC 1306A**. This amendment is identical to that published under the Notice of Intended Action.

The amendment was adopted in final form on November 13, 1990, and will become effective on January 16, 1991.

This rule is intended to implement Iowa Code Supplement section 261.47.

Amend subrule **21.1(2)**, paragraph "e," as follows:

e. If funds are insufficient to repay loans to all qualified applicants, ~~priority shall be given to repayment of debt under the Iowa guaranteed loan program~~ *moneys appropriated for the program shall be used to repay loans to qualified applicants demonstrating the greatest financial need.*

[Filed 11/14/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1514A

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of 1990 Iowa Acts, chapter 1272, the College Student Aid Commission adopts a new Chapter 28, "Access to Education Grant Program," Iowa Administrative Code.

This adopted chapter summarizes the procedures to be followed in the administration of the Access to Education Grant.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 3, 1990, as **ARC 1302A**. This rule is identical to that published under Notice of Intended Action.

The rule was adopted in final form on November 13, 1990, and will become effective on January 16, 1991.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, chapter 1272, section 65.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 28] is being omitted. This rule is identical to that published under Notice as **ARC 1302A**, IAB 10/3/90.

[Filed 11/14/90, effective 1/16/91]
[Published 12/12/90]

[For replacement pages for IAC, see IAC Supplement, 12/12/90.]

ARC 1515A

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.2 as amended by 1990 Iowa Acts, chapter 1272, section 45, the College Student Aid Commission adopts a new Chapter 29, "Displaced Workers Financial Aid Program," Iowa Administrative Code.

This chapter summarizes the procedures to be followed in the administration of the displaced workers program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 3, 1990, as **ARC 1310A**. This rule is identical to that published under Notice of Intended Action.

The rule was adopted in final form on November 13, 1990, and will become effective on January 16, 1991.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, chapter 1272, section 46.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 29] is being omitted. This rule is identical to that published under Notice as **ARC 1310A**, IAB 10/3/90.

[Filed 11/14/90, effective 1/16/91]
[Published 12/12/90]

[For replacement pages for IAC, see IAC Supplement, 12/12/90.]

ARC 1508A

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission adopts Chapter 30, "Osteopathic Forgivable Loan Program," Iowa Administrative Code.

This new chapter establishes the rules necessary for the administration of the Osteopathic Forgivable Loan Program, which was funded by the 1990 Iowa Legislature.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 3, 1990, as **ARC 1303A**. This rule is identical to that published under Notice of Intended Action except for the following:

1. Subrule 30.1(6) was amended by adding paragraph "d" which clarifies loan cancellations due to death or total permanent disability.
2. Subrule 30.1(9) was revised to conform to other state loan program restrictions regarding default on other educational loans.

The rule was adopted in final form on November 13, 1990, and will become effective on January 16, 1991.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, chapter 1272, section 52.

The following new chapter is adopted:

CHAPTER 30

OSTEOPATHIC FORGIVABLE LOAN PROGRAM

283—30.1(261) Osteopathic forgivable loan program. A state-supported and administered forgivable loan program is for Iowans enrolled at the University of Osteopathic Medicine and Health Sciences.

30.1(1) Definitions. As used in this chapter:

"Iowa resident student" means an individual who meets the criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262).

"Medical practice" means working full-time as a licensed physician in the state of Iowa following completion of either a required internship or residency program as certified by the state board of medical examiners.

"Medical residency or internship program" means an advanced medical training program which graduates

pursue immediately after graduating from the university.

30.1(2) Student eligibility. Individuals enrolling as first-year students on or after July 1, 1990, in the osteopathic university who meet the Iowa residency criteria as defined in 681 IAC 1.4(262) and plan to practice medicine in Iowa are eligible recipients.

30.1(3) Promissory note. The recipient of a loan under this program shall sign a promissory note agreeing to practice medicine in Iowa for one full year for each loan received or to repay the loan and accrued interest according to repayment terms specified in the note.

30.1(4) Interest rate. The rate of interest on loans under this program shall be at the rate of 10.5 percent per annum on the unpaid principal balance.

30.1(5) Disbursement of loan proceeds.

a. The full loan amount will be disbursed when the university certifies that the borrower is an Iowa resident and enrolled in good standing.

b. The loan check will be made copayable to the borrower and the University of Osteopathic Medicine and Health Sciences and will be sent to the university within ten days following the receipt of the proper certification.

c. The university will deliver the check to the student and require that the loan check be endorsed to the university to be applied directly to the borrower's tuition account.

d. If the student withdraws from attendance and is entitled to a refund of tuition and fees, the pro rata share of the refund attributable to the state loan must be refunded to the commission.

30.1(6) Loan cancellations.

a. Thirty days following the termination of enrollment in the University of Osteopathic Medicine and Health Sciences or the completion of a medical residency or internship or termination of a medical practice in the state of Iowa, the borrower shall notify the commission of the nature of the borrower's employment or educational status.

b. To certify eligibility for cancellation, the borrower must submit to the commission an affidavit from a local medical society or state licensing board verifying that the borrower practiced medicine as a licensed physician in the state of Iowa for 12 consecutive months for each annual loan to be canceled.

c. If the borrower qualifies for partial loan cancellation, the commission shall notify the borrower promptly and revise the repayment schedule accordingly.

d. In the event of death or total and permanent disability, a borrower's obligation to pay this loan is canceled. Borrowers seeking forgiveness as a result of total or permanent disability must submit sufficient information substantiating the claim to the commission. Reports of a borrower's death will be referred to the licensing board for confirmation.

30.1(7) Loan payments.

a. Prior to the start of the repayment period, the commission shall provide the borrower with a repayment schedule, modified to reflect any applicable cancellation benefits.

b. It shall be the borrower's responsibility to remit payments to the commission by the fifteenth day of each month.

c. In the event the borrower fails to abide by any material provision of the promissory note or fails to make any payment due under the promissory note within ten days after the date the payment is due, the commission may declare the borrower in default and declare the entire unpaid balance and accrued interest on the promissory note due.

d. The borrower is responsible for notifying the commission immediately of any change in name, place of employment, or home address.

30.1(8) Deferral of repayment.

a. Repayment of the borrower's loan obligation may be deferred under the following circumstances: active duty in the United States military service, not to exceed three years; during a period of temporary disability, not to exceed three years.

b. Repayment of the borrower's loan obligation under this loan program is not required during periods of enrollment as an osteopathic student at the University of Osteopathic Medicine and Health Sciences or during an internship or medical residency.

30.1(9) Restriction. A student who is in default on a Stafford Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance shall be ineligible for loan payments. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedure set forth in 283—Chapter 3, Iowa Administrative Code.

This rule is intended to implement Iowa Code chapter 261 as amended by 1990 Iowa Acts, chapter 1272, section 52.

[Filed 11/14/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1546A

DENTAL EXAMINERS BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 153.33(5), the Iowa Board of Dental Examiners hereby adopts amendments to Chapter 22, "Minimum Training Standards for Dental Assistants Engaging in Dental Radiography," Iowa Administrative Code.

The purpose of these amendments is to clarify and expand the requirements for issuance and renewal of a Certificate of Qualification issued to dental assistants participating in dental radiography.

Notice of Intended Action was published in the Iowa Administrative Bulletin, August 22, 1990, as **ARC 1170A**. The amendments were adopted by the Board of Dental Examiners on November 15, 1990.

Changes from the Notice are as follows:

1. Subrule 22.6(1) was revised by adding at the end of the subrule the following: "under student status unless the student status is obtained pursuant to 22.4(2)."

2. Subrule 22.11(1) was revised to include criminal and civil penalties.

3. Subrule 22.11(2) was clarified to provide discipline under 650—Chapter 30.

These amendments are intended to implement Iowa Code section 136C.3 and chapter 153.

These amendments shall become effective on January 16, 1991.

ITEM 1. Amend rule 650—22.4(153) as follows:

Amend subrule 22.4(1) as follows:

22.4(1) An applicant for qualification in dental radiography shall be deemed eligible for examination upon compliance with the provisions of subrules 22.3(1) to 22.3(3) ~~or, in lieu thereof, submitting satisfactory documentation showing active and direct participation in dental radiography for not less than one year prior to the effective date of these rules~~.

Rescind the existing subrule 22.4(2) and insert the following in lieu thereof:

22.4(2) Students enrolled in an approved accredited dental assistant program who, as part of their course of study, apply ionizing radiation.

Amend subrule 22.4(3) as follows:

22.4(3) ~~Students of dental assisting~~ *Dental assistants under student status who are* enrolled in a board-approved *dental radiography home/office study* program ~~or course of study for dental radiography~~ who, as a part of their *home/office* ~~course of~~ study, apply ionizing radiation to a human being while under the direct supervision of a licensed dentist, *in a dental office,* provided the course of study is completed in not more than ~~24~~ *six* months from its inception. *Prior to engaging in home/office study, the dental assistant must make application for student status to the board on the form approved by the board.*

ITEM 2. Amend rule 650—22.6(153) as follows:

650—22.6(153) Examination and proficiency evaluation. Except as otherwise provided in this chapter, no person shall operate radiation emitting equipment in any dental office without first having successfully completed a written examination approved by the board and who presents to the board satisfactory evidence that an Iowa licensed dentist attests to the reasonable clinical proficiency of that person observed over not less than one month, which shall be, for the purpose of this rule only, deemed a continuation of the person's status as a student under subrule *22.4(2) or* 22.4(3).

Further amend rule 650—22.6(153) by adding the following new subrules:

22.6(1) In the event a dental assistant under student status pursuant to subrule 22.4(3) fails twice to successfully complete the examination, a third examination may be taken so long as the third examination is taken within 60 days after expiration of the six-month period of student status. In the event the dental assistant fails the third examination, student status shall be revoked and the dental assistant shall be deemed ineligible to participate in dental radiography under student status unless the student status is obtained pursuant to 22.4(2).

22.6(2) A dental assistant who completes a formal course of study pursuant to 22.4(2) or a dental assistant who takes the examination for issuance of a renewal of a certificate is allowed to take the examination not more than two times. The board may require the dental assistant to take remedial training prior to being allowed to retake the examination. Dental assistants in this category may not participate in dental radiography before successful completion of the examination and issuance of a certificate of qualification or issuance of a renewal of an existing certificate of qualification.

ITEM 3. Rescind existing rules 650—22.7(153) to 650—22.10(153) and insert the following in lieu thereof:

650—22.7(153) Application for board qualification. Applications for issuance of a certificate of qualification shall be made to the board on the form provided by the board and must be completely answered.

22.7(1) Applications must be filed with the board along with:

a. Proof that training and experience qualify the applicant to engage in dental radiography.

b. Proof that the applicant has successfully completed the Dental Radiation Health and Safety Examination of the Dental Assisting National Board, if taken after January 1, 1986, or proof of having successfully completed the written examination approved by the board.

c. Signed verification as to the truth of the statements and that the applicant has read the requirements of these rules and understands the regulations pertaining to dental radiography.

d. Signature of an Iowa licensed dentist attesting to the reasonable clinical proficiency of the applicant having observed the applicant for a period not less than 30 days. An applicant who meets all requirements except the 30-day clinical proficiency requirement may petition the board for a waiver of this requirement.

e. The fee as specified in these rules.

f. Additional information the board may require relating to character, education and experience as may be necessary to pass upon the applicant's qualification.

22.7(2) Any person who does not meet the requirements of subrule 22.7(1) may apply for student status as defined in subrule 22.4(3).

650—22.8(153) Renewal requirements.

22.8(1) Commencing in 1993, certificates shall be renewed biennially.

22.8(2) The renewal application shall be made in writing to the board at least 30 days before the current certificate expires.

22.8(3) Attendance once every four years at an updating seminar in dental radiography approved by the board shall be required for renewal. At the time of renewal the dental assistant shall be required to sign a statement that the dental assistant has attended the required course during the previous four-year period. Proof of attendance at such course of study shall be retained by the dental assistant and submitted to the board as further proof of compliance at the request of the board.

22.8(4) All certificates shall expire on June 30, 1993, and every two years thereafter.

22.8(5) The appropriate fee as specified in this chapter shall accompany the application for renewal. A penalty shall be assessed by the board for failure to renew within 30 days after expiration as specified in this chapter.

22.8(6) The holder of a certificate who fails to renew within 90 days after its expiration may obtain a renewal certificate only by following the procedures for application and testing provided in these rules.

22.8(7) Any dental assistant who ceases to participate in dental radiography for more than one year shall obtain a renewal certificate only by following procedures for application and testing provided in these rules.

DENTAL EXAMINERS BOARD[650] *(cont'd)*

22.8(8) The board may require recertification, qualification and clinical evaluation of a dental assistant holding a certificate of qualification in dental radiography if the board, in its discretion, believes such action is necessary for the protection of the public.

650—22.9(136C) Certificate of qualification in dental radiography—fees.

22.9(1) The fee for application for a certificate of qualification or student status leading to qualification shall be $25.

22.9(2) The fee for renewal of a certificate shall be $10.

22.9(3) The fee for renewal if the applicant has failed to renew the certificate within 30 days after expiration shall be $35.

650—22.10(153) Responsibilities of certificate holder.

22.10(1) The dental assistant holding a certificate of qualification issued by the board shall conspicuously display the certificate in the office of employment.

22.10(2) The dental assistant holding a certificate of qualification issued by the board shall notify the office of the board of any address change within 60 days.

650—22.11(153) Enforcement.

22.11(1) Any individual except a licensed dentist or a licensed dental hygienist who participates in dental radiography in violation of this chapter or Iowa Code chapter 136C shall be subject to the criminal and civil penalties set forth in Iowa Code sections 136C.4 and 136C.5.

22.11(2) Any licensed dentist who permits a person to engage in dental radiography contrary to this chapter or Iowa Code chapter 136C, shall be subject to discipline by the board pursuant to 650—Chapter 30.

[Filed 11/21/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1533A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106 and Iowa Code Supplement section 15.293 (11), the Iowa Department of Economic Development adopts amendments to Chapter 6, "Retraining Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1238A** on September 5, 1990. The IDED Board adopted the amendments on November 15, 1990.

The amendments to Chapter 6:

1. Explain the definition of managerial procedures as it relates to retooling;
2. Clarify the dates when allowable costs and precontract costs can be claimed;
3. Require an explanation of retooling operations in place;
4. Require an explanation of the need for and relevance of retraining as it relates to the retooling operations in place;
5. Redistribute criteria points, emphasizing the quality of the training plan.

The following comments were received during the comment period:

1. Concerns about disclosing financial data for specific project sites of a company may be detrimental to the company making the disclosure;
2. Too much emphasis was placed on the training plan;
3. Addition of bonus points for small businesses;
4. Clarification on points awarded for meeting the matching requirement;
5. Some of the new wording was considered redundant; and
6. Do not change the point values of criteria to lower the amount of points possible to receive from 200 to 190.

Changes to the Notice of Intended Action include:

1. Deletion of the requirement to have an application submitted by the fifteenth of the month to make costs allowable for that month, since applications may be submitted at any time during the month to be considered for funding.
2. Deletion of the proposed change in subrule 6.6(5)"b"(1).
3. Deletion in rule 6.8 of the phrase "the points assigned to criteria represent the maximum points possible".
4. Deletion in subrules 6.8(1), 6.8(2) and 6.8(3) of the references to financial and other data "at the project site", since identifying this information by project site may provide the applicant's competitors information that may put the applicant at a disadvantage.
5. Change in subrule 6.8(4) to allow the original points for the business investment ratio and clarify how the points are awarded.
6. Clarification of "need" in subrule 6.8(6) to reduce ambiguity.
7. Change point distribution back to original value in subrule 6.8(15), since the change was viewed as not necessary to encourage applications from multiple businesses.
8. Add bonus points for small businesses applying for assistance to give small businesses an equal opportunity to compete for funding.

These rules will become effective on January 16, 1991.

These rules are intended to implement Iowa Code Supplement sections 15.291 to 15.298.

The following amendments are adopted:

ITEM 1. Amend rule **261—6.2(73GA,ch 220)**, definition of "Retooling," as follows:

"Retooling" means upgrading, modernizing, or expanding a business to increase the production or efficiency of business operations, including replacing equipment, introducing new manufacturing processes, or changing managerial procedures. *Managerial procedures include those philosophies and techniques, such as statistical process control, total quality management, quality circles, just-in-time, and others. These management technologies are labor intensive and do not necessarily require capital outlay.*

ITEM 2. Amend rule 261—6.4(73GA,ch220) as follows:

261—6.4 (73GA,ch220) Allowable costs. Allowable program costs means all necessary and incidental costs of providing program services and includes, but is not

limited to, the following services: jobs retraining; adult basic education and job-related instruction; vocational and skill-assessment services and testing; training facilities, equipment, materials, and supplies; administrative expenses for the jobs retraining program; subcontracted services with institutions governed by the board of regents, merged area schools, private colleges or universities, or other federal, state or local agencies; contracted or professional services; and for funded projects, precontract costs approved by the department. *Allowable costs can be claimed from the date the application is submitted. Allowable precontract costs must be submitted in writing to the department prior to the execution of the contract.* On-the-job training is not an allowable program service. Employee wages paid by a business for actual training time may be used to meet the business investment requirement of 6.8(4).

ITEM 3. Amend subparagraph **6.6(5)**"a"(4) as follows:

(4) The retooling operations in place or planned to be in place *at the project site.*

ITEM 4. Amend subrule **6.6(5)**, paragraph "b," by adding two new subparagraphs as follows:

(13) An explanation of the type of retooling operations in place or planned to be in place at the project site.

(14) An explanation of the need for retraining as it relates to the company's retooling operations at the project site.

ITEM 5. Amend subrules 6.8(1), 6.8(2), 6.8(3), 6.8(4), 6.8(6), 6.8(12), and 6.8(15) as follows:

6.8(1) Actual investment. The total amount of dollars which have been invested in the business for the previous three years to increase productivity or efficiency, including capital improvements in retooling. ~~10~~ *5* points.

6.8(2) Planned investment. The total amount of dollars planned to be invested in the business for the following three years to increase productivity or efficiency including capital improvements in retooling. ~~10~~ *5* points.

6.8(3) Ratio: investment + profit compared to retraining dollars requested. A ratio comparing the total dollars invested or to be invested pursuant to subrules 6.8(1) and 6.8(2) plus the amount of profit in dollars made by the business in the previous three years, to the amount of dollars proposed to assist the business in retraining. ~~25~~ *10* points.

6.8(4) Ratio: business investment in retraining costs compared to requested retraining funds. A ratio comparing the total amount planned to be invested by the business *at the project site* in the actual costs of retraining to the amount of dollars being requested for retraining. This ratio shall indicate that the business's investment amount is at least equal to the amount requested, *in which case the full 25 points will be awarded.* If not, the application shall be denied. 25 points.

6.8(6) Need. The need of the applicant's business for retraining assistance. "Need" is not limited to financial need for purposes of this criterion, *although it can include financial condition;* it may also include the need of the business to improve the quality of jobs, improve technology, or remain competitive, etc. ~~10~~ *20* points.

6.8(12) Feasibility. The feasibility of implementing the retraining proposal~~.~~, *including the relevance of the retraining proposal to the retooling efforts, a statement of the specified outcomes of the retraining proposal, the likelihood of the business to improve quality of jobs, improve technology, remain competitive, and improve financial condition.* ~~10~~ *25* points.

6.8(15) Number of businesses. The number of businesses contained in the training proposal applying for combined assistance. ~~10~~ *20* points.

Further amend rule 261—6.8(73GA,ch220) by adding the following new subrule:

6.8(17) Small businesses. Businesses with less than 250 employees and sales of less than $2,000,000. 30 points.

[Filed 11/20/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1532A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 8, "Self-Employment Loan Program," Iowa Administrative Code.

The adopted amendments:

1. Require an applicant to have successfully completed or be willing to complete a business training program prior to receiving a loan award.

2. Require a minimum score of 10 points out of 19 possible points of the selection criteria to receive a loan.

Notice of Intended Action was published in the September 5, 1990, Iowa Administrative Bulletin as **ARC 1237A**. The only comment received during the comment period was a request from Kirkwood Community College to add the Rural Development Center to subrule 8.3(7) as an example of a source of business training.

The only change from the Notice of Intended Action was the addition of Kirkwood Community College's Rural Development Center as an example of a source of business training.

These amendments were adopted by the Economic Development Board at its November 15, 1990, meeting and will become effective on January 16, 1991.

These amendments are intended to implement Iowa Code section 15.241.

The following amendments are adopted:

ITEM 1. Amend rule 261—8.3(15) by adding a new subrule as follows:

8.3(7) Experience. An applicant must have successfully completed a business training program including, but not limited to, programs such as SEID, WEDGE, Drake's Minority Business Venture, and Kirkwood Community College's Rural Development Center; or be able to demonstrate a basic knowledge of business strategy and planning documented by previous successful business management or ownership; or be willing to enroll in a business training program; or agree in writing to accept and utilize ongoing technical assistance.

ITEM 2. Amend subrule 8.4(2) as follows:

8.4(2) Review. Applications will initially be reviewed by the IDED staff. IDED staff may request additional

information from the applicant prior to committee review. A review committee will score each application. The scores will be averaged and the applications receiving a minimum of ~~five~~ *10* points out of a total of ~~ten~~ *19* will be considered by the committee for recommendation for funding. The committee's recommendation for funding will include the amount of the loan (not to exceed $5,000), the amount of the interest to be charged (not to exceed 5 percent), and other terms and conditions. The IDED director will review the recommendation and make a final decision based on various factors including geographical distribution, economic impact, etc.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC

ARC 1534A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 14, "Youth Affairs," Iowa Administrative Code.

The adopted amendments:

1) Expand the age range for the In-School Program from 14 to 19 1/2 years to 14 to 21 years to allow older mentally handicapped secondary students to participate in the program.

2) Change the hours of work on the Summer Conservation Program to 32 hours per week with 8 hours of nonpaid environmental education, instead of the current 30 hours per week of work and 10 hours of environmental education.

3) Add an enrollee bonus, not to exceed $100, to reimburse youth for the cost of work boots, uniforms, and state camp fees, if they successfully complete the program.

4) Increase the maximum grant award for Summer Conservation projects from $17,500 to $20,125 to allow for the increased costs due to minimum wage increases.

5) Reduce the number of audit reports required to be submitted from two to one.

6) Allow graduating seniors to participate in the Iowa Corps prior to their entering a postsecondary school.

7) Change the application deadline for Iowa Corps projects from April 30 each year to April 1 each year to allow notification of successful applicants prior to the end of the school year.

8) Change the points awarded for selection criteria to give credit for environmental projects; to add intergenerational relationships; to reduce the points awarded for financial need; and to eliminate the points awarded for previous volunteer experiences.

9) Allow project extensions for Young Adult projects beyond the May 15 to September 15 limits under extenuating circumstances, such as natural disasters and inclement weather conditions.

Notice of Intended Action was published in the September 5, 1990, Iowa Administrative Bulletin as **ARC 1235A**, and subrules 14.4(4) and 14.7(5) were also Adopted and Filed Emergency as **ARC 1236A** at that time.

No comments were received and there are no changes from the Notice of Intended Action.

These amendments were adopted by the Economic Development Board at its November 15, 1990, meeting and will become effective on January 16, 1991, at which time the Emergency Adopted subrules, 14.4(4) and 14.7(5), will be rescinded.

These rules are intended to implement Iowa Code Supplement sections 15.225, 15.227 to 15.230 and Iowa Code section 15.226.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to Ch 14] is being omitted. These rules are identical to those published under Notice as **ARC 1235A**, IAB 9/5/90.

[Filed 11/20/90, effective 1/16/91]
[Published 12/12/90]

[For replacement pages for IAC, see IAC Supplement, 12/12/90.]

ARC 1538A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 39, "Iowa Main Street Program," Iowa Administrative Code.

Notice of Intended Action was published as **ARC 1135A** on August 8, 1990, in the Iowa Administrative Bulletin. The Iowa Department of Economic Development Board adopted these rules on November 15, 1990.

The amendments revise the selection criteria, lower the population cap for eligible applicants, update Code references, refine match requirements and make other technical changes.

A public hearing to receive comment about the proposed amendments to Chapter 39 was held on September 4, 1990. No public comment was received. The only change to the proposed rules was a modification of subrule 39.3(3) to provide for distribution of RFPs upon availablility of funds. This clarification was recommended by the Administrative Rules Review Committee as follows:

39.3(3) Request for proposals (RFP). The ~~agency~~ *department, upon availability of funds,* will ~~annually~~ distribute a request for proposal which describes the Iowa main street program, outlines eligibility requirements, includes an application and a description of the application procedures. Grants will be awarded on a competitive basis.

These rules will become effective on January 16, 1991.

These rules are intended to implement Iowa Code section 99E.32(3)"d"(3).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to Ch 39] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 1135A**, IAB 8/8/90.

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[For replacement pages for IAC, see IAC Supplement, 12/12/90.]

ARC 1537A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts a new Chapter 80, "Community Builder Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1243A** on September 5, 1990. The IDED Board adopted the new chapter on November 15, 1990.

The new rules establish a community builder program. The purpose of the program is to encourage local governments or coalitions of local governments to implement and complete comprehensive planning efforts for community development, business development and economic development.

No comments concerning the proposed new chapter were received from the public at the hearing held on September 25, 1990. As a result of comments that the Department received prior to the hearing, the following changes were made to the proposed rules:

In rule 261—80.3(73GA,ch1140) the sentence concerning applications for financial assistance prepared by community colleges has been deleted since this was covered by other statements in this rule.

In rule 261—80.6(73GA,ch1140) "shall" has been changed to "may" to allow the councils greater flexibility in working with the program.

In rule 261—80.12(73GA,ch1140) the Iowa Finance Authority has been included in the listing of service providers since they will also provide technical assistance for planning.

These rules will become effective on January 16, 1991.

These rules are intended to implement 1990 Iowa Acts, chapter 1140.

The following new chapter is adopted:

CHAPTER 80

COMMUNITY BUILDER PROGRAM

261—80.1(73GA,ch1140) Definitions. As used in this chapter:

"Certified applicant" means any eligible applicant or group of applicants which submits a community builder plan to the department for review and subsequently receives certification.

"Department" means the department of economic development.

261—80.2(73GA,ch1140) Purpose. The purpose of the community builder program is to encourage local governments or coalitions of local governments to implement and complete comprehensive planning efforts for community development, business development and economic development. Certified applicants receive bonus points when applying for selected state financial assistance programs. Plans are required for communities which receive funding under these same programs.

261—80.3(73GA,ch1140) Eligible participants. Incorporated cities, counties, unincorporated communities, clusters of cities, groups of counties and groups of unincorporated communities may submit community builder plans to the department. Plans from clusters or groups of local governments shall include contiguous jurisdictions to the maximum extent possible. Only the above-noted entities may submit community builder plans to the department for review, although participants may utilize or contract with other parties to prepare the plans. Private businesses may not submit community builder plans and are not eligible for bonus points.

261—80.4(73GA,ch1140) Additional consideration for financial assistance. Any certified applicant shall be eligible for bonus points of not less than 5 percent and not more than 20 percent of the total points available when applying for the state financial assistance programs listed below.

80.4(1) The agency responsible for administering the program shall be responsible for assigning bonus points to the applications of certified applicants.

80.4(2) Financial assistance programs affected. The following state financial assistance programs shall assign bonus points to the applications of certified applicants:

a. The community economic betterment account administered by the department.

b. The community development block grant program administered by the department.

c. The rural community 2000 program administered by the department.

d. The revitalize Iowa's sound economy program administered by the department of transportation.

e. The chapter 220 housing program fund administered by the Iowa finance authority.

f. The recycling projects program under Iowa Code Supplement chapter 455D administered by the department of natural resources.

g. The resource enhancement and protection program administered by the department of natural resources.

261—80.5(73GA,ch1140) Contents of community builder plans. At a minimum, each community builder plan shall include the following items:

80.5(1) A cover letter or letters signed by the mayor(s) or the chair(s) of the county board of supervisors from the community, communities, county or counties involved in transmitting the plan to the department. This letter shall designate a principal contact for correspondence regarding the plan, including a name, mailing address and telephone number. For plans involving groups of communities or clusters, a lead community and contact shall be designated.

80.5(2) A five-year strategic plan and vision designed to meet the needs of the local government(s) involved.

This plan should identify the key assets and liabilities of the jurisdictions involved, identify goals for development, and describe the community, business and economic development strategies to be followed locally during the next five years and their expected results. The five-year plan will include:

a. A community profile and data base including assessments of infrastructure, cultural and fine arts resources, housing, primary health care services, natural resources, conservation and recreational facilities. The profile and data base shall also include a description of each local government's participation in county or regional economic development plans.

b. A plan to improve the local government(s) involved with respect to infrastructure, cultural and fine arts resources, housing, primary health care services, natural resources, conservation and recreational facilities. The plan shall include a listing of priorities and action steps to meet identified needs.

c. A listing of local community programs which encourage community, business and economic development, including both public and private resources. State and federal programs need not be listed.

d. An analysis of current and potential local tax revenues over the next five years. This analysis shall show the extent of tax abatements for community, business and economic development purposes and use of available tax capacity.

e. A county or regional survey showing the available labor force for the area and current employment.

f. A description of how the public was informed or participated in the development of the community builder plan.

261—80.6(73GA,ch1140) Submittal of community builder plans. Applicants shall submit six copies of each community builder plan to the Iowa Department of Economic Development, Community Builder Plan Review, 200 East Grand Avenue, Des Moines, Iowa 50309. The department shall distribute copies of each plan for review by the department of transportation, department of natural resources and Iowa finance authority. At the same time applicants shall submit one copy of each community builder plan to the appropriate regional coordinating council(s) who may submit comments to the Iowa department of economic development within 25 days.

261—80.7(73GA,ch1140) Review process. The department shall coordinate a review process for each submitted community builder plan, accept comments on plans from other departments and regional coordinating councils and determine whether the plan meets the requirements stated under rule 80.5(73GA,ch1140). The department shall inform applicants in writing within 60 days from time of receipt if the plan meets or does not meet the requirements. If the plan does not meet the requirements, the department shall notify the applicant in writing of any deficiencies. The applicant may resubmit the revised portions for reconsideration after addressing these deficiencies.

261—80.8(73GA,ch1140) Certification. The department shall certify the completion of eligible applicants whose plans have met the requirements of the community builder program. Certified applicants shall be notified in writing by the department. The department shall keep a complete listing of certified applicants and the date of their certification. Copies of this listing shall be provided to the department of transportation, the department of natural resources, the Iowa finance authority and all regional coordinating councils and councils of government. Certification shall continue to remain in effect for five years from the date of notification to the applicant. Eligible applicants may submit an updated plan to apply for recertification for another five-year period. This may be done at any time the applicant deems appropriate. Recertification shall remain in effect from the date the applicant is notified by the department of the approval of the updated plan.

261—80.9(73GA,ch1140) Amendments. Certified applicants may amend plans once each year before the anniversary of certification. Amendments will be accepted or rejected and will not result in recertification but will allow applicants to account for changes in their jurisdictions. If the amendment is not accepted, the original plan will remain certified.

261—80.10(73GA,ch1140) Plan required for awardees of state programs. After July 1, 1990, any city, cluster of cities, county, group of counties, unincorporated community or group of unincorporated communities not yet certified but awarded a grant or other initiative under the programs listed in 80.4(2)"b" shall notify the department that it has initiated a process to prepare and submit a community builder plan within six months of the receipt of the award. This plan must be submitted to the department within three years of the receipt of the award to be eligible to receive bonus points on future applications.

261—80.11(73GA,ch1140) Compliance. Failure to comply with the requirements of the community builder program will result in the noncertification of the city, cluster of cities, county, group of counties, unincorporated community or group of unincorporated communities resulting in ineligibility for bonus points on future applications.

261—80.12(73GA,ch1140) Technical assistance for planning. Contingent on the availability of funding for this purpose, the department may enter into contracts with service providers including, but not limited to, councils of government, Iowa State University extension, the University of Iowa, merged area schools, private colleges, regional coordinating councils, Iowa finance authority and the University of Northern Iowa to provide technical assistance for eligible applicants preparing community builder plans. Eligible applicants are encouraged to seek the assistance of these service providers in preparing their plans.

These rules are intended to implement 1990 Iowa Acts, chapter 1140.

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ARC 1552A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission for the Department of Natural Resources hereby adopts revisions to Chapter 40, "Scope of Division-Definitions-Forms-Rules of Practice," and Chapter 41, "Water Supplies," and creates a new Chapter 43, "Water Supplies - Design and Operation," Iowa Administrative Code.

The Notice of Intended Action was published in the June 13, 1990, Iowa Administrative Bulletin as **ARC 965A**. Public hearings were held on July 9, July 10, July 11, and July 12, 1990. The amendments were adopted on November 19-20, 1990, by the Environmental Protection Commission. Changes to the amendments to Chapters 40, 41 and 43 proposed in the Notice of Intended Action have been made as the result of comments and are reflected in the responsive summary.

These "filtration" rules pertain to revision of the existing Chapters 40 and 41 to add definitions, monitoring requirements and standard language for public notification. Additionally Chapter 43 is being created to contain topics relating to public water supplies' design and operation requirements and include the new monitoring and performance standards for public water supplies using surface water or groundwater influenced by surface water. The rule changes are proposed due to promulgation of the same regulations by EPA which become effective December 31, 1990.

These rules are intended to implement Iowa Code chapter 455B, Division III, Part 1.

These rules will become effective January 16, 1991, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

ITEM 1. Amend rule **567—40.2(455B)** by inserting in alphabetical order the following new definitions:

"Coagulation" means a process using coagulation chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

"Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (1) precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (2) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires disease.

"Point of disinfectant application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water run-off.

"Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in mg/l in a representative sample of water.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h (0.02 ft/min.) resulting in substantial particulate removal by physical and biological mechanisms.

"Surface water" means all water which is open to the atmosphere and subject to surface runoff.

"Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the Iowa department of public health.

ITEM 2. Amend 567—41.2(455B) by adding the following new subrule:

41.2(3) Heterotrophic plate count bacteria (HPC).

a. Applicability. All public water systems that use a surface water source or a groundwater source under the direct influence of surface water must provide treatment consisting of disinfection, as specified in 43.5(2), and filtration treatment which complies with 43.5(3). The heterotrophic plate count is an alternate method to demonstrate a detectable disinfectant residual in accordance with 43.5(2)"d."

b. Maximum contaminant levels. Reserved.

c. Monitoring requirements. Reserved.

d. BAT. Reserved.

e. Analytical methodology. Public water systems shall conduct heterotrophic plate count bacteria analysis in accordance with 43.5(2) and the following analytical method. Measurements for heterotrophic plate count bacteria must be conducted by a laboratory certified by the department to do such analysis. Until laboratory certification criteria are developed for the analysis of heterotrophic plate count bacteria, any laboratory certified for total coliform analysis by the department is certified for heterotrophic plate count bacteria analysis. After certification criteria have been established, the laboratory shall meet the criteria at renewal of certification.

(1) The heterotrophic plate count shall be performed in accordance with Method 9215B (Pour Plate Method), pp. 9-58 to 9-61, as set forth in "Standard Methods."

(2) Reporting. The public water system shall report the results of heterotrophic plate count in accordance with 43.7(3)"b."

ITEM 3. Subrule 41.3(3) is amended by adding introductory text to read as follows:

41.3(3) Turbidity. The requirements in this subrule apply to public water supplies using surface water until June 29, 1993.

ITEM 4. Subrule 41.4(2) is amended by adding introductory text to read as follows:

41.4(2) Turbidity. Sampling and analytical requirements. The requirements in this subrule apply to public water supplies using surface water until June 29, 1993.

ITEM 5. Amend Chapter 41 by adding a new rule 567—41.7(455) as follows:

567—41.7(455B) Physical properties maximum contaminant levels (MCL or treatment technique requirement) and monitoring requirements.

41.7(1) Turbidity.

a. Applicability. The maximum contaminant levels (treatment technique requirements) for turbidity are applicable to community and noncommunity public water supply systems using surface water or groundwater under the direct influence of surface water in whole or in part. A system providing filtration on or before December 30, 1991, shall meet the requirements of this subrule on June 29, 1993. A system providing filtration after December 30, 1991, shall meet the requirements of this subrule when filtration is installed. The department may require and the system shall comply with any interim turbidity requirements the department deems necessary. Failure to meet any requirement of this subrule, in accordance with 567—43.5(455B), after the date specified in this paragraph is a treatment technique violation.

b. Maximum contaminant levels (MCL or treatment technique requirement) for turbidity. The maximum contaminant levels (treatment technique requirements) for turbidity in drinking water, measured at representative entry point(s) to the distribution system, are as follows:

(1) Conventional filtration treatment or direct filtration.

1. For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.5 nephelometric turbidity units (NTU) in at least 95 percent of the measurements taken each month when measured as specified in 41.7(1)"c" and "e."

2. The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU when measured as specified in 41.7(1)"c" and "e."

(2) Slow sand filtration.

1. For systems using slow sand filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month when measured as specified in 41.7(1)"c" and "e."

2. The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU when measured as specified in 41.7(1)"c" and "e."

(3) Diatomaceous earth filtration.

1. For systems using diatomaceous earth filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month when measured as specified in 41.7(1)"c" and "e."

2. The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU when measured as specified in 41.7(1)"c" and "e."

(4) Other filtration technologies. A public water system may use either a filtration technology not listed in 41.7(1)"b"(1) to 41.7(1)"b"(3) or a filtration technology listed in 41.7(1)"b"(1) and "b"(2) at a higher turbidity level if it demonstrates to the department through a preliminary report submitted by a registered professional engineer, using pilot plant studies or other means, that the alternative filtration technology in combination with disinfection treatment that meets the requirements of 43.5(2), consistently achieves 99.9 percent removal or inactivation of Giardia lamblia cysts and 99.99 percent removal or inactivation of viruses. For a system that uses alternative filtration technology and makes this demonstration, the maximum contaminant levels (treatment technique requirements) for turbidity are as follows:

1. The turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month when measured as specified in 41.7(1)"c" and "e."

2. The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU when measured as specified in 41.7(1)"c" and "e."

c. Monitoring requirements.

(1) Routine turbidity monitoring. Turbidity measurements as required by 43.5(3) must be performed on representative samples of the system's filtered water every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a calibration protocol approved by the department and audited for compliance during sanitary surveys. Major elements of the protocol shall include but are not limited to: method of calibration, calibration frequency, calibration standards, documentation, data collection and data reporting. For any systems using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the department may reduce the sampling frequency to once per day if it determines that less frequent monitoring is sufficient to indicate effective filtration performance. For systems serving 500 or fewer persons, the department may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the department determines that less frequent monitoring is sufficient to indicate effective filtration performance. Approval shall be based upon documentation provided by the system, acceptable to the department and pursuant to the conditions of an operation permit.

(2) A supplier of water serving a population or population equivalent of greater than 100,000 persons shall provide a continuous or rotating cycle turbidity monitoring and recording device or take hourly grab samples to determine compliance with 41.7(1)"b."

d. Reserved.

e. Analytical methodology. Public water systems shall conduct turbidity analysis in accordance with 43.5(4) and the following analytical method. Measurements for turbidity shall be conducted by a grade II, III, or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of a grade II, III, or IV operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform analysis under 41.4(13)"a."

(1) Turbidity monitoring shall be conducted in accordance with Method 2130B (Nephelometric Method), pp. 2-13 to 2-16, as set forth in "Standard Methods."

(2) Reporting. The public water supply system shall report the results of the turbidity analysis in accordance with 43.7(1) and 43.7(3).

41.7(2) Residual disinfectant.

a. Applicability. Public water supply systems which apply chlorine shall monitor, record, and report the concentrations daily in accordance with 43.7(2)"a." In addition, all public water supply systems that use a surface water source or a groundwater source under the direct influence of surface water must provide treatment consisting of disinfection, as specified in 43.5(2), and filtration treatment, as specified in 43.5(3), and shall monitor for the residual disinfectant concentration in both the water entering the distribution system and in the distribution system and shall report the results of that analysis in accordance with 43.7(3).

b. Maximum contaminant levels. Reserved.

c. Monitoring requirements. Public water supplies that use surface water or groundwater under the direct influence of surface water shall monitor for the residual disinfectant concentration in both the water entering the distribution system and in water in the distribution system so as to demonstrate compliance with 43.5(2).

(1) Disinfectant residual entering system. Residual disinfectant concentration of the water entering the distribution system shall be monitored continuously, and the lowest value recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but not to exceed five working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies prescribed below:

System size (persons served)	Samples/ day(*)
<500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

(*) When more than one grab sample is required/day, the day's samples cannot be taken at the same time. The sampling intervals must be at a minimum of four-hour intervals.

If at any time the disinfectant concentration falls below 0.3 mg/l in a system using grab sampling in lieu of continuous monitoring, the system shall take a grab sample every four hours until the residual disinfectant concentration is equal to or greater than 0.3 mg/l.

(2) Disinfectant residual in system. The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 43.2(1)"c," except that the department may allow a public water system which uses both a surface water source or a groundwater source under direct influence of surface water, and a groundwater source to take disinfectant residual samples at points other than the total coliform sampling points, if these points are included as a part of the coliform sample site plan meeting the requirements of 41.2(1)"c"(1)"1" and the department determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count as specified in 41.2(3), may be measured in lieu of residual disinfectant concentration.

d. BAT. Reserved.

e. Analytical methodology. Measurements for residual disinfectant concentration shall be conducted by a grade II, III, or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of a grade II, III, or IV operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform analysis under 41.4(13)"a."

(1) Residual disinfectant concentrations for free chlorine and combined chlorine (chloramines) must be measured by Method 4500-C1 D. and E. (Amperometric Titration Method), pp. 4-54 to 4-58, Method 4500-C1 F. (DPD Ferrous Titrimetric Method), pp. 4-58 to 4-62, Method 4500-C1 G. (DPD Colorimetric Method), pp. 4-62 to 4-65 "Standard Methods" 17 edition or (Method 408F (Leuco Crystal Violet Method), pp. 310-313, as set forth in "Standard Methods," 16th edition. Residual disinfectant concentrations for free chlorine and combined chlorine may also be measured by using DPD colorimetric test kits. Residual disinfectant concentrations for ozone must be measured by the Indigo Method as set forth in Bader, H., Hoigne, J., "Determination of Ozone in Water by the Indigo Method; A Submitted Standard Method"; Ozone Science and Engineering, Vol. 4, pp. 169-176, Pergamon Press Ltd., 1982, or automated methods which are calibrated in reference to the results obtained by the Indigo Method on a regular basis.

Note: The Indigo Method has been published in the 17th edition of "Standard Methods," pp. 4-162 to 4-165; the Iodemetric Method in the 16th edition may not be used.

Residual disinfectant concentrations for chlorine dioxide must be measured by Method 4500-ClO_2 C. (Amperometric Method) or Method 45-ClO_2D. (DPD Method) pp. 4-78 to 4-80, as set forth in "Standard Methods."

(2) Reporting. The public water supply system shall report the results in compliance with 43.7(1) and 43.7(3).

41.7(3) Temperature.

a. Applicability. Reserved.

b. Maximum contaminant levels. Reserved.

c. Monitoring requirements. Reserved.

d. BAT. Reserved.

e. Analytical methodology. Measurements for temperature must be conducted by a grade II, III, or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of a grade II, III, or IV operator meeting the requirements of 567—Chapter 81 or a laboratory certified by the department to perform analysis under 41.4(13). Temperature shall be determined in compliance with Method 2550 (Temperature), pp. 2-80 to 2-81, as set forth in "Standard Methods."

41.7(4) Hydrogen power(pH).

a. Applicability. Reserved.

b. Maximum contaminant levels. Reserved.

c. Monitoring requirements. Reserved.

d. BAT. Reserved.

e. Analytical methodology. Measurements for pH shall be conducted by a grade II, III, or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of a grade II, III, or IV operator meeting the requirements of 567—Chapter 81 or a laboratory certified by the department to perform analysis under 41.4(13)"a." pH shall be determined in compliance with

Method 4500-H^+ (pH Value), pp. 4-94 to 4-102, as set forth in "Standard Methods."

ITEM 6. Subrule **41.5(2)**"a"(2) is amended by adding a numbered paragraph "4" to read as follows:

4. Occurrence of a waterborne disease outbreak, as defined in 567—40.2, in an unfiltered system subject to the requirements of 567—43.5, after December 30, 1991.

ITEM 7. Amend subrule **41.5(2)**, paragraph "e," by adding a new subparagraph of standard language to read as follows:

(10) Microbiological contaminants (for use when there is a violation of the treatment technique requirements for filtration and disinfection in 567—43.5(455B). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants is a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little or no risk and should be considered safe.

ITEM 8. A new Chapter 567—43 entitled "Water Supplies - Design and Operation" is created by transferring portions of Chapter 41 and adding new rules. A table of corresponding numbers is inserted herein for clarification.

Chapter 43

Former rule number	New rule number
	43.1(new)
41.6	43.2
41.11	43.1(1)
41.12	43.3
41.13	43.4
41.14	43.7
41.14(1)	43.7(1)
41.14(2)	43.7(2)
	43.7(3) (new)
41.14(3)	43.1(4)
41.15	43.1(2)
41.16	43.1(3)
	43.5(new)
	43.6 Reserved (new)
Ch 41 - Table C	Ch 43 - Table A
Ch 41 - Table D	Ch 43 - Table B

567—43.1(455B) General information.

Renumber rule **41.11** "Emergency actions regarding water supplies" as **43.1(1)**. Renumber rule **41.15** "Prohibition on the use of lead pipes, solder and flux" as **43.1(2)**. Renumber rule **41.16** "Use of noncentralized treatment devices" as **43.1(3)**. Renumber subrule **41.14(3)** "Cross-connection control" as **43.1(4)**.

Renumber rule **41.6** "Permits to operate" as **567—43.2(455B)**. Renumber rule **41.12** "Public water supply system construction" as **567—43.3(455B)** and transfer **Table C** at the end of Chapter 41 to the end of Chapter 43 and reletter as **Table A**. Renumber rule **41.13** "Certification of completion" as **567—43.4(455B)**.

Add a new rule to read as follows:

567—43.5(455B) Filtration and disinfection.

43.5(1) Applicability/general requirements.

a. These rules apply to community and noncommunity public water supply systems using surface water or groundwater under the direct influence of surface water in whole or in part. The rules establish criteria under which filtration is required as a treatment technique. In addition, these rules establish treatment technique requirements in lieu of maximum contaminant levels for Giardia lamblia, heterotrophic bacteria, Legionella, viruses and turbidity. Each public water system with a surface water source or a groundwater source under the direct influence of surface water must provide treatment of that source water which complies with these treatment technique requirements. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(1) At least 99.9 percent (3-log) removal or inactivation of Giardia lamblia cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and

(2) At least 99.99 percent (4-log) removal or inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

b. Criteria for identification of groundwater under the direct influence of surface water. "Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with: (1) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia; or (2) significant and relatively rapid shifts in water characteristics such as turbidity (particulate content), temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the department. The department determination of direct influence may be based on site-specific measurements of water quality or documentation of well construction characteristics and geology with field evaluation. Only surface water and groundwater sources under the direct influence of surface water that are at risk to the contamination from Giardia cysts are subject to the requirements of this rule. Groundwater sources shall not be subject to this rule. The evaluation process shall be used to delineate between surface water, groundwater under the direct influence of surface water and groundwater. The identification of a source as surface water and groundwater under the direct influence of surface water shall be determined for an individual source, by the department, in accordance with the following criteria. The public water supply shall provide to the department that information necessary to make the determination. The evaluation process will involve one or more of the following steps:

(1) Preliminary review. The department shall conduct a preliminary evaluation of information on the source provided by the public water supply to determine if the source is an obvious surface water (i.e., pond, lake, stream, etc.) or groundwater under the direct influence

of surface water. The source shall be evaluated during that period of highest susceptibility to influence from surface water. The preliminary evaluation may include a review of surveys, reports, geological information of the area, physical properties of the source, and a review of departmental and public water system records. If the source is identified as a surface water no additional evaluation shall be conducted. If the source is a groundwater and identified as a deep well, it shall be classified as a groundwater not under the direct influence of surface water and no additional evaluation shall be conducted, unless through direct knowledge or documentation the source does not meet the requirements of 43.5(1)"b"(2). The deep well shall then be evaluated in accordance with 43.5(1)"b"(3). If the source is a shallow well, the source shall be evaluated in accordance with 43.5(1)"b"(2). If the source is a spring, infiltration gallery, Ranney well, or any other subsurface source it shall be evaluated in accordance with 43.5(1)"b"(3).

(2) Well source evaluation. Shallow wells greater than 50 feet in lateral distance from a surface water source shall be evaluated for direct influence of surface water through a review of departmental or public water system files in accordance with 43.5(1)"b"(2)"1," first unnumbered paragraph, and 43.5(1)"b"(2)"2." Sources that meet the criteria shall be considered to be not under the direct influence of surface water. No additional evaluation will be required. Shallow wells 50 feet or less in lateral distance from a surface water shall be in accordance with 43.5(1)"b"(3) and (4).

1. Well construction criteria. The well shall be constructed so as to include:

- A surface sanitary seal using bentonite clay, concrete, or other acceptable material.
- The well casing shall penetrate a confining bed.
- The well casing shall be perforated or screened only below a confining bed.

2. Water quality criteria. Water quality records shall indicate:

- No record of total coliform or fecal coliform contamination in untreated samples collected over the past three years.
- No history of turbidity problems associated with the well, other than turbidity as a result of inorganic chemical precipitates.
- No history of known or suspected outbreak of Giardia or other pathogenic organisms associated with surface water (e.g., Cryptosporidium) which has been attributed to well.

3. Other available data. If data on particulate matter analysis of the well are available, there shall be no evidence of particulate matter present that is associated with surface water. If information on turbidity or temperature monitoring of the well and nearby surface water is available, there shall be no data on the source which correlates with that of a nearby surface water.

4. Wells that do not meet all the requirements listed shall require further evaluation in accordance with 43.5(1)"b" (3) and (4).

(3) Formal evaluation. The evaluation shall be conducted by the department or registered engineer at the direction of the public water supply. The evaluation shall include:

1. Complete file review. In addition to the information gathered in 43.5(1)"b"(1), the complete file review shall consider but not be limited to: design and construction details; evidence of direct surface water contamination; water quality analysis; indications of waterborne disease outbreaks; operational procedures; and customer complaints regarding water quality or water-related infectious illness. Sources other than a well source shall be evaluated in a like manner to include a field survey.

2. Field survey. A field survey shall substantiate findings of the complete file review and determine if the source is at risk to pathogens from direct surface water influence. The field survey shall examine the following criteria for evidence that surface water enters the source through defects in the source which include but are not limited to: a lack of a surface seal on wells, infiltration gallery laterals exposed to surface water, springs open to the atmosphere, surface runoff entering a spring or other collector, and distances to obvious surface water sources.

A report summarizing the findings of the complete file review and field survey shall be submitted to the department for final review and classification of the source. If the complete file review or field survey demonstrates conclusively that the source is subject to the direct surface water influence, the source shall be classified as under the direct influence of surface water. Either method or both may be used to demonstrate that the source is a surface water or groundwater under the direct influence of surface water. If the findings do not demonstrate conclusive evidence of direct influence of surface water, the analysis outlined in 43.5(1)"b"(4) should be conducted.

(4) Particular analysis and physical properties evaluation.

1. Surface water indicators. Particulate analysis shall be conducted to identify organisms which only occur in surface waters as opposed to groundwaters, and whose presence in a groundwater would indicate the direct influence of surface water.

- Identification of a Giardia cyst, live diatoms, and blue-green, green, or other chloroplast containing algae in any source water shall be considered evidence of direct surface water influence.
- Rotifers and insect parts are indicators of surface water. Without knowledge of which species is present, the finding of rotifers indicates that the source is either directly influenced by surface water, or the water contains organic matter sufficient to support the growth of rotifers. Insects or insect parts shall be considered strong evidence of surface water influence, if not direct evidence.
- The presence of coccidia (e.g., Cryptosporidium) in the source water is considered a good indicator of direct influence of surface water. Other macroorganisms (>7 um) which are parasitic to animals and fish such as, but are not limited to, helminths (e.g., tapeworm cysts), ascaris, and Diphyllobothrium, shall be considered as indicators of direct influence of surface water.

2. Physical properties. Turbidity, temperature, pH and conductivity provide supportive, but less direct, evidence of direct influence of surface water. Turbidity fluctuations of greater than 0.5 - 1 NTU over the course of a year may be indicative of direct influence of surface water. Temperature fluctuations may also indicate surface water influence. Changes in other chemical parameters such as pH, conductivity, hardness, etc., may also give an indirect indication of influence by nearby surface water.

c. A public water system using a surface water source or a groundwater source under the direct influence of

surface water is considered to be in compliance with the requirements of this subrule if it meets the filtration requirements in 43.5(3) and the disinfection requirements in 43.5(2) in accordance with the effective dates specified within the respective subrules.

d. Each public water system using a surface water source or a groundwater source under the direct influence of surface water must be operated by a certified operator who meets the requirements of 567—Chapter 81.

43.5(2) Disinfection. All community and noncommunity public water supply systems using surface water or groundwater under the direct influence of surface water in whole or in part shall be required to provide disinfection in compliance with this subrule and filtration in compliance with 43.5(3). If the department has determined that filtration is required, the system must comply with any interim disinfection requirements the department deems necessary before filtration is installed. A system providing filtration on or before December 30, 1991, must meet the disinfection requirements of this subrule beginning June 29, 1993. A system providing filtration after December 30, 1991, must meet the disinfection requirements of this subrule when filtration is installed. Failure to meet any requirement of this subrule after the applicable date specified in this subrule is a treatment technique violation. The disinfection requirements are as follows:

a. The disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation or removal of Giardia lamblia cysts and at least 99.99 percent (4-log) inactivation or removal of viruses, acceptable to the department.

b. The disinfection system must include:

(1) Redundant components, including an auxiliary power supply with automatic start-up and alarm to ensure that disinfectant application is maintained continuously while water is being delivered to the distribution system, or

(2) Automatic shut-off of delivery of water to the distribution system whenever there is less than 0.3 mg/l of residual disinfectant concentration in the water. If the department determines that automatic shut-off would cause unreasonable risk to health or interfere with fire protection, the system must comply with 43.5(2)"b"(1).

c. Disinfectant residual entering system. The residual disinfectant concentration in the water entering the distribution system, measured as specified in 41.7(2)"c" and "e," cannot be less than 0.3 mg/l for more than four hours.

d. Disinfectant residual in the system. The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in 41.7(2)"c" and "e," cannot be undetectable in more than 5 percent of the samples each month for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (HPC) as specified in 41.2(3)"e," is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement. Therefore, the value "V" in the following formula cannot exceed 5 percent in one month for any two consecutive months.

$$V = \frac{c+d+e}{a+b} \times 100$$

where:

a = number of instances where the residual disinfectant concentration is measured;
b = number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;
c = number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;
d = number of instances where no residual disinfectant concentration is detected and where the HPC is >500/ml; and
e = number of instances where the residual disinfectant concentration is not measured and HPC is >500/ml.

43.5(3) Filtration. A public water system that uses a surface water source or a groundwater source under the direct influence of surface water must provide treatment consisting of both disinfection, as specified in 43.5(2), and filtration treatment which complies with the turbidity requirements of subrule 41.7(1). A system providing or required to provide filtration on or before December 30, 1991, must meet the requirements of 41.7(1) by June 29, 1993. A system providing or required to provide filtration after December 30, 1991, must meet the requirement of 41.7(1) when filtration is installed. A system shall install filtration within 18 months after the department determines, in writing, that filtration is required. The department may require and the system shall comply with any interim turbidity requirements the department deems necessary.

Failure to meet any requirements of the referenced subrules after the dates specified is a treatment technique violation.

43.5(4) Analytical and monitoring requirements.

a. Analytical requirements. Only the analytical method(s) specified in this paragraph, or otherwise approved by the department, may be used to demonstrate compliance with the requirements of 43.5(2) and 43.5(3). Measurements for pH, temperature, turbidity, and residual disinfectant concentrations must be conducted by a grade II, III, or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of a grade II, III, or IV operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform analysis under 41.4(13)"a." Measurements for heterotrophic plate count bacteria must be conducted by a laboratory certified by the department to do such analysis. Until laboratory certification criteria are developed for the analysis of heterotrophic plate count bacteria, any laboratory certified for total coliform analysis by the department is certified for heterotrophic plate count bacteria analysis unless notified otherwise by the department. The procedures shall be performed in accordance with 567—Chapter 41 as listed below and the referenced publications.

(1) Heterotrophic plate count—567—41.2(3)
(2) Turbidity—567—41.7(1)
(3) Residual disinfectant concentration—567—41.7(2)

(4) Temperature—567—41.7(3)
(5) pH—567—41.7(4).

b. Monitoring requirements. A public water system that uses a surface water source or a groundwater source under the influence of surface water must monitor in accordance with this paragraph or some interim requirements required by the department, until filtration is installed.

(1) Turbidity measurements to demonstrate compliance with 43.5(3) shall be performed in accordance with 41.7(1).

(2) Residual disinfectant concentration of the water entering the distribution system to demonstrate compliance with 43.5(2)"d" shall be monitored in accordance with 41.7(2)"c"(1).

(3) The residual disinfectant concentration of the water in the distribution system to demonstrate compliance with 43.5(2)"d" shall be monitored in accordance with 41.7(2)"c"(2).

(4) Reporting and response to violation. Public water supplies shall report the results of routine monitoring required to demonstrate compliance with 567—43.5(455B) and treatment technique violations as follows:

1. Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, must report that occurrence to the department as soon as possible, but no later than by the end of the next business day.

2. If at any time the turbidity exceeds 5 NTU, the system must inform the department as soon as possible, but no later than the end of the next business day.

3. If at any time the residual falls below 0.3 mg/l in the water entering the distribution system, the system must notify the department as soon as possible, but no later than by the end of the next business day. The system also must notify the department by the end of the next business day whether or not the residual was restored to at least 0.3 mg/l within four hours.

4. Routine monitoring results shall be provided as part of the monthly operation reports in accordance with 43.7(3).

ITEM 9. Reserve a new rule 43.6(455B) as follows:

567—43.6(455B) Disinfectant and disinfectant byproducts. Reserved.

ITEM 10. Renumber rule **41.14** "Operation and maintenance for public water supplies" as **567—43.7(455B)**. Amend paragraph 41.14(2)"a"(3) to read:

(3) Chlorine residual. A minimum free available chlorine residual of 0.3 mg/l or a minimum total available chlorine residual of 1.5 mg/l must be continuously maintained throughout the water distribution system, except for those points on the distribution system that terminate as dead ends or areas that represent very low use when compared to usage throughout the rest of the distribution system as determined by the department.

ITEM 11. Renumber subrule **41.14(1)** "Records of operation required" as **43.7(1)**. Renumber subrule **41.14(2)** "Chemical application" as **43.7(2)**. Transfer **Table D** at the end of Chapter 41 to the end of Chapter 43 and reletter as **Table B**.

ITEM 12. Add the following language pertaining to reporting requirements for filtration and disinfection as 567—43.7(3).

43.7(3) Reporting and record-keeping requirements for systems using surface water and groundwater under the direct influence of surface water. In addition to the monitoring requirements required by 43.7(1) and 43.7(2), a public water system that uses a surface water source or a groundwater source under the direct influence of surface water must report monthly to the department the information specified in this subrule beginning June 29, 1993, or when filtration is installed, whichever is later.

a. Turbidity measurements as required by 41.7(1) and 43.5(3) must be reported within ten days after the end of each month the system serves water to the public. Information that must be reported includes:

(1) The total number of filtered water turbidity measurements taken during the month.

(2) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in 41.7(1)"b" for the filtration technology being used.

(3) The date and value of any turbidity measurements taken during the month which exceed 5 NTU.

b. Disinfection information specified in 41.7(2) and 43.5(2) must be reported to the department within ten days after the end of each month the system serves water to the public. Information that must be reported includes:

(1) For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system.

(2) The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.3 mg/l and when the department was notified of the occurrence.

(3) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to 41.2(1)"c":

1. Number of instances where the residual disinfectant concentration is measured;

2. Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

3. Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

4. Number of instances where no residual disinfectant concentration is detected and where HPC is >500/ml;

5. Number of instances where the residual disinfectant concentration is not measured and HPC is >500/ml; and

6. For the current and previous month the system serves water to the public, the value of "V" in the following formula:

$$V = \frac{c + d + e}{a + b} \times 100$$

where
a = the value in "b"(3)"1" of this subrule
b = the value in "b"(3)"2" of this subrule
c = the value in "b"(3)"3" of this subrule
d = the value in "b"(3)"4" of this subrule and
e = the value in "b"(3)"5" of this subrule.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1551A

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission for the Department of Natural Resources hereby adopts revisions to Chapter 40, "Scope of Division-Definitions-Forms-Rules of Practice," and Chapter 41, "Water Supplies," Iowa Administrative Code.

The Notice of Intended Action was published in the June 13, 1990, Iowa Administrative Bulletin as **ARC 968A**. Public hearings were held on July 9, July 10, July 11, and July 12, 1990. The amendments were adopted November 19-20, 1990, by the Environmental Protection Commission. Minor changes to the amendments to Chapters 40 and 41 proposed in the Notice of Intended Action have been made as the result of comments and are reflected in the responsiveness summary.

These water supply rules pertain to major revisions of the coliform bacteria monitoring requirements. The rule changes are proposed due to promulgation of regulations by EPA which become effective December 31, 1990.

These rules are intended to implement Iowa Code chapter 455B, Division III, Part 1.

These rules shall become effective January 16, 1991, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

ITEM 1. Amend rule **567—40.2(455B)** by inserting in alphabetical order the following new definitions and amending the definition of "sanitary survey" and "standard methods":

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

"Sanitary survey" means a review and on-site inspection *conducted by the department* of the water source, facilities, equipment, operation and maintenance and records of a public water supply system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water *and identifying improvements necessary to maintain or improve drinking water quality.*

"Standard methods" means "Standard Methods for the Examination of Water and Wastewater" ~~fourteenth~~ *seventeenth* edition, American Public Health Association, 1015 ~~18th~~ *15th* Street, N.W., Washington, D.C. ~~20036~~ *20005* ~~(1975)~~ *(1989).*

"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

ITEM 2. Rescind 567—41.1(455B) and 567—41.2(455B) and insert the following:

567—41.1(455B) Primary drinking water regulations —coverage. Rules 41.2(455B) to 41.5(455B) and 43.2(455B) shall apply to each public water supply system, unless the public water supply system meets all of the following conditions:

1. Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

2. Obtains all of its water from, but is not owned or operated by, a public water supply system to which such regulations apply;

3. Does not sell water to any person; and

4. Is not a carrier which conveys passengers in interstate commerce.

567—41.2(455B) Biological maximum contaminant levels (MCL) and monitoring requirements.

41.2(1) Coliforms, fecal coliforms and *E. coli.*

a. Applicability. These rules apply to all public water supply systems.

b. Maximum contaminant levels (MCL) for total coliforms, fecal coliforms/*E. coli.*

(1) The MCL is based on the presence or absence of total coliforms in a sample. The system is in compliance with MCL requirements for total coliform if it meets the following requirements:

1. For a system which collects 40 samples or more per month, no more than 5.0 percent of the samples collected during a month may be total coliform-positive.

2. For a system which collects less than 40 samples per month, no more than one sample collected during a month may be total coliform-positive.

(2) Any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in 41.5(2)"a"(2), this is a violation that may pose an acute risk to health.

(3) Compliance of a system with the MCL for total coliforms in 41.2(1)"b"(1) and (2) is based on each month in which the system is required to monitor for total coliforms.

(4) Results of all routine and repeat samples not invalidated by the department or laboratory must be included in determining compliance with the MCL for total coliforms.

c. Monitoring requirements.

(1) Routine total coliform monitoring.

1. Public water supply systems must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. The plan shall be reviewed or updated by the public water supply system every two years and shall be retained on file at the facility. Major elements of the plan shall include, but are not limited to, a map of the distribution system, notation or a list of routine sample location(s) for each sample period, resample locations for each routine sample, and a log of samples taken. The plan must be made available to the department upon request and during sanitary surveys and must be revised by the system as directed by the department.

2. The public water supply system must collect samples at regular time intervals throughout the month, except that a system which uses only groundwater (except groundwater under the direct influence of surface water, as defined in 43.5(1)"b") [see ARC 1552A herein], and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites.

3. Community water systems. The monitoring frequency for total coliforms for community water systems and noncommunity water systems serving schools, to include preschools and day care centers, is based on the population served by the system as listed below, until

June 29, 1994. Public water systems which do not collect five or more routine samples each month must undergo an initial sanitary survey by June 29, 1994. After June 29, 1994, the monitoring frequency for systems serving less than 4,101 persons shall be a minimum of five routine samples per month unless the department determines, after completing sanitary surveys (at intervals not to exceed five years), that the monitoring frequency may continue as listed below. The monitoring frequency for regional water systems shall be as listed in 41.2(1)"c"(1)"4" but in no instance less than that required by the population equivalent served.

Total Coliform Monitoring Frequency for Community Water Systems and Noncommunity Schools

Population Served	Minimum Number of Samples Per Month
25 to 1,000*	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270

* Includes public water supply systems which have at least 15 service connections, but serve fewer than 25 persons

4. Regional water systems. The supplier of water for a regional water system as defined in rule 567—40.2(455B) shall sample for coliform bacteria at a frequency indicated in the following chart until June 29, 1994, but in no case shall the sampling frequency for a regional water system be less than as set forth in 41.2(1)"c"(1)"3," based on the population equivalent served. Public water systems which do not collect five or more routine samples each month must undergo an initial sanitary survey by June 29, 1994. After June 29, 1994, the monitoring frequency of systems with less than 82 miles of pipe shall be a minimum of five routine samples per month unless the department determines, after completing sanitary surveys (at intervals not exceeding five years), that the monitoring frequency may continue as listed below. The following chart represents sampling frequency per miles of distribution system and is determined by calculating one-half the square root of the miles of pipe.

Total Coliform Monitoring Frequency for Regional Water Systems

Miles of Pipe	Minimum Number of Samples Per Month
0 - 9	1
10 - 25	2
26 - 49	3
50 - 81	4
82 - 121	5
122 - 169	6
170 - 225	7
226 - 289	8
290 - 361	9
362 - 441	10
442 - 529	11
530 - 625	12
626 - 729	13
730 - 841	14
842 - 961	15
962 - 1,089	16
1,090 - 1,225	17
1,226 - 1,364	18
1,365 - 1,521	19
1,522 - 1,681	20
1,682 - 1,849	21
1,850 - 2,025	22
2,026 - 2,209	23
2,210 - 2,401	24
2,402 - 2,601	25
2,602 - 3,249	28
3,250 - 3,721	30
3,722 - 4,489	33
4,490 - 5,041	35

5. Noncommunity water systems. The monitoring frequency for total coliforms for noncommunity water systems is as listed in the four unnumbered paragraphs below until June 29, 1999. Public water systems which do not collect five or more routine samples each month must undergo an initial sanitary survey by June 29, 1999. After June 29, 1999, the minimum number of samples shall be five routine samples per month unless the department determines, after completing sanitary surveys (at intervals not exceeding five years), that the monitoring frequency may continue as listed below.

- A noncommunity water system using only groundwater (except groundwater under the direct influence of surface water, as defined in 567—43.5(1)"b") and serving 1,000 persons or fewer must monitor each calendar quarter that the system provides water to the public. Systems serving more than 1,000 persons during any month must monitor at the same frequency as a like-sized community water system, as specified in 41.2(1)"c"(1)"3."
- A noncommunity water system using surface water, in total or in part, must monitor at the same frequency as a like-sized community water system, as specified in 41.2(1)"c"(1)"3," regardless of the number of persons it serves.
- A noncommunity water system using groundwater under the direct influence of surface water, as defined in 567—43.5(1)"b," must monitor at the same frequency

as a like-sized community water system, as specified in 41.2(1)"c"(1)"3." The system must begin monitoring at this frequency beginning six months after the department determines that the groundwater is under the direct influence of surface water.

• A noncommunity water system serving schools must monitor at the frequency as a like-sized community water system, as specified in 41.2(1)"c"(1)"3."

6. If the department, on the basis of a sanitary survey, determines that some greater frequency of monitoring is more appropriate, that frequency shall be the frequency required under these regulations. This frequency shall be confirmed or changed on the basis of subsequent surveys.

7. Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for total coliforms in 41.2(1)"b." Repeat samples taken pursuant to 41.2(1)"c"(2) are not considered special purpose samples, and must be used to determine compliance with the MCL for total coliforms in 41.2(1)"b."

(2) Repeat total coliform monitoring.

1. Repeat sample time limit and numbers. If a routine sample is total coliform-positive, the public water supply system must collect a set of repeat samples within 24 hours of being notified of the positive result and in no case more than 24 hours after being notified by the department. A system which collects more than one routine sample per month must collect no fewer than three repeat samples for each total coliform-positive sample found. A system which collects one routine sample per month or fewer must collect no fewer than four repeat samples for each total coliform-positive sample found. The department may extend the 24-hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control. In those cases, the public water supply system must report the circumstances to the department no later than the end of the next business day after receiving the notice to repeat sample and initiate the action directed by the department. In the case of an extension, the department will specify how much time the system has to collect the repeat samples.

2. Repeat sample location(s). The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or at the first or last service connection, the system will be required to collect the repeat samples from the original sampling site and locations only upstream or downstream.

3. The system must collect all repeat samples on the same day, except that the department may allow a system with a single service connection to collect the required set of repeat samples over a four-day period. "System with a single service connection" means a system which supplies drinking water to consumers through a single service line.

4. Additional repeat sampling. If one or more repeat samples in the set is total coliform-positive, the public water supply system must collect an additional set of repeat samples in the manner specified in 41.2(1)"c"(2)"1" to 41.2(1)"c"(2)"3." The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the MCL for total coliforms in 41.2(1)"b" has been exceeded, notifies the department, and provides public notification to its users.

5. If a system collecting fewer than five routine samples per month has one or more total coliform-positive samples and the department does not invalidate the sample(s) under 41.2(1)"c"(3), it must collect at least five routine samples during the next month the system provides water to the public. For systems monitoring on a quarterly basis, the additional five routine samples may be required to be taken within the same quarter in which the original total coliform-positive occurred.

The department may waive the requirement to collect five routine samples the next month the system provides water to the public if the department has determined why the sample was total coliform-positive and establishes that the system has corrected the problem or will correct the problem before the end of the next month the system serves water to the public. In this case, the department must document this decision to waive the following month's additional monitoring requirement in writing, have it approved and signed by the supervisor of the water supply section and the department official who recommends such a decision, and make this document available to the EPA and public. The written documentation will generally be provided by the public water supply system in the form of a request and must describe the specific cause of the total coliform-positive sample and what action the system has taken to correct the problem. The department will not waive the requirement to collect five routine samples the next month the system provides water to the public solely on the grounds that all repeat samples are total coliform-negative. Under this paragraph, a system must still take at least one routine sample before the end of the next month it serves water to the public and use it to determine compliance with the MCL for total coliforms in 41.2(1)"b."

(3) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this subparagraph does not count towards meeting the minimum monitoring requirements of 41.2(1)"c." The department may invalidate a total coliform-positive sample only if one or more of the following conditions are met.

1. The laboratory establishes that improper sample analysis caused the total coliform-positive result. A laboratory must invalidate a total coliform sample (unless total coliforms are detected, in which case, the sample is valid) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the multiple-tube fermentation technique), produces a turbid culture in the absence of an acid reaction in the presence-absence (P-A) coliform test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., membrane filter technique). If a laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result. The

department may waive the 24-hour time limit on a case-by-case basis.

2. The department, on the basis of the results of repeat samples collected as required by 41.2(1)"c"(2)"1" to "4," determines that the total coliform-positive sample resulted from a domestic or other nondistribution system plumbing problem. "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water supply system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken. The department will not invalidate a sample on the basis of repeat sample results unless all repeat samples collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative (e.g., the department will not invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the public water supply system has only one service connection).

3. The department has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required under 41.2(1)"c"(2)"1" to "4," and use them to determine compliance with the MCL for total coliforms in 41.2(1)"b." To invalidate a total coliform-positive sample under this paragraph, the decision with the rationale for the decision must be documented in writing, and approved and signed by the supervisor of the water supply section and the department official who recommended the decision. The department must make this document available to EPA and the public. The written documentation generally provided by the public water supply system in the form of a request must state the specific cause of the total coliform-positive sample, and what action the system has taken to correct this problem. The department will not invalidate a total coliform-positive sample solely on the grounds of poor sampling technique or that all repeat samples are total coliform-negative.

(4) Fecal coliforms/*Escherichia coli (E. coli)* testing.

1. If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the system may test for *E. coli* in lieu of fecal coliforms.

2. The department may allow a public water supply system, on a case-by-case basis, to forego fecal coliform or *E. coli* testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive or *E. coli*-positive. Accordingly, the system must notify the department as specified in 41.2(1)"c"(5)"1" and meet the provisions of 567—41.5(455B) pertaining to public notification.

(5) Public water supply system's response to violation.

1. A public water supply system which has exceeded the MCL for total coliforms in 41.2(1)"b" must report the violation to the water supply section of the department by telephone no later than the end of the next business day after it learns of the violation, and notify the public in accordance with 41.5(2)"a."

2. A public water supply system which has failed to comply with a coliform monitoring requirement must report the monitoring violation to the department within ten days after the system discovers the violation and notify the public in accordance with 41.5(2)"b."

3. If fecal coliforms or *E. coli* are detected in a routine or repeat sample, the system must notify the department by telephone by the end of the day when the system is notified of the test result, unless the system is notified of the result after the department office is closed, in which case the system must notify the department before the end of the next business day.

d. Best available technology (BAT). The U.S. EPA identifies, and the department has adopted the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms in 41.2(1)"b."

(1) Protection of wells from contamination by coliforms by appropriate placement and construction;

(2) Maintenance of a disinfectant residual throughout the distribution system;

(3) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of a minimum positive water pressure of 20 psig in all parts of the distribution system; and

(4) Filtration or disinfection of surface water in accordance with 567—43.5(455B) or disinfection of groundwater using strong oxidants such as, but not limited to, chlorine, chlorine dioxide, or ozone.

e. Analytical methodology.

(1) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml.

(2) Public water supply systems shall determine the presence or absence of total coliforms. A determination of total coliform density is not required.

(3) Total coliform analyses. Public water supply systems must conduct total coliform analyses in accordance with one of the following analytical methods:

1. Multiple-Tube Fermentation (MTF) Technique, as set forth in "Standard Methods," Method 9921, 9921A, and 9921B—pp. 9-66 to 9-75, except that 10 fermentation tubes must be used; or "Microbiological Methods for Monitoring the Environment, Water and Wastes," U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA-600/8-78-017, December 1978, available from ORD Publications, CERI, U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B.4.1-4.6.4, pp. 114-118 (Most Probable Number Method), except that 10 fermentation tubes must be used; or

2. Membrane Filter (MF) Technique, as set forth in "Standard Methods," Method 9222A, 9222B, and 9222C—pp. 9-82 to 9-93; or "Microbiological Methods for Monitoring the Environment, Water and Wastes," U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA-600/8-78-017, December 1978, available from ORD Publications, CERI, U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B. 2.1-2.6, pp. 108-112; or

3. Presence-Absence (P-A) Coliform Test, as set forth in "Standard Methods," Method 9921E—pp. 9-80 to 9-82; or

4. Minimal Medium ONPG-MUG (MMO-MUG) Test, as set forth in the article "National Field Evaluation

of a Defined Substrate Method for the Simultaneous Detection of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with Presence-Absence Techniques" (Edberg et al), Applied and Environmental Microbiology, Volume 55, pp. 1003-1008, April 1989. (Note: The MMO-MUG Test is sometimes referred to as the Autoanalysis Colilert System.)

(4) In lieu of the 10-tube MTF Technique specified in 41.2(1)"e"(3)"1," a public water supply system may use the MTF Technique using either five tubes (20-ml sample portions) or a single culture bottle containing the culture medium for the MTF Technique, i.e., lauryl tryptose broth (formulated as described in "Standard Methods," Method 9221B—p. 9-68), as long as a 100-ml water sample is used in the analysis.

(5) Fecal coliform analysis. Public water systems must conduct fecal coliform analysis in accordance with the following procedure. When the MTF technique of presence-absence (P-A) coliform test is used to test for total coliforms, shake the lactose-positive presumptive tube or P-A bottle vigorously and transfer the growth with a sterile 3-mm loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. For EPA-approved analytical methods which use a membrane filter, remove the membrane containing the total coliform colonies from the substrate with sterile forceps and carefully curl and insert the membrane into a tube of EC medium. (The laboratory may first remove a small portion of selected colonies for verification). Gently shake the inoculated EC tubes to ensure adequate mixing and incubate in a waterbath at 44.5 (±) 0.2 °C for 24 (±) 2 hours. Gas production of any amount in the inner fermentation tube of the EC medium indicates a positive fecal coliform test. The preparation of EC medium is described in "Standard Methods," Method 9921C—p. 9-75, paragraph 1a. Public water supply systems need only determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

41.2(2) *Giardia.* Reserved.

41.2(3) Heterotrophic—Plate count bacteria [See ARC 1551A herein]

41.2(4) Macroscopic organisms and algae.

a. Applicability. These rules apply to both community and noncommunity public water supply systems using surface water or groundwater under direct influence of surface as defined by 43.5(1).

b. Maximum contaminant levels (MCL) for macroscopic organisms and algae. Finished water shall be free of any macroscopic organisms such as plankton, worms, or cysts. The finished water algal cell count shall not exceed 500 organisms per milliliter or 10 percent of the total cells found in the raw water, whichever is greater. Compliance with the maximum contaminant level for algal cells is calculated in accordance with 41.2(4)"c."

c. Monitoring requirements—reserved.

d. BAT—reserved.

e. Analytical methodology. Measurement of the algal cells shall be in accordance with Method 10200F, "Standard Methods," pp. 10-23 to 10-28. Such measurement shall be required only when the department determines on the basis of complaints or otherwise that excessive algal cells are present.

ITEM 3. Rescind and reserve subrule **41.3(4)**. This subrule has been completely rewritten and the requirements are included within 41.2(1)"b."

ITEM 4. Rescind subrule **41.3(7)** and the implementation clause at the end thereof. Provisions of 41.3(7) are now found within 41.2(4) without material change.

ITEM 5. Rescind and reserve subrule **41.4(1)**. This subrule has been completely rewritten and the requirements are included within 41.2(1)"c."

ITEM 6. Rescind and reserve subrule **41.4(10)**. Provisions of 41.4(10) are now found within 41.2(4) without material change.

ITEM 7. Rescind subrule **41.5(1)**, paragraph "b," and insert the following:

b. Except where a different reporting period is specified in this part, the supplier of water shall report to the department within 48 hours after any failure to comply with the monitoring requirements set forth in this rule. The supplier of water shall also notify the department within 48 hours of failure to comply with any primary drinking water regulations.

ITEM 8. Subrule **41.5(2)"a"(2)** is amended by adding a numbered paragraph "3" to read as follows:

3. Violation of the MCL for total coliforms, when fecal coliforms or *E. coli* are present in the water distribution system, as specified in 41.2(1)"b"(2).

ITEM 9. Subrule 41.5(2)"e" is amended by adding the following:

(11) Total coliforms (to be used when there is a violation of 41.2(1)"b"(1) and not a violation of 41.2(1)"b"(2). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment or the pipes which distribute the water and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than the drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than 5.0 percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than 40 samples/month that have one total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

Fecal coliforms/*E. coli* (to be used when there is a violation of 41.2(1)"b"(2) or both 41.2(1)"b"(1) and (2). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms or *E. coli* is a serious health concern. Fecal coliforms and *E. coli* are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of these bacteria in drinking water is generally a result of a problem with water treatment or the pipes which distribute the water and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may

include diarrhea, cramps, nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than the drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and *E. coli* to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: (to be inserted by the public water supply system, according to instructions from state or local authorities).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1554A

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission for the Department of Natural Resources amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The recent revisions which amended the numerical and narrative criteria of the water quality standards, effective May 23, 1990, included new aquatic use protection designations for Iowa's various water bodies. It is anticipated that approximately three years of field activities will be required to properly determine and assign the appropriate use designations to all individual rivers, streams and lakes. The determination and adoption of use designations are required prior to implementation of the amended water quality standards in establishing individual effluent limits for wastewater treatment facilities. This amendment is the second group of waters for which the new use designations are warranted.

A Notice of Intended Action was published on September 19, 1990, as **ARC 1269A** reflecting the proposed changes to stream use designations. Public hearings were held on October 9, 10, and 11, 1990.

The amendments in use designations were adopted on November 19, 1990. Modifications to the proposed rules, as published under the Notice, have been made in the use designations for one stream in northeastern Iowa, as requested by a written comment. Only one written comment was received. This comment has been addressed in a responsiveness summary available from the Department. This summary is on file with the Administrative Rules Coordinator. No economic impact statement was prepared for these particular use designations as the economic impact was addressed in the statement prepared for the original water quality standards revisions adopted on March 20, 1990.

No changes were made as a result of the public hearings.

These rules are intended to implement Iowa Code chapter 455B, Division III, Part 1.

These rules become effective January 16, 1991, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

Insert the following into subrule **61.3(5)**"e" in their natural sequence or hydrological order:

Iowa Water Quality Standards
Water Use Designations

e.

WESTERN IOWA RIVER BASINS

Western Iowa River Basins (Missouri, Big Sioux, and Little Sioux Rivers)

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for Western Iowa River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

Deep Creek - 5b
Willow Creek - 5a
Wiskey Creek - 10

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Willow Cr.								
5a. Mouth (Plymouth Co.) to confluence with an unnamed tributary (NE 1/4, Sec. 11, T93N, R44W, Plymouth Co.)			X					
Deep Cr.								
5b. Mouth (Plymouth Co.) to confluence with an unnamed tributary (NE 1/4, Sec. 11, T93N, R44W, Plymouth Co.)			X					
Wiskey Cr.								
10. Mouth (Plymouth Co.) to confluence with an unnamed tributary (NW 1/4, Sec. 11, T93N, R44W, Plymouth Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

SOUTHERN IOWA RIVER BASINS

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for Southern Iowa River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

West Nishnabotna River - 10, *10a*

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
10a. Confluence with Elk Cr. (Sec. 36, T81N, R36W, Shelby Co.) to confluence with an unnamed tributary (Sec. 34, T83N, R36W, Carroll Co.)			X					

DES MOINES RIVER BASIN

Des Moines River Basin (Lower Des Moines River, Upper Des Moines River, East Fork Des Moines River, Blue Earth River, and Raccoon River Subbasins).

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations the Des Moines River Basin. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

Cedar Creek - 2c
Miller Creek - 2a
Muchakinock Creek - 2b
Short Creek - 25a

LOWER DES MOINES RIVER SUBBASIN

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Miller Cr.								
2a. Mouth (Wapello Co.) to confluence with an unnamed tributary (Sec. 29, T73N, R16W, Monroe Co.)			X					
Muchakinock Cr.								
2b. Confluence with an unnamed tributary (N 1/2, Sec. 2, T75N, R16W, Mahaska Co.) to confluence with Little Muchakinock (Sec. 34, T75N, R16W, Mahaska Co.)			X					
Cedar Cr.								
2c. Confluence with Bee Branch (Sec. 3, T72N, R18W, Monroe Co.) to Hwy 34 bridge crossing (Monroe Co.)			X					

RACCOON RIVER SUBBASIN

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Short Cr.								
25a. Mouth (Greene Co.) to confluence with an unnamed tributary (S21, T84N, R31W, Greene Co.)			X					

SKUNK RIVER BASIN

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for the Skunk River Basin. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

Bear Creek - 14
Sugar Creek - 15

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Bear Cr.								
14. Mouth (Story Co.) to N line of Sec. 32, T85N, R23W, Story Co.			X					
Sugar Cr.								
15. Interstate 80 bridge crossing to confluence with an unnamed tributary (SW 1/4, Sec. 24, T80N, R17W, Jasper Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

IOWA-CEDAR RIVER BASIN

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for the Iowa-Cedar River Basin. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

Honey Creek - 13b
Lime Creek - 32a, 32b
Little Bear Creek - 13a
Rock Creek - 30a

IOWA RIVER SUBBASIN

(Mississippi R. Tributaries)

	Water Uses						
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Little Bear Cr.								
13a. Mouth (Poweshiek Co.) to confluence with an unnamed tributary (SW 1/4, Sec. 13, T80N, R10W, Buchanan Co.)			X					
Honey Cr.								
13b. Mouth (Marshall Co.) to confluence with an unnamed tributary (Sec. 15, T86N, R20W, Hardin Co.)			X					

CEDAR RIVER SUBBASIN

	Water Uses						
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Rock Cr.								
30a. County Rd. F28 bridge to the confluence with an unnamed tributary (SW 1/4, Sec. 13, T80N, R16W, Poweshiek Co.)			X					
Lime Cr.								
32a. Mouth (Benton Co.) to confluence with an unnamed tributary (Sec. 1, T87N, R10W, Buchanan Co.)		X						
32b. Confluence with an unnamed tributary (Sec. 1, T87N, R10W, Buchanan Co.) to confluence with an unnamed tributary (SW 1/4, Sec. 11, T88N, R10W, Buchanan Co.)			X					

NORTHEASTERN IOWA RIVER BASINS

Northeastern Iowa River Basins (Wapsipinicon River, Maquoketa River, North Fork Maquoketa River, Turkey River, Volga River, Yellow River, and Upper Iowa River Subbasins).

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for Northeastern Iowa River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

Barber - Creek 7a
Mill Creek - 12a
Otter Creek - 10, 11, *11a, 11b*
Ram Hollow - 57a
Rogers Creek - 73a
Silver Creek - 139, *139a*

WAPSIPINICON RIVER SUBBASIN

(Mississippi R. Tributaries)

	Water Uses						
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
Barber Cr.								
7a. Mouth (Clinton Co.) to bridge crossing (SW 1/4, Sec. 33, T81N, R3E, Clinton Co.)			X					
Otter Creek								
11a. N. line of Sec. 33, T91N, R9W, Fayette Co. to confluence with an unnamed tributary (Sec. 29, T91N, R9W, Fayette Co.)		X						
11b. Confluence with an unnamed tributary (Sec. 29, T91N, R9W, Fayette Co.) to confluence with an unnamed tributary (Sec. 18, T91N, R9W, Fayette Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567] *(cont'd)*

	Water Uses						
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
MAQUOKETA RIVER SUBBASIN								
(Mississippi R. Tributaries)								
Mill Cr.								
12a. Mouth (Clinton Co.) to confluence with an unnamed tributary (Sec. 26, T82N, R6E, Clinton Co.)			X					

	Water Uses						
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
TURKEY RIVER SUBBASIN								
(Turkey River Tributaries)								
Rogers Cr.								
73a. Mouth (Winneshiek Co.) to confluence with Goddard Cr. and Krumm Cr.			X					

	Water Uses						
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
UPPER IOWA RIVER SUBBASIN								
(Upper Iowa R. Tributaries)								
Silver Creek								
139a. N line of Sec.26, T100N, R9W, Winneshiek Co. to Hwy. 52 bridge crossing (Winneshiek Co.)			X					

[Filed 11/26/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1525A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 76, "Application and Investigation," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this rule November 14, 1990. Notice of Intended Action regarding this rule was published in the Iowa Administrative Bulletin on October 3, 1990, as **ARC 1314A**.

Recipients that utilize Medicaid services at a frequency or in an amount which is considered to be overuse of services may be restricted (locked-in) to receive services from a designated provider(s) to promote high quality health care and to prevent harmful practices such as duplication of medical services, drug abuse or overuse, and possible drug interactions. Under current policy recipients are locked-in for a minimum of six months, with longer restrictions determined on an individual basis. This amendment changed the minimum period for lock-in to 24 months.

A six-month lock-in period is too short to ensure behavior changes. A survey of other states has determined Minnesota, Michigan, Kansas, and Missouri have a 24-month lock-in period and Nebraska and Colorado have 12 months.

This rule is identical to that published under Notice of Intended Action.

This rule is intended to implement Iowa Code section 249A.4.

This rule shall become effective February 1, 1991.

The following amendment is adopted:

Amend subrule 76.9(1) as follows:

76.9(1) A lock-in or restriction shall be imposed for a minimum of ~~six~~ *24* months with longer restrictions determined on an individual basis.

[Filed 11/14/90, effective 2/1/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1520A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules November 14, 1990. Notices of Intended Action regarding these rules were published in the Iowa Administrative Bulletin on September 19, 1990, as **ARC 1261A** and on October 3, 1990, as **ARC 1290A**.

These amendments provide Medicaid coverage of the drug Clozapine for treatment of chronic schizophrenia when certain criteria are met and provide that payment will be made for a physical examination when the examination is required for a disabled adult for attendance at school or camp.

Clozapine is a newly marketed antipsychotic drug found to be clinically effective in the psychiatric management of treatment-resistant schizophrenic patients who have derived little benefit from standard neuroleptic medications.

Schizophrenia is characterized by positive symptoms such as delusions, hallucinations, disturbances in thinking and communication, and by deteriorating social functioning which have historically been treated with neuroleptic medications. Many of the neuroleptic medications have unpleasant side effects including blurred vision, dry mouth, depression, restlessness, parkinsonism and, in a few cases, generally after several years of usage, irreversible abnormal movements of facial and limb muscles called tardive dyskinesia.

In addition to the positive symptoms there are negative symptoms of schizophrenia such as loss of motivation, withdrawal, emotional flatness, and lack of interest or pleasure from activities or social relations. These symptoms receive little relief from current neuroleptic medications.

Persons treated with Clozapine experience limited side effects, do not develop tardive dyskinesia, and show improvement in both positive and negative symptoms, often greater than with other medications. However, the main side effect of Clozapine is an acute disease which affects the white blood cell count in approximately 1 percent of the persons taking the medication. Therefore, persons on Clozapine require weekly hematology tests to ensure that the white blood cell count has not been affected.

Approximately 1 percent of the population (29,080 in Iowa) suffers from schizophrenia. It is estimated that 10 to 30 percent of persons with schizophrenia (2,908 to 8,724) are considered treatment-resistant, e.g., have received various treatments with little or no benefit. It is recognized that many persons with treatment-resistant schizophrenia may be tried on Clozapine, but only one-third of the persons will benefit and be maintained on it. It is estimated that 85 to 90 percent of the persons with treatment-resistant schizophrenia are on, or eligible for, Medicaid.

Upon receipt of the Federal Food and Drug Administration approval, Sandoz Pharmaceuticals established a pricing and distribution mechanism which packaged the laboratory work, medication, and monitoring service. As a result, Clozapine is costly ($172 per week) and is currently available only on a limited, case-by-case basis in Iowa. Costs are being paid by family members in several areas of the state, by several Iowa counties who have agreed to assume responsibility for the costs in anticipation of a long-term savings, and by a private insurer in at least one known case.

Due to the costs and numbers involved and the limited experience Iowa has had with the drug, the Department of Human Services is proposing to require prior authorization for payment of Clozapine using criteria developed by the state mental health institutions. Those criteria are as follows:

1. The condition being treated must meet the Diagnostic and Statistical Manual (DSM) III-R criteria for a schizophrenic disorder.
2. The patient must have had an unsuccessful trial on at least three or more different antipsychotic medications or be unable to tolerate other neuroleptics due to tardive dyskinesia or other side effects.
3. The patient must be treatment-resistant as evidenced by a documented duration of illness longer than five years with multiple hospitalizations, or continuous hospitalization for more than one year.
4. The patient must have a score of 50 or higher on the Brief Psychiatric Rating Scale (BPRS).
5. Payment will be approved for 12 weeks of therapy for patients meeting criteria 1 through 4 above if there are no contraindications for use of the drug and the patient has undergone a medical evaluation prior to the beginning of drug therapy.
6. After 12 weeks, patients showing improvement (a 20 percent reduction in the total BPRS score from baseline and documented progress) will continue to be covered.
7. Patients showing some documented clinical improvement after 12 weeks but not meeting continuation criteria must be reviewed for consideration of an additional 12 weeks of therapy. If an additional 12 weeks is granted, continuation criteria must be met to continue coverage after a total of 24 weeks of therapy.
8. Patients showing no improvement after 12 weeks of therapy are not eligible for continued therapy with Clozapine.

Physicians disagree over the number of persons with schizophrenia who might benefit from use of the drug. These criteria are intended to describe a conservative definition of medical necessity for treatment.

Other options would include giving more people the initial 12 weeks of payment. These options were avoided because of increased costs.

Another option would be to refuse to pay for the drug altogether. This option was rejected because it very likely violates the Medicaid statute by discriminating against persons on the basis of diagnosis.

There may be significant savings from the use of Clozapine by persons with schizophrenia in Iowa. For about 30 percent of the clients in-patient hospitalization can be avoided. Anticipated savings need to be evaluated carefully in light of potential alternative placement or living arrangements and the individual's capacity for self-sufficiency.

Medicaid already pays for an examination required for a child for attendance at school or camp. This change

is being made in response to requests from advocates of disabled adult recipients whose families are unable to cover the costs of the physical examination required for attendance at school or camp.

The following revisions to **ARC 1290A** were made in response to comments. There were no revisions to **ARC 1261A.**

The phrase "to a Medicaid-certified provider" was inserted in subrule 78.1(2), paragraph "a," subparagraph (2), and subrule 78.28(1), paragraph "g," for clarity.

Subrule 78.1(2), paragraph "a," subparagraph (2), number "3" and subrule 78.28(1), paragraph "g," subparagraph (3), were revised by lowering the required duration of illness from ten years to five years.

Subrule 78.1(2), paragraph "a," subparagraph (2), number "4" and subrule 78.28(1), paragraph "g," subparagraph (4), were revised by lowering the required score on the Brief Psychiatric Rating Scale from 61 to 50.

In addition, when the established criteria have not been met, rules were revised to provide that payment for Clozapine will be approved if recommended as appropriate treatment for chronic treatment-resistant schizophrenia by a physician review panel established by the Department. The review panel shall base its recommendation on clinical documentation provided by the prescribing physician.

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

These rules shall become effective February 1, 1991.

The following amendments are adopted:

ITEM 1. Amend subrule **78.1(1)**, paragraph "b," subparagraph (4), as follows:

(4) The examination is required of a child *or disabled adult* for attendance at school or camp.

ITEM 2. Amend subrule **78.1(2)**, paragraph "a," subparagraph (2), by adding the following paragraph to the end of the subparagraph:

Payment for clozapine will be approved to a Medicaid-certified provider when the following criteria have been met:

1. The condition being treated meets the Diagnostic and Statistical Manual (DSM) III-R criteria for a schizophrenic disorder.

2. The patient has had an unsuccessful trial on at least three or more different antipsychotic medications or is unable to tolerate other neuroleptics due to tardive dyskinesia or other side effects.

3. The patient must be treatment-resistant as evidenced by a documented duration of illness longer than five years with multiple hospitalizations, or continuous hospitalization for more than one year.

4. The patient must have a score of 50 or higher on the Brief Psychiatric Rating Scale (BPRS).

5. Payment will be approved for 12 weeks of therapy for patients meeting criteria 1 to 4 above if there are no contraindications for use of the drug and the patient has undergone a medical evaluation prior to the beginning of drug therapy.

6. After 12 weeks, patients showing improvement (a 20 percent reduction in the total BPRS score from baseline and documented progress) will continue to be covered.

7. Patients showing some documented clinical improvement after 12 weeks but not meeting continuation criteria must be reviewed for consideration of an additional 12 weeks of therapy. If an additional 12 weeks is granted, continuation criteria must be met to continue coverage after a total of 24 weeks of therapy.

8. Patients showing no improvement after 12 weeks of therapy are not eligible for continued therapy with clozapine. (Cross-reference 78.28(1)"g")

When the above criteria have not been met, payment for clozapine will be approved if recommended as appropriate treatment for chronic, treatment-resistant schizophrenia by a physician review panel established by the department. The review panel shall base its recommendation on clinical documentation provided by the prescribing physician.

ITEM 3. Amend subrule **78.28(1)** by adding the following new paragraph:

g. Prior approval is required for clozapine. Payment will be approved to a Medicaid-certified provider when the following criteria have been met:

(1) The condition being treated meets the Diagnostic and Statistical Manual (DSM) III-R criteria for a schizophrenic disorder.

(2) The patient has had an unsuccessful trial on at least three or more different antipsychotic medications or is unable to tolerate other neuroleptics due to tardive dyskinesia or other side effects.

(3) The patient must be treatment-resistant as evidenced by a documented duration of illness longer than five years with multiple hospitalizations, or continuous hospitalization for more than one year.

(4) The patient must have a score of 50 or higher on the Brief Psychiatric Rating Scale (BPRS).

(5) Payment will be approved for 12 weeks of therapy for patients meeting criteria 1 to 4 above if there are no contraindications for use of the drug and the patient has undergone a medical evaluation prior to the beginning of drug therapy.

(6) After 12 weeks, patients showing improvement (a 20 percent reduction in the total BPRS score from baseline and documented progress) will continue to be covered.

(7) Patients showing some documented clinical improvement after 12 weeks but not meeting continuation criteria must be reviewed for consideration of an additional 12 weeks of therapy. If an additional 12 weeks is granted, continuation criteria must be met to continue coverage after a total of 24 weeks of therapy.

(8) Patients showing no improvement after 12 weeks of therapy are not eligible for continued therapy with clozapine. (Cross-reference 78.1(2)"a"(2)

When the above criteria have not been met, payment for clozapine will be approved if recommended as appropriate treatment for chronic, treatment-resistant schizophrenia by a physician review panel established by the department. The review panel shall base its recommendation on clinical documentation provided by the prescribing physician.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1524A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 176, "Dependent Adult Abuse," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules November 14, 1990. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on September 19, 1990, as **ARC 1262A.**

These amendments do the following:

1. Change the time frames for completion of the preliminary adult abuse report from 96 hours to four regular working days. This change will make the time frames for completion of dependent adult abuse reports concur with the time frames for completion of child abuse reports.

2. Change the time frames for expungement of unfounded adult abuse reports from six months from the receipt of the initial report to immediately upon determination that the report is unfounded. This change was mandated by the Seventy-third General Assembly in 1990 Iowa Acts, chapter 1221, section 5.

3. Add the attorney of the dependent adult's guardian and the mandatory reporter to the list of persons with access to dependent adult abuse information as mandated by the Seventy-second General Assembly, 1987 Session, in Iowa Code section 235A.15.

4. Add the legally authorized protection and advocacy agency recognized in Iowa Code section 135C.2, if a person identified in the information as a victim or a perpetrator of abuse resides in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness, to the list of others with access to dependent adult abuse information as mandated by the Seventy-third General Assembly, 1990 Iowa Acts, chapter 1221, section 4.

5. Correct a grammatical error.

These rules are identical to those filed under Notice of Intended Action.

These rules are intended to implement Iowa Code sections 235A.15 and 235A.18 as amended by 1990 Iowa Acts, chapter 1221, sections 4 and 5, respectively, and Iowa Code chapter 235B.

These rules shall become effective February 1, 1991.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to Ch 176] is being omitted. These rules are identical to those published under Notice as **ARC 1262A**, IAB 9/19/90.

[Filed 11/14/90, effective 2/1/91]
[Published 12/12/90]

[For replacement pages for IAC, see IAC Supplement, 12/12/90.]

ARC 1557A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 100.35 and 101.5 and 1989 Iowa Code Supplement subsection 135C.2(5)"b," the Iowa Department of Public Safety, State Fire Marshal Division, hereby amends Chapter 5, "Fire Marshal," Iowa Administrative Code.

These amendments contain provisions specifying fire safety requirements for small group homes (specialized licensed facilities) for the mentally retarded and open parking garages, and allow sharing of aboveground storage tanks by governmental subdivisions.

A Notice of Intended Action to adopt these amendments was published in the Iowa Administrative Bulletin on August 22, 1990, as **ARC 1173A.** A public hearing was held on September 12, 1990. Comments were received from a representative of the city of Des Moines regarding requirements contained in the amendments for open parking garages. No substantive changes have been made in these amendments from the Notice of Intended Action, although several editorial corrections have been made.

These amendments are intended to implement Iowa Code chapters 100 and 101 and 1989 Iowa Code Supplement subsection 135C.2(5)"b."

These amendments will become effective on January 16, 1991.

The following amendments are adopted:

ITEM 1. Amend rule 661—5.230(100) as follows:

Amend subrule **5.230(4)** by changing the catchword from "Exceptions" to "Existing buildings".

Rescind subrule 5.230(5) and insert in lieu thereof the following:

5.230(5) Parking garages. Open parking garages over four stories in height are exempt from automatic fire extinguishing requirements, provided they are of noncombustible construction and house no occupancy above the open parking garage.

NOTE: An open parking garage shall meet the definition and requirements as spelled out in the Uniform Building Code (1988 Edition) Section 709(b).

Any level which does not qualify as an open parking garage and all levels below shall have an approved automatic fire extinguishing system.

All other parking structures shall comply with the standards for "Parking Structures" No. 88A, 1985 Edition of the National Fire Protection Association.

ITEM 2. Amend rule **661—5.305(101)** by adding the following additional unnumbered paragraph at the end of the current text of the rule:

Nothing in these rules shall prohibit the sharing of aboveground tanks by governmental subdivisions.

ITEM 3. Amend rule 661—**5.552(100)** as follows:

Amend subrule **5.552(1)**, paragraph "a," by striking the last sentence.

Rescind subrule **5.552(1)**, paragraph "f," subparagraph (5).

Rescind the Exception to the following: **5.552(2)**"f," **5.552(4)**, **5.552(5)**"d"(4), **5.552(5)**"d"(5), **5.552(7)**"b," **5.552(8)**"a," **5.552(10)**"a," **5.552(12)**"a," **5.552(13)**"a."

Rescind subrule **5.552(15)**, paragraph "d."

ITEM 4. Amend 661—Chapter 5 by adding the following new rule:

661—5.620(100) General requirements for small group homes (specialized licensed facilities) for the mentally retarded.

5.620(1) Scope. This rule applies to specialized licensed facilities for the mentally retarded with three to five beds.

5.620(2) Exits.

a. There shall be a minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms.

b. Interior and exterior stairways shall have a minimum clear width of not less than 30 inches.

5.620(3) Windows. Every resident sleeping room shall have an outside window or outside door arranged and located to permit the venting of products of combustion and access to fresh air in the event of an emergency.

a. In new construction, windows shall have a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches and the finished sill height shall be not more than 44 inches above the floor.

b. In existing construction the finished sill height shall be not more than 44 inches above the floor or may be accessible from a platform not more than 44 inches below the window sill.

5.620(4) Interior finish. Interior finish in exit shall be Class A, B or C. See Table No. 5-C, following 661—5.105(100).

5.620(5) Doors. Doors to resident sleeping rooms shall be a minimum of 1 3/8-inch solid core wood or equivalent.

5.620(6) Vertical separations. Basement stairs must be enclosed with one-hour rated partitions and 1 3/4 inch solid core wood doors equipped with self-closers. These doors must be kept closed unless held open by an approved electro-magnetic holder, actuated by an approved smoke detection device located at the top of the stairwell and interconnected with the alarm system.

5.620(7) Fire detection, fire alarms and sprinklers.

a. The home shall have smoke detection installed on each occupied floor including basements in accordance with National Fire Protection Association Standard No. 74. Smoke detectors shall be interconnected so that activation of any detector will sound an audible alarm throughout. The system shall be tested by a competent person at least semiannually with date of test and name noted.

b. Homes may be protected with a sprinkler system meeting the requirements of National Fire Protection Association Standard No. 13D, 1989 edition.

5.620(8) Fire extinguishers.

a. Approved fire extinguishers shall be provided on each floor, so located that a person will not have to travel more than 75 feet from any point to reach the nearest extinguisher. An additional extinguisher shall be provided in, or adjacent to, each kitchen or basement storage room.

b. Type and number of portable fire extinguishers shall be determined by the fire marshal.

5.620(9) Mechanical, electrical and building service equipment.

a. Air conditioning, ventilating, heating, cooking and other service equipment shall be in accordance with state regulations governing same, or nationally recognized standards such as National Fire Protection Association standards governing the type of equipment, and shall be installed in accordance with the manufacturer's specifications. All hazardous areas normally found in one- and two-family dwellings, such as laundry, kitchen, heating units and closets need not be separated with walls if all equipment is installed in accordance with the manufacturer's listed instructions.

b. Portable comfort heating devices are prohibited.

5.620(10) Attendants, evacuation plan.

a. Every home shall have at least one staff person on the premises at all times while residents are present. This staff person shall be at least 18 years of age and capable of performing the required duties of evacuation. No person other than the management or a person under management control shall be considered as an attendant.

b. Every facility shall formulate a plan for the protection of all persons in the event of fire and for their evacuation to areas of refuge and from the building when necessary. All employees shall be instructed and kept informed respecting their duties under the plan. This plan is to be posted where all employees may readily study it. Fire drills shall be held at least once a month. Records must be kept available for inspection.

5.620(11) Smoking.

a. There shall be no smoking in resident sleeping areas and smoking and no smoking policies shall be strictly adhered to.

b. Ashtrays shall be constructed of noncombustible material with self-closing tops and shall be provided in all areas where smoking is permitted.

5.620(12) Exit illumination. Approved rechargable battery powered emergency lighting shall be installed to provide automatic exit illumination in the event of failure of the normal lighting system.

5.620(13) Occupancy restrictions.

a. Occupancies not under the control of, or not necessary to, the administration of residential care facilities are prohibited therein with the exception of the residence of the owner or manager.

b. Nonambulatory residents shall be housed only on accessible floors which have direct access to grade which does not involve stairs or elevators.

5.620(14) Maintenance.

a. All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. This includes fire extinguishing equipment, alarm systems, doors and their appurtenances, cords and switches, heating and ventilating equipment, sprinkler systems and exit facilities.

b. Storerooms shall be maintained in a neat and proper manner at all times.

c. Excessive storage of combustible materials such as papers, cartons, magazines, paints, sprays, old clothing, furniture and similar materials shall be prohibited at all times.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1561A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 99F.4, the Department of Public Safety hereby adopts a new Chapter 23, "Closed Circuit Videotape Surveillance Systems on Excursion Gambling Boats," Iowa Administrative Code.

The Notice of Intended Action was published in the September 19, 1990, Iowa Administrative Bulletin as **ARC 1264A**.

A public hearing was held on October 11, 1990, to receive comments on the proposed rules. Several prospective licensees attended the public hearing and contacted the Department prior to the public hearing. In response to concerns expressed by these persons, language has been added to the rules regarding relocation of gaming devices within the casino areas of the excursion gambling boats, to provide needed flexibility to the operators.

These rules will become effective January 16, 1991.

These rules are intended to implement Iowa Code Supplement section 99F.4.

The following new chapter is adopted:

CHAPTER 23

CLOSED CIRCUIT VIDEOTAPE SURVEILLANCE SYSTEMS ON EXCURSION GAMBLING BOATS

661—23.1(99F) Definitions.

"Administrator" means the administrator of the Iowa racing and gaming commission.

"Applicant" means any person applying for an occupational license or applying for a license to operate an excursion gambling boat, or the officers and members of the board of directors of a qualified sponsoring organization located in Iowa.

"Casino" means all areas of an excursion gambling boat where gaming is conducted.

"Commission" means the Iowa racing and gaming commission.

"DCI" means the division of criminal investigation, Iowa department of public safety.

"Gangplank" means the walkways that passengers use to embark and disembark from the excursion gambling boat.

"Land-based facility" means the licensee's operation where the soft count room is located, if other than on an excursion gambling boat.

"Licensee" means a qualified sponsoring organization conducting gambling games on an excursion gambling boat licensed by the Iowa racing and gaming commission under Iowa Code section 99F.7.

"Operator" means an entity licensed to operate an excursion gambling boat by the Iowa racing and gaming commission.

661—23.2(99F) Minimum standards. This chapter sets forth the minimum standards that must be followed by a licensee with respect to casino surveillance systems. The director of the DCI or the administrator may, at the director or administrator's absolute discretion, require a licensee to comply with casino surveillance system requirements that are more stringent than those set forth by these rules.

661—23.3(99F) Closed circuit television. Every licensee shall install, maintain and operate a closed circuit television system according to specifications set forth in these rules and shall provide access at all times to the system or its signal to the commission and the DCI.

661—23.4(99F) Required equipment. The closed circuit television system shall include, but shall not be limited to, the following equipment:

1. Camera - Pan, tilt, zoom, commonly referred to as P.T.Z. cameras, that are light sensitive and capable of being placed behind a dome or one-way mirror which conceals the P.T.Z. cameras from view. Each camera shall have the capability to distinguish a clear, unobstructed view of the table number of the gaming table or slot machine.

2. Video printers - Capable of adjustment and must possess the capability to generate instantaneously upon command a clear, still copy of the image depicted on a videotape recording with a minimum of 128 shades of gray.

3. Video monitors - Each screen must be at least 12 inches measured diagonally and all controls must be front mounted. Solid state circuitry is required.

4. Date and time generators - Each shall be capable of recording both time and date of the recorded events without obstructing the recorded view. This must be in military time.

5. Universal power supply - The system and its equipment must be directly and securely wired in a way to prevent tampering with the system.

6. Domes for cameras - Made of sufficient quality and size to accommodate P.T.Z. cameras, and capable of accommodating clear, unobstructed views.

7. Video switchers - Capable of both manual and automatic sequential switching, for the entire surveillance system.

8. Videotape recorders - Capable of producing high quality, first generation pictures with a horizontal resolution of a minimum of 300 lines nonconsumer, professional grade, and recording standard ½ inch, VHS tape with high-speed scanning and flickerless playback capability in real time. Also, time and date insertion capabilities for taping what is being viewed by any camera in the system. A minimum of one video recorder for every eight video cameras is required.

661—23.5(99F) Required surveillance. Every licensee or operator shall conduct and record as required by either the commission or the DCI surveillance which allows clear, unobstructed views in the following areas of the excursion boats and the land-based facilities:

1. Overall views of the casino pit areas.

2. All gaming or card table surfaces, including table bank trays, with sufficient clarity to permit identification of all chips, cash, and card values, and the outcome of the game. Each gaming table shall have the capability of being viewed by no less than two cameras.

3. Dice in craps games, with sufficient clarity to read the dice in their stopped position after each roll.

4. All roulette tables and wheels, capable of being recorded on a split screen to permit views of both the table and the wheel on one monitor screen.

5. All areas within cashier cages and booths, including, but not limited to, customer windows, employee windows, cash drawers, vaults, safes, counters, chip storage and fill windows. Every transaction occurring within or at

the casino cashier cages must be recorded with sufficient clarity to permit identification of currency, chips, tokens, fill slips, paperwork, employees, and patrons.

6. All entrance and exit doors to the casino area shall be monitored by the surveillance system if they are utilized for the movement of uncounted moneys, tokens, or chips. Also, elevators, stairs, gangplanks, and loading and unloading areas shall be monitored if they are utilized for the movement of uncounted moneys, chips, or tokens.

7. All areas within a hard count room and any area where uncounted coin is stored during the drop and count process, including walls, doors, scales, wrapping machines, coin sorters, vaults, safes, and general work surfaces.

8. All areas within a soft count room, including solid walls, doors, solid ceilings, stored drop boxes, vaults, safes, and counting surfaces which shall be transparent.

9. Overall views of patrons, dealers, spectators, and pit personnel, with sufficient clarity to permit identification thereof.

10. Overall views of the movement of cash, gaming chips and tokens, drop boxes and drop buckets.

11. All areas on the general casino floor with sufficient clarity to permit identification of all players, employees, patrons, and spectators.

12. Every licensee who exposes slot machines for play shall install, maintain, and operate at all times a casino surveillance system that possesses the capability to monitor and record clear, unobstructed views of the following:

o All slot change booths, including their cash drawers, countertops, counting machines, customer windows, and employee windows, recorded with sufficient clarity to permit identification of all transactions, cash, and paperwork therein.

o The slot machine number.

o All areas, recorded with sufficient clarity to permit identification of all players, employees, patrons, and spectators.

13. The DCI may require surveillance coverage of any other operation or game on either an excursion gambling boat or a land-based facility.

661—23.6(99F) Equipment in DCI offices. Excursion boat and land-based offices assigned to the DCI shall be equipped with a minimum of two 12-inch monochrome video monitors with control capability of any video source in the surveillance system. The following shall be additional mandatory equipment for said room or rooms:

1. Video printer.
2. Video recorders.
3. Audio pickup of soft count room.
4. Time and date generators, if not in the master surveillance system.
5. Total override surveillance system capabilities.

661—23.7(99F) Camera lenses. All closed circuit cameras shall be equipped with lenses of sufficient quality to allow clarity of the value of gaming chips, tokens, and playing cards. These cameras shall be capable of black and white recording and viewing except those covering exits and entrances of the casino area and gangplank areas, which shall be capable of recording in color.

661—23.8(99F) Lighting. Adequate lighting shall be present in all areas of the casino and count rooms to enable clear video reproductions.

661—23.9(99F) Surveillance room. There shall be provided on each excursion gambling boat a room or rooms specifically utilized to monitor and record activities on the casino floor, count room, cashier cages, gangplank area, and slot cages. These rooms shall have a trained surveillance person present during casino operation hours. The following are requirements for the operation of equipment in the surveillance room:

23.9(1) Surveillance equipment location. All equipment that may be utilized to monitor or record views obtained by a casino surveillance system must remain located in the room used exclusively for casino surveillance security purposes, except for equipment which is being repaired or replaced. The entrance to the casino surveillance room must be locked or secured at all times.

23.9(2) Override capability. Casino surveillance equipment must have total override capability over any other satellite monitoring equipment in other casino offices, with the exception of the DCI rooms.

23.9(3) Access. DCI and commission employees shall at all times be provided immediate access to the casino surveillance room and other casino surveillance areas. Also, all DCI and commission employees shall have access to all records and areas of such rooms.

23.9(4) Surveillance logs. Entry in the log shall be required when requested by the DCI or the commission, whenever surveillance is conducted on anyone, or whenever any activity that appears unusual, irregular, illegal or in violation of commission rules is observed. Also, all telephone calls shall be logged.

23.9(5) Blueprints. A copy of the configuration of the casino floor shall be posted and updated immediately upon any change. Also included shall be the location of any change, and the location of surveillance cameras, gaming tables and slot machines by assigned numbers. Copies shall also be made available to the DCI room.

23.9(6) Storage and retrieval. Surveillance personnel will be required to label and file all videotape recordings. The date, time, and signature of the person making the recording is required. All videotape recordings shall be retained for at least seven days after recording unless a longer period is required by the DCI, the commission, or court order. Original audio tapes and original video tapes shall be released to a DCI agent upon demand.

23.9(7) Malfunctions. Each malfunction of surveillance equipment must be repaired within 24 hours of the malfunction. If, after 24 hours, activity in the affected area cannot be monitored, the game or machine shall be closed until such coverage can be provided. A record of all malfunctions shall be kept and reported to the DCI each day.

23.9(8) Security. Entry to the surveillance room is limited to persons approved by the DCI or the administrator. A log of personnel entering and exiting the surveillance room shall be maintained and submitted to the DCI every 30 days.

23.9(9) Playback station. An area is required to be provided within the DCI room that will include, but is not limited to, a video monitor and a video recorder with the capability of producing first generation videotape copies.

23.9(10) Additional requirements.

a. Audio and videotape monitoring will be continuous in the DCI and security detention areas, when someone is being detained. These recordings must be retained for 30 days after the recorded event, unless directed otherwise by the administrator, DCI or court order.

b. The commission, its employees, and DCI agents shall, at all times, be provided immediate access to the surveillance room and all areas of the casino.

23.9(11) Written plans and alterations.

a. Every operator or applicant for licensing shall submit to the commission for approval by the administrator and to the DCI for approval by the director of the DCI, a written casino surveillance system plan no later than 60 days prior to the start of gaming operations.

b. A written casino surveillance system plan must include a casino floor plan that shows the placement of all casino surveillance equipment in relation to the locations required to be covered, and a detailed description of the casino surveillance system and its equipment. In addition, the plan may include other information that evidences compliance with these rules by the licensee, operator or applicant.

c. The operator may change the location of table games, slot machines, and other gaming devices. The surveillance system must also be adjusted, if necessary, to provide the coverage required by these rules. A DCI agent must approve the change in surveillance system before the relocated table games, slot machines, or other gaming devices may be placed into operation. The operator must submit any change to the surveillance system showing the change in the location of the gaming devices and related security and surveillance equipment within seven days to the administrator and the director of the DCI.

661—23.10(99F) Nongambling hours. Security surveillance will be required during nongambling hours as follows:

23.10(1) Cleanup and removal time. At any time cleanup operations or money removal is being conducted in the casino area, the security surveillance room must be staffed with a minimum of one trained surveillance person.

23.10(2) Locked down mode. Anytime the casino is closed and in a locked down mode, sufficient surveillance coverage must be conductd to monitor and record the casino, in general, so that security integrity is maintained. During this period it is not required that a trained security surveillance person be present.

661—23.11(99F) Waivers from requirements. Upon request of an applicant, licensee, or operator, the director may, for just cause, waive any requirement of these rules.

These rules are intended to implement Iowa Code Supplement section 99F.4.

[Filed 11/26/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1548A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 6, "Organization, Public Inspection," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, volume XIII, number 8, on October 17, 1990, page 733, as **ARC 1329A.**

This rule is being made to implement amendments to Iowa Code section 68B.4 contained in the 1990 Iowa Acts, chapter 1209. The amendments require each regulatory agency to adopt rules specifying the method by which agency consent, subject to specified conditions, may be obtained for officials or employees of the agency to sell any goods or services to individuals, associations, or corporations subject to the regulatory authority of the agency.

This rule is identical to that published under Notice of Intended Action. This rule will become effective January 16, 1991, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This rule is intended to implement Iowa Code section 68B.4 as amended by 1990 Iowa Acts, chapter 1209.

The following rule is adopted.

Amend Chapter 6 by adding the following new rule:

701—6.7(68B) Consent to sell. In addition to being subject to any other restrictions in outside employment, self-employment or related activities imposed by law, an official or employee of the department of revenue and finance may only sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the authority of the department of revenue and finance when granted permission subsequent to completion and approval of an Iowa department of revenue and finance application to engage in outside employment. The application to engage in outside employment must be approved by the employee's immediate supervisor, division administrator, and the administration division administrator. Approval to sell may only be granted when conditions listed in Iowa Code section 68B.4 are met.

This rule is intended to implement Iowa Code section 68B.4 as amended by 1990 Iowa Acts, chapter 1209.

[Filed 11/21/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1547A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 10, "Interest, Penalty, and Exceptions to Penalty," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, volume XIII, number 8, on October 17, 1990, page 734, as **ARC 1330A.**

This amendment implements Iowa Code section 421.7. This Code section requires the Director of Revenue and Finance to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest bearing taxes arising under Iowa Code Title XVI shall be 12 percent for the calendar year

1991. The interest rate is 2 percent above the average prime rate charged by banks on short-term business loans as published in the Federal Reserve Bulletin for the 12-month period ending September 30, 1990. For the past 12 months, the average prime rate was 10 percent.

1990 Iowa Acts, chapter 1172, amended Iowa Code subsection 421.7(2) to provide that beginning with calendar year 1991, the interest rate charged on outstanding taxes or paid on refunds to taxpayers would be increased to 2 percent above the average prime rate for the 12 months ended September 30 of the previous calendar year. This provision increases the interest rate on outstanding taxes or on refunds to taxpayers to 12 percent.

The 12 percent annual rate is equivalent to an interest rate of 1.0 percent per month on all outstanding taxes. The rate will be applied to all taxes owing or becoming payable on or after January 1, 1991. Under Iowa law, each fraction of a month is considered a whole month when interest is computed. When required to pay interest on taxpayers' refunds, the Department will also pay interest at the 12 percent rate on refunds owing or becoming payable on or after January 1, 1991.

These amendments are identical to those published under Notice of Intended Action. These amendments will become effective January 16, 1991, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The amendments are intended to implement Iowa Code chapter 421 as amended by 1990 Iowa Acts, chapter 1172.

The following amendments are adopted.

ITEM 1. Amend rule 701—10.2(421) by adding the following new subrule:

10.2(10) Calendar year 1991. The interest upon all unpaid taxes which are due as of January 1, 1991, will be 12 percent per annum (1.0% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1991. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless whether the tax to be refunded is due before, on, or after January 1, 1991. This interest rate of 12 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1991.

ITEM 2. Amend the implementation clause of rule **701—10.2(421)** to read as follows:

This rule is intended to implement Iowa Code section 421.7 *as amended by 1990 Iowa Acts, chapter 1172.*

[Filed 11/21/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

ARC 1540A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4(1) and 476.2, the Iowa State Utilities Board (Board) gives notice that on November 21, 1990, the Board issued an order in Docket No. RMU-90-19, In Re: Options for Demand Charge Allocations, "Order Adopting Rules."

On April 13, 1990, the Board issued an order in this docket commencing a rule making to consider the adoption of an amendment to 199 IAC 19.10(3), setting forth options for allocation of demand charges assessed to local distribution companies by pipelines. The rule making was necessitated by Northern Natural Gas Company's unification of D-1 charges and D-2 charges into a single demand charge. On the same date the proposed rule making was initiated, the Board emergency adopted and implemented a subrule allocating demand charges according to the same percentage the charges were allocated in the last month in which D-2 rates were not zero. [IAB 5/2/90, **ARC 846A**] The emergency rule was intended to provide the basis for allocation until the options could be assessed through the rule-making process. A Notice of Intended Action was published in the Iowa Administrative Bulletin on May 2, 1990, as **ARC 845A**. In order to allow for public comment on the proposed rule, a deadline of May 22, 1990, was set for written comments and an oral presentation was held on May 31, 1990.

The Board proposed five separate options for consideration. The Board will adopt Option 1, modified to use the average percentage over a 12-month period rather than a single month. Option 1 is nearly identical to the rule currently in effect. The allocation has proved workable and is easy to administer. The modification, suggested by Midwest Gas, a division of Iowa Public Service Company, and the Consumer Advocate Division of the Department of Justice (Consumer Advocate), will provide a more representative percentage than the single month of January 1990, which left the outcome sensitive to seasonal factors. In addition, the term "current demand charges" will be defined to remove any ambiguity.

Option 2, which allocated the demand charges in the amount allocated in the month before the change became effective was not supported by any of the commenters. According to the comments, using the total D-2 dollar amount from the last month charges were allocated is less relevant than a percentage since the total amount of demand charges is a changing number. The third option, which allocated the charge uniformly over all units sold, was supported by Consumer Advocate. However, no method for setting this charge was offered and Board action would be required to change the amount as total demand charges changed. Option 4 assigned demand costs on the basis of peak day hours in which service was available and was rejected because the calculation would be difficult to perform and check. Several commenters were concerned that this method would cause large year-to-year variations in prices to interruptible customers. Option 5, which restored the previous rule and resulted in the assignment of all demand costs to firm sales customers, was favored by the interruptible customers commenting and by some of the utilities concerned about the possible loss of industrial sales. Other commenters opposed Option 5 arguing the interruptible customers benefit from the pipeline system and should pay a portion of the fixed distribution costs in recognition of the use of the system.

The rule finally adopted incorporates certain revisions proposed by the parties filing comments. The Board has also provided a definition of the term "current demand charges" for clarity. The Board does not believe additional public comment on the adopted rule is necessary because the changes made to the rule are a logical outgrowth of the prior Notice and public hearing.

UTILITIES DIVISION[199] *(cont'd)*

The rule is intended to implement Iowa Code section 476.6(11) and will become effective on January 16, 1991, pursuant to Iowa Code section 17A.5.

The Board, having given due consideration to each of the comments received, adopts the following:

Amend subrule **19.10(3)** by rescinding the fifth unnumbered paragraph and inserting the following in lieu thereof:

If a supplier's entitlement charge is zero, the same percentage of current demand charges shall be allocated to each customer class or grouping as the average of demand charges allocated during the last 12-month period for which entitlement rates were not zero. "Current demand charges" means the amount (D x Rd) used in computing the formula set out in 19.10(1).

[Filed 11/21/90, effective 1/16/91]
[Published 12/12/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/12/90.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAY
Utilities Division[199]	22.10(1)"c" (IAB 10/31/90 **ARC 1393A**)	Effective date of December 5, 1990, delayed seventy days by the Administrative Rules Review Committee at its November 14, 1990, meeting.

[Pursuant to §17A.8(9)]

AGENCY	RULE	EFFECTIVE DATE DELAY
Education Department[281]	103.2(280), last two sentences (IAB 10/31/90 **ARC 1383A**)	Effective date of December 5, 1990, delayed until adjournment of the 1991 Session of the General Assembly by the Administrative Rules Committee at its November 13, 1990, meeting.

ARC 1553A

NATURAL RESOURCE COMMISSION[571]

ECONOMIC IMPACT STATEMENT

The Administrative Rules Review Committee at its November 14, 1990, meeting moved to require the Department of Natural Resources to file an Economic Impact Statement on proposed amendments to Chapter 82, "Commercial Fishing," Iowa Administrative Code.

The Notice of Intended Action was published in Iowa Administrative Bulletin Vol. XIII, No. 7 (10/3/90) p. 624, **ARC 1292A**.

Specifically, the Rules Committee directed the Department to address the economic impact on commercial fishermen and the Department of the proposal to remove flathead catfish and channel catfish from the commercial species list on the Missouri River effective January 1, 1992.

The restriction of catfish from commercial harvest on the Missouri River is being proposed because of severe overexploitation. Channel modification brought about by the Army Corps of Engineers' Bank Stabilization and Navigation Project has dramatically reduced the available aquatic habitats for catfishes and most other riverine species. Because of limited habitat, there exists today a fraction of the fish community that there was in the preproject period. The small amount of commercial fishing activity by Iowa and Nebraska fishermen accounts for 93 percent of the total harvest of channel catfish from the Missouri River.

During 1990, the Department of Natural Resources received $4,246 income from license sales and gear tags purchased by commercial fishermen fishing the Missouri River (Table 1). This amount represents the maximum annual revenue lost to the Department beginning in 1992 if all 13 commercial fishermen ceased operations. The majority of commercial fishermen are expected to exit the Missouri River if catfishes are removed from the permitted take; however, a lesser amount of commercial fishing is expected to continue for carp, buffalo, and other commercial food-fish species. The remaining commercial fishing activity will provide an undetermined amount of revenue to the Department.

Table 1
Revenue Received by Department of Natural Resources from Missouri River Commercial Fishermen During 1990

	Number Sold	Each	Total
Owner's License	13	$200	$2,600
Operator's License	26	50	1,300
Operator's License (Nonresident)	2	100	200
Gear Tags	146	1	146
Total State Revenue			$4,246

The 13 licensed Missouri River commercial fishermen reported a harvest of 9,393 pounds of catfish from the Missouri River in 1989 (Table 2). At a reported market price of $1 per pound by Missouri River fishermen, total revenue generated to the commercial fishermen was $9,393. The average income from catfish sales among the 13 fishermen in 1989 was $723. The sale of other commercial species such as carp and buffalo brought an additional $285 on average to each fisherman.

Comparison of the commercial fishing activity on the Missouri River to that conducted on the Mississippi River may better describe the nature of the Missouri River fishery and status of the catfish populations.

In 1989 there were 172 licensed commercial fishermen on the Mississippi River who reported a harvest of 2,965,147 pounds of fish valued at $627,775 (Table 3). Combined harvest of flathead and channel catfish from the Mississippi River totaled 693,352 pounds with an estimated value of $294,064. Reported market price for Mississippi River catfish in 1989 was $.45 for channel catfish and $.33 for flathead catfish.

Table 2
Commercial Harvest and Value of Fish From the Missouri River in 1989

	Pounds Harvest	Price Per Pound	Value
Channel Catfish	3,989	$ 1	$3,989
Flathead Catfish	5,404	$ 1	5,404
Total Catfish	9,393		$9,393
Other Species	30,366	. $.12	3,702
Total All Species	39,759		$13,095

Table 3
Commercial Harvest and Value of Fish From the Mississippi River in 1989

	Pounds Harvest	Price Per Pound	Value
Channel Catfish	543,818	$.45	$244,718
Flathead Catfish	149,534	$.33	49,346
Total Catfish	693,352		$294,064
Other Species	2,271,795	$.14	333,711
Total All Species	2,965,147		$627,775

Iowa Missouri River commercial fishermen report they receive an average of $1 per pound for catfish. This represents a market price at least double that demanded by Mississippi River catfish. Yet, the total reported harvest of catfish in 1989 from the Missouri River was only 9,393 pounds compared to a reported harvest of 693,352 pounds from the Mississippi River. Catfish are not harvested from the Missouri River in large numbers by commercial fishermen because the population of catfish is in short supply.

The term "commercial fishing" hardly describes the current level of activity on the Missouri River. Most of the 13 licensed fishermen by their own admission are "weekenders," in it for an interesting pastime or hobby or "food gathering." We have on the Missouri River a small group of people who are, in essence, sportfishing with commercial fishing gear. This small group of people account for 93 percent of the harvest of a limited catfish population. It is the conclusion of the Department of Natural Resources that catfish population on the Missouri River has been reduced dramatically by systemwide habitat decline brought on by the Bank Stabilization and Navigation Project. Continuation of commercial fishing for catfish threatens the viability of future catfish populations.

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER 41

WHEREAS, 1990 Iowa Acts ch 1146 empowers the Governor to accept on behalf of the State of Iowa, retrocession of Federal Jurisdiction if offered by the appropriate Federal authority.

WHEREAS, Section 5 of the Public Buildings Amendments of 1988 (Public Law 100-678), 102 Stat.4050, gives General Services Administration (GSA) the authority to offer an assignment of jurisdiction for the administration of criminal, health and safety laws for property under their charge and control.

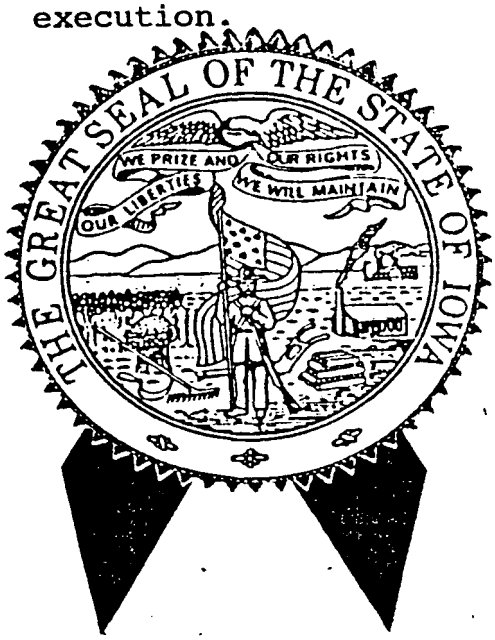
WHEREAS, on September 13, 1990, GSA offered assignment of jurisdiction to the State of Iowa for the administration of Iowa criminal laws and health and safety laws; provided that such jurisdiction is to be concurrent with jurisdiction of the United States who will continue to administer Federal laws.

WHEREAS, the offer of assignment and concurrent jurisdiction pertains to the following Federal properties:

U.S. Courthouse, 123 East Walnut Street, Des Moines, Iowa
Ft. Des Moines, Iowa, Buildings 87 and 309
Federal Building and Courthouse, 4th and Perry, Davenport, Iowa

NOW, THEREFORE, I, TERRY E. BRANSTAD, GOVERNOR OF THE STATE OF IOWA, by virtue of the authority vested in me by the Constitution and laws of the State of Iowa, do accept the offer of assignment of concurrent jurisdiction.

This Executive Order shall become effective immediately upon its execution.



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, Iowa this 6th day of November in the year of our Lord one thousand nine hundred ninety.

Terry E. Branstad
GOVERNOR

Attest:

Elaine Baxter
Secretary of State

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA

FILED NOVEMBER 21, 1990

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

No. 89-983. RUDEN vs. PARKER.

Appeal from the Iowa District Court for Scott County, James A. Kelley, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Snell and Andreasen, JJ. Opinion by McGiverin, C.J. (8 pages $3.20)

Plaintiff parents brought a claim for parental consortium due to the death of their adult child. The district court granted defendant's partial summary judgment motion, ruling that Rudens have no claim for loss of consortium of their adult daughter Darci. Rudens appeal with our permission, Iowa R. App. P. 2, from the district court's grant of the partial summary judgment motion. OPINION HOLDS: I. We will assume, without deciding, that Rudens have standing to challenge Iowa Rule of Civil Procedure 8 because we conclude that rule 8 does not deny equal protection as it applies to Rudens. II. Iowa Rule of Civil Procedure 8 provides that parents may sue for the loss of services, companionship and society resulting from injury to or death of "a minor child." Rudens argue that the equal protection guarantees of the United States and Iowa constitutions will be violated if rule 8 is applied in a manner that denies them a right to recover for the loss of consortium that resulted from the death of their adult child, while allowing parents to recover for the loss of consortium of a minor child. The parent-child relationship is different when a child is a minor as opposed to when a child is an adult. We affirm the district court's ruling on the partial summary judgment motion.

No. 89-1692. AMERICAN ASBESTOS TRAINING CENTER, LTD. vs. EASTERN IOWA COMMUNITY COLLEGE.

Appeal from the Iowa District Court for Jones County, Thomas M. Horan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (6 pages $2.40)

American Asbestos Training Center Ltd. is a private enterprise which offers asbestos training courses. Eastern Iowa Community College also offers asbestos training courses. American Asbestos sought injunctive relief to bar the community college from offering such courses. American Asbestos claimed the community college was violating Iowa Code chapter 23A, which restricts governmental competition with private enterprise. The district court found no violation of chapter 23A and therefore granted the community college a summary judgment. American Asbestos has appealed. **OPINION HOLDS:** I. Chapter 23A bars governmental entities from dispensing "goods" or "services" to the public in competition with private enterprise. However, the word "services" does not include the teaching and training functions of a community college. The community college's training course involved here is within the parameters of the community college educational mission and is not in violation of chapter 23A. II. Even if the term "services" is given broad interpretation, the court's judgment for the community college is correct because chapter 23A expressly permits the offering of "services" that are specifically authorized by statute. Community colleges are expressly authorized to offer vocational and technical training. Here the state board of education had approved the community college asbestos training programs. We agree with the district court that specific authorization was given to the community college to provide asbestos training courses.

No. 89-1176. SHAW vs. SOO LINE RAILROAD CO.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge. **DECISION OF COURT OF APPEALS AND JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Snell, J. (13 pages $5.20)

The plaintiffs appeal from a prêtrial summary judgment finding that landowner and trucking company defendants owed no duty to guard against the risk of harm from obstructed visibility. **OPINION HOLDS:** Under the circumstances of this case, the private landowner and its business invitee (which parked trucks on land adjacent to a highway) owed neither a statutory nor a common law duty to highway travelers to guard against the risk of harm from obstructed visibility caused by the parked trucks.

No. 90-1059. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT vs. HALL.

On review of the report of the Grievance Commission. **LICENSE REVOKED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Snell and Andreasen, JJ. Opinion by McGiverin, C.J. (16 pages $6.40)

The Grievance Commission found that respondent violated numerous disciplinary rules. The violations stem from a $350,000 loan respondent received from the Citizens State Bank, Hopkinton, Iowa, allegedly through dishonesty, and numerous business ventures with a client, Walter Ronk. The commission recommended a four month suspension of Hall's license to practice law. OPINION HOLDS: I. As a preliminary matter, respondent asserts that we should not reach the merits of this case on appeal because the Grievance Commission erred when it failed to grant respondent's motion to dismiss. Hall urges defenses of res judicata, estoppel, laches and deprivation of due process. The commission found no merit in these contentions and neither do we. II. On May 14, 1982, Citizens State Bank loaned respondent $350,000 in the form of two promissory notes in the amounts of $200,000 and $150,000. Respondent signed the notes. Respondent falsely represented to the bank that the loans would be used to purchase 60,000 laying hens and equipment for the hen operation of Lux Pullets, Inc. In fact, the notes provided on their face that they were purchase money loans and would be used to purchase hens and equipment. The equipment and laying hens were never acquired by respondent or his company and, thus, the bank received no collateral or security for the loans. The $350,000 was used by respondent for other purposes, and most of the money was never repaid to the bank by respondent or his company. The bank sustained a loss of more than $300,000 on the two notes. The Grievance Commission also concluded, and we agree, that respondent made later false statements regarding the transaction with Citizens State Bank. The first of these statements occurred when respondent testified in a sworn deposition in a related civil lawsuit that the $350,000 in loans from Citizens State Bank were unsecured loans. The second false statement was a written response to a committee inquiry in which respondent stated that the bank knew that the money loaned on May 14, 1982, would not be used to purchase hens. The commission found, and we agree, that the untruthful deposition testimony that the loans were unsecured violated numerous disciplinary rules. III. Ronk had been a client of respondent's law firm for several years and at various times prior to 1978 respondent had acted as Ronk's legal counsel. Beginning in 1978, respondent and Ronk entered into several joint business ventures. During all of their joint business dealings,

No. 90-1059. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT vs. HALL (continued).

Ronk regarded respondent as his attorney and looked to him for advice. Respondent's ethical violations in his dealings with Ronk were severe. Respondent did not enter into a one time transaction with Ronk but, rather, a series of transactions occurring over a four year period. These business transactions were largely failures which ended up costing Ronk several hundred thousand dollars. Some of the transactions were solely for the benefit of respondent. Finally, an additional factor with regard to respondent's dealings with Ronk is that respondent attempted to exonerate himself from any professional responsibility for his actions. This alone is a serious ethical violation. IV. We conclude there are aggravating factors that suggest a more severe punishment should be imposed than the punishment recommended by the commission. First, respondent has been reprimanded by the Ethics Committee in 1987 in connection with a separate business transaction with a separate client. Second, the number and variety of respondent's ethical violations support an enhanced sanction. Finally, although respondent has admitted that he was involved in a conflict of interest with regard to the Ronk matters, his true belief, as evidenced by his brief, is that he really did nothing wrong. Based upon our de novo review, we revoke Hall's license to practice law in Iowa.

No. 89-1656. MIDWEST RECOVERY SERVICES vs. WOLFE.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Schultz, Snell, and Andreasen, JJ. Opinion by Snell, J. (9 pages $3.60)

Midwest filed two separate small claims actions for four dishonored checks written by Helen Wolfe. Wolfe filed an answer and counterclaim in each of the actions, alleging that Midwest had violated provisions of the Iowa Debt Collection Practices Act in attempting to collect on the dishonored checks. The court entered judgment against Wolfe on the checks. However, the court further found that the behavior of Midwest was in violation of the Act. Judgment was entered against Midwest pursuant to the Act and was set off against the judgment in favor of Midwest. Midwest's request for a new trial was denied, and Midwest appealed. **OPINION HOLDS:** A check negotiated for cash is not subject to the Iowa Debt Collection Practices Act. The judgment for damages and attorney fees against Midwest is reversed.

No. 89-1235. FARMERS STATE BANK vs. UNITED CENTRAL BANK.
Appeal from the Iowa District Court for Polk County, Theodore H. Miller, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Schultz, Snell, and Andreasen, JJ. Opinion by Schultz, J. (9 pages $3.60)

Farmers State Bank used United Central Bank, now named First Interstate Bank of Des Moines, N.A., as a correspondent bank and also sold it loan participations. J.E.M.S., Inc., a one-bank holding corporation, owns over eighty percent of Farmers' stock. In 1982, Farmers loaned money to a farmer, evidenced by three notes, and Interstate purchased loan participations in the notes. After the notes were due in 1983, Farmers consolidated the three notes into one. Interstate refused to continue as a loan participant in the renewal of the loan. J.E.M.S. then participated in this loan. Following a loss on the loan, Farmers and J.E.M.S. filed an action against Interstate for reimbursement of the portion of the loss attributed to Interstate's failure to renew its loan participation. The district court granted defendant's motion for summary judgment. Farmers and J.E.M.S. appeal. OPINION HOLDS: I. Farmers did not suffer damages as a result of Interstate's refusal to participate in the renewed loan. In addition, Farmers cannot recover damages under the collateral source rule because J.E.M.S.'s payment of the nonrenewed portion of the loan is not the type of benefit contemplated under this rule. II. J.E.M.S. argues that even in the absence of a contract, promise, or representation between J.E.M.S. and Interstate, it is entitled to recover the amounts actually expended for its forced assumption of a debt owed by Interstate. J.E.M.S. identifies its theory of recovery as "money had and received." However, this theory of recovery was neither identified or asserted by J.E.M.S. nor ruled on by the district court. If J.E.M.S. was advancing the "money had and received" theory of recovery that it now seeks on appeal, a rule 179(b) motion would have been the appropriate method to remind the district court that it had not addressed all of J.E.M.S.'s theories of recovery. This was not done. Consequently, the legal theories not included in the district court's ruling were not preserved for review on appeal. The district court's dismissal of J.E.M.S.'s claim is affirmed.

No. 89-1123. DENTAL PROSTHETIC SERVICES, INC. vs. HURST. On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge. **DECISION OF COURT OF APPEALS AND JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Schultz, J. (8 pages $3.20)

In this appeal, Dental Prosthetic Services, Inc. (DPS) brought suit against James P. Hurst, a former employee, to enforce a covenant not to compete contained in the written employment agreement between the parties. Following a bench trial, the district court dismissed the petition. The court found that DPS failed to prove that Hurst's business was located within a fifty-mile radius of DPS's business. Alternatively, the court concluded that the restrictive covenant was unreasonable as to time and area. DPS appealed this decision, and the court of appeals affirmed by operation of law. DPS's application for further review was granted. OPINION HOLDS: I. Hurst testified that his laboratory was more than fifty miles away from the site of DPS's laboratory. We agree with the trial court that DPS did not present conclusive evidence that contradicted Hurst's testimony, Thus, DPS failed to establish that the two laboratories are within a fifty-mile radius of each other. II. The term "business" in the restrictive covenant is ambiguous, thus requiring construction of the employment contract. III. Based on the language of the covenant considered as a whole together with the extrinsic evidence provided, the contractual provision "directly or indirectly engage in business" encompasses only the activities conducted at Hurst's laboratory and not the incidental deliveries and service calls made within the prohibited fifty-mile area. Therefore, Hurst did not directly or indirectly engage in business within the restricted area, thus he did not violate the restrictive covenant. Consequently, it is unnecessary to decide whether the covenant was unreasonable as to time and area.

No. 89-592. ARBIE MINERAL FEED CO. vs. FARM BUREAU MUTUAL INSURANCE.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. **REVERSED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (10 pages $4.00)

In 1983, Arbie obtained a default judgment against James Elgin. Previously, in 1982, Elgin, and others, brought an action against Farm Bureau for their refusal to pay on an insurance claim. Arbie learned of Elgin's action against Farm Bureau. On August 13, 1984, the sheriff, at Arbie's instruction, levied on any assets of judgment rendered in the insurance claim case. In 1986, the insurance claim case was settled. As part of the settlement, Farm Bureau agreed that a judgment be entered in the amount of $105,000 in favor of Sands and Elgin, Inc. No judgment was ever entered in favor of James Elgin individually. Arbie subsequently filed a petition against James Elgin, Elgin Inc., Sands, Sands Inc., E & S Farms, and Farm Bureau alleging fraud and misrepresentation and seeking actual, general and punitive damages. The court found the defendants jointly and severally liable for actual damages and punitive damages. The trial court held that even though there was not strict compliance with rule 260, Arbie nevertheless had a valid lien on any judgment allocated to Elgin. All five defendants appealed. **OPINION HOLDS:** There was never a judgment, or any part thereof, awarded to James Elgin. A judgment which has never existed cannot be property. Thus, it cannot be levied upon. We hold that a judgment may not be levied upon until it has been entered. Had Arbie levied upon Elgin's cause of action, that cause of action could have been sold at sheriff's sale. However, Arbie levied on a nonexistent judgment; it did not levy on Elgin's cause of action. As a result no lien was created.

No. 89-1358. **COOPER v. IOWA BOARD OF PAROLE.**
Appeal from the Iowa District Court for Jones County, August F. Honsell, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Lavorato, Neuman, and Snell, JJ. Per curiam. (2 pages $.80)

In 1986 Kevin Cooper was convicted of first-degree robbery and was sentenced to a prison term of not to exceed twenty-five years. After he arrived in prison the board of parole notified Cooper that, under the terms of former Iowa Code section 906.5 (1983), he would not be eligible for parole until he had served twelve and one-half years (half of his maximum indeterminate sentence) because he had previously been convicted of a forcible felony. Cooper challenged the application of former Iowa Code section 906.5 as to him, raising the identical claim asserted by the appellant in Wharton v. Iowa Board of Parole, ___ N.W.2d ___ (Iowa 1990). OPINION HOLDS: We rejected Wharton's claim. What we said in Wharton controls this case and requires us to reject the identical claim now asserted by Cooper.

No. 89-1973. **FEE v. EMPLOYMENT APPEAL BOARD.**
Appeal from the Iowa District Court for Wapello County, Robert Bates, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Opinion by Harris, J. (5 pages $2.00)

Petitioner Judy K. Fee was discharged from her employment with Boom-Co. The employment appeal board, by a vote of two to one, denied her unemployment benefits on July 18, 1989. Boom-Co., apparently confusing the dissent with the majority opinion, filed an application for rehearing on August 9, 1989. Judy received notice of the hearing on Boom-Co.'s application for rehearing. By statute, when the application was not acted upon within twenty days, it was deemed denied by operation of law. Judy filed a petition for judicial review on September 25, 1989. The district court ruled that the petition was not timely because it was not filed within thirty days after the July 18, 1989, decision. Judy appealed. OPINION HOLDS: Iowa Code section 17A.16(2) states that "any party," not merely an aggrieved party, may apply for rehearing. Under this statute Judy received notice informing her when the application would be deemed denied. Section 17A.19(3) provides that "a party" has thirty days to petition for judicial review after the application for rehearing is denied. We hold Judy was entitled to compute her filing requirements on the basis of Boom-Co.'s application for rehearing. Judy's filing was timely and the district court should have entertained her petition for judicial review.

No. 89-1335. **WHARTON v. IOWA BOARD OF PAROLE.**
Appeal from the Iowa District Court for Jones County, August F. Honsell, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Opinion by Harris, J. (4 pages $1.60)

In 1984 Wharton was sentenced to two indeterminate sentences of not to exceed twenty-five years for first-degree robbery, to be served consecutively. The sentencing court did not mention any minimum sentence. However, the parole board later informed Wharton that because of a previous forcible felony conviction, he would not be eligible for parole until he had served half his maximum sentence. In so doing, the parole board relied on a restriction on parole found in former Iowa Code section 906.5. Subsequently, in 1988, the legislature moved the restriction on parole from Iowa Code section 906.5 to Iowa Code section 902.11 (1989); the move was accomplished by the simultaneous repeal of the former section and reenactment of the new one. Wharton contends the repeal of the provision in section 906.5, under which he was sentenced, effectively withdraws the impediment to his eligibility for parole. He argues that the 1988 legislation was silent, both as to any continuing effect of the old statute, or retrospective application of the one that supplanted it. OPINION HOLDS: I. The district court correctly rejected Wharton's contention. According to a fundamental canon of statutory construction the simultaneous repeal and reenactment of all or a part of a legislative act "leaves unaffected all rights, interests, and liabilities arising under the earlier provision. There is no interruption in the statute's operation. II. Wharton's constitutional challenges to former section 906.5 lack merit. We have previously rejected the claim that former section 906.5 unconstitutionally transferred a judicial function to the executive branch of government. Wharton's due process and equal protection claims also fail.

No. 89-619. **BRITT-TECH CORP. v. AMERICAN MAGNETICS CORP.**
On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Cerro Gordo County, Gilbert K. Bovard, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED AND REMANDED.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Opinion by Harris, J. Special concurrence by Carter, J. (6 pages $2.40)

Plaintiff manufacturer, Britt-Tech Corporation, brought this action for both contribution and indemnity after settling a wrongful death action. Summary judgment was entered in favor of the defendants, American Magnetics Corporation, which supplied component parts to the

No. 89-619. **BRITT-TECH CORP. v. AMERICAN MAGNETICS CORP.** (continued).

manufacturer, and River City Development Company, a dealer which sold the item to the consumer. The trial court granted summary judgment in favor of both American Magnetics and River City upon a finding that Britt-Tech did not comply with Iowa Code section 668.6 (1985). We transferred the case to the court of appeals, which affirmed the partial summary judgment in favor of defendant River City but reversed the partial summary judgment in favor of defendant American Magnetics. The case is before us on further review. OPINION HOLDS: I. Although Britt-Tech contends otherwise it is clear that Iowa Code chapter 668 (1989) is applicable to its contribution claims. II. The trial court held that the release executed between Britt-Tech and the Hardy estate did not satisfy the specificity requirements found in section 668.7. We agree, and affirm the trial court in sustaining the motions for summary judgment against Britt-Tech's claims for contribution. The case must be remanded for further proceedings on Britt-Tech's claims for indemnification. CONCURRENCE ASSERTS: I believe that in applying Iowa Code section 668.7 (1989) the identity of released parties may be shown by parol evidence. I also believe that liability may be "extinguished" for purposes of section 668.5(2) without any release if all conceivable damages have been paid in full. In the present case, however, any discharge of the party from whom contribution is sought was untimely under section 668.6(3).

No. 89-1453. **FEDERAL DEPOSIT INSURANCE CORP. v. HARTWIG.** Appeal from the Iowa District Court for Keokuk County, Phillip R. Collett, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Opinion by Neuman, J. (7 pages $2.80)

The Hartwigs gave the bank two mortgages and a deed of trust on farmland owned by them. The mortgages and deed of trust each provide that, in the event of default, a receiver shall be appointed to take possession of the property and collect the "rents and profits accruing therefrom." Following default by the Hartwigs in 1987, the bank obtained a partial summary judgment on the notes and foreclosure of the mortgages and deed of trust. The property was eventually purchased at sheriff's sale by the FDIC. Before foreclosure, and later while the property was in receivership, the Hartwigs enrolled a portion of the mortgaged farmland in the Conservation Reserve Program. In this program, the government contractually agrees to pay the farmer annual "rental payment[s] . . . to compensate

No. 89-1453. **FEDERAL DEPOSIT INSURANCE CORP. v. HARTWIG** (continued).

such participant for placing eligible cropland in the CRP." In July 1989, the receiver sought direction from the district court concerning distribution of two CRP payments due in October 1989. The district court ruled that the FDIC was entitled to the proceeds less sums expended by the Hartwigs to prepare the land for participation in the program based on the mortgage. It is from this ruling that the Hartwigs have appealed. OPINION HOLDS: We find that CRP payments constitute "rent" within the meaning of the "rents and profits" clause of a mortgage. Therefore, the district court correctly ruled that the FDIC was entitled to the CRP payments.

No. 90-1132. **COMMITTEE ON PROFESSIONAL ETHICS v. HILL.**
On review of the report of the Grievance Commission. **LAWYER REPRIMANDED.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Opinion by Neuman, J. (5 pages $2.00)

The complaint stems from allegations that attorney Ralph William Hill (1) counseled an individual who was represented by another attorney, (2) taped telephone conversations without the knowledge of the other party to the conversation, and (3) allowed an appeal to be dismissed by default while misleading his client with regard to its status. OPINION HOLDS: We concern ourselves with only the third charge because the Grievance Commission found insufficient evidence to sustain the others and the Committee on Professional Ethics has not appealed the decision. Under the circumstances of this case we are persuaded that a public reprimand is appropriate. In February 1989, this court disciplined Hill with a three-month suspension for sexual impropriety with a client. When he applied to this court for reinstatement, the matter was held in abeyance because the committee had not concluded its investigation of the present case. Seven months later the committee had still failed to conclude its work and, following inquiry, we were convinced that Hill presented no danger to the public. We reinstated him notwithstanding the pending matter. In essence, Hill has already suffered a seven-month penalty for his inaction on the Propp appeal and the two other matters which were ultimately resolved in his favor. We deem this a sufficient sanction to protect the public and deter Hill from neglect in the future.

No. 89-1086. **HAWKEYE BANK AND TRUST v. BAUGH.**
Appeal from the Iowa District Court for Appanoose County, James D. Jenkins, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Opinion by Neuman, J. (11 pages $4.40)

In April 1988, Hawkeye Bank and Trust brought an action to set aside alleged fraudulent conveyances of farmland between Terry B. Baugh and Baugh Family Farms, Inc. Russell Baugh, the son of Terry Baugh and president of Baugh Family Farms, Inc., filed an answer on behalf of the corporation. Russell Baugh, however, is not an attorney. On the morning of trial, the bank complained about Russell's representation of the corporation. The district court agreed and refused to permit Russell to represent the corporation. The court then rejected Russell's motion for a brief continuance to secure counsel. The court then proceeded to hear the plaintiff's evidence--without response by the corporation--and entered judgment for the full relief requested. This appeal followed. OPINION HOLDS: I. We adopt the general rule that a corporation may not represent itself through non-lawyer employees, officers, or shareholders. No basis for departure from the general rule can be seen in the case before us. II. We are persuaded that the trial court abused its discretion when it denied Baugh a brief continuance to secure counsel for the corporation. Accordingly, we reverse the decision of the district court and remand for further proceedings consistent with this opinion.

No. 89-1823. **STATE v. ALEXANDER.**
Appeal from the Iowa District Court for Boone County, M.D. Seiser, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Lavorato, Neuman, and Snell, JJ. Opinion by Neuman, J. (5 pages $2.00)

Alexander was charged with willful injury. Although potential defenses of justification or self-defense were implicated, Alexander eventually pleaded guilty to a lesser charge of going armed with a dangerous weapon and was convicted. Alexander subsequently learned of a witness whose testimony would allegedly support a theory of justification or self-defense. He moved for new trial on the ground of newly discovered evidence. The district court denied the motion without a hearing, ruling that a motion for new trial cannot be urged following a plea of guilty. Alexander appeals from this ruling. OPINION HOLDS: The question is whether "new trial" may be sought only by defendants who have already been to trial, or whether the remedy is also available to defendants who plead guilty and later seek to set aside their plea and

No. 89-1823. **STATE v. ALEXANDER** (continued).

proceed to trial on the ground of newly discovered evidence. The rules governing the question are, regrettably, less than clear. However, we are confident that the legislature did not intend to give admittedly guilty persons the unfettered right to recant their admission and proceed to trial on the ground of newly discovered evidence or any other ground not intrinsic to the plea. Notions of newly discovered evidence simply have no bearing on a knowing and voluntary admission of guilt. We affirm the district court's refusal to hear Alexander's motion for a new trial.

No. 89-1465. **PRINCIPAL CASUALTY INSURANCE COMPANY v. NORWOOD.**

Appeal from the Iowa District Court for Jasper County, Richard Morr, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Carter, Lavorato, Neuman, and Snell, JJ. Opinion by Neuman, J. (8 pages $3.20)

The insured persons challenge a district court decision favoring the insurer in a declaratory judgment action concerning subrogation proceeds and the deductability of attorney fees under Iowa Code section 668.5(3) and (4) (1989). OPINION HOLDS: Iowa Code chapter 668 (1989) authorizes an insured to retain a reasonable attorney fee out of subrogation proceeds claimed by an insurer when the recovery stems from settlement with, rather than verdict or judgment against, a third-party tortfeasor. The subrogee's responsibility under section 668.5(3) to pay a pro rata share of legal and administrative expenses incurred in obtaining a judgment or verdict against a third-party tortfeasor applies equally to settlement recoveries "to the extent that the settlement was reasonable." See Iowa Code § 668.5(4). No dispute over the reasonableness of the settlement exists in the case before us. Accordingly, we reverse the judgment of the district court and remand for entry of judgment for the defendants in accordance with this opinion.

NO. 89-750. INTERSTATE POWER COMPANY V. IOWA STATE COMMERCE COMMISSION.

Appeal from the Iowa District Court for Polk County, Anthony M. Critelli and Arthur A. Gamble, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (12 pages $4.80)

Interstate Power Company filed a request with the Iowa State Commerce Commission (now the Iowa Utilities Board) to increase its electric rates. One issue Interstate did not specifically litigate was the proper method for calculating deferred federal income taxes which result from Interstate's use of the accelerated depreciation method before the board. While Interstate's petition for judicial review was pending, the IRS issued revenue rulings to two other utilities which changed the deferral rate for federal taxes. Interstate then filed an application for leave to present additional evidence to the board. The application was granted. On remand the board received evidence about the new IRS rulings. The district court ultimately ruled on the merits of the petition for judicial review. The OCA and the board appealed. OPINION HOLDS: I. Interstate urges a number of reasons why we should not reach the remand issue. We find no merit in any of these reasons. II. Section 17A.19(7) expressly authorizes a remand when the court believes there is additional material evidence and good reasons why it was not presented to the agency. Here, the revenue rulings and the board's acquiescence were not available to the board in the original contested case proceeding and the evidence was clearly material. III. We think section 17A.19(7) gives the district court discretion to allow the board to hear all material evidence, including later evidence, bearing on the proper rate. IV. For all of these reasons, we think the district court properly exercised its discretion in remanding for additional evidence.

NO. 89-273. KENNY V. WHITTLE.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Linn County, Van D. Zimmer, Judge. **DECISION OF COURT OF APPEALS AFFIRMED IN PART AND VACATED IN PART; ORDER OF THE DISTRICT COURT REVERSED IN PART AND AFFIRMED IN PART.** Considered by McGiverin, C.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Per Curiam. (6 pages $2.40)

In this personal injury action the plaintiffs--stepfather and stepson--appeal from an order denying their motion for new trial. They assert the district court

NO. 89-273. KENNY V. WHITTLE (continued).
should have awarded them a new trial because (1) the verdict was contrary to the evidence and (2) the court abused its discretion when it permitted an expert to testify. The court of appeals in a two to one decision reversed on both grounds. We granted further review. OPINION HOLDS: I. Here the defendants admitted liability for their rear-end collision which resulted in the plaintiffs' injuries. The proximate cause of those injuries was the sole issue in the case. It appears clear to us from all of the uncontroverted evidence that the verdict bears no reasonable relationship to the loss suffered by the stepfather. So the verdict is contrary to the evidence. The district court in these circumstances should have granted the stepfather a new trial. The court abused its discretion when it refused to do so. The same reasoning applies as to the verdict for the stepson. The district court should have granted the stepson a new trial. Its failure to do so was likewise an abuse of discretion. II. Because the defendant conceded liability in the district court, we think that concession became the law of the case. In these circumstances we think, contrary to the court of appeals' conclusion, the issue of liability should not be submitted on remand. III. Over the plaintiffs' objections, the district court allowed the defendant to call the physician who took x-rays of the stepson after the second collision. This testimony came in as rebuttal. We think the district court properly exercised its discretion in allowing rebuttal testimony.

NO. 89-1162. HARPER V. STATE.

Appeal from the Iowa District Court for Lee County, D.B. Hendrickson, Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by McGiverin, C.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (8 pages $3.20)

A prison disciplinary committee found that inmate Harper had committed a Class I offense, disobeying a lawful order, by engaging in jiggering [moving objects between cells], a Class II offense. A Class I offense is considered more serious and carries stricter penalties than a Class II offense. Harper sought postconviction relief to challenge the disciplinary action. The district court denied postconviction relief, and Harper has appealed. OPINION HOLDS: We find insufficient evidence that Harper's act of "jiggering" constituted the Class I offense of disobeying a lawful order. There is no evidence that any staff person or other person in authority told Harper that jiggering was prohibited by the prison rules. Nor is there any evidence that once this was communicated to Harper, he

NO. 89-1162. HARPER V. STATE (continued).
engaged in any disobedience by continuing to "jigger." In reaching our conclusion we do not ignore the prison authorities' broad discretion in prison disciplinary matters. But the district court's interpretation would give prison authorities unfettered discretion to charge a more serious offense when only a minor offense has been committed. Fairness and justice dictate against such a result.

NO. 89-1482. COLE v. FIRST STATE BANK.
Appeal from the Iowa District Court for Butler County, Stephen P. Carroll, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Lavorato, Neuman, and Snell, JJ. Opinion by Lavorato, J. (17 pages $6.80)

The Coles borrowed money from First State Bank of Greene. The loans were secured by a mortgage on the Coles' farm. When the Coles did not repay the loans as they agreed to do, the bank filed a foreclosure action against them. In January 1987 the sheriff offered the property for sale to the highest bidder. The bank bid $80,000 for the property. It received a certificate of sheriff's sale on the same day. The bank immediately assigned the sheriff's certificate to the Steeres. The bank did not offer the Coles the opportunity to repurchase the property on the same terms and conditions. In July 1987 the Coles filed an application in the foreclosure action to determine the fair market value of the homestead. The court took no action on this application. The Coles did not redeem the property during the one-year redemption period. The sheriff then delivered a sheriff's deed covering the property to the Steeres. In January 1988 the Coles filed suit in equity against the bank and the Steeres. The district court ruled in favor of the defendants. The Coles appealed. OPINION HOLDS: We conclude that the Coles waived any claim that they had a right to a fair market valuation of their homestead and a separate right to redeem it pursuant to Iowa Code section 654.16. The district court correctly sustained the rule 105 motion and motion for judgment on the pleadings on this issue. We also conclude that the right of first refusal in section 524.910(2) does not apply to a transaction in which a state bank assigns its sheriff's certificate of sale before the period of redemption expires. The court correctly sustained the bank's motion for judgment on the pleadings as to this issue and properly dismissed it. Finally, we find that the Coles failed to establish by clear, satisfactory, and convincing evidence the alleged oral agreement by the bank to sell back six acres of farmland to the Coles for $10,000. The district court properly dismissed this claim.

NO. 89-995. FIRST NATIONAL BANK IN SIOUX CITY V. WATTS.
Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by Harris, P.J., and Carter, Lavorato, Neuman, and Snell, JJ. Opinion by Lavorato, J.
(15 pages $6.00)

Jerome Watts purchased a car and insured it with Farm and City Insurance Company. He financed the car through the car dealer, who assigned the contract and debt to First National Bank of Sioux City. Watts later allowed the Farm and City policy to lapse for nonpayment of renewal premiums. After the policy had lapsed, the car was destroyed in a collision. First National Bank, as lienholder, later demanded payment from Farm and City of the amount owed it by Watts. The bank relied on the policy's "loss payable clause," providing that the interest of the lienholder shall not be invalidated by any act or neglect of the car's owner. The district court held that Farm and City had to pay the bank's demand, and Farm and City has appealed. OPINION HOLDS: I. The district court erred by concluding that Watts' failure to pay the renewal premium was an "act or neglect of the owner" within the meaning of the loss payable clause. The language "act or neglect of the owner" in a loss payable clause refers to breach of policy conditions by the owner. The loss payable clause operates as an independent contract between the insurer and the loss payee lienholder, so the owner cannot defeat the loss payee lienholder's interest by breaching a condition of the policy. But there is no condition or provision in the policy that required Watts to renew it. So Watts breached no condition or provision of the policy when he failed to pay the renewal premium. The loss payable clause did not protect the bank against Watts' failure to renew the policy. II. The policy ended by expiration rather than cancellation. Farm and City would have been required to give notice of cancellation but was not required to give notice of expiration. The policy clearly stated an expiration date. The bank had a copy of the declaration page and so was fully aware of it. The policy gave the lienholder no greater rights than it gave the insured with respect to notice of expiration. So Farm and City was not required to notify the bank that the policy would expire by lapse of the policy period. III. We reverse and remand with directions; the district court shall enter judgment in favor of Farm and City and shall dismiss the bank's petition with costs taxed to the bank.

NO. 89-1559. IN RE ESTATE OF THIES.

Appeal from the Iowa District Court for Hardin County, Carl D. Baker, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (19 pages $7.60)

In 1977 Franklin W. Thies owed Citizens State Bank money on several promissory notes. Franklin arranged for a loan from the Farmers Home Administration to repay the notes and several other obligations. At the time, the bank requested that Franklin's mother, Taldine Thies, guarantee the notes until the FmHA loan came through. With the understanding that the guaranty would be destroyed or returned to her when the FmHA proceeds were received, Taldine signed the guaranty. The guaranty, by its terms, allowed Franklin to "obtain credit, from time to time" and specified "(no limit)" as to dollar amounts. The FmHA proceeds were eventually received. Franklin repaid the loans from those proceeds. Apparently, the guaranty was never removed from the bank files. Later, in 1984, 1985, and 1986, Franklin borrowed more money from the bank. Taldine died in April 1986, and the bank filed a claim in probate based on Taldine's guaranty. On July 31, 1986, the Iowa superintendent of banking determined that the bank was insolvent. The FDIC then accepted the appointment as receiver of the bank. An official of the FDIC executed an affidavit in which he stated that the FDIC purchased certain assets of the bank which included Franklin's promissory notes and Taldine's guaranty. In January 1988 the district court substituted the FDIC for the bank in the estate proceeding. The FDIC filed a motion for summary judgment based on 12 U.S.C. section 1823(e). The executor appealed. OPINION HOLDS: We find that 12 U.S.C. section 1823(e) precludes the defense that the guaranty had been satisfied and was not an asset the FDIC purchased from the bank, since the alleged understanding between Taldine and the bank failed to meet any one of the four requirements in section 1823(e).

No. 89-1300. HOPE EVANGELICAL LUTHERAN CHURCH vs. IOWA DEPARTMENT OF REVENUE AND FINANCE.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Snell, J. (25 pages $10.00)

In this administrative action, Hope Evangelical Lutheran Church challenged a use tax assessment on consumer items Hope purchased from church-affiliated suppliers for use either in worship services or for educational purposes. The agency upheld the use tax assessment, and on judicial review the district court upheld the agency's action. Hope has appealed. OPINION HOLDS: I. The use tax assessment does not burden the free exercise of religion in violation of the First Amendment to the United States Constitution. The use tax is not a prior restraint on the exercise of religion or a precondition to the exercise of religion. The U.S. Supreme Court has made it clear that to the extent the imposition of a generally applicable tax merely decreases the amount of money a taxpayer has to spend on its religious activities, any such burden is not constitutionally significant. II. Hope did not argue below its claim that the use tax assessment violated the establishment clause by fostering an excessive government entanglement with religion. We will not consider those arguments now. We note, however, that a similar use tax reviewed by the U.S. Supreme Court was found to involve no excessive entanglement between government and religion. III. The use tax assessment on Bibles, books, and other written materials does not have an unconstitutional chilling effect on the church's right to freedom of the press. The tax is a general tax not restricted to certain publications protected by the first amendment, and it is not tailored in such a way that it singles out and targets small groups of publications. IV. Hope is not entitled to any of the statutory use tax exemptions it claims. Hope claims it is entitled to an exemption under Iowa Code section 422.45(3) (1977) because the sellers of the merchandise had used the entire sale proceeds for educational, religions or charitable purposes. However, Hope did not meet its burden to show that this exemption applies to the facts of this case. Hope also claims another exemption under section 422.45(8) (1977) because the merchandise was used for educational purposes by a private Iowa nonprofit educational institution. However, Hope failed to establish that it is a private nonprofit educational institution.

NO. 89-979. FERNANDEZ v. CURLEY.

Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Jr., Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Opinion by Carter, J. (10 pages $4.00)

Fernandez, who recovered actual and punitive damages from defendant Curley as a result of injuries sustained in an automobile collision, appeals from an order denying his motion for new trial on the issue of punitive damages. He also challenges the order disbursing a portion of the punitive damages to the civil reparations fund pursuant to Iowa Code section 668A.1(2)(b) (1989). In disbursing the punitive damage award, the trial court directed that taxable court costs and plaintiff's reasonable attorney fees first be paid from the award and that plaintiff be paid twenty-five percent of the amount remaining after those costs and fees had been satisfied. The remaining amount of the punitive damage award was disbursed to the civil reparations fund. **OPINION HOLDS:** I. The first issue on appeal concerns whether the district court erred in refusing to permit evidence of defendant's 1984 OWI conviction as that conduct bore on plaintiff's right to recover punitive damages. The trial court was in a good position to gauge whether, in light of the substantial evidence of willful and wanton conduct in the act which injured plaintiff, evidence of a prior incident of comparable conduct should be permitted. We find no abuse of discretion in the trial court's evidentiary ruling. II. The other issue which we must consider is the method employed by the trial court in disbursing the punitive damage award under Iowa Code section 668A.1(2)(b). We are persuaded that the fractional percentage to be paid plaintiff is tied to the amount of punitive or exemplary damages actually awarded rather than the amount remaining after payment of fees and costs. We agree with the district court that section 668A.1(2)(b) contemplates payment of the applicable costs and fees from the gross punitive damage award prior to distributing any portion thereof to the claimant or the civil reparations fund. The district court determined that the word "fees" included plaintiff's reasonable attorney fees applicable to the recovery of the punitive damage award. The court determined that this could be measured by a reasonable contingent fee agreement. We conclude that this interpretation comports with the intent of the legislation. We disagree, however, with the district court's determination that the term "costs" as used in this litigation means taxable court costs. We believe that the applicable "costs" contemplated by this statute are the reasonable costs of litigation

NO. 89-979. FERNANDEZ v. CURLEY (continued).

specifically attributable to the punitive damage claim which are not otherwise assessed against the defendant in the cost judgment entered pursuant to section 625.1. This includes, but is not limited to, the nontaxable portion of deposition costs, and those expert witness fees reasonably incurred but which exceed the limit provided in Iowa Code section 622.72. We affirm the judgment of the district court awarding actual and punitive damages. We reverse the district court's order disbursing punitive damages and remand the case to that court for a new section 668A.1(2)(b) allocation consistent with our interpretation of that statute.

NO. 890-1303. STATE v. WATKINS.

Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge. **AFFIRMED ON CONDITION AND REMANDED.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Opinion by Larson, J. (11 pages $4.40)

The defendant appeals from his convictions and sentences for first-degree kidnapping and second-degree theft. **OPINION HOLDS:** I. Failure to raise a statutory objection to the jury panel does not amount to a waiver of a constitutional challenge. Watkins' failure to object to the composition of the jury panel prior to the time it was sworn did not waive his constitutional arguments under the sixth amendment. II. A defendant challenging the composition of a jury panel must first establish a prima facie violation of the sixth amendment's fair cross-section requirement. But the court here did not rule, one way or the other, on whether Watkins had presented a prima facie case. It simply denied Watkins' request for a hearing. We hold that it was error for the court to deny Watkins an opportunity to make a prima facie showing of a denial of the sixth amendment's requirement that a jury panel represent a cross section of the community. III. We believe the appropriate remedy in this case is to affirm on condition and remand the case to the district court for an evidentiary hearing on the sixth amendment issue. If Watkins establishes a prima facie case, the State must show a justifiable reason for the disproportionate representation on the jury panel. If the trial court determines, upon presentation of the State's evidence, that the reasons are insufficient, or that they are merely pretextual, a new trial should be granted. If the trial court finds that the defendant has failed to establish a prima facie case, or that the State has justified a disproportionate representation on the jury, the judgment should be affirmed. Watkins' right to appeal from the district court's rulings is preserved.

NO. 89-346. HAMMER v. BRANSTAD.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **AFFIRMED AS MODIFIED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Schultz, Carter, and Lavorato, JJ. Opinion by Carter, J. (19 pages $7.60)

Plaintiffs Barbara Hammer and Janice Drury are nurses employed by the State of Iowa. The plaintiff Iowa Nurses' Association is a voluntary membership association formed as an Iowa nonprofit corporation for the support and benefit of nurses generally. These plaintiffs challenge the validity of the Governor's June 4, 1985, executive order adjusting the salary upgrades made by the Department of Personnel in attempting to carry out the comparable worth mandates of 1984 Iowa Acts chapter 1314. The Governor and affected State agencies have appealed with permission from orders certifying the members of the plaintiff class and granting plaintiffs' motion for summary judgment on the liability issues. **OPINION HOLDS:** I. Where an interlocutory appeal is granted on a timely application to appeal from a potentially outcome-determinative interlocutory order, this court may, in its discretion, also permit an appeal from earlier orders which inhere therein. II. We agree with the defendants that the Iowa Nurses' Association does not have standing to litigate the monetary claim being made on behalf of the class. The claims of class members involve only recoupment of past monetary loss. That loss was not suffered by the Iowa Nurses' Association as such, and that entity therefore lacks standing to represent the class in seeking such recovery. III. If it is ultimately determined in the present litigation that plaintiffs Hammer and Drury have not sustained the type of injury for which they are seeking relief on behalf of the class, they may no longer continue as class representatives. If that does occur, a reasonable opportunity should be given other class members to intervene as class representatives. IV. Defendants contend that, because "merit step positions" did not exist for employees in plaintiffs' category at the time Senate File 2359 was enacted, the language of section 3(2) requiring that merit steps be retained is inapplicable to these employees. We believe that the phrase "merit step positions" as utilized in section 3(2) of Senate File 2359 merely denotes the relative pay level of an employee within a pay grade. We believe it was the intent of the legislature in enacting section 3 of Senate File 2359 that wherever "noncontractual" employees such as these plaintiffs were located in the pay matrix immediately prior to comparable worth adjustments this relative in-grade pay level was to be maintained in the newly assigned pay grade. V. Based on our interpretation of the issues presented, we hold the district court did not err in

NO. 89-346. HAMMER v. BRANSTAD (continued).

sustaining plaintiffs' motion for summary judgment and denying defendants' cross-motion for summary judgment. We affirm that ruling. We modify the district court's order of November 17, 1988, by directing that the Iowa Nurses' Association be dismissed from the case as a party plaintiff. Otherwise, that order is also affirmed.

NO. 349/89-1302. STATE v. WATKINS.

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Opinion by Larson, J. (7 pages $2.80)

After the jury had deliberated for over two hours in the robbery trial of Charles D. Watkins, the court amended the instructions by inserting an alternative means of committing the offense. Watkins was found guilty and appealed, claiming error in the trial court's giving of the supplemental instruction. **OPINION HOLDS:** Under the circumstances of this case, the court lacked authority to give these supplemental instructions where there was no request by the jury, the jury had been deliberating for over two hours, and the amendments in effect changed, rather than modified, the instructions. The district court has discretion to give supplemental instructions on its own motion in criminal cases as well as in civil cases. This is necessarily subject, however, to the caveat that it must not prejudice the defendant. Here, the supplemental instructions on the alternative means of committing these offenses prejudiced Watkins because they injected a critical matter into the case without an opportunity for Watkins to meet it.

NO. 89-744. KINER v. RELIANCE INSURANCE COMPANY.
Appeal from the Iowa District Court for Story County, Newt Draheim, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED ON APPEAL; AFFIRMED ON CROSS-APPEAL.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Opinion by Larson, J. (14 pages $5.60)

Kiner sued Reliance Insurance Company, the workers' compensation carrier of his former employer, for bad-faith failure to pay workers' compensation benefits. He also asserted a claim for slander, alleging that Reliance had wrongfully stated he was addicted to drugs as one of its reasons for failing to pay benefits. A jury awarded Kiner $75,000 in actual damages and $550,000 in punitive damages on the bad-faith claim. On the slander claim, the jury awarded Kiner $75,000 actual and $150,000 punitive damages. However, on the bad-faith claim, the district court ordered a new trial on all issues, finding the $550,000 punitive damage award to be excessive. On the slander claim, the district court left in place the $150,000 punitive damage award but found the $75,000 actual damage award to be excessive; the court ordered a new trial on the slander claim unless Kiner would agree to a $25,000 remittitur of the actual damage award. Both Kiner and Reliance have appealed from the district court's judgment. **OPINION HOLDS:** Bad-faith claim. I. The district court had subject matter jurisdiction of the bad-faith claim. The industrial commissioner's exclusive jurisdiction under chapter 85 is limited to matters surrounding a job-related injury and does not extend to subsequent dealings during which a tort may arise by reason of bad faith on the part of an employer's insurer. II. The bad-faith claim was properly submitted to the jury. A reasonable fact finder could find that Reliance had failed to exercise an honest and informed judgment on Kiner's claim, and thus could conclude that its denial was not fairly debatable. III. The instructions correctly stated the elements of a bad-faith claim. We do not believe that "reckless disregard" of the lack of reasonable basis for denying a claim is a necessary element in a bad-faith claim. IV. The district court did not abuse its discretion by granting Reliance a new trial on the bad-faith claim, due to the size of the punitive damage verdict. The court acted within its discretion in concluding that the $550,000 punitive damage award was flagrantly excessive and lacking in evidentiary support. Slander claim. V. Kiner's slander claim was not barred by the applicable two-year statute of limitations. The jury could have found that a slanderous publication occurred within two years before the filing date of Kiner's petition. VI. Reliance defended against the slander claim by asserting a qualified privilege, arguing that the statements were made only to persons having an interest in the subject matter and to whom

NO. 89-744. KINER v. RELIANCE INSURANCE COMPANY (continued).

Reliance had a right or duty to communicate the statements. However, Reliance was not entitled to a dismissal of the slander claim due to this qualified privilege. The jury rejected the qualified privilege defense, and a contrary finding is not compelled under the record. VII. Reliance failed to raise below its issue that the slander claim should not have been submitted because there was no publication to third parties. We therefore decline to consider this issue. VIII. The district court abused its discretion by ordering a new trial unless Kiner consented to a $25,000 remittitur in the actual damage award on the slander claim. IX. The damage instruction did not allow duplicate damages. Reliance's other complaint about the damage instruction was waived.

NO. 348/90-887. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. OLTROGGE.

Appeal from the recommendations of the Grievance Commission **LICENSE SUSPENDED.** Considered by Harris, P.J., and Larson, Schultz, Carter, and Neuman, JJ. Per curiam. (5 pages $2.00)

The commission recommended that respondent's license to practice law in this state be suspended for not less than one year. The commission's recommendation was based on its finding that respondent had failed to timely file state and federal income tax returns for several years and had made a series of false answers to Client Security and Attorney Disciplinary Commission questionnaires. **OPINION HOLDS:** We order that respondent M. Wayne Oltrogge's license to practice law in this state be suspended indefinitely with no possibility of reinstatement for one year. It is further ordered that the costs of this action be assessed against respondent.

No. 89-1486. SCHULTZE vs. LANDMARK HOTEL CORPORATION.

Appeal from the Iowa District Court for Polk County, Theodore H. Miller, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Schultz, J.

(12 pages $4.80)

In this appeal the issue is whether the statute of limitations for medical malpractice actions for wrongful death under Iowa Code section 614.1(9)(1987) begins to run on discovery of the death or on discovery of the wrongful act that caused the death. The district court held that the limitation period commenced on the date the medical treatment factors relating to the wrongfulness of the death are known, or should have been known through the use of reasonable diligence. Defendants appealed. OPINION HOLDS: I. The language of section 614.1(9) communicates that malpractice actions for wrongful death must be brought within two years after the claimant knew of the death. To further extend the limitation period would be contrary to the plain language of the subsection and the legislature's intent to restrict the length of time for commencing malpractice actions. Additionally, it would create a discovery rule that supersedes a statutorily imposed discovery rule which is contrary to legislative intent. II. Plaintiff argues that the discovery rule should apply to section 614.1(9) because of the "extreme hardship" and "strained and impractical result" it works on survivors. Plaintiff's argument has no merit because no unjust unfairness exists in this case. All the information from which the cause of death could be ascertained was available to plaintiff at the time of his wife's death. III. In this case, the statute of limitations began to run on June 13, 1987, the date of plaintiff's wife's death. Since plaintiff did not file this wrongful death action against defendants until June 30, 1989, the two-year period expired on June 13, 1989. Thus, plaintiff's malpractice action against defendants is barred.

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