



IOWA ADMINISTRATIVE BULLETIN

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January 17, 1996

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Pages 1165 to 1236

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

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 Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

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 Iowa Administrative Bulletin.

PHYLLIS BARRY, Administrative Code Editor
KATHLEEN BATES, Deputy Editor

Telephone: (515)281-3355
(515)281-8157

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, 1995, to June 30, 1996	\$228.00 plus \$11.40 sales tax
Second quarter	October 1, 1995, to June 30, 1996	\$171.00 plus \$8.55 sales tax
Third quarter	January 1, 1996, to June 30, 1996	\$114.00 plus \$5.70 sales tax
Fourth quarter	April 1, 1996, to June 30, 1996	\$ 57.00 plus \$2.85 sales tax

Single copies may be purchased for \$16.00 plus \$0.80 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 - \$1,053.00 plus \$52.65 sales tax

(Price includes 22 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$9.50 plus \$0.48 tax.)

Iowa Administrative Code Supplement - \$367.00 plus \$18.35 sales tax
(Subscription expires June 30, 1996)

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
Telephone: (515)281-8796**

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CITATION of Administrative Rules

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

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

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

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

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

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
 FROM: Phyllis Barry, Iowa Administrative Code Editor
 SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Iowa Administrative Code Division is using a PC system to assist in the printing of the Iowa Administrative Bulletin. In order to most effectively transfer rules from the various agencies sending their rules on a diskette, please note the following:

1. We use a Windows environment with Lotus Ami Professional 3.1 as our word processing system and can import directly from any of the following:

Ami Pro	Microsoft Word	SmartWare
Ami Pro Macro	Microsoft Word for Windows	SuperCalc
dBase	1.x, 2.0, 6.0	Symphony Document
DCA/FFT	MultiMate	Wang (IWP)
DCA/RFT	Navy DIF	Windows Write
DIF	Office Writer	Word for Windows 1.x, 2.0, 6.0
Display Write 4	Paradox	WordPerfect 4.2, 5.x, 6.0
Enable 1.x, 2.x, 4.x	Peach Text	WordStar
Excel 3.0, 4.0, 5.0	Professional Write	WordStar 2000 ver 1.0, 3.0
Exec MemoMaker	Rich Text Format	XyWrite III, Plus
Manuscript	Samna Word	XyWrite IV

2. If you do not have any of the above, a file in an ASCII format is helpful.

3. Submit only 3 1/2" or 5 1/4" high density MSDOS or compatible format diskettes. Please indicate on each diskette the agency name, file name, the format used for exporting, chapter or chapters of rules being amended.

4. **Deliver this diskette to the Administrative Code Division, 4th Floor, Lucas Building, when documents are submitted to the Governor's Administrative Rules Coordinator.**

Diskettes from agencies will be returned **unchanged** by the Administrative Code Division. Please refer to the hard-copy document which is returned to your agency by the Governor's office. This document reflects any changes in the rules—update your diskettes accordingly.

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

Schedule for Rule Making 1996

NOTICE SUBMISSION -DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 1 '95	Dec. 20 '95	Jan. 9	Jan. 24	Jan. 26	Feb. 14	Mar. 20	June 17
Dec. 15 '95	Jan. 3	Jan. 23	Feb. 7	Feb. 9	Feb. 28	Apr. 3	July 1
Dec. 29 '95	Jan. 17	Feb. 6	Feb. 21	Feb. 23	Mar. 13	Apr. 17	July 15
Jan. 12	Jan. 31	Feb. 20	Mar. 6	Mar. 8	Mar. 27	May 1	July 29
Jan. 26	Feb. 14	Mar. 5	Mar. 20	Mar. 22	Apr. 10	May 15	Aug. 12
Feb. 9	Feb. 28	Mar. 19	Apr. 3	Apr. 5	Apr. 24	May 29	Aug. 26
Feb. 23	Mar. 13	Apr. 2	Apr. 17	Apr. 19	May 8	June 12	Sept. 9
Mar. 8	Mar. 27	Apr. 16	May 1	May 3	May 22	June 26	Sept. 23
Mar. 22	Apr. 10	Apr. 30	May 15	May 17	June 5	July 10	Oct. 7
Apr. 5	Apr. 24	May 14	May 29	May 31	June 19	July 24	Oct. 21
Apr. 19	May 8	May 28	June 12	June 14	July 3	Aug. 7	Nov. 4
May 3	May 22	June 11	June 26	June 28	July 17	Aug. 21	Nov. 18
May 17	June 5	June 25	July 10	July 12	July 31	Sept. 4	Dec. 2
May 31	June 19	July 9	July 24	July 26	Aug. 14	Sept. 18	Dec. 16
June 14	July 3	July 23	Aug. 7	Aug. 9	Aug. 28	Oct. 2	Dec. 30
June 28	July 17	Aug. 6	Aug. 21	Aug. 23	Sept. 11	Oct. 16	Jan. 13 '97
July 12	July 31	Aug. 20	Sept. 4	Sept. 6	Sept. 25	Oct. 30	Jan. 27 '97
July 26	Aug. 14	Sept. 3	Sept. 18	Sept. 20	Oct. 9	Nov. 13	Feb. 10 '97
Aug. 9	Aug. 28	Sept. 17	Oct. 2	Oct. 4	Oct. 23	Nov. 27	Feb. 24 '97
Aug. 23	Sept. 11	Oct. 1	Oct. 16	Oct. 18	Nov. 6	Dec. 11	Mar. 10 '97
Sept. 6	Sept. 25	Oct. 15	Oct. 30	Nov. 1	Nov. 20	Dec. 25	Mar. 24 '97
Sept. 20	Oct. 9	Oct. 29	Nov. 13	Nov. 15	Dec. 4	Jan. 8 '97	Apr. 7 '97
Oct. 4	Oct. 23	Nov. 12	Nov. 27	Nov. 29	Dec. 18	Jan. 22 '97	Apr. 21 '97
Oct. 18	Nov. 6	Nov. 26	Dec. 11	Dec. 13	Jan. 1 '97	Feb. 5 '97	May 5 '97
Nov. 1	Nov. 20	Dec. 10	Dec. 25	Dec. 27	Jan. 15 '97	Feb. 19 '97	May 19 '97
Nov. 15	Dec. 4	Dec. 24	Jan. 8 '97	Jan. 10 '97	Jan. 29 '97	Mar. 5 '97	June 2 '97
Nov. 29	Dec. 18	Jan. 7 '97	Jan. 22 '97	Jan. 24 '97	Feb. 12 '97	Mar. 19 '97	June 16 '97
Dec. 13	Jan. 1 '97	Jan. 21 '97	Feb. 5 '97	Feb. 7 '97	Feb. 26 '97	Apr. 2 '97	June 30 '97
Dec. 27	Jan. 15 '97	Feb. 4 '97	Feb. 19 '97	Feb. 21 '97	Mar. 12 '97	Apr. 16 '97	July 14 '97

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
17	Friday, January 26, 1996	February 14, 1996
18	Friday, February 9, 1996	February 28, 1996
19	Friday, February 23, 1996	March 13, 1996

PLEASE NOTE:

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

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

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
DENTAL EXAMINERS BOARD[650] Child support noncompliance, 6.9(2), 30.4, ch 33 IAB 1/3/96 ARC 6149A	Conference Room — 2nd Floor Executive Hills West 1209 East Court Ave. Des Moines, Iowa	January 24, 1996 1 p.m.
EDUCATIONAL EXAMINERS BOARD[282] Child support noncompliance, ch 10 IAB 1/17/96 ARC 6183A	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	February 14, 1996 9 a.m.
EDUCATION DEPARTMENT[281] School fees, ch 18 IAB 1/3/96 ARC 6155A	Icaria Room Green Valley AEA 1405 N. Lincoln Creston, Iowa	January 25, 1996 7 to 9 p.m.
	State Board Room Grimes State Office Bldg. E. 14th and Grand Ave. Des Moines, Iowa	January 26, 1996 9 to 11 a.m.
	Spring Conference Room Grant Wood AEA 4401 6th St. S.W. Cedar Rapids, Iowa	February 1, 1996 7 to 9 p.m.
	Central Office Conference Room Arrowhead AEA 1235 5th Ave. Ft. Dodge, Iowa	February 6, 1996 7 to 9 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567] Air pollution, 20.2, 22.1(2), 22.8(1), 22.101(1), 22.202, 22.203(1), 22.300, 23.1(4), 23.3(2), 29.1 IAB 1/17/96 ARC 6188A	Conference Room Fifth Floor East Wallace State Office Bldg. Des Moines, Iowa	February 19, 1996 10 a.m.
Registration of groundwater professionals, 134.2 to 134.5 IAB 1/17/96 ARC 6189A	Conference Room, East Half Fifth Floor Wallace State Office Bldg. Des Moines, Iowa	February 6, 1996 1 p.m.
	Community Hall Denison, Iowa	February 7, 1996 10 a.m.
	Public Library Iowa City, Iowa	February 8, 1996 10 a.m.

LAW ENFORCEMENT ACADEMY[501]

Petition for rule making,
1.11
IAB 1/17/96 ARC 6179A

Conference Room
Camp Dodge
Johnston, Iowa

February 6, 1996
10:30 a.m.

Reserve officer weapons certification,
10.1(3)"d"
IAB 1/17/96 ARC 6178A

Conference Room
Camp Dodge
Johnston, Iowa

February 6, 1996
10 a.m.

NATURAL RESOURCE COMMISSION[571]

Nonresident deer hunting,
94.2, 94.6, 94.8
IAB 1/3/96 ARC 6154A

Conference Room — 4th Floor
Wallace State Office Bldg.
Des Moines, Iowa

January 24, 1996
10 a.m.

PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE[591]

Child support noncompliance,
6.1, 6.5, 6.14, 6.15
IAB 1/17/96 ARC 6171A

Conference Room — 6th Floor
Lucas State Office Bldg.
Des Moines, Iowa

February 6, 1996
10 a.m.

Child support noncompliance —
installers and inspectors,
15.1, 15.3(1), 15.6(1), 15.7(1)
15.8(1), 15.9(1), 15.12
IAB 1/17/96 ARC 6172A

Conference Room — 6th Floor
Lucas State Office Bldg.
Des Moines, Iowa

February 6, 1996
10 a.m.

Appeals — contested cases,
17.32(4)
IAB 1/17/96 ARC 6173A

Conference Room — 6th Floor
Lucas State Office Bldg.
Des Moines, Iowa

February 6, 1996
10 a.m.

SECRETARY OF STATE[721]

Primary election signatures,
21.600
IAB 1/3/96 ARC 6139A

Office of Secretary of State
Second Floor
Hoover State Office Bldg.
Des Moines, Iowa

January 23, 1996
1:30 p.m.

TRANSPORTATION DEPARTMENT[761]

Motor vehicle, mobile home and travel
trailer dealers, manufacturers, distributors
and wholesalers, rescind chs 420, 421,
422; new ch 425
IAB 1/17/96 ARC 6174A

Conference Room
Motor Vehicle Division
Park Fair Mall, Lower Level
100 Euclid Ave.
Des Moines, Iowa

February 8, 1996
10 a.m.
(if requested)

UTILITIES DIVISION[199]

Practice and procedure,
rule-making workshop
IAB 1/3/96

Hearing Room — 1st Floor
Lucas State Office Bldg.
Des Moines, Iowa

January 19, 1996
9 a.m.

Deregulation of competitive intraLATA
interexchange services; interLATA and
intraLATA ISDN, operator services, and
directory assistance services; and
voice messaging service
IAB 1/3/96

Hearing Room — 1st Floor
Lucas State Office Bldg.
Des Moines, Iowa

March 14, 1996
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 small capitals 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]

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AUDITOR OF STATE[81]

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CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

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School Budget Review Committee[289]

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 Foster Care Review Board[489]
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 INTERNATIONAL NETWORK ON TRADE(INTERNET)[497]
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 VOTER REGISTRATION COMMISSION[821]
 WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]

REORGANIZATION—NOT IMPLEMENTED

The agency listed below is identified in the Iowa Administrative Code with a WHITE TAB*. This agency has not yet implemented government reorganization.

Records Commission[710]

* It is recommended that all white tabs be moved to a separate binder rather than interspersed with the colored tabs which implemented state government reorganization.

NOTICE --- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Bicycle Safety	Statewide	Not-for-Profit Bicycle Clubs and Other Local Coalitions Which Include a Bicycle Club Identifying Specific Need	Bicycle Safety Education	2/15/96*	3/1/96 through 9/30/96*

Request application packet from: Mary Harlan, Bureau of Disability and Injury Prevention
 Division of Substance Abuse and Health Promotion
 Iowa Department of Public Health
 Lucas Building, 321 E. 12th Street
 Des Moines, Iowa 50319-0075
 Telephone: (515) 242-6336

*Please note the application date has been extended and the contract period begins later.

NOTICE -- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Community Scholarship Program	Rural Communities in Federally Designated Health Provider Shortage Areas in Iowa	Public or private non-profit Community Organizations in Rural Designated Health Provider Shortage Areas	Scholarship for students who are residents of the community, for educational expenses in primary care practitioner college or program	03/15/96	extends until the service commitment has been completed

Total funding of \$73,582.50 is provided as follows: Federal - \$29,433 (40 percent), State - \$14,716.50 (20 percent), community organizations \$29,433 (40 percent)

Request application packet from:

Kathy Williams, Bureau of Community Health Development
 Iowa Department of Public Health
 321 East 12th Street
 Lucas State Office Building
 Des Moines, Iowa 50319-0075
 Telephone: 515/281-7224

NOTICE --- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Disease Prevention	Statewide	Pharmacies Licensed by the Iowa Board of Pharmacy	Medication Distribution	3/29/96	7/1/96-6/30/97

Request application packet from: Carolyn Vogel, Bureau of Disease Prevention
 Division of Health Protection
 Iowa Department of Public Health
 Lucas Building, 321 East 12th Street
 Des Moines, Iowa 50319-0075
 Telephone: (515) 242-5149

NOTICE -- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Loan Repayment Program	Rural Communities in Federally Designated Health Provider Shortage Areas in Iowa	Primary care health professionals licensed in Iowa and eligible under Section 338A or 338B of the Public Health Service Act as amended November 16, 1990, by Public Law 101 - 597	Loan repayment for eligible primary care practitioners	03/15/96	extends until the service commitment has been completed

State and Federal funding each provide 50 per cent of the total program funds for a total of \$150,000.

Request application packet from:

Kathy Williams, Bureau of Community Health Development
 Iowa Department of Public Health
 321 East 12th Street
 Lucas State Office Building
 Des Moines, Iowa 50319-0075
 Telephone: 515/281-7224

NOTICE---AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Substance Abuse	Statewide	Nonprofit and governmental entities	Innovative prevention services	3/22/96	7/01/96 to 6/30/97

Instructions: Training (voluntary) for completion of application forms will be offered on February 7, 1996 through the Iowa Communication Network. To receive the application packet and participate in the voluntary training, notice of an intention to apply for the funding must be received in the IDPH office by January 26, 1996.

Request application packet from:

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

ARC 6166A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5(11), 163.1, and 165.36, the Iowa Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 65, "Livestock Importation," Iowa Administrative Code.

This amendment will permit the importation of cattle from herds not under quarantine in modified accredited free states, as provided for in Iowa Code section 165.36(2), if the state does not have a "reciprocity" agreement with Iowa. The "reciprocity" provision has become obsolete, and can be suspended, since Iowa is tuberculosis-free and our cattle can move interstate unrestricted. Health requirements (tuberculosis) for cattle originating from states or areas not meeting USDA Class Free or Modified Accredited status are retained.

Any interested person may make written suggestions or comments on the following proposed amendment on or before February 6, 1996. Such written suggestions or comments should be directed to Dr. Walter D. Felker, State Veterinarian, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

This amendment is intended to implement Iowa Code section 165.36.

The following amendment is proposed.

Amend subrule 65.4(3) as follows:

65.4(3) Tuberculosis. Cattle of all classes may enter the state of Iowa when originating from a tuberculosis accredited free area, *or a modified accredited area*, from a herd not under quarantine, or meet one of the following requirements:

- a. Originate from a negative herd tested within 12 months of entry, showing date of herd test.
- b. Negative tuberculin test applied within 30 days prior to entry.
- c. Originate from tuberculosis-free accredited herd, showing date of last test and herd accreditation number.
- d. ~~Originate from states having reciprocity with Iowa.~~

ARC 6183A

EDUCATIONAL EXAMINERS BOARD[282]

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 272.2(12) and Iowa Code Supplement chapter 252J, the Board of Educational Examiners hereby gives Notice of Intended Action to adopt Chapter 10, "Child Support Non-compliance," Iowa Administrative Code.

The proposed rules implement Iowa Code Supplement chapter 252J by establishing procedures for the Board of Educational Examiners to suspend, revoke, or deny issuance or renewal of a license, a coaching authorization, an evaluator approval or a statement of professional recognition to an applicant or licensed practitioner who is non-compliant with child support payments. The Board of Educational Examiners will be notified of noncompliance by the child support recovery unit of the Department of Human Services.

Any interested person may make written comments on the proposed rules no later than February 14, 1996, by addressing these comments to the Executive Director, Board of Educational Examiners, Grimes State Office Building, E. 14th and Grand Avenue, Des Moines, Iowa 50319-0147.

There will be a public hearing on February 14, 1996, beginning at 9 a.m. in the State Board Room, Second Floor, Grimes State Office Building, E. 14th and Grand Avenue, Des Moines, Iowa, at which 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 proposed rules.

These rules are intended to implement Iowa Code Supplement chapter 252J.

The following rules are proposed.

Adopt a new 282—Chapter 10 as follows:

CHAPTER 10 CHILD SUPPORT NONCOMPLIANCE

282—10.1(272,252J) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code Supplement chapter 252J. In addition to the procedures set forth in Iowa Code Supplement chapter 252J, the following shall apply.

10.1(1) The notice required by Iowa Code Supplement section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rules of Civil Procedure 56.1. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

10.1(2) The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service of the notice upon the applicant or licensee.

10.1(3) The board's administrator is authorized to prepare and serve the notice required by Iowa Code Supplement section 252J.8 upon the applicant or licensee.

10.1(4) Applicants and licensees shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code Supplement chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code Supplement section 252J.9, all court orders entered in such actions, and withdrawals of certificates or noncompliance by the child support recovery unit.

10.1(5) All board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code Supplement chapter 252J.

10.1(6) In the event an applicant or licensee files a timely district court action following service of a board notice pursuant to Iowa Code Supplement sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

10.1(7) The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee if the license is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

282—10.2(252J) Suspension or revocation of a license. The board shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures set forth in Iowa Code Supplement chapter 252J. In addition to the procedures set forth in Iowa Code Supplement chapter 252J, the following shall apply.

10.2(1) The notice required by Iowa Code Supplement section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rules of Civil Procedure 56.1. Alternatively, the licensee may accept service personally or through authorized counsel.

10.2(2) The effective date of the suspension or revocation of a license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service of the notice upon the licensee.

10.2(3) The board's administrator is authorized to prepare and serve the notice required by Iowa Code Supplement section 252J.8 and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the

license is on suspension, the administrator shall notify the licensee of the board's intention to continue the suspension.

10.2(4) The licensee shall keep the board informed of all court actions, and all child support recovery unit action taken under or in connection with Iowa Code Supplement chapter 252J, and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code Supplement section 252J.9, all court orders entered in such actions and withdrawals of certificates of noncompliance by the child support recovery unit.

10.2(5) All board fees required for license renewal or license reinstatement must be paid by licensees before a license will be reinstated after the board has suspended or revoked a license pursuant to Iowa Code Supplement chapter 252J.

10.2(6) In the event a licensee files a district court action following service of a board notice pursuant to Iowa Code Supplement sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the suspension or revocation, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

10.2(7) The board shall notify the licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee if the license is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

282—10.3(17A,22,252J) Sharing of information. Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code Supplement chapter 252J or 598.

These rules are intended to implement Iowa Code Supplement chapter 252J.

ARC 6188A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 20, "Scope of Title—Definitions—Forms—Rules of Prac-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

tice," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," and Chapter 29, "Qualification in Visual Determination of the Opacity of Emissions," Iowa Administrative Code.

Item 1 updates the adoption by reference date for the definition of volatile organic compounds (VOC) and thereby exempts acetone from the list of VOC.

Item 2 clarifies that the Department reserves the right to require proof that the National Ambient Air Quality Standards have not been violated by any source which is being exempted from the air quality construction permit requirement. Presently, air quality construction permits may be issued only when the director concludes that the expected emissions from sources will not prevent the attainment or maintenance of the ambient air quality standards.

Item 3 corrects rule references within the permit by rule for spray booths.

Item 4 corrects an internal rule reference to sources which are exempt from the requirement to obtain a Title V operating permit.

Item 5 makes changes to 567—22.200(455B) to 22.207(455B) to incorporate references to the operating permit by rule for small sources proposed in the new rule 567—22.300(455B) included in this action.

Item 6 changes the date that voluntary operating permit applications may be submitted from 90 days after Title V program approval by the U.S. Environmental Protection Agency, to July 1, 1996.

Item 7 proposes establishing an optional "operating permit by rule for small sources" allowing small sources (sources with actual emissions of less than 50 percent of the major source threshold levels) otherwise subject to Title V permitting to register for an operating permit by rule. The proposed rule allows smaller sources to accept annual emissions limits, established in the rule, which restrict their "potential to emit" and thus their exposure to "major source" requirements of the Clean Air Act. Sources meeting the eligibility requirements and submitting the necessary documentation will be exempted from applying for a Title V operating permit and from paying the Title V fee. Sources eligible for the operating permit by rule must be willing to accept the following limits on actual emissions: for each regulated air pollutant, less than 50 tons per 12-month rolling period; for each regulated hazardous air pollutant, including fugitive emissions, less than 5 tons per 12-month rolling period; and for all regulated hazardous air pollutants combined, less than 12.5 tons per 12-month rolling period.

The rule creates two tiers of responsibility. A de minimus level is established which requires only annual record keeping for sources with actual emissions of regulated air pollutants under 5 tons per year, under 2 tons per year for each single hazardous air pollutant, and under 5 tons per year of any combination of hazardous air pollutants. The second tier (for sources emitting greater than de minimus levels, but still meeting eligibility requirements for the rule) is required to maintain record keeping sufficient to ensure continued compliance with requirements of the rule.

Items 8 and 9 adopt by reference maximum achievable control technology (MACT) standards for hazardous air pollutants for source categories for secondary lead smelting, petroleum refineries, and for aerospace manufacturing and rework facilities. This rule making also amends the MACT standard for gasoline distribution by clarifying the relationship between the gasoline distribution MACT and regulations established in the petroleum refinery MACT.

Item 10 adds language establishing that visible emissions standards of less than 40 percent may be established in construction permits.

Item 11 changes the requirements for qualification in visual determination of the opacity of emissions to correct the inadvertent deletion of the requirement that individuals certified in visible emissions observation establish experience in opacity reading with a minimum of 250 readings of black plumes and 250 readings of white plumes.

Any person may make written suggestions or comments on the proposed amendments on or before February 19, 1996. Written comments should be directed to Catharine Fitzsimmons, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, fax (515)281-8895.

A public hearing will be held on February 19, 1996, at 10 a.m. in the Fifth Floor East Conference Room of the Wallace State Office Building, at which time comments may be submitted orally or in writing.

Any persons who intend to attend a public hearing and have special requirements, such as hearing or mobility impairments, should contact the Department of Natural Resources to advise the Department of any specific needs.

These amendments may impact small businesses.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend 567—20.2(455B), definition of "Volatile organic compound," as follows:

"Volatile organic compound" means any compound included in the definition of volatile organic compound found at 40 CFR Section 51.100(s) as amended through ~~October 5, 1994~~ September 21, 1995.

ITEM 2. Amend subrule 22.1(2), paragraph "i," last unnumbered paragraph, as follows:

The department reserves the right to require proof that *the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. National Ambient Air Quality Standards have not been violated by any change made when claiming this exemption to the air quality construction permit requirement.* If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department's rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

ITEM 3. Amend paragraphs 22.8(1)"b," "c," and "e" as follows:

b. Facilities which facilitywide spray one gallon per day or less of sprayed material are exempt from all requirements, except that they must submit the certification in ~~22.8(5)~~ 22.8(1)"e" to the department and keep records of daily sprayed material use. The facility must keep the records of daily sprayed material use for 18 months from the date to which the records apply.

c. Facilities which facilitywide spray more than one gallon per day but never more than three gallons per day

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

are exempt from all requirements, except that they must submit the certification in ~~22.8(5)~~ *22.8(1)"e"* to the department, keep records of daily sprayed material use, and vent emissions from spray booths through a stack which is at least 22 feet tall, measured from ground level. The facility must keep the records of daily sprayed material use for 18 months from the date to which the records apply.

e. Facilities which claim to be permitted by provisions of this rule must submit to the department a written statement as follows:

"I certify that all paint booths at the facility and listed below are in compliance with all applicable requirements of ~~rule 567 IAC subrule 22.8(1)(455B)~~. I understand that this equipment shall be deemed permitted under the terms of ~~567 IAC subrule 22.8(1)(455B)~~ only if all applicable requirements of ~~567 IAC subrule 22.8(1)(455B)~~ are met. This certification is based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

The certification must be signed by one of the following individuals.

(1) For corporations, a principal executive officer of at least the level of vice-president, or a responsible official as defined at 567 IAC 22.100(455B).

(2) For partnerships, a general partner.

(3) For sole proprietorships, the proprietor.

(4) For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

ITEM 4. Amend 22.101(1), the first sentence, as follows:

22.101(1) Except as provided in ~~subrule subrules 22.102(1) and 22.102(2)~~, any person who owns or operates any of the following sources shall obtain a Title V operating permit:

ITEM 5. Amend 567—22.202(455B) as follows.

567—22.202(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application for an operating permit, except in compliance with a properly issued Title V operating permit or a properly issued voluntary operating permit *or operating permit by rule for small sources*.

ITEM 6. Amend 22.203(1)"a" as follows:

a. Timely application. Each source applying for a voluntary operating permit shall submit an application:

(1) ~~Within 90 days after approval of the department's Title V program by USEPA. By July 1, 1996,~~ if the source is applying for a voluntary operating permit for the first time;

(2) At least 6 months but not more than 12 months prior to the date of expiration if the application is for renewal;

(3) Within 12 months of becoming subject to this rule for a new source or a source which would otherwise become subject to the Title V permit requirement after the effective date of this rule.

ITEM 7. Add the following new rule 567—22.300(455B) as follows:

567—22.300(455B) Operating permit by rule for small sources. Sources which comply with the requirements contained in this rule will be deemed to have an operating permit by rule for small sources. Sources which comply

with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in 567—22.100(455B).

22.300(1) Definitions for operating permit by rule for small sources. For the purposes of rule 22.300(455B), the definitions shall be the same as the definitions found at rule 22.100(455B).

22.300(2) Registration for operating permit by rule for small sources.

a. Except as provided in subrules 22.300(3) and 22.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants equal to or in excess of the threshold for a major stationary source of regulated air pollutants, and

(2) The potential to emit air contaminants equal to or in excess of the threshold for a major stationary source of hazardous air pollutants, and

(3) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in 22.300(6) below, and

(4) Operation of the source will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28.

b. Eligibility for an operating permit by rule for small sources does not obviate the source's responsibility to meet any and all applicable federal requirements, including but not limited to, a maximum achievable control technology (MACT) standard.

c. Nothing in this rule shall prevent any stationary source which has had a Title V operating permit or a voluntary operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or a voluntary operating permit or upon rescission of a Title V operating permit or a voluntary operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in subrule 22.300(6).

22.300(3) Exceptions to eligibility.

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources which are not major sources but subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources only until five years from April 20, 1994. These sources shall be required to obtain a Title V operating permit when the deferment period specified in subrule 22.101(2) has expired.

c. Sources which are not major sources but subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emission standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for an operating permit by rule for small sources only until five years from April 20, 1994, or until the final promulgation of a federal standard under 40 CFR Part 63 to which the source is subject, whichever is earlier. These sources shall be required to obtain a Title V operating permit when the deferment period specified in subrule 22.101(2) has expired or no longer applies.

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22.300(4) Stationary source with de minimus emissions. Stationary sources with de minimus emissions must submit the standard registration form. Only the record-keeping and reporting provisions listed in 22.300(4)"c" shall apply to a stationary source with de minimus emissions or operations as specified below:

a. In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

(1) 5 tons per year of a regulated air pollutant (excluding HAPs), and

(2) 2 tons per year of a single HAP, and

(3) 5 tons per year of any combination of HAPs.

b. In every 12-month rolling period, at least 90 percent of the stationary source's emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in subparagraphs (1) to (9) below:

(1) 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

(2) 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

(3) 365 gallons of solvent-containing (or volatile organic compound containing) material used at a paint spray unit(s);

(4) 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;

(5) 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;

(6) 1,400 gallons of gasoline combusted;

(7) 16,600 gallons of diesel fuel combusted;

(8) 500,000 gallons of distillate oil combusted; or

(9) 71,400,000 cubic feet of natural gas combusted.

c. Record keeping for de minimus sources.

(1) De minimus sources shall maintain an annual log of each raw material used and its amount, and each product produced and its production rate. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than five years.

(2) Within 30 days of a written request by the state or the U.S. EPA, the owner or operator of a stationary source not maintaining records pursuant to subrule 22.300(7) shall demonstrate that the stationary source's emissions or throughput are not in excess of the applicable quantities set forth in paragraphs "a" and "b" above.

22.300(5) Provision for air pollution control equipment. The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution control agency rules and regulations or permit terms and conditions. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

22.300(6) Emission limitations.

a. No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

(1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and

(2) 5 tons per year of a single hazardous air pollutant, and

(3) 12.5 tons per year of any combination of hazardous air pollutants.

b. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in paragraph "a" of this subrule.

22.300(7) Record-keeping requirements. Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with any applicable record-keeping requirements in this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in an operating permit or in a local, state, or federal rule or regulation.

a. A stationary source previously covered by the provisions in 22.300(4) shall comply with the applicable provisions of subrule 22.300(7) (record-keeping requirements) and subrule 22.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in paragraph 22.300(4)"a."

b. The owner or operator of a stationary source subject to this rule shall keep and maintain records for each permitted emission unit sufficient to determine actual emissions. Such information shall be summarized in a monthly log, maintained on site for ten years, and be made available to local, state, or U.S. EPA staff upon request.

c. Record-keeping requirements for certain emission units.

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include: information on the manufacturer, brand, product name or code, VOC content in grams per liter or pounds per gallon, hazardous air pollutant content in grams per liter or pounds per gallon, or manufacturer's product specifications, material VOC content reports or laboratory analyses providing this information;

2. A description of any equipment used during and after coating/solvent application, including type, make and model; maximum design process rate or throughput; control device(s) type and description (if any); and a description of the coating/solvent application/drying method(s) employed;

3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

1. A monthly log identifying the liquid stored and monthly throughput; and

2. Information on the tank design and specifications including control equipment.

(3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity, control device(s) type and description (if any) and all source test information; and

2. A monthly log of hours of operation, fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), percent sulfur for fuel oil and coal, and percent nitrogen for coal.

(4) Emission control unit. The owner or operator of a stationary source subject to this rule that contains an emission control unit shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control unit;

2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; maximum design or rated capacity; inlet and outlet temperatures, and concentrations for each pollutant controlled; catalyst data (type, material, life, volume, space velocity, ammonia injection rate and temperature); baghouse data (design, cleaning method, fabric material, flow rate, air/cloth ratio); electrostatic precipitator data (number of fields, cleaning method, and power input); scrubber data (type, design, sorbent type, pressure drop); other design data as appropriate; all source test information; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

(5) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in subparagraph (1), (2), or (3) above shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make and model; maximum design process rate or throughput; control device(s) type and description (if any);

2. A monthly log of operating hours, each raw material used and its amount, each product produced and its production rate; and

3. Purchase orders, invoices, and other documents to support information in the monthly log.

22.300(8) Registration and reporting requirements.

a. Duty to apply. Any source which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources, apply for a voluntary operating permit, or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V or a valid voluntary operating permit, shall be subject to enforcement action for operation without a Title V operating permit. For each source applying for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand

Avenue, Des Moines, Iowa 50319-0034, at least two copies of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By July 1, 1996, if the source is applying for an operating permit by rule for small sources for the first time;

2. Within 12 months of becoming subject to rule 22.101(455B) for a new source or a source which would otherwise become subject to the Title V permit requirement after the effective date of this rule.

(2) Complete registration form. To be deemed complete the registration form must provide all information required pursuant to 22.300(8)"b."

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

(4) Certification of truth, accuracy, and completeness. Any registration form, report, or supplemental information submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

b. At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, predicted actual emissions from the source; and to determine whether the source is subject to the exceptions listed in subrule 22.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products (by two-digit Standard Industrial Classification Code);

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;

2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;

3. Identification and description of air pollution control equipment;

4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories as defined in rule 22.100(455B).

(4) Requirements for certification. Facilities which claim to meet the requirements set forth in this rule to qualify for an operating permit by rule for small sources must submit to the department, with a complete registration form, a written statement as follows:

"I certify that all equipment at the facility with a potential to emit any regulated pollutant is included in the registration form, and submitted to the department as required in 22.300(8)"b." I understand that the facility will be deemed to have been granted an operating permit by rule for small sources under the terms of 567 IAC 22.300(455B) only if all applicable requirements of 567 IAC 22.300(455B) are met and if the registration is not denied by the director under 567 IAC 22.300(11). This certification is based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete." The certification must be signed by one of the following individuals.

For corporations, a principal executive officer of at least the level of vice-president, or a responsible official as defined at 567 IAC 22.100(455B).

For partnerships, a general partner.

For sole proprietorships, the proprietor.

For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

22.300(9) Construction permits issued after registration for an operating permit by rule for small sources. This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable construction permit, or to replace a condition or term of any construction permit, or any provision of a construction permitting program. This does not preclude issuance of any construction permit with conditions or terms necessary to ensure compliance with this rule.

a. If the issuance of a construction permit acts to make the source no longer eligible for an operating permit by rule for small sources, the source shall, within 90 days of issuance of the construction permit, submit an application for either a Title V operating permit or a voluntary operating permit.

b. If the issuance of a construction permit does not prevent the source from continuing to be eligible to operate under an operating permit by rule for small sources the source shall, within 30 days of issuance of a construction permit, provide to the department the information as listed in 22.300(8)"b" for the new or modified source.

22.300(10) Violations.

a. Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule.

b. A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including rules 22.101(455B) to 22.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur:

(1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in subrule 22.300(6), or

(2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in subrule 22.300(6).

22.300(11) Suspension, termination, and revocation of an operating permit by rule for small sources.

a. Registrations may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of an operating permit by rule for small sources:

(1) The director has reasonable cause to believe that the operating permit by rule for small sources was obtained by fraud or misrepresentation.

(2) The person registering for the operating permit by rule for small sources failed to disclose a material fact required by the registration form or the rules applicable to the operating permit by rule for small sources, of which the applicant had or should have had knowledge at the time the registration form was submitted.

(3) The terms and conditions of the operating permit by rule for small sources have been or are being violated.

(4) The owner or operator of the source has failed to pay an administrative, civil or criminal penalty for violations of the operating permit by rule for small sources.

b. If the director suspends, terminates or revokes an operating permit by rule for small sources under this rule, the notice of such action shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

ITEM 8. Amend paragraphs 23.1(4)"r" and "x" as follows:

r. Emission standards for hazardous air pollutants for sources categories: Gasoline distribution: (Stage 1). These standards apply to all existing and new bulk gasoline terminals and pipeline breakout stations that are major sources of hazardous air pollutants or are located at plant sites that are major sources. *Bulk gasoline terminals and pipeline breakout stations located within a contiguous area or under common control with a refinery complying with 40 CFR Subpart CC are not subject to 40 CFR Subpart R standards.* (Subpart R)

x. ~~to ad. Reserved.~~ *National emission standards for hazardous air pollutants from secondary lead smelting. These standards apply to all existing and new secondary lead smelters sources which use blast, reverberatory, rotary, or electric smelting furnaces for lead recovery of scrap lead that are located at major or area sources. The provisions apply to smelting furnaces, refining kettles, agglomerating furnaces, dryers, process fugitive sources, and fugitive dust. Excluded from the rule are primary lead smelters, lead refiners, and lead remelters. Hazardous air pollutants regulated under this standard include but are not limited to lead compounds, arsenic compounds, and 1,3-butadiene.* (Subpart X)

y. to ab. Reserved.

ITEM 9. Amend 23.1(4) by adding the following new paragraphs 23.1(4) "ac" and "ag" and reserving paragraphs "ad" to "af":

ac. National emission standards for hazardous air pollutants: petroleum refineries. These standards apply to petroleum refining process units and colocated emission points at new and existing major sources. Affected sources include process vents, equipment leaks, storage vessels, transfer operations, and wastewater streams. The standards also apply to marine tank vessel and gasoline loading racks. Excluded from the standard are catalyst regeneration from catalytic cracking units and catalytic reforming

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

units, and vents from sulfur recovery units. Compliance with the standard includes emission control and prevention. (Subpart CC)

ag. National emission standards for hazardous air pollutants for source categories: aerospace manufacturing and rework facilities. These standards apply to major sources involved in the manufacture, repair, or rework of aerospace components and assemblies, including but not limited to airplanes, helicopters, missiles, and rockets for civil, commercial, or military purposes. Hazardous air pollutants regulated under this standard include chromium, cadmium, methylene chloride, toluene, xylene, methyl ethyl ketone, ethylene glycol, and glycol ethers. (Subpart GG)

ITEM 10. Amend paragraph 23.3(2)"d" as follows:

d. Visible emissions. No person shall allow, cause or permit the emission of visible air contaminants ~~in excess of 40 percent opacity~~ into the atmosphere from any equipment, internal combustion engine, premise fire, open fire or stack, *in excess of 40 percent opacity or that level specified in a construction permit*, except as provided below and in 567—Chapter 24.

ITEM 11. Amend 567—29.1(455B) as follows:

567—29.1(455B) Methodology and qualified observer. The federal method for visual determination of opacity of emissions and requirements for qualified observers as defined in Method 9, 40 CFR Part 60 Appendix A as amended through November 14, 1990, is adopted by reference.

To qualify as an observer a candidate must, after meeting the requirements established in Method 9, 40 CFR Part 60 Appendix A, have on record with the department a minimum of 250 readings of black plumes and 250 readings of white plumes, taken at approved smoke reading courses.

This rule is intended to implement Iowa Code chapter 455B.

ARC 6189A

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 455G.18, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 134, "Registration of Groundwater Professionals," Iowa Administrative Code.

The proposed amendments are intended to implement the requirements for certification of groundwater professionals in Iowa Code Supplement section 455G.18.

Any interested party may submit written comments to the attention of Keith Bridson, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319, or by fax (515)281-7212, no later than February 16, 1996.

There will be three public hearings on these proposed amendments:

February 6, 1996, at 1 p.m. in the east half of the Fifth Floor Conference Room in the Wallace State Office Building, 900 East Grand, Des Moines, Iowa;

February 7, 1996, at 10 a.m. in the Denison Community Hall, next to City Hall, Denison, Iowa;

February 8, 1996, at 10 a.m. in the Iowa City Public Library, Iowa City, Iowa.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments may have an impact on small businesses as provided in Iowa Code section 17A.31.

These proposed amendments are intended to implement Iowa Code Supplement section 455G.18.

The following amendments are proposed.

ITEM 1. Amend rule 134.2(455G) as follows:

567—134.2(455G) Registration Certification requirements.

134.2(1) A groundwater professional must ~~register~~ *be certified* as provided in 134.3(455G) before engaging in activities described in 134.1(455G), except that a person engaging in activities described in 134.1(455G) need not be ~~registered~~ *certified* if that person is under direct supervision of a ~~registered~~ *certified* groundwater professional when engaging in such activities.

134.2(2) In order to ~~register~~ *be certified* as a groundwater professional, a person must be one or more of the following:

a. A person certified by the American Institute of Hydrology as a Professional Hydrologist, Professional Hydrogeologist, or Professional Hydrologist (Groundwater).

b. A person certified by the National Water Well Association or Association of Groundwater Scientists and Engineers as a Groundwater Professional.

c. A person certified by the American Board of Industrial Hygiene as an Industrial Hygienist.

d. A professional engineer registered in Iowa.

e. A professional geologist certified by a national organization (e.g., American Institute of Professional Geologists, American Association of Petroleum Geologists, Society of Independent Earth Scientists).

f. Any person with five years of direct or related experience and training as a groundwater professional or in the field of earth sciences as of June 10, 1991. This must include a minimum of at least two years of education and training, and two years of experience as a groundwater professional.

g. Any person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by a national organization, provided that the license, certification, or registration process requires, at a minimum, both of the following:

(1) Possession of a bachelor's degree from an accredited college.

(2) Five years of related professional experience.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

134.2(3) *In order to be certified as a groundwater professional, the applicant must complete a course of instruction and pass a certification examination offered or authorized by the department, except as provided in paragraph 134.3(3)"a" and subrule 134.3(6).*

a. *Anyone who fails an initial examination may take a second examination after a 60-day waiting period. Subsequent examinations may be completed as scheduled by the department.*

b. *Any person registered as a groundwater professional prior to the effective date of this subrule will be allowed to continue performing as a certified groundwater professional for 90 days upon failure of the first examination. Failure of the second examination will result in denial of certification as a groundwater professional.*

ITEM 2. Amend rule 134.3(455G) as follows:

567—134.3(455G) Registration Certification procedure.

134.3(1) Application. Application for registration certification shall be made by completing a form provided by the department and submitting evidence of meeting the requirements found in ~~subrule 134.2(2)~~ rule 134.2(455G) (i.e., copy of certificate, license, description of experience and training).

134.3(2) ~~Registration~~ **Registration Certification** fee. The initial registration certification and each renewal application must be accompanied by a nonrefundable fee in the form of a check or money order payable to the Department of Natural Resources. The ~~registration~~ certification fee is \$200 every two years and must be renewed biennially by January 1 of each even-numbered year (i.e., 1994, 1996, etc.). No proration of registration certification fees will be done. *The department will assess a fee for each training course and examination, based upon the cost of preparation and administration.*

134.3(3) Deadline for application. A person must be registered certified in order to provide services as a groundwater professional. ~~after January 1, 1992.~~

a. *A groundwater professional who was registered prior to January 1, 1996, is not required to attend the initial course of instruction, but must pass the certification examination by January 1, 1997.*

b. *Any person who was not registered as a groundwater professional prior to January 1, 1996, must attend an initial course of instruction and pass a certification examination offered or authorized by the department, except as provided in subrule 134.3(6).*

c. *Groundwater professionals, registered prior to the effective date of this paragraph, may continue to provide the services described for groundwater professionals in rule 134.1(455G) until the groundwater professional certification course and examination are made available by the department. Except as provided in paragraph 134.3(3) "a," registered groundwater professionals must enroll for the course of instruction within 30 days of notice of availability and take the examination upon completion of the course.*

134.3(4) **Registration Certification** issuance and renewal.

a. Upon receipt, review, and acceptance of the application and registration certification fee, the department shall furnish the applicant with a ~~registration document~~ certificate showing the name of the individual and the expiration date.

b. In order to remain valid, a groundwater professional registration certificate must be renewed prior to the expira-

tion date specified on the ~~registration document~~ certificate. Renewal applications must be made on a form provided by the department and must be received by the department or postmarked at least 60 days prior to the expiration date of the registration or certification then in effect. The renewal application must be accompanied by the registration or certification fee specified in subrule 134.3(2) and proof of completing the continuing education requirements in 134.3(5).

134.3(5) Continuing education. All groundwater professionals are required to complete at least six hours of continuing education per year.

a. *Groundwater professionals not required to attend the course of instruction in 134.3(3)"a" must attend specified courses, comprising up to 16 hours, offered by the department for their first year of continuing education. These courses may include the policies and procedures for implementing corrective action rules in 567—Chapter 135 and the applicable principles of Risk Based Corrective Action (RBCA).*

b. *All certified groundwater professionals or persons applying for certification may be required to attend specified courses applicable to policies and procedures implementing corrective action rules in 567—Chapter 135 as part of the continuing education requirements.*

c. *Courses other than those provided by the department must be submitted to the department for prior approval as meeting the continuing education requirement.*

134.3(6) Exemption from examination. *The department may provide for an exemption from the initial course of instruction and certification examination requirements for a professional engineer registered pursuant to Iowa Code chapter 542B, if the person is qualified in the field of geotechnical, hydrological, environmental, groundwater, or hydrological engineering upon submission of sufficient proof of exemption to the Iowa comprehensive petroleum underground storage tank fund board, as provided in 1995 Iowa Code Supplement section 455G.18(8). A groundwater professional exempted under this provision must meet the continuing education requirements of subrule 134.3(5).*

ITEM 3. Amend rule 134.4(455G) as follows:

567—134.4(455G) Suspension, revocation and denial of registration certification.

134.4(1) General policy. It is the policy of the department to enforce standards of professional and ethical conduct which are generally accepted within the professions which qualify persons for registration certification in Iowa as groundwater professionals. The department intends to rely on written standards of professional and ethical conduct and competency which are applicable to persons who qualify for registration certification by virtue of certification by or membership in a professional organization or state licensure as provided in Iowa Code section 455G.18(2).

It is the policy of the department to investigate and enforce standards of conduct by registered certified groundwater professionals which fall within the scope of their professional relationships with the department, their clients and other state regulatory agencies including the Iowa comprehensive petroleum underground storage tank fund board and their agents.

134.4(2) Lack of qualification. The department may suspend, revoke or deny registration certification as a groundwater professional for any of the following reasons:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

a. A material misstatement of fact in an application for ~~registration~~ *certification*.

b. Failure to provide the fee for ~~registration~~ *certification*.

c. Loss of license, certification, or registration necessary to meet the ~~registration~~ *certification* requirements in subrule 134.2(2).

d. Insufficient proof of qualifications required under rule 134.2(455G). ~~subrule 134.2(2)~~.

e. *Failure to successfully complete the certification requirements.*

f. *Receipt of a "certificate of noncompliance" with a child support obligation and failure to provide a "withdrawal of a certificate of noncompliance" from the child support recovery unit as provided in 1995 Iowa Code Supplement chapter 252J.*

g. *Default on an obligation owed to or collected by the state as provided in 1995 Iowa Code Supplement section 421.17(34)"e."*

134.4(3) Discipline based on a single act or omission. The department may suspend, revoke or deny ~~registration~~ *certification* based on substantial evidence of a single act or failure to act. The severity of the sanction may be based on the gravity of the act or omission and on the degree of culpability such as whether it was negligent, knowing, willful, or with such a degree of reckless disregard as to equate with intentional conduct. Single acts or omissions that may be grounds for discipline include, but are not limited to, the following:

a. Fraudulent omissions or misstatements of material fact in any reports, correspondence or communications with the department.

b. Violation of an ethical standard which the person knew or should have known and which results in or reasonably could have resulted in material consequences.

c. Failure to report the presence of contamination to the parties reasonably believed to be responsible for reporting the contamination to the department as provided in 567—Chapter 131 and 567—135.6(455B).

d. Knowingly making a material false statement, representation or certification on any application, record, report, or document required to be maintained or submitted by department rule or which is voluntarily submitted to the department.

e. Gross incompetence in the performance of groundwater professional services and corrective action.

f. *Material misstatement of facts or misrepresentation of information required to be provided pursuant to Iowa Code chapters 455G and 455B, division IV, part 8.*

134.4(4) Discipline based on repeated acts or omissions. The department may suspend, revoke or deny ~~registration~~ *certification*, based on substantial evidence of repeated acts or omissions which, when taken together indicate a lack of competency, professionalism, ethical conduct, or adherence to standards of performance generally expected by the profession. The severity of the sanction may be based on the gravity of the acts or omissions and the degree of culpability. Disciplinary sanctions under this subrule will not be applied without providing the person with at least one written notice of the deficiency and a written warning that future repetition may result in discipline. Conduct or omissions which may be a basis for discipline include but are not limited to the following:

a. Repeated incidents of substandard field investigation may result in suspension or revocation.

b. Repeated incidents of substandard, inaccurate or incomplete site cleanup reports and failure to follow site

cleanup report instructions may result in suspension or revocation.

c. Conduct warranting a sanction after prior suspension shall result in a more severe sanction.

134.4(5) Disciplinary procedure.

a. Prior to issuance of a final department action imposing a disciplinary sanction of suspension, revocation or denial of ~~registration~~ *certification* the department shall conduct such lawful investigation as it deems necessary to substantiate material facts sufficient to warrant a disciplinary sanction. The decision to impose a disciplinary sanction shall be made by the administrator of the environmental protection division.

b. Written notice of a sanction shall be sent by restricted certified mail to the person against whom the sanction is imposed. The notice shall provide a brief explanation of the facts relied upon and the sanction to be imposed. The notice shall inform the recipient of applicable appeal rights.

c. A person may appeal a decision imposing a suspension, revocation or denial of ~~registration~~ *certification* within 30 days of receipt of the notice. Upon timely receipt of the notice of appeal, contested case procedures, including informal settlement, shall apply as provided in 561—Chapter 7. In accordance with 561—subrule 7.5(2), the department shall initiate pleading by the filing of a petition.

d. Notwithstanding 561—subrule 7.15(7), the sanction imposed shall not take effect until after a contested case hearing and issuance of a proposed decision. If a timely appeal has not been filed, the sanction is effective after 30 days from receipt of the notice. A party may request stay of the sanction, as provided in 561—subrule 7.15(7), after issuance of a proposed decision.

ITEM 4. Add a **new** subrule 134.4(6):

134.4(6) Noncompliance with support order procedures. Upon receipt of a certification of noncompliance with a support obligation as provided in Iowa Code Supplement section 252J.7, the department will initiate procedures to deny an application for certification or renewal, or to suspend a certification in accordance with Iowa Code Supplement section 252J.8(4). The department shall issue a notice by restricted certified mail to the person of its intent to deny or suspend groundwater professional certification based on receipt of a certification of noncompliance. The suspension or denial shall be effective 30 days after receipt of the notice unless the person provides the department with a withdrawal of the certificate of noncompliance from the child support recovery unit as provided in Iowa Code Supplement section 252J.8(4)"c." Pursuant to Iowa Code Supplement section 252J.8(4), the person does not have a right to a hearing before the department to contest the denial or suspension action under this subrule but may seek a hearing in district court in accordance with Iowa Code Supplement section 252J.9.

ITEM 5. Amend rule 134.5(455G) as follows:

567—134.5(455G) Penalty. A groundwater professional who fails to ~~register~~ *obtain certification* with the department of natural resources as required in this chapter is subject to a civil penalty of \$50. *A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional certification revoked.*

ARC 6182A

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 177, "In-Home Health Related Care," appearing in the Iowa Administrative Code.

These amendments clarify that payment for the In-Home Health program shall be approved effective as of the date of application, except that payment cannot be made prior to the date that all eligibility requirements are met and qualified health care services are provided. Services provided prior to the date the provider agreement was signed shall not be considered as qualified health care services unless the services were supervised by a registered nurse and approved by a physician.

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 February 7, 1996.

These amendments are intended to implement Iowa Code section 249.3(2)"a."

The following amendments are proposed.

ITEM 1. Amend rule 441—177.3(249), introductory paragraph, as follows:

441—177.3(249) **Service criteria.** The client shall require *health care* services that would require the supervision of a professional registered nurse working under the certification of a physician:

ITEM 2. Amend rule 441—177.4(249) as follows:

Amend subrule 177.4(1) by adding the following new paragraph "d."

d. The client shall require and be receiving qualified health care services. Qualified health care services are health care services supervised by a registered nurse and approved by a physician.

Amend subrule 177.4(9) by adding the following new paragraph "c."

c. Payment for the program shall be approved effective as of the date of application or the date all eligibility requirements are met and qualified health care services are provided, whichever is later.

ARC 6186A

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 sections 523A.16 and 523E.16, the Iowa Division of Insurance gives Notice of Intended Action to amend Chapter 19, "Prearranged Funeral Contracts," Iowa Administrative Code.

The proposed rule regulates the denial, suspension or revocation of a sales permit when the Iowa Securities Bureau receives a certificate of noncompliance from the Child Support Recovery Unit. The proposed rule is necessary for the implementation of Iowa Code Supplement chapter 252J.

Interested persons may submit written comments on or before February 6, 1996, to Dennis Britson, Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code Supplement section 252J.8.

The following amendment is proposed.

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

191—19.25(252J) **Denial, suspension or revocation of sales permit for failure to pay child support.**

19.25(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the salesperson that the salesperson's pending application, pending request for renewal, or current sales permit will be denied, suspended or revoked 30 days after the date of the notice. Notice shall be sent to the salesperson's last-known address by certified mail.

19.25(2) The notice shall contain the following items:

a. A statement that the commissioner intends to deny, suspend or revoke the salesperson's sales permit in 30 days;

b. A statement that the salesperson must contact the CSRU to request a withdrawal of the certificate of noncompliance;

c. A statement that the salesperson's application, request for renewal or current sales permit will be denied, suspended or revoked if the certificate of noncompliance is not withdrawn;

d. A statement that the salesperson does not have a right to a hearing before the division, but the salesperson may file an application for a hearing in district court pursuant to Iowa Code Supplement section 252J.9 within 30 days of the provision of the notice;

e. A statement that the filing of an application with the district court will stay the proceedings of the division;

f. A copy of the certificate of noncompliance.

19.25(3) The filing of an application for hearing with the district court will stay all proceedings until the commissioner is notified of the resolution of the application.

INSURANCE DIVISION[191](cont'd)

19.25(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice that an application for hearing has been filed, the commissioner shall deny, suspend or revoke the current sales permit 30 days after the notice is issued.

19.25(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, pending proceedings shall halt and the named salesperson shall be notified that the proceedings have been halted. If the salesperson's permit has already been suspended or revoked, the salesperson shall reapply for a permit and the application shall be granted if the applicant is otherwise in compliance with the division's rules.

19.25(6) All application fees must be paid by the applicant before a sales permit will be issued, renewed or reinstated after the commissioner has denied, suspended or revoked a sales permit pursuant to Iowa Code Supplement chapter 252J.

This rule is intended to implement Iowa Code Supplement section 252J.8.

ARC 6187A**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 502.607(1), the Iowa Division of Insurance gives Notice of Intended Action to amend Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

The proposed rule regulates the denial, suspension or revocation of an agent's license when the Iowa Securities Bureau receives a certificate of noncompliance from the Child Support Recovery Unit. The proposed rule is necessary for the implementation of Iowa Code Supplement chapter 252J.

Interested persons may submit written comments on or before February 6, 1996, to Craig A. Goetsch, Superintendent of Securities, Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319.

The amendment is intended to implement Iowa Code Supplement section 252J.8.

The following amendment is proposed.

Amend 191—Chapter 50 by adding the following new rule:

191—50.11(252J) Denial, suspension or revocation of license for failure to pay child support.

50.11(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the administrator shall issue a notice to the agent that the agent's pending application for licensure or current license will be

denied, suspended or revoked 30 days after the date of the notice. Notice shall be sent to the agent's last-known address by certified mail.

50.11(2) The notice shall contain the following items:

- a. A statement that the administrator intends to deny, suspend or revoke the agent's securities license in 30 days;
- b. A statement that the agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;
- c. A statement that the agent's application, request for licensure or current license will be denied, suspended or revoked if the certificate of noncompliance is not withdrawn;
- d. A statement that the agent does not have a right to a hearing before the division, but the agent may file an application for a hearing in district court pursuant to Iowa Code Supplement section 252J.9 within 30 days of the provision of the notice;
- e. A statement that the filing of an application with the district court will stay the proceedings of the division;
- f. A copy of the certificate of noncompliance.

50.11(3) The filing of an application for hearing with the district court will stay all proceedings until the administrator is notified of the resolution of the application.

50.11(4) If the administrator does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice that an application for hearing has been filed, the administrator shall deny, suspend or revoke the agent's license 30 days after the notice is issued.

50.11(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, pending proceedings shall halt and the named agent shall be notified that the proceedings have been halted. If the agent's license has already been suspended or revoked, the agent shall reapply for licensure and the application shall be granted if the agent is otherwise in compliance with the division's rules.

50.11(6) All application fees must be paid by the applicant before a license will be issued after the administrator has denied, suspended or revoked a license pursuant to Iowa Code Supplement chapter 252J.

This rule is intended to implement Iowa Code Supplement section 252J.8.

ARC 6179A**LAW ENFORCEMENT
ACADEMY[501]****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 80B.11, the Iowa Law Enforcement Academy gives Notice of Intended Action to amend Chapter 1, "Organization and Administration," Iowa Administrative Code.

This proposed amendment [rule 501—1.11(17A,80B)] will provide a procedure and facilitate the process by

LAW ENFORCEMENT ACADEMY[501](cont'd)

which interested persons can request the Academy to address its rules.

Any interested person may make written comments or suggestions on this proposed amendment prior to February 6, 1996. Such written materials should be sent to Gene W. Shepard, Director, Iowa Law Enforcement Academy, P.O. Box 130, Camp Dodge, Johnston, Iowa 50131-0130, fax (515)242-5471.

There will be a public hearing on this proposed amendment February 6, 1996, at 10:30 a.m. in the Conference Room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, at which time persons may present their views 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 rule.

This amendment was approved by the Iowa Law Enforcement Academy Council on December 12, 1995.

This amendment is intended to implement Iowa Code section 17A.7.

This amendment was also Adopted and Filed Emergency and is published herein as ARC 6180A. The content of that submission is incorporated by reference.

ARC 6178A

LAW ENFORCEMENT
ACADEMY[501]

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 80B.11, the Iowa Law Enforcement Academy gives Notice of Intended Action to amend Chapter 10, "Reserve Officer Weapons Certification," Iowa Administrative Code.

This proposed amendment authorizes the Chairperson of the Iowa Law Enforcement Academy Council to grant interim certification to carry weapons to a reserve officer until the next council meeting.

Any interested person may make written comments or suggestions on this proposed amendment on or before February 6, 1996. Such written materials should be sent to Gene W. Shepard, Director, Iowa Law Enforcement Academy, P.O. Box 130, Camp Dodge, Johnston, Iowa 50131, or fax (515)242-5471.

There will be a public hearing on this proposed amendment February 6, 1996, at 10 a.m. in the Conference Room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, at which time persons may present their views 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 rule.

This amendment was approved by the Iowa Law Enforcement Academy Council on December 12, 1995.

This amendment is intended to implement Iowa Code sections 80D.3 and 80D.7.

The following amendment is proposed.

Amend subrule 10.1(3) by adding the following new paragraph "d":

d. Interim certification to carry weapons may be granted by the chairperson of the council if all requirements for certification have been met by the reserve officer and certified by the appointing authority. All interim certifications to carry weapons shall then be brought before the council at the next regularly scheduled meeting in order that the council can approve or reject the reserve officer's certification to carry weapons.

ARC 6167A

LOTTERY DIVISION[705]

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 99E.9 and 17A.3, the Iowa Lottery Board hereby gives Notice of Intended Action to amend Chapter 1, "General Operation of the Lottery," and Chapter 2, "Licensing," Iowa Administrative Code.

Item 1 amends rule 705—1.5(17A,22) by adding an unnumbered paragraph regarding the release of information to the child support recovery unit regarding the identity of licensees.

Item 2 amends the implementation clause of rule 705—1.5(17A,22).

Item 3 amends rule 705—2.1(99E) by adding language to implement Iowa Code Supplement chapter 252J and to provide for methods of service with the notice required by Iowa Code Supplement section 252J.8.

Item 4 amends the implementation clause of rule 705—2.1(99E).

Item 5 amends rule 705—2.2(99E) by adding language to implement Iowa Code Supplement chapter 252J.

Item 6 amends the catchwords for rule 705—2.4(99E).

Item 7 amends subrules 2.4(3) and 2.4(7) by providing for a refund of the \$100 application fee for computerized games where the applicant fails to qualify for a license and by adding the notice requirements imposed by Iowa Code Supplement chapter 252J.

Item 8 amends the implementation clause for rule 705—2.4(99E).

Item 9 amends rule 705—2.7(99E) by adding language to implement Iowa Code Supplement chapter 252J.

Item 10 amends the implementation clause of rule 705—2.7(99E).

Item 11 amends rule 705—2.12(99E) by adding language to implement Iowa Code Supplement chapter 252J and to provide notice for the revocation and suspension of a license.

Item 12 amends the implementation clause of rule 705—2.12(99E).

LOTTERY DIVISION[705](cont'd)

Item 13 amends Chapter 2 by adding rules regarding the method of service for license revocation and suspension; the licensee's or applicant's responsibilities to keep the lottery informed of any pending litigation against the licensee or applicant regarding child support disputes; and the calculated time prior to the filing of a district court action regarding the revocation, suspension, or denial of a license.

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

The Lottery has determined that the proposed amendments requiring the lottery to deny, revoke or refuse to reinstate a lottery license may have an impact on small business. The Lottery has considered the factors listed in Iowa Code section 17A.31(4). The Lottery 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 29, 1996, to the Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312. 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 these proposed amendments on or before February 6, 1996. Written comments or suggestions should be directed to Kenneth Brickman, Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312.

Persons who would like to convey their views orally should contact Kenneth Brickman at (515)281-7870 or at the address indicated above.

Requests for a public hearing must be received by February 6, 1996.

These amendments are intended to implement Iowa Code chapter 99E and Iowa Code Supplement chapters 252J and 598.

The following amendments are proposed.

ITEM 1. Amend rule 705—1.5(17A,22) by adding the following new unnumbered paragraph after the first paragraph of the rule and immediately preceding the second unnumbered paragraph:

Notwithstanding any statutory confidentiality provision, the agency may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code Supplement chapter 252J or 598.

ITEM 2. Amend the implementation clause of rule 705—1.5(17A,22) to read as follows:

This rule is intended to implement Iowa Code section 22.11 and Iowa Code Supplement section 252J.2 and chapter 598.

ITEM 3. Amend rule 705—2.1(99E) by adding the following new unnumbered paragraph at the end of the rule and immediately preceding the implementation clause:

The lottery will deny a license to any applicant, who is an individual, if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance.

ITEM 4. Amend the implementation clause of rule 705—2.1(99E) to read as follows:

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"k," 99E.16(1), 99E.16(7), and 99E.17(3), and Iowa Code Supplement section 252J.2.

ITEM 5. Amend rule 705—2.2(99E) to read as follows:

705—2.2(99E,252J) Factors relevant to license issuance. The lottery may issue a license to any applicant to act as a licensed retailer who meets the eligibility criteria established by Iowa Code chapter 99E and these rules. In exercising its licensing discretion the lottery shall consider the following factors: the background and reputation of the applicant in the community for honesty and integrity; the financial responsibility and security of the person and business or activity; the type of business owned or operated by the applicant to ensure consonance with the dignity of the state, the general welfare of the people, and the operation and integrity of the lottery; the accessibility of the applicant's place of business or activity to the public; the sufficiency of existing licenses to serve the public convenience; the volume of expected sales; the accuracy of the information supplied in the application for a license; the applicant's indebtedness to the state of Iowa, local subdivisions of the state, or the United States government; *if an individual, indebtedness owed for child support payments*; and any other criteria or information relevant to determining if a license should be issued.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"k," and 99E.16 and Iowa Code Supplement section 252J.2.

ITEM 6. Amend rule 705—2.4(99E), catchwords, as follows:

705—2.4(99E,252J) Lottery licenses.

ITEM 7. Amend subrules 2.4(3) and 2.4(7) as follows:

2.4(3) The fee for a lottery license varies based upon the type of lottery product which the applicant wishes to sell. All license applications must be accompanied by the minimum, nonrefundable fee of \$25. Applications to sell computerized game tickets, if available, must be accompanied by an additional, ~~nonrefundable~~ fee of \$100 for a total fee of \$125. *The additional fee shall be refunded to an applicant in the event the computerized license portion of the application is denied.*

2.4(7) The lottery will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold shall be considered denied for purposes of appeal. *If an application is denied because the lottery has received a certificate of noncompliance from the child support unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service of the notice upon the applicant.*

ITEM 8. Amend the implementation clause of rule 705—2.4(99E,252J) to read as follows:

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"a," 99E.9(3)"k," and 99E.16, and Iowa Code Supplement sections 252J.2 and 252J.8.

ITEM 9. Amend rule 705—2.7(99E) by adding the following new unnumbered paragraph at the end of the rule and immediately preceding the implementation clause:

LOTTERY DIVISION[705](cont'd)

Notwithstanding the foregoing, the lottery will deny a provisional license to any applicant, who is an individual, if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance. If an application is denied because the lottery has received a certificate of noncompliance from the child support unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service of the notice upon the applicant.

ITEM 10. Amend the implementation clause of rule 705—2.7(99E) to read as follows:

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"k," 99E.16(1), 99E.16(3), and 99E.16(4), and Iowa Code Supplement sections 252J.2 and 252J.8.

ITEM 11. Amend rule 705—2.12(99E) to read as follows:

701—2.12(99E) Suspension or revocation of a license.

2.12(1) The lottery may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons: failure to meet or maintain the eligibility criteria for license application and issuance established by Iowa Code chapter 99E or these rules; violation of any of the provisions of chapter 99E, these rules, or the license terms and conditions; failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments which are dishonored; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery; if public convenience is adequately served by other licensees; failing to sell a minimum number of tickets as established by the lottery; a history of thefts or other forms of losses of tickets or revenue from the business; violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control; obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake; making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery; denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted; failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license; systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery; failing to follow the instructions of the lottery for the conduct of any particular game or special event; failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event; making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event; *for a licensee who is an individ-*

ual, where the lottery receives a certificate of noncompliance from the child support unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance; or allowing activities on the licensed premises which could compromise the dignity of the state.

2.12(2) *The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.*

2.12(3) *If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the retailer's license upon 15 days' notice served in conformance with 2.13(99E,252J).*

2.12(4) Upon revocation or suspension of a retailer's license, the retailer shall surrender to the lottery, by a date designated by the lottery, the license, lottery identification card, and all other lottery property.

ITEM 12. Amend the implementation clause of rule 705—2.12(99E) to read as follows:

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"k," 99E.16, and 99E.17, and Iowa Code Supplement section 252J.8.

ITEM 13. Amend 705—Chapter 2 by adding the following new rules:

705—2.13(99E,252J) Methods of service. The notice required by Iowa Code Supplement section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee may accept service personally or through authorized counsel.

Notice of a license revocation or a suspension for the reasons described in 705—2.12(99E) shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with R.C.P. 56.1. Alternatively, the licensee may accept service personally or through authorized counsel. The notice shall set forth the reasons for the suspension, or revocation and provide for an opportunity for a hearing. A hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"k," and 99E.16 and Iowa Code Supplement section 252J.8.

705—2.14(99E,252J) Licensee's obligation. Licensees and license applicants shall keep the lottery informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code Supplement chapter 252J, and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code Supplement section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"k," and 99E.16 and Iowa Code Supplement section 252J.8.

705—2.15(99E,252J) Calculating the effective date. In the event a licensee or applicant files a timely district court action following service of a lottery notice pursuant to

LOTTERY DIVISION[705](cont'd)

Iowa Code Supplement sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"k," and 99E.16 and Iowa Code Supplement sections 252J.8 and 252J.9.

ARC 6171A

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 sections 424.1 and 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) hereby gives Notice of Intended Action to amend Chapter 6, "Administration of the Environmental Protection Charge Imposed Upon Petroleum Diminution," Iowa Administrative Code.

Rule 591—6.1(424), rule 591—6.5(424), rule 591—6.14(424), and rule 591—6.15(424) are amended by adding language to implement Iowa Code Supplement chapter 252J which requires the Department of Revenue and Finance to deny or revoke a permit or license if the Department has received a certificate of noncompliance from the child support recovery unit.

The Board has determined that these proposed amendments may have an impact on small business. The Board has considered the factors listed in Iowa Code section 17A.31(4) and 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 post-marked no later than January 27, 1996, to the Policy Section, Compliance 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 these proposed amendments on or before February 6, 1996. Such written comments should be directed to the Policy Section, Compliance Division, Iowa

Department of Revenue and Finance, Hoover State Office Building, P. O. Box 10457, Des Moines, Iowa 50306.

The proposed amendments will not necessitate additional annual expenditures exceeding \$100,000 by political subdivisions or agencies and entities which contract with political subdivisions. Therefore, no fiscal note accompanies this Notice.

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

There will be a public hearing on February 6, 1996, at 10 a.m., in the conference room of the Department of Insurance, Sixth Floor, Lucas State Office Building, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing.

These amendments are intended to implement Iowa Code Supplement chapter 252J.

The following amendments are proposed.

ITEM 1. Amend rule 591—6.1(424) by adding the following new definitions in alphabetical sequence and amending the implementation sentence as follows:

"Certificate of noncompliance" means a document provided by the child support recovery unit certifying that the named obligor is not in compliance with a support order or with a written agreement for payment of support entered into by the unit and the obligor.

"Child support recovery unit" means the child support recovery unit created by Iowa Code section 252B.2.

"Obligor" means a natural person as defined in Iowa Code section 252B.1 who has been ordered by a court or administrative agency to pay support.

"Unit" means the child support recovery unit created in Iowa Code section 252B.2.

"Withdrawal of a certificate of noncompliance" means a document provided by the unit certifying that the certificate of noncompliance is withdrawn and that the licensing authority may proceed with issuance, reinstatement, or renewal of an obligor's license.

This rule is intended to implement Iowa Code section 424.2 and Iowa Code Supplement chapter 252J.

ITEM 2. Amend rule 591—6.5(424) to read as follows:

591—6.5(424) Application for permit. A depositor shall file with the department an application for a permit. The application shall be made upon a form prescribed by the board and shall set forth *the name of the applicant, the applicant's current known address, the applicant's social security number, the name under which the applicant transacts or intends to transact business, the locations of the applicant's places of business and any other relevant information which the board may require.* The application will be signed by the owner of the business if the owner is a natural person; by a member or partner in the case of an association or partnership respectively; and, in the case of a corporation, by an executive officer or other person authorized by the corporation to sign the application. A copy of the authorization shall be attached to the application as written evidence of the signer's authority.

The application shall be in the form provided at the end of this chapter.

This rule is intended to implement Iowa Code section 424.5 and Iowa Code Supplement chapter 252J.

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

ITEM 3. Amend rule 591—6.14(424) to read as follows:

591—6.14(424) Revocation of a permit. The department may revoke a permit if the permit holder has become substantially delinquent in paying any tax or charge which is administered by the department or the interest or penalty on that tax or charge. The department may also revoke a permit if the holder of the permit fails to comply with any of the provisions of 1989 Iowa Acts, chapter 131, or any order or rule of the department, or any order or rule of the board pursuant to that enactment. *The department may also revoke a permit upon receipt of a certificate of non-compliance from the child support recovery unit.* Concerning the characterization of the term "tax administered by the department," the local option sales and service tax is a tax administered by the department. Local vehicle, property, whether imposed on centrally assessed property or not, beer and liquor, and insurance premium taxes are non-exclusive examples of taxes which are not administered by the department. For a characterization of the term "substantially" delinquent in paying a tax or charge, see the third unnumbered paragraph of rule 701—13.16(422).

A notice of intent to revoke a permit, with a date to become effective no sooner than 30 days from the date of the notice, will be provided in advance of revocation upon receipt by the board/administrator of a certificate of non-compliance from the child support recovery unit.

This rule is intended to implement Iowa Code section 424.5 and Iowa Code Supplement chapter 252J.

ITEM 4. Amend rule 591—6.15(424) to read as follows:

591—6.15(424) Reinstatement of revoked permit. A revoked permit shall be reinstated only on such terms and conditions as the case may warrant. Terms and conditions shall include payment of any tax, charge, penalty or interest due to the department, *or upon receipt by the department of a withdrawal of a certificate of noncompliance from the child support recovery unit.* Pursuant to the director's statutory authority in Iowa Code section 424.5, to restore permits after revocation, the director has determined that upon the revocation of a depositor's permit the permit holder will be required to *pay all delinquent child support under Iowa Code Supplement chapter 252J; to pay all delinquent charges or taxes, file returns, post a bond and refrain from chargeable occurrences under Iowa Code section 424.3, prior to the reinstatement or issuance of a new depositor's permit.*

As set forth above, the director may impose a waiting period not to exceed 90 days during which a permit holder must refrain from chargeable occurrences, before the director restores a permit or issues a new permit after a revocation. The department may require a sworn affidavit, subject to the penalty for perjury, stating that a permit holder has fulfilled all requirements of an order of revocation and stating the dates during which the permit holder refrained from chargeable occurrences. *A permit revoked for nonpayment of child support will be reinstated upon receipt from the child support recovery unit of a withdrawal of the certificate of noncompliance.*

Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a revoked permit or issue a new permit after a revocation unless otherwise noted.

1. Failure to post a bond as required.
2. Failure to timely file a return.

3. Failure to timely pay the charge or any tax, interest or penalty administered by the department (including un-honored checks and late payments).

4. Failure to comply with any of the provisions of 1989 Iowa Acts, chapter 131, or any rule or order of the department or board.

An administrative law judge or the director may order a waiting period after revocation not to exceed:

1. Five days for one through five offenses.
2. Seven days for six through seven offenses.
3. Ten days for eight through nine offenses.
4. Thirty days for ten offenses or more.

An administrative law judge or the director may order a waiting period not to exceed:

1. Forty-five days if a second revocation occurs within 24 months of a first revocation.
2. Sixty days if a second revocation occurs within 18 months of the first revocation.
3. Ninety days if a second revocation occurs within 12 months of the first revocation.
4. Ninety days if a third or subsequent revocation occurs at any time after a second or other prior revocation.

This rule is intended to implement Iowa Code section 424.5 and Iowa Code Supplement chapter 252J.

ARC 6172A

**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 section 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) hereby gives Notice of Intended Action to amend Chapter 15, "Installers and Inspectors," Iowa Administrative Code.

Rule 591—15.1(455G) and subrules 15.3(1), 15.6(1), 15.7(1), 15.8(1), 15.9(1), 15.12(2), and 15.12(3) are amended by adding language to implement Iowa Code Supplement chapter 252J which requires the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board to deny or revoke a permit or license if the Board has received a certificate of noncompliance from the child support recovery unit.

The Board has determined that these proposed amendments may have an impact on small business. The Board has considered the factors listed in Iowa Code section 17A.31(4) and 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 post-marked no later than January 27, 1996, to the Iowa Com-

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

prehensive Petroleum Underground Storage Tank Fund Board, Administrator, 1000 Illinois Street, Suite B, Des Moines, Iowa 50314. 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 are registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before February 6, 1996. Such written comments should be directed to the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, Robert Galbraith, Department of Justice, 1223 E. Court Avenue, Des Moines, Iowa 50319.

The proposed amendments will not necessitate additional annual expenditures exceeding \$100,000 by political subdivisions or agencies and entities which contract with political subdivisions. Therefore, no fiscal note accompanies this Notice.

Persons who want to orally convey their views should contact the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, Robert Galbraith, Department of Justice, at (515)281-7020 or at the Department of Justice offices at 1223 E. Court Avenue, Des Moines, Iowa.

There will be a public hearing on February 6, 1996, at 10 a. m. in the conference room of the Department of Insurance, Sixth Floor, Lucas State Office Building, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing.

These amendments are intended to implement Iowa Code Supplement chapter 252J.

The following amendments are proposed.

ITEM 1. Amend rule 591—15.1(455G) by adding the following new definitions in alphabetical sequence:

"Certificate of noncompliance" means a document provided by the child support recovery unit certifying that the named obligor is not in compliance with a support order or with a written agreement for payment of support entered into by the unit and the obligor.

"Child support recovery unit" means the child support recovery unit created by Iowa Code section 252B.2.

"Obligor" means a natural person as defined in Iowa Code section 252B.1 who has been ordered by a court or administrative agency to pay support.

"Unit" means the child support recovery unit created in Iowa Code section 252B.2.

"Withdrawal of a certificate of noncompliance" means a document provided by the unit certifying that the certificate of noncompliance is withdrawn and that the licensing authority may proceed with issuance, reinstatement, or renewal of an obligor's license.

ITEM 2. Amend subrule 15.3(1), introductory paragraph, to read as follows:

15.3(1) Licensing of individuals. *Licenses will not be issued to persons who are in noncompliance with the child support recovery unit.* The following individuals shall be licensed:

ITEM 3. Amend subrule 15.6(1) by adding the following new paragraph "f."

f. The applicant shall not have been issued a certificate of noncompliance from the child support recovery unit.

ITEM 4. Amend subrule 15.7(1) by adding the following new paragraph "e."

e. The applicant shall not have been issued a certificate of noncompliance from the child support recovery unit.

ITEM 5. Amend subrule 15.8(1) by adding the following new paragraph "f."

f. The applicant shall not have been issued a certificate of noncompliance from the child support recovery unit.

ITEM 6. Amend subrule 15.9(1) by adding the following new paragraph "e."

e. The applicant shall not have been issued a certificate of noncompliance from the child support recovery unit.

ITEM 7. Amend subrule 15.12(2) by adding the following new paragraph "g."

g. A license will be revoked upon receipt by the administrator of a certificate of noncompliance from the child support recovery unit.

ITEM 8. Amend subrule 15.12(3) to read as follows:

15.12(3) Appeal. Nothing herein shall eliminate the ability of the license holder to appeal, under Iowa Code chapter 17A procedures, any administrative action allowed by these rules.

Notwithstanding Iowa Code section 17A.18, the obligor does not have a right to a hearing before the board to contest the board's actions under Iowa Code Supplement chapter 252J but may request a court hearing pursuant to Iowa Code Supplement section 252J.9 within 30 days of the provision of notice under this section.

ITEM 9. Amend the implementation sentence at the end of 591—Chapter 15 as follows:

These rules are intended to implement Iowa Code chapter 455G and Iowa Code Supplement chapter 252J.

ARC 6173A

**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 section 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board ("Board") hereby gives Notice of Intended Action to amend Chapter 17, "Appeals—Contested Cases," Iowa Administrative Code.

Rule 591—17.32(17A) is amended by adding language to implement Iowa Code Supplement chapter 252J which requires the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board to deny or revoke a permit or license if the board has received a certificate of noncompliance from the Child Support Recovery Unit.

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

Any interested person may make written suggestions or comments on this proposed amendment on or before February 6, 1996. Such written comments should be directed to the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, Robert Galbraith, Department of Justice, 1223 E. Court Avenue, Des Moines, Iowa 50319.

The proposed amendment will not necessitate additional annual expenditures exceeding \$100,000 by political subdivisions or agencies and entities which contract with political subdivisions. Therefore, no fiscal note accompanies this Notice.

Persons who want to orally convey their views should contact the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, Robert Galbraith, Department of Justice, at (515)281-7020 or at the Department of Justice offices at 1223 E. Court Avenue, Des Moines, Iowa.

There will be a public hearing on February 6, 1996, at 10 a.m. in the Conference Room of the Department of Insurance, Sixth Floor, Lucas State Office Building, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing.

This amendment is intended to implement Iowa Code Supplement chapter 252J.

The following amendment is proposed.

Amend subrule 17.32(4) by adding the following new unnumbered paragraph.

Notwithstanding Iowa Code section 17A.18, the obligor does not have the right to a hearing before the board to contest the board's actions under Iowa Code Supplement chapter 252J but may request a court hearing pursuant to Iowa Code Supplement section 252J.9 within 30 days of the provision of notice under this section.

ARC 6174A

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to rescind Chapter 420, "Motor Vehicle Dealers, Manufacturers and Distributors," Chapter 421, "Mobile Home Dealers, Manufacturers and Distributors," and Chapter 422, "Travel Trailer Dealers, Manufacturers and Distributors," and to adopt Chapter 425, "Motor Vehicle, Mobile Home and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Iowa Administrative Code.

Provisions regarding manufacturers, distributors, wholesalers and dealers of motor vehicles, mobile homes and travel trailers are currently addressed in three chapters of rules. The proposed rules combine these provisions into one chapter.

In the proposed rules, definitions for "consumer use" and "designated location" are now applicable to mobile home dealers, in addition to motor vehicle and travel trailer dealers.

A definition for "wholesaler" has been added.

In the proposed rules, the definition of "engage in the business" states that a person selling at retail more than six motor vehicles, six mobile homes or six travel trailers during a 12-month period is presumed to be engaged in the business. The current rules for mobile home dealers do not define "engage in the business." The current rules for travel trailer dealers set the threshold at three, not six.

In the proposed rules, required "regular business hours" for dealers and used vehicle wholesalers are 40 posted hours between 8 a.m. and 4:30 p.m., Monday to Friday. The current rules for motor vehicle dealers require 16 hours. The current rules for mobile home and travel trailer dealers do not specify regular business hours.

The proposed rules clarify what must be submitted by a new vehicle dealer as evidence of a franchise.

The proposed rules require a corporate applicant for a dealer's or used vehicle wholesaler's license to certify compliance with state requirements for incorporation. The current rules require a corporate applicant to submit proof of registering the articles of incorporation with the state.

The proposed rules require an applicant for a dealer's or used vehicle wholesaler's license to certify compliance with zoning laws. The current rules require an applicant to provide evidence of compliance with zoning laws.

A new provision applicable only to motor vehicle dealers allows the Department to issue a temporary license valid until an on-site inspection of the dealership can be completed.

The current rules require an applicant for a dealer's license or used motor vehicle wholesaler's license to submit a copy of the lease agreement if the applicant's place of business/designated location is not owned by the applicant. This requirement has been dropped.

The proposed rules specify that a copy of an ownership document is allowable as evidence of ownership of a vehicle offered for sale if the original document is held by a lienholder.

Most time requirements for filing notice of changes with the Department have been standardized at ten days prior to the change.

There is a rule on fleet and retail auction sales in the current motor vehicle dealer rules. In the proposed rules, this rule applies to all three types of dealers. It specifies that a dealer's license is required for fleet sales or retail auction sales of more than six vehicles in a 12-month period. An exception has been added for incidental vehicle sales at auction.

The proposed rules add a new provision allowing other business activities at a licensed location of a dealer or used vehicle wholesaler as long as these activities do not involve the sale of firearms, alcoholic beverages, or dangerous weapons.

The proposed rules contain new provisions for the salespersons of dealers and used vehicle wholesalers.

A rule on testing permits for motor trucks and truck tractors has been dropped.

The proposed rules define "all weather surface" for display and repair facilities.

For a motor vehicle dealer's license, the proposed rules clarify that a separate license is required for each city or township in which the applicant maintains a place of business. For a mobile home or travel trailer dealer's license, the proposed rules clarify that a separate license is required for each county in which the applicant maintains a place of business.

TRANSPORTATION DEPARTMENT[761](cont'd)

The proposed rules list the form needed to apply for an extension lot license.

The proposed rules modify the definitions of "vehicle show" and "vehicle exhibition." The vehicles shown or exhibited need not be new.

These rules are intended to implement Iowa Code chapters 321, 322, 322B and 322C.

Any person or agency may submit written comments concerning these proposed rules or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639.
5. Be received by the Director's Staff no later than February 6, 1996.

A meeting to hear requested oral presentations is scheduled for Thursday, February 8, 1996, at 10 a.m. in the conference room of the Motor Vehicle Division, which is located on the lower level of Park Fair Mall, 100 Euclid Avenue, Des Moines.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed rules may have an impact on small business. The Department has considered the factors listed in Iowa Code subsection 17A.31(4), paragraphs "a" to "l." The following may request the issuance of a regulatory flexibility analysis: the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons signing the request who qualify as a small business, or an organization registered with the Department and representing at least 25 persons. The request must:

1. Include the name, address, and telephone number of the person(s) authoring the request.
2. Be submitted in writing to the Director's Staff at the address listed in this Notice.
3. Be delivered to the Director's Staff or postmarked no later than 20 days after publication of this Notice in the Iowa Administrative Bulletin.

Proposed rule-making actions:

ITEM 1. Rescind 761—Chapter 420, "Motor Vehicle Dealers, Manufacturers and Distributors," 761—Chapter 421, "Mobile Home Dealers, Manufacturers and Distributors," and 761—Chapter 422, "Travel Trailer Dealers, Manufacturers and Distributors."

ITEM 2. Adopt the following new chapter:

CHAPTER 425

MOTOR VEHICLE, MOBILE HOME AND TRAVEL TRAILER DEALERS, MANUFACTURERS, DISTRIBUTORS AND WHOLESALERS

761—425.1(322) Introduction.

425.1(1) This chapter applies to the licensing of motor vehicle, mobile home and travel trailer dealers, manufacturers, distributors and wholesalers. Also included in this chapter are the criteria for the issuance and use of dealer plates, and rules for the sale of mobile homes.

425.1(2) The office of vehicle services administers this chapter.

a. The mailing address is: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

b. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines.

761—425.2 Reserved.

761—425.3(322) **Definitions.** The following definitions, in addition to those found in Iowa Code sections 322.2, 322B.2 and 322C.2, apply to this chapter of rules:

"Car lot" means an extension lot for the sale of motor vehicles that is located within the same city or township as the motor vehicle dealer's principal place of business but is not adjacent. Parcels of property are adjacent if the parcels are separated only by an alley, street or highway that is not a controlled access facility.

"Certificate of title" means a document issued by the appropriate official which contains a statement of the owner's title, the name and address of the owner, a description of the vehicle, a statement of all security interests, and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms "title certificate," "title only" and "title" shall be synonymous with the term "certificate of title."

"Consumer use" means use of a motor vehicle; mobile home or travel trailer for business or pleasure, not for sale at retail, by a person who has obtained a certificate of title and, except for a mobile home, has registered the vehicle under Iowa Code chapter 321.

"Dealer," unless otherwise specified, means a person who is licensed to engage in this state in the business of selling motor vehicles, mobile homes or travel trailers at retail under Iowa Code chapter 322, 322B or 322C.

"Designated location" means a building actually occupied where the public and the department may contact the owner or operator during regular business hours. In lieu of a building, a mobile home or travel trailer dealer may use a mobile home as an office if taxes are current or a travel trailer as an office if registration fees are current.

"Engage in this state in the business" or similar wording means doing any of the following acts for the purpose of selling motor vehicles, mobile homes or travel trailers at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment or conduct a retail auction, or to act as an agent for the purpose of doing any of these acts. A person selling at retail more than six motor vehicles, six mobile homes or six travel trailers during a 12-month period may be presumed to be engaged in the business. See rule 425.20(322) for provisions regarding fleet sales and retail auction sales.

"Manufacturer's certificate of origin" means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. The terms "manufacturer's statement," "importer's statement or certificate," "MSO" and "MCO" shall be synonymous with the term "manufacturer's certificate of origin." See rule 761—400.1(321) for more information.

"Registered dealer" means a dealer licensed under Iowa Code chapter 322, 322B or 322C who possesses a current dealer certificate under Iowa Code section 321.59.

TRANSPORTATION DEPARTMENT[761](cont'd)

"Regular business hours" means to be consistently open to the public on a weekly basis at hours reported to the office of vehicle services. For a motor vehicle, mobile home or travel trailer dealer or used vehicle wholesaler, regular business hours shall include a minimum of 40 posted hours between 8 a.m. and 4:30 p.m. and between Monday and Friday, inclusive.

"Salesperson" means person employed by a motor vehicle, mobile home or travel trailer dealer or used vehicle wholesaler for the purpose of buying or selling vehicles.

"Travel trailer lot" means an extension lot for the sale of travel trailers that is located within the same county as the travel trailer dealer's principal place of business but is not adjacent. Parcels of property are adjacent if the parcels are separated only by an alley, street or highway that is not a controlled access facility.

"Vehicle," unless otherwise specified, means a motor vehicle, mobile home or travel trailer.

"Wholesaler" means a person who sells vehicles to dealers and not at retail.

This rule is intended to implement Iowa Code chapters 322, 322B and 322C.

761—425.4 to 425.9 Reserved.

761—425.10(322) Application for dealer's license.

425.10(1) Applications forms. To apply for a license as a motor vehicle, mobile home or travel trailer dealer, the applicant shall complete Form 417008, "Application for Dealer's License," and Form 417009, "Fees for Dealer License Application," and submit them to the office of vehicle services.

425.10(2) Surety bond.

a. The applicant shall obtain a surety bond in the following amounts and file the original with the office of vehicle services:

(1) For a motor vehicle dealer's license, \$50,000.

(2) For a mobile home dealer's license, \$25,000.

(3) For a travel trailer dealer's license, \$25,000. However, an applicant for a travel trailer dealer's license is not required to file a bond if the person is licensed as a motor vehicle dealer under the same name and at the same principal place of business.

b. The surety bond shall provide for notice to the office of vehicle services at least 30 days before cancellation.

c. The office of vehicle services shall notify the bonding company of any conviction of the dealer for a violation of dealer laws.

d. If the bond is canceled, the office of vehicle services shall notify the dealer by certified mail that the dealer's license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

425.10(3) Franchise.

a. An applicant who intends to sell new motor vehicles, mobile homes or travel trailers shall submit to the office of vehicle services written evidence of a franchise, contract, agreement or understanding with the manufacturer or distributor of each make the applicant intends to sell.

b. The written evidence of a franchise shall include all of the following:

(1) The name and address of the applicant and the manufacturer or distributor.

(2) The make of motor vehicle, mobile home or travel trailer that the applicant is authorized to sell.

(3) The signatures of both parties.

425.10(4) Corporate applicants. If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

425.10(5) Place of business. The applicant shall maintain a place of business at a designated location. See rules 425.12(322) to 425.14(322) for further requirements.

425.10(6) Zoning. The applicant shall certify on the application that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

425.10(7) Separate licenses required.

a. A separate license is required for each city or township in which an applicant for a motor vehicle dealer's license maintains a place of business.

b. A separate license is required for each county in which an applicant for a mobile home or travel trailer dealer's license maintains a place of business.

425.10(8) to 425.10(10) Reserved.

425.10(11) Verification of compliance. The department shall verify the applicant's compliance with all statutory and regulatory dealer licensing requirements.

This rule is intended to implement Iowa Code sections 322.1 to 322.15, 322B.1 to 322B.8, and 322C.1 to 322C.6.

761—425.11 Reserved.

761—425.12(322) Motor vehicle dealer's place of business.

425.12(1) Verification of compliance; temporary license. Before a motor vehicle dealer's license is issued, an investigator from the department shall physically inspect an applicant's principal place of business to verify compliance with this rule. The department may issue a temporary license upon receipt of certification by the applicant that the place of business complies with this rule. The temporary license shall be in effect until an on-site inspection is completed.

425.12(2) Telephone service and office area. A motor vehicle dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all motor vehicles offered for sale. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

425.12(3) Facility for displaying motor vehicles. A motor vehicle dealer's principal place of business shall include facility for displaying motor vehicles. The facility shall be:

a. A suitable space reserved for display purposes where motor vehicles may be viewed by prospective buyers.

b. Within a building. Exception: For used motor vehicle dealers and for dealers selling new trucks or motor homes exclusively, the display facility may be an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil.

c. Of a minimum size.

(1) For display of motorcycles and motorized bicycles, the minimum size of the display facility is 3 meters by 4.6 meters (10 feet by 15 feet).

(2) For display of other motor vehicles, the minimum size of the display facility is 5.5 meters by 9.1 meters (18 feet by 30 feet).

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425.12(4) Facility for reconditioning and repairing motor vehicles. A motor vehicle dealer's principal place of business shall include a facility for reconditioning and repairing motor vehicles. The facility shall be an area that:

- a. Is equipped to repair and recondition one or more motor vehicles of a type sold by the dealer.
- b. Is within a building.
- c. Has adequate access.
- d. Is separated from the display and office areas by solid, floor-to-ceiling walls and solid, full-length doors.
- e. Is of a minimum size.

(1) The minimum size facility for motorcycles and motorized bicycles is an unobstructed rectangular area measuring 3 meters by 4.6 meters (10 feet by 15 feet).

(2) The minimum size facility for other types of motor vehicles is an unobstructed rectangular area measuring 4.3 meters by 7.3 meters (14 feet by 24 feet).

425.12(5) Motor vehicle dealer who is also a recycler. If a motor vehicle dealer also does business as a recycler, there shall be separate parking for motor vehicles being offered for sale at retail from motor vehicles that are salvage.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

761—425.13(322) Mobile home dealer's place of business.

425.13(1) Telephone service and office area. A mobile home dealer's principal place of business shall include telephone service and an adequate office area for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all mobile homes offered for sale. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

425.13(2) Reserved.

This rule is intended to implement Iowa Code sections 322B.1 to 322B.8.

761—425.14(322) Travel trailer dealer's place of business.

425.14(1) Telephone service and office area. A travel trailer dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all travel trailers offered for sale. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

425.14(2) Facility for displaying travel trailers. A travel trailer dealer's principal place of business shall include a space of sufficient size to permit the display of one or more travel trailers. The display facility may be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil. If an outdoor display facility is maintained, it may be used only to display, recondition or repair travel trailers or to park vehicles.

425.14(3) Facility for repairing and reconditioning travel trailers. A travel trailer dealer's principal place of business shall include a facility for reconditioning and repairing travel trailers. The facility:

- a. Shall be equipped and of sufficient size to repair and recondition one or more travel trailers of a type sold by the dealer.
- b. Shall have adequate access.

c. May be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil.

d. May occupy the same area as the display facility.

425.14(4) Travel trailer dealer also licensed as a motor vehicle dealer. If a travel trailer dealer is also licensed as a motor vehicle dealer under the same name and at the same principal place of business, separate facilities for displaying, repairing and reconditioning travel trailers are not required.

This rule is intended to implement Iowa Code sections 322C.1 to 322C.6.

761—425.15 and 425.16 Reserved.

761—425.17(322) Extension lot license. Extension lots of motor vehicle and travel trailer dealers must be licensed. Application shall be made on Form 417059, "Application for Dealer's Extension Lot License."

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

761—425.18(322) Supplemental statement of changes. A motor vehicle or mobile home dealer shall file a written statement with the office of vehicle services at least ten days before any change of name, location, hours, or method or plan of doing business. A license is not valid until the changes listed in the statement have been approved by the office of vehicle services.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322B.1 to 322B.8.

761—425.19 Reserved.

761—425.20(322) Fleet vehicle sales and retail auction sales.

425.20(1) Fleet sales. Any person who has acquired vehicles for consumer use in a business shall obtain the appropriate dealer's license when more than six vehicles are offered for sale at retail in a 12-month period.

425.20(2) Retail auction sales. Any person who sells at public auction more than six vehicles in a 12-month period shall obtain the appropriate dealer's license. All certificates of title for the vehicles offered for sale at public auction shall be duly assigned to the dealer.

425.20(3) Place of business. A dealer's license issued under this rule does not require a place of business.

425.20(4) Exceptions.

a. The state of Iowa, counties, cities and other governmental subdivisions are not required to obtain a dealer's license to sell their vehicles at retail.

b. This rule does not apply to a vehicle owner, or to an auctioneer representing the owner, selling vehicles at a retail auction if the vehicles were acquired by the owner for consumer use, the vehicles are incidental to the auction, and only one owner's vehicles are sold.

This rule is intended to implement Iowa Code sections 322.1 to 322.15, 322B.1 to 322B.8, and 322C.1 to 322C.6.

761—425.21 to 425.23 Reserved.

761—425.24(322) Miscellaneous requirements.

425.24(1) The department shall not issue a license under Iowa Code chapter 322, 322B or 322C to any other person at a place of business or designated location of a person currently licensed under Iowa Code chapter 322, 322B or 322C.

425.24(2) A motor vehicle, mobile home or travel trailer dealer shall not represent or advertise the dealership

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under any name or style other than the name which appears on the dealer's license.

425.24(3) Other business activities are allowed at a place of business of a dealer or the designated location of a used vehicle wholesaler, but those activities shall not include the sale of firearms, dangerous weapons as defined in Iowa Code section 702.7, or alcoholic beverages as defined in Iowa Code subsection 123.3(4).

This rule is intended to implement Iowa Code sections 322.1 to 322.15, 322B.1 to 322B.8, and 322C.1 to 322C.6.

761—425.25 Reserved.

761—425.26(322) Fairs, shows and exhibitions.

425.26(1) Definitions. As used in this rule:

"Display without permit" means the motor vehicle, mobile home or travel trailer dealer may provide staff for security and for explaining or describing the design, features, performance, options and models of the vehicles being shown. The dealer may also post, display or provide product information through literature or other descriptive media. However, the product information shall not include prices, except for the manufacturer's sticker price. "Display" does not mean offering vehicles for sale or negotiating sales of vehicles.

"Fair" means a county fair or a scheduled gathering for a predetermined period of time at a specific location for the exhibition, display or sale of various wares, products, equipment, produce or livestock, but not solely vehicles, and sponsored by a person other than a single dealer.

"Offer" vehicles "for sale," "negotiate sales" of vehicles, or similar wording, means doing any of the following at a fair, show or exhibition: posting prices in addition to the manufacturer's sticker price, discussing prices or trade-ins, arranging for payments or financing, and initiating contracts.

"Vehicle exhibition" means a scheduled event conducted at a specific location where various types, makes or models of vehicles are displayed, either at the same time or consecutively in time, and sponsored by a person other than a single dealer.

"Vehicle show" means a scheduled event conducted for a predetermined period of time at a specific location for the purpose of displaying at the same time various types, makes or models of vehicles, which may be in conjunction with other events or displays, and sponsored by a person other than a single dealer.

425.26(2) Permits for motor vehicle dealers. A fair, show or exhibition permit allows a motor vehicle dealer to display and offer new motor vehicles for sale and negotiate sales of new motor vehicles at a specified county fair, vehicle show or vehicle exhibition that is held in the same county as the motor vehicle dealer's principal place of business. Exception: A motor vehicle dealer who is licensed to sell motor homes may be issued a permit to offer for sale Class "A" and Class "C" motor homes at a specified fair, show or exhibition in any Iowa county.

a. Permits will be issued to motor vehicle dealers only for county fairs, vehicle shows or vehicle exhibitions where more than one motor vehicle dealer may participate.

b. The permit period is the duration of the event, not to exceed 14 days. The permit is not valid on Sundays. Only one permit may be issued to each motor vehicle dealer for an event.

c. The permit is limited to the line makes for which the motor vehicle dealer is licensed in Iowa.

425.26(3) Permits for mobile home dealers. A fair, show or exhibition permit allows a mobile home dealer to display and offer new mobile homes for sale and negotiate sales of new mobile homes at a specified fair, vehicle show, or vehicle exhibition in any Iowa county.

a. The permit period is the duration of the event, not to exceed 14 days. The permit is valid on Sundays.

b. The permit is limited to the line makes for which the mobile home dealer is licensed in Iowa.

425.26(4) Permits for travel trailer dealers. A fair, show or exhibition permit allows a travel trailer dealer to display and offer new travel trailers for sale and negotiate sales of new travel trailers at a specified fair, vehicle show, or vehicle exhibition in any Iowa county.

a. The permit period is the duration of the event, not to exceed 14 days. The permit is valid on Sundays.

b. The permit is limited to the line makes for which the travel trailer dealer is licensed in Iowa.

425.26(5) Permit application. A motor vehicle, mobile home or travel trailer dealer shall apply for a fair, show or exhibition permit on Form 41119. The application shall include the dealer's name, address and license number and the following information about the fair, show or exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

425.26(6) Display of permit. The motor vehicle, mobile home, or travel trailer dealer shall display the permit at the fair, show or exhibition in close proximity to the vehicles being exhibited.

425.26(7) Variance. The department may grant a variance from the requirements of these rules and grant a special limited permit for the display only of motor homes or travel trailers at a convention sponsored by an established national association, if the department determines that granting the permit would not encourage evasion of these rules and that the public interest so demands. The department may impose alternative permit requirements.

425.26(8) Display without permit. A dealer who does not have a permit may display vehicles at fairs, vehicle shows and vehicle exhibitions.

This rule is intended to implement Iowa Code sections 321.124, 322.5(2), 322B.3(4) and 322C.3(9).

761—425.27 and 425.28 Reserved.

761—425.29(322) Classic car permit. A classic car permit allows a motor vehicle dealer to display and sell classic cars at a specified county fair, vehicle show or vehicle exhibition that is held in the same county as the motor vehicle dealer's principal place of business. "Classic car" is defined in Iowa Code subsection 322.5(3).

425.29(1) The permit period is the duration of the event, not to exceed five days. The permit is valid on Sundays. Only one permit may be issued to each motor vehicle dealer for an event. No more than three permits may be issued to a motor vehicle dealer in any one calendar year.

425.29(2) Application for a classic car permit shall be made on Form 411045. The application shall include dealer's name, address and license number and the following information about the county fair, vehicle show or vehicle exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

425.29(3) The motor vehicle dealer shall display the permit in a prominent place at the location of the county fair, vehicle show or vehicle exhibition.

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This rule is intended to implement Iowa Code subsection 322.5(3).

761—425.30 to 425.39 Reserved.

761—425.40(322) Salespersons of dealers and used vehicle wholesalers.

425.40(1) Every motor vehicle, mobile home, and travel trailer dealer and used vehicle wholesaler shall:

a. Keep a current written record of all salespersons acting in its behalf. The record shall be open to inspection by any peace officer or any employee of the department.

b. Maintain a current record of authorized persons allowed to sign all documents required under Iowa Code chapter 321 for vehicle sales.

425.40(2) No person shall either directly or indirectly claim to represent a dealer or used vehicle wholesaler unless the person is listed as a salesperson by that dealer or wholesaler.

This rule is intended to implement Iowa Code sections 322.3, 322.13, 322B.7 and 322C.4.

761—425.41 to 425.49 Reserved.

761—425.50(322) Manufacturers, distributors, wholesalers, factory branches and distributor branches. This rule applies to the licensing of manufacturers, distributors, wholesalers, factory branches and distributor branches of new motor vehicles, mobile homes and travel trailers. The licensing of used vehicle wholesalers is addressed in rule 425.52(322).

425.50(1) Application for license. To apply for a license, the applicant shall complete Form 417029, "Manufacturer, Distributor, Wholesaler Application for License," and submit it to the office of vehicle services, accompanied by a list of the applicant's franchised dealers in Iowa and a sample copy of a completed manufacturer's certificate of origin that is issued by the firm. A distributor or wholesaler shall also provide a copy of written authorization from the manufacturer to act as its distributor or wholesaler.

425.50(2) Licensing requirements.

a. Motor vehicle zone offices shall be licensed as factory or distributor branches.

b. New motor homes delivered to Iowa dealers must contain the systems and meet the standards specified in Iowa Code paragraph 321.1(39)"d." A motor home manufacturer shall affix in a prominent location within each motor home manufactured for delivery in this state a seal signifying compliance with the required standards. The seal shall measure at least 50 millimeters (2 inches) in both height and width. The standards seal issued by the Recreation Vehicle Industry Association is acceptable.

c. A licensee shall ensure that any new retail outlet is properly licensed as a dealer before any vehicles are delivered to the outlet.

d. A licensee shall notify the office of vehicle services in writing at least ten days prior to any:

(1) Change in name, location or method of doing business, as shown on the license.

(2) Issuance of a franchise to a dealer in this state to sell new vehicles at retail.

(3) Change in authorized representatives who are subject to licensing.

(4) Change in the trade name of a mobile home or travel trailer manufactured for delivery in this state.

e. A licensee shall notify the office of vehicle services in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

This rule is intended to implement Iowa Code sections 322.27 to 322.30, 322B.4, and 322C.7 to 322C.9.

761—425.51(322) Factory or distributor representatives. A representative of a person licensed under rule 425.50(322) is required to have a factory or distributor representative's license. Application shall be made on Form 417032 to the office of vehicle services.

This rule is intended to implement Iowa Code sections 322.27 to 322.30, 322B.4, and 322C.7 to 322C.9.

761—425.52(322) Used vehicle wholesalers.

425.52(1) Application for license. To apply for a license as a used vehicle wholesaler, the applicant shall complete Form 417004, "Used Vehicle Distributor/Wholesaler Application for License," and submit it to the office of vehicle services. The applicant shall certify on the application that the applicant's designated location complies with all applicable zoning provisions or is a legal nonconforming use. If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

425.52(2) Licensing requirements. The licensee shall:

a. Maintain regular business hours and telephone service at a designated location. The location shall include separate and adequate office space for keeping records of vehicles sold and offered for sale. Before a license is issued, an investigator from the department shall physically inspect the location to verify compliance with this rule.

b. Represent and advertise the business under the name which appears on the license.

c. Confine the sale of vehicles to licensed dealers.

d. Notify the department in writing at least ten days before any change in name, location, hours or method of doing business, as shown on the license.

425.52(3) Renewal. The license must be renewed annually.

This rule is intended to implement Iowa Code sections 322.27 to 322.30, 322B.4, and 322C.7 to 322C.9.

761—425.53 to 425.59 Reserved.

761—425.60(322) Right of inspection.

425.60(1) Peace officers have the authority to inspect vehicles or component part of vehicles, business records, and manufacturers' certificates of origin, certificates of title and other evidence of ownership for all vehicles offered for sale.

425.60(2) The department has the right at any time to verify compliance of a person licensed under Iowa Code chapter 322, 322B or 322C or issued a certificate under Iowa Code section 321.59 with all statutory and regulatory requirements.

This rule is intended to implement 321.62, 321.95, 322.13, 322B.7 and 322C.1.

761—425.61 Reserved.

761—425.62(322) Denial, suspension or revocation.

425.62(1) The department may deny an application or suspend or revoke a certificate or license if the applicant, certificate holder or licensee fails to comply with the applicable provisions of this chapter of rules, Iowa Code sec-

TRANSPORTATION DEPARTMENT[761](cont'd)

tions 321.57 to 321.63 or Iowa Code chapter 322, 322B or 322C.

425.62(2) The department may deny a dealer's application for a fair, show or exhibition permit for a period not to exceed six months if the dealer fails to comply with the applicable provisions of rule 425.26(322) or Iowa Code subsection 322.5(2), 322B.3(4) or 322C.3(9).

425.62(3) The department may deny a motor vehicle dealer's application for a demonstration permit for a period not to exceed six months if the dealer fails to comply with rule 425.72(322).

425.62(4) A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with rules 761—Chapter 13.

This rule is intended to implement Iowa Code chapter 17A and sections 321.57 to 321.63, 322.6, 322.9, 322.31, 322B.6, and 322C.6.

761—425.63 to 425.69 Reserved.

761—425.70(321) Dealer plates.

425.70(1) Definition. The definitions of "dealer" and "vehicle" in Iowa Code section 321.1 apply to this rule.

425.70(2) Persons who may be issued dealer plates. Dealer plates as provided in Iowa Code sections 321.57 to 321.63 may be issued to:

- a. Licensed motor vehicle dealers.
- b. Licensed mobile home dealers. The plates shall display the word "trailer."
- c. Licensed travel trailer dealers. The plates shall display the word "trailer."
- d. A person engaged in the business of buying, selling or exchanging trailer-type vehicles subject to registration under Iowa Code chapter 321, other than travel trailers, and who has an established place of business for such purpose in this state. The plates shall display the word "trailer."
- e. Insurers selling vehicles of a type subject to registration under Iowa Code chapter 321 solely for the purpose of disposing of vehicles acquired as a result of a damage settlement or recovered stolen vehicles acquired as a result of a loss settlement. The plates shall display the words "limited use."
- f. Persons selling vehicles of a type subject to registration under Iowa Code chapter 321 solely for the purpose of disposing of vehicles acquired or repossessed by them in exercise of powers or rights granted by lien or title-retention instruments or contracts given as security for loans or purchase money obligations, and who are not required to be licensed dealers. The plates shall display the words "limited use."
- g. Persons engaged in the business of selling special equipment body units which have been or will be installed on motor vehicle chassis not owned by them, solely for the purpose of delivering, testing or demonstrating the special equipment body and the motor vehicle. The plates shall display the words "limited use."
- h. A licensed wholesaler who is also licensed as a motor vehicle dealer as specified in paragraph 425.70(3)"e."

425.70(3) Use of dealer plates.

a. Dealer plates shall not be displayed on vehicles that are rented, leased or loaned. However, a dealer plate may be displayed on a motor vehicle, other than a truck or truck tractor, loaned to a customer of a licensed motor vehicle dealer while the customer's motor vehicle is being serviced or repaired by the dealer.

b. Motor vehicles used by dealers, manufacturers or distributors to transport other vehicles shall be registered, except when being transported from the place of manufacturing, assembling or distribution to a dealer's place of business.

c. Saddle-mounted vehicles being transported shall display dealer plates.

d. Trailer dealer plates may be displayed on a trailer carrying a load, provided the truck or truck tractor towing the trailer is properly registered under Iowa Code section 321.122, except as provided in rule 425.72(321).

e. Dealer plates may be used by a dealer licensed as a wholesaler for a new motor vehicle model when operating a new motor vehicle of that model if the motor vehicle is owned by the wholesaler and is operated solely for the purpose of demonstration, show or exhibition.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

761—425.71 Reserved.

761—425.72(321) Demonstration permits.

425.72(1) Demonstration permits may be issued to motor vehicle dealers to permit the use of dealer plates for the purpose of demonstrating the load capabilities of motor trucks and truck tractors. The fee for a permit is \$10.

425.72(2) The dealer shall complete the permit form. The information to be filled out includes, but is not limited to, the following:

- a. Date of issuance by the dealer, date of expiration, and the specific dates for which the permit is valid. The expiration date shall be five days or less from the date of issuance.
 - b. Dealer's name, address and license number.
 - c. Name(s) of the prospective buyer(s) and all prospective drivers.
 - d. Route of the demonstration trip. The points of origin and destination shall be the dealership. The permit is not valid for a route outside Iowa.
 - e. The make, year and vehicle identification number of the motor vehicle being demonstrated.
- 425.72(3)** The permit is a three-part form. The original copy of the permit shall at all times be carried in the motor vehicle to which it refers and shall be shown to any peace officer upon request. The dealer shall mail or deliver the second copy to the office of vehicle services within 48 hours after issuance. The dealer shall retain the third copy for at least one year from the date of issuance.
- 425.72(4)** Only one demonstration permit per motor vehicle shall be issued for a prospective buyer.

425.72(5) The demonstration permit is valid only for a movement that does not exceed the legal length, width, height and weight restrictions. The permit is not valid for an overdimensional or overweight movement.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

761—425.73 to 425.79 Reserved.

761—425.80(321) Sale of mobile homes.

425.80(1) Mobile home owned by dealer.

a. A mobile home owned by a mobile home dealer shall not be offered for sale unless the dealer has a properly assigned manufacturer's certificate of origin, a properly assigned foreign certificate of title, or an Iowa certificate of title in the dealer's name. A used mobile home with an Iowa title assigned to a mobile home dealer shall not be re-

TRANSPORTATION DEPARTMENT[761](cont'd)

assigned by the dealer. The dealer shall within 15 days after acquiring the used mobile home obtain a new certificate of title; no title fee shall be charged.

b. A mobile home dealer shall not sell a mobile home owned by the dealer without delivering to the transferee a manufacturer's certificate of origin or a certificate of title duly assigned or reassigned to the transferee.

425.80(2) Mobile home not owned by dealer. A mobile home that is not owned by a mobile home dealer may be offered for sale and sold by the dealer under the following conditions:

a. The mobile home owner and dealer shall enter into a written listing agreement, signed by the dealer and the owner or by one owner of a jointly owned mobile home. The listing agreement shall be dated and include the following:

- (1) The make, model year, and vehicle identification number of the mobile home.
- (2) The period of time the agreement will remain in force.
- (3) The commission or other remuneration the dealer is entitled to receive.
- (4) The price for which the mobile home will be sold.
- (5) The name and address of the secured party if the mobile home is subject to a security interest.
- (6) Any additional terms to which the owner and dealer agree.

b. If current taxes have not been paid, the taxes and penalties shall be paid from the proceeds of the sale.

c. The dealer shall inform a prospective purchaser of the mobile home that the mobile home is not owned by the dealer and, if requested by a prospective purchaser, give the name and address of the owner.

d. An offer to purchase the mobile home shall be in writing.

e. Upon sale of the mobile home, the dealer shall prepare a written disclosure statement in duplicate. The statement shall include a description of the mobile home, the name and address of the owner, the name and address of the secured party if the mobile home is subject to a security interest, and the amount of taxes and penalties due if the current taxes have not been paid.

The disclosure statement shall be signed and dated by the transferee. The original shall be given to the transferee and the duplicate shall be retained by the dealer at the dealer's principal place of business for three years.

f. The written listing agreement and written disclosure statement shall be made available upon request to any peace officer employed by the department.

This rule is intended to implement Iowa Code sections 321.24, 321.45, 321.46, 321.104 and 322B.6.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Michael K. Guttau, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for December is 8.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective December 1, 1995, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7 - 31 days	Minimum 4.80%
32 - 89 days	Minimum 4.30%
90 - 179 days	Minimum 4.90%
180 - 364 days	Minimum 5.10%
One year	Minimum 4.80%
Two years or more	Minimum 5.80%

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

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

ARC 6180A

LAW ENFORCEMENT ACADEMY[501]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy hereby adopts an amendment to Chapter 1, "Organization and Administration," Iowa Administrative Code.

The purpose of this amendment is to provide a procedure and to facilitate the process by which interested persons can request the Academy to address its rules.

In compliance with Iowa Code section 17A.4(2), this agency finds that good cause exists that notice and public participation are unnecessary as a delay in the implementation of this amendment is not in the public interest.

The agency also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment, 35 days after publication, should be waived and the amendment made effective upon filing on December 27, 1995, as a matter is presently pending submission to the Iowa Law Enforcement Academy Council and the establishment of a procedure is necessary in order that the matter can be timely and properly addressed.

This amendment was approved by the Iowa Law Enforcement Academy Council on December 12, 1995.

This amendment is also published herein under Notice of Intended Action as ARC 6179A to allow for public comment.

This amendment is intended to implement Iowa Code section 17A.7.

The following amendment is adopted.

Amend 501—Chapter 1 by adding a new rule 1.11(17A,80B) as follows:

501—1.11(17A,80B) Petition for rule making. Any person or agency may file a petition for rule making with the Academy Council at the Iowa Law Enforcement Academy, Camp Dodge, P.O. Box 130, Johnston, Iowa 50131-0130.

1.11(1) The petition. A petition is deemed filed when it is received by the academy. The academy must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the academy with an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

IOWA LAW ENFORCEMENT ACADEMY COUNCIL

Petition by {Name of Petitioner})
for the {adoption, amendment or) PETITION FOR
repeal} of rules relating to) RULE MAKING
{state subject matter}.)

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

2. A citation to any law deemed relevant to the academy council's authority to take the action urged or to the desirability of that action.

3. A brief summary of petitioner's arguments in support of the action urged in the petition.

4. A brief summary of any data supporting the action urged in the petition.

5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

6. Any request by petitioner for a meeting provided for by subrule 1.11(4).

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

The academy council may deny a petition because it does not substantially conform to the required form.

1.11(2) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The academy council or the academy staff may request a brief from the petitioner or from any other person concerning the substance of the petition.

1.11(3) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Academy Director, Iowa Law Enforcement Academy Council, Camp Dodge, P.O. Box 130, Johnston, Iowa 50131-0130.

1.11(4) Academy council consideration. Upon request by petitioner in the petition, the academy director must schedule a brief and informal meeting between the petitioner and the academy council, a member of the academy council, or a member of the staff of the academy to discuss the petition. The academy council or a member of the academy staff may request the petitioner to submit additional information or argument concerning the petition. Comments may also be solicited from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the academy council by any person.

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

Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the academy council's rejection of the petition.

This rule is intended to implement Iowa Code section 17A.7.

[Filed Emergency 12/27/95, effective 12/27/95]
[Published 1/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/17/96.

ARC 6175A
LAW ENFORCEMENT
ACADEMY[501]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy hereby adopts a new Chapter 12, "Child Support," Iowa Administrative Code.

This new chapter follows the recommendations made by the Attorney General's office in implementing 1995 Iowa Acts, chapter 115, which mandates denying the issuance of a law enforcement officer's certification upon receipt of a notice of noncompliance pursuant to Iowa Code Supplement chapter 252J.

In accordance with Iowa Code section 17A.4(2), the agency finds that good cause exists that notice and public participation are unnecessary as a delay in the effective date of this rule is not in the public interest and could have an adverse impact on the Academy's implementation of this chapter.

The agency also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of the rules, 35 days after publication, should be waived and the rules should be made effective on January 1, 1996, as 1995 Iowa Acts, chapter 115, section 14, requires licensing authorities to adopt such rules on or before January 1, 1996.

This change was approved by the Iowa Law Enforcement Academy Council on December 12, 1995.

This new chapter became effective January 1, 1996.

These rules are intended to implement Iowa Code Supplement chapter 252J.

The following new chapter is adopted:

CHAPTER 12
CHILD SUPPORT

501—12.1(252J) Issuance of academy council certification. The council shall deny the issuance of a law enforcement officer's certification upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code Supplement chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

12.1(1) The notice required by Iowa Code Supplement section 252J.8 shall be served upon the law enforcement officer or applicant to be a law enforcement officer by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the law enforcement officer or applicant to be a law enforcement officer may accept service personally or through authorized counsel.

12.1(2) The effective date of the denial of the issuance of a law enforcement officer's certification, as specified in the notice required by section 252J.8, shall be 60 days following service of the notice upon the law enforcement officer or applicant to be a law enforcement officer.

12.1(3) The academy director is authorized to prepare and serve the notice required by section 252J.8 upon the law enforcement officer or applicant to be a law enforcement officer.

12.1(4) Law enforcement officers and applicants to be a law enforcement officer shall keep the council informed of all court actions and all child support recovery unit actions taken under or in connection with chapter 252J and shall

provide the council copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

12.1(5) All council fees for applications, certification or reinstatement must be paid by law enforcement officers or applicants to be a law enforcement officer before a law enforcement officer's certification will be issued or reinstated after the council has denied the issuance or reinstatement of a certification pursuant to chapter 252J.

12.1(6) In the event a law enforcement officer or applicant to be a law enforcement officer timely files a district court action following service of a council notice pursuant to sections 252J.8 and 252J.9, the council shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the council to proceed. For purposes of determining the effective date of the denial of the issuance of a certificate of registration, the council shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

12.1(7) The council shall notify the law enforcement officer or applicant to be a law enforcement officer in writing through regular first-class mail, or such other means as the council deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance of a law enforcement officer's certification, and shall similarly notify the law enforcement officer or applicant to be a law enforcement officer when the certification is issued following the council's receipt of a withdrawal of the certificate of noncompliance.

501—12.2(252J) Suspension or revocation of academy council certification. The council shall suspend or revoke a law enforcement officer's certification upon the receipt of a certification of noncompliance from the child support recovery unit of the department of human services according to the procedures in chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

12.2(1) The notice required by section 252J.8 shall be served upon the law enforcement officer by restricted certified mail, return receipt requested, or personal service in accordance with R.C.P. 56.1. Alternatively, the law enforcement officer may accept service personally or through authorized counsel.

12.2(2) The effective date of revocation or suspension of a law enforcement officer's certification, as specified in the notice required by section 252J.8, shall be 60 days following service of the notice upon the law enforcement officer.

12.2(3) The academy director is authorized to prepare and serve the notice required by section 252J.8 and is directed to notify the law enforcement officer that the officer's certification will be suspended, unless the registration is already suspended on other grounds. In the event a law enforcement officer's certification is on suspension, the academy director shall notify the law enforcement officer of the council's intention to revoke the officer's certification.

12.2(4) Law enforcement officers shall keep the council informed of all court actions and all child support recovery unit actions taken under or in connection with chapter 252J and shall provide the council copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to section 252J.9, all court orders entered in

LAW ENFORCEMENT ACADEMY[501](cont'd)

such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

12.2(5) All council fees for certification or reinstatement must be paid by the law enforcement officer before an officer's certification will be reinstated after the council has suspended or revoked a certification pursuant to chapter 252J.

12.2(6) In the event a law enforcement officer timely files a district court action following service of a council notice pursuant to sections 252J.8 and 252J.9, the council shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the council to proceed. For purposes of determining the effective date of revocation or suspension, the council shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

12.2(7) The council shall notify the law enforcement officer in writing through regular first-class mail, or such other means as the council deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the law enforcement officer's certification and shall similarly notify the law enforcement officer when the certification is reinstated following the council's receipt of a withdrawal of the certificate of noncompliance.

501—12.3(17A,22,252J) Confidentiality. Notwithstanding any statutory confidentiality provision, the council may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying law enforcement officers or applicants to be a law enforcement officer who are subject to enforcement under chapter 252J or 598.

[Filed Emergency 12/22/95, effective 1/1/96]
[Published 1/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/17/96.

ARC 6042A. This amendment will change the date back to May 5, 1989, to be consistent with the previous rules and Iowa Code section 455G.9(1)"a"(1). This amendment will become effective December 27, 1995, to be consistent with the effective date of the other amendments in **ARC 6042A.**

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because the amendment simply corrects an inadvertent date change and replaces the wrong date with the date which is consistent with Iowa Code.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective December 27, 1995, as it will impact the working procedures of the Board if the correction is not made.

The Board adopted this amendment on December 20, 1995.

This amendment became effective on December 27, 1995.

This amendment is intended to implement Iowa Code chapter 455G.

The following amendment is adopted.

Amend 11.1(3)"d," introductory paragraph, as follows:

d. Claims which are filed with the board prior to January 31, 1990, or if filed by a city or county on or before September 1, 1990, for releases reported to the department after July 1, 1987, but prior to ~~May 8, 1989~~ *May 5, 1989*; and claims filed with the board prior to September 1, 1990, for releases reported to the department after January 1, 1984, but prior to July 1, 1987, are retroactive claims which shall be eligible for reimbursement subject to the following guidelines:

[Filed Emergency 12/26/95, effective 12/27/95]
[Published 1/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/17/96.

ARC 6177A**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 455G.4(3) and 455G.9, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) hereby amends Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

The purpose of this amendment is to change the date by which a release had to be reported to the Department of Natural Resources in order to be considered a retroactive claim. The date in 11.1(3)"d," which became effective December 27, 1995, was inadvertently changed from "May 5, 1989" to "May 8, 1989" in both the Notice of Intended Action published as **ARC 5840A** and Adopted and Filed as

ARC 6169A**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby amends Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 19, 1995, as **ARC 5724A.** No comments were received during the comment period which closed August 8, 1995. The Board adopted this amendment on December 20, 1995.

Iowa Code section 455G.19 provides for an environmental damage offset against remedial account benefits.

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

Rule 591—11.5(455G) is the Board rule implementing this environmental damage offset. The General Assembly passed House File 508 in 1995, which was signed into law by the Governor. A portion of 1995 Iowa Acts, chapter 215, repeals Iowa Code section 455G.19, thereby eliminating the environmental damage offset.

The Board finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this rescission, 35 days after publication, should be waived and the rescission should become effective on December 29, 1995, after filing with the Administrative Rules Coordinator. The rule making implements the 1995 legislation and confers a benefit on the public by the elimination of the environmental damage offset.

This rescission was approved by the Board at their meeting held December 20, 1995.

This rescission became effective December 29, 1995.

The following amendment is adopted.

Amend 591—Chapter 11 by rescinding rule 591—11.5(455G).

[Filed Emergency After Notice 12/21/95, effective 12/29/95]
[Published 1/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/17/96.

ARC 6168A

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

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 455G.4(3), the Iowa Comprehensive Petroleum Under-

ground Storage Tank Fund Board hereby amends Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 19, 1995, as ARC 5723A. No comments were received during the comment period which closed August 8, 1995. The Board adopted this amendment on December 20, 1995.

Rule 591—11.7(455G) sets forth prioritization of remedial account claims. This rule was promulgated by the Board pursuant to the statutory authority of Iowa Code section 455G.9(5). The General Assembly passed House File 508 in 1995, which was signed into law by the Governor. A portion of 1995 Iowa Acts, chapter 215, repeals Iowa Code section 455G.9(5), thereby eliminating the Board's authority to prioritize remedial account claims.

The Board finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this rescission, 35 days after publication, should be waived and the rescission should become effective on December 29, 1995, after filing with the Administrative Rules Coordinator. The rule making implements the 1995 legislation and both confers a benefit and removes a restriction on the public by the elimination of prioritization of remedial account claims.

This rescission was approved by the Board at their meeting held December 20, 1995.

This rescission became effective December 29, 1995.

The following amendment is adopted.

Amend 591—Chapter 11 by rescinding rule 591—11.7(455G).

[Filed Emergency After Notice 12/21/95, effective 12/29/95]
[Published 1/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/17/96.

ARC 6181A

JOB SERVICE DIVISION[345]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Commissioner of the Division of Job Service hereby adopts amendments to Chapter 3, "Employer's Contributions and Charges," Chapter 4, "Claims and Benefits," and Chapter 5, "Benefit Payment Control," Iowa Administrative Code.

These amendments are identical to those published under Notice of Intended Action in the November 22, 1995, Iowa Administrative Bulletin as ARC 6036A.

Subrule 3.43(3), paragraph "b," is amended to allow charges to be removed from reimbursable accounts under the rule of two affirmances.

Subrule 3.43(5) is amended to provide for relief of charges when claimant voluntarily quits to accept other or better employment.

Subrule 3.43(6), which explained charging in the case of other employment, is rescinded.

Subrule 3.43(8), paragraphs "b," "c," and "e," are amended to provide relief of charges for requalification after voluntary quit without good cause, misconduct or a refusal of suitable work.

Subrule 3.43(9) is amended to provide for charges to reimbursable employers for combined wage claims paid by another state.

Subrules 3.43(13), 3.43(14), and 3.43(15) are rescinded because they are obsolete subrules dealing with requalification.

Subrule 3.43(17) is amended to provide for the timely protest due to a partial transfer.

Subrule 3.44(1) is amended to provide for the relief of charges when an overpayment is established.

Subrules 3.44(2) and 3.44(3) are added to address reimbursable overpayment charging procedures.

Subrule 3.44(7) is rescinded.

Rule 345—4.27(96) is amended to reflect legislation which relieves charges which were previously charged to the subsequent employer.

Subrule 4.28(5) is amended to provide eligibility for benefits if left for other or better employment.

Subrule 4.52(10), paragraphs "c" and "d," are amended to reflect the current Iowa Code citation.

Subrule 5.7(6), paragraph "f," is amended to provide for relief of charges for reimbursables as the general rule.

These amendments were adopted by the Director of the Department of Employment Services on December 28, 1995.

These amendments will become effective on February 21, 1996.

These amendments are intended to implement Iowa Code sections 96.4(5) and 96.20 and Iowa Code Supplement sections 96.3(7), 96.5(1)"a," 96.6(2), and 96.7(2)"a"(2).

The following amendments are adopted.

ITEM 1. Amend subrule 3.43(3), paragraph "b," subparagraph (1), to read as follows:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim, ~~but this does not apply to a reimbursable employer.~~

ITEM 2. Rescind subrule 3.43(5) and insert the following new subrule in lieu thereof:

3.43(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

ITEM 3. Rescind and reserve subrule 3.43(6).

ITEM 4. Amend subrule 3.43(8), paragraphs "a," "b," "c," "e," and "f," rescind existing paragraph "d," and reletter existing paragraphs "e" and "f" as "d" and "e" as follows:

a. In order to meet the ten times the weekly benefit amount in insured work requalification provision, the following criteria must be met:

Subsequent to leaving *or refusing work*, the individual shall have worked in (except in back pay awards) and been paid wages equal to ten times the claimant's weekly benefit amount.

b. An employer's account shall not be charged with benefit payments to an eligible claimant who quit such employment ~~but shall be charged to the account of the next succeeding covered employer with whom the individual worked in (except in back pay awards) and received wages in insured employment equal to ten (10) times the claimant's weekly benefit amount.~~ *without good cause attributable to the employer or who was discharged for misconduct or who failed without good cause either to apply for available, suitable work or to accept suitable work with that employer but shall be charged to the balancing account.*

c. The requalification and transfer of charges shall occur for the ~~contributory~~ employer if the requalifying employment is earned with an out-of-state covered employer. ~~However, the~~ *The* transfer of charges shall be made to the balancing account.

d. ~~The requalification shall occur for the employer who is required by law or by voluntary election to reimburse the trust fund for benefits paid if the requalifying employment is earned with an out-of-state covered employer. However, the transfer of charges shall not occur but will accrue to the account of the reimbursable employer.~~

e. *d.* Periods of insured employment with separate employers may be joined to collectively equal ten times the individual's weekly benefit amount when requalification cannot be accomplished by an individual insured employer. The employer from whom the individual left work, *was discharged or with whom the individual failed to apply or accept suitable work*, will not accrue any charges and subsequent employers will not receive charges because ~~none of such employers provided the required minimum of not less than ten (10) times the individual's weekly benefit amount in insured employment except that an employer who is required by law or by election to reimburse the trust fund shall be charged with the benefits paid.~~

f. *e.* Before benefits can be paid or the transfer of charges can occur, sufficient evidence must be present to establish the fact that the criteria in subrule 3.43(8), paragraph "a," has been met. Verification of employment must

JOB SERVICE DIVISION[345](cont'd)

~~be made and such verification can be made but is not limited to the following method may be completed through the records of the division or by using any method establishing proof of the necessary wage credits, including the following:~~

ITEM 5. Amend subrule 3.43(9) as follows:

3.43(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state, but no reimbursement so payable shall be charged against ~~any a contributory~~ employer's account for the purpose of section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund ~~shall be charged with the~~ will be liable for charges against the employer's account for benefits paid by another state as required in section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits ~~are have~~ been transferred and who has potential liability will be notified on Form ~~68-0075~~ 65-5522, Notice of Wage Transfer, that the wages ~~are have~~ been transferred, the state to which they ~~are have~~ been transferred, and the mailing address to which a protest or other information of potential charges may be mailed. *This protest must be postmarked or received by the division within ten days of the date the Form 65-5522 was mailed to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.*

c. Requests received from the paying state for amounts in excess of an amount equal to potential charges of an Iowa claim will not be charged to the Iowa employer, except for reimbursable employers.

d. *When Iowa is the paying state on an interstate claim wherein Iowa wage credits are insufficient to have a valid Iowa claim, charges shall not be made against the Iowa employer's account but shall be charged to the balancing account, except for reimbursable employers.*

ITEM 6. Rescind subrules 3.43(13), 3.43(14), and 3.43(15) and renumber subrule 3.43(16) as 3.43(13).

ITEM 7. Amend subrule 3.43(17) to read as follows:

3.43(17 14) Transfer of wages upon the sale of a clearly segregable part of an employer's business or enterprise. An individual who accepts work with an acquiring employer and who works in and is paid wages for work with such acquiring employer shall have all of the wages which were paid to the individual by the transferring employer transferred to the acquiring employer. *In order to get relief from the charges, the transferring employer must protest this issue on the Notice Of Claim, Form 65-5317, in a timely manner.*

ITEM 8. Amend subrule 3.44(1) to read as follows:

3.44(1) Overpayments. If a claimant is overpaid benefits, the employer, ~~except the employer who is required by~~

~~law or by election to reimburse the fund of benefits paid,~~ will be relieved of benefit charges to such employer's account.

ITEM 9. Adopt new subrules 3.44(2) and 3.44(3) as follows:

3.44(2) The employer shall not be relieved of benefit charges for a payment of back pay until the amount of the overpayment is recovered by the division.

3.44(3) Option of reimbursable credit or refund for an overpayment. The division shall credit the account of the reimbursable employer for overpayments. However, the employer may request a refund in those cases where the employer determines that it cannot use the credit against future charges within a reasonable period of time.

ITEM 10. Rescind subrule 3.44(7).

ITEM 11. Amend rule 345—4.27(96) to read as follows:

345—4.27(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, decision of the job service representative, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be ~~transferred to the account of the employer with which the individual requalified transferred to the balancing account, or remain with the employer from which they were earned.~~

ITEM 12. Rescind subrule 4.28(5) and insert the following new subrule in lieu thereof:

4.28(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

ITEM 13. Amend subrule 4.52(10), paragraphs "c" and "d," introductory paragraph, to read as follows:

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 4.22(1)"r"(3) 4.22(2)"i"(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 4.22(1)"r"(2) 4.22(2)"i"(3) if they are:

ITEM 14. Amend subrule 5.7(6), paragraph "f," to read as follows:

f. An overpayment to the claimant will cause the employer to be relieved of charges except when *the overpay-*

JOB SERVICE DIVISION[345](cont'd)

~~ment is a result of payment of a back pay award. Benefit charges shall not be relieved until the amount of the overpayment is recovered by the division as provided in Iowa Code section 96.3(8). an employer who is required by law or by election to reimburse the unemployment compensation fund shall be charged with the benefits paid. The reimbursable employer shall receive credit only upon recovery of the overpayment from the claimant except for those benefit charges which are determined to be incorrect because of an error by an individual engaged in the administration of Iowa Code chapter 96. Division of job service error shall be determined on the basis of the facts that caused the error; however, an adjudication reversing an allowance of benefits to a denial of benefits shall not be deemed a division of job service error. If a division error is determined, the reimbursable employer shall be relieved of all charges attributable to the error.~~

[Filed 12/28/95, effective 2/21/96]
[Published 1/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/17/96.

ARC 6170A

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

Adopted and Filed

Pursuant to the authority of Iowa Code section 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board amends Chapter 6, "Administration of the Environmental Protection Charge Imposed Upon Petroleum Diminution," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 25, 1995, as ARC 5945A. No comments were received during the comment period which closed November 14, 1995. The Board adopted these amendments on December 20, 1995.

1995 Iowa Acts, chapter 115, requires the Department of Revenue and Finance to deny or revoke a permit if the Department has received a certificate of noncompliance from the child support recovery unit. The Department of Revenue and Finance administers the environmental protection charge imposed upon petroleum diminution, which charge is part of the Iowa Petroleum Underground Storage Tank Fund Program (program). The program is implemented by the Petroleum Underground Storage Tank Fund Board, who retains authority to amend the rules governing the program. These amendments help to implement the legislation passed to aid the child support recovery unit.

These amendments were approved by the Board at their meeting held December 20, 1995.

These amendments will become effective February 21, 1996.

These amendments are intended to implement Iowa Code Supplement chapter 252J.

The following amendments are adopted.

ITEM 1. Amend rule 591—6.6(424) to read as follows:

591—6.6(424) Assignment, effectiveness and revocation of permits. A permit cannot be assigned. It is valid only for the person in whose name it is issued. The permit is valid for that person until canceled or revoked by the department. A permit holder selling the business shall request cancellation of the permit, and the purchaser shall apply for a new permit in the purchaser's own name. *The department will deny a permit to any applicant who is an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance.*

This rule is intended to implement Iowa Code section 424.5 and Iowa Code Supplement chapter 252J.

ITEM 2. Amend rule 591—6.7(424) by adding the following new subrule:

6.7(3) The department will revoke a permit of an individual permit holder if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

ITEM 3. Amend the implementation clause of rule 591—6.7(424) to read as follows:

This rule is intended to implement Iowa Code section 424.5 and Iowa Code Supplement chapter 252J.

[Filed 12/21/95, effective 2/21/96]
[Published 1/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/17/96.

ARC 6176A

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

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455G.4(3) and 455G.11, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) amends Chapter 10, "Eligibility for Insurance," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 19, 1995, as ARC 5737A. No public comments were received on these amendments. In addition, these amendments were simultaneously Adopted and Filed Emergency as ARC 5738A. These amendments are identical to the amendments published under Notice of Intended Action and Adopted and Filed Emergency. These amendments will allow insurance to be backdated until December 31, 1995, and increase the surcharge from \$400 to \$800 per tank per policy year for

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

tanks that are not upgraded, consistent with legislation passed in 1995 Iowa Acts, chapter 215.

These amendments were adopted by the Board on December 20, 1995.

These amendments shall become effective February 21, 1996, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code section 455G.11.

The following amendments are adopted.

ITEM 1. Amend paragraph 10.1(2)"i" to read as follows:

i. If there has been a failure to demonstrate financial responsibility coverage or if there has been a lapse in financial responsibility coverage since October 26, 1990, any application for financial responsibility coverage after ~~July 1, 1995~~ December 31, 1995, acceptable to the UST board or its representative, will result in financial responsibility coverage which begins on the date the policy is issued. There shall be no backdating of financial responsibility coverage for such applications.

ITEM 2. Amend paragraph 10.1(6)"a" to read as follows:

a. Owners who have not complied with upgrade or replacement requirements as noted in 591—Chapter 10 shall pay a surcharge of ~~\$400~~ \$800 per tank per policy year until such time that the tank fully meets upgrade or replacement requirements as noted herein, or the tank has been permanently taken out of service in accordance with rules promulgated by the DNR. The surcharge is fully earned and shall not be refunded, even if an upgrade takes place during the policy term.

ITEM 3. Amend paragraph 10.1(6)"d" to read as follows:

d. Failure to meet the ~~January 1, 1995~~ December 22, 1998, upgrade or replacement date will subject the owner/operator to cancellation of insurance coverage.

[Filed 12/26/95, effective 2/21/96]
[Published 1/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/17/96.

ARC 6184A

**PROFESSIONAL LICENSURE
DIVISION[645]**

**BOARD OF COSMETOLOGY
ARTS AND SCIENCES EXAMINERS**

Adopted and Filed

Pursuant to the authority of Iowa Code section 157.14, the Board of Cosmetology Arts and Sciences Examiners hereby amends Chapter 62, "Fees," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 25, 1995, as ARC 5973A. No written comments were received. The Cosmetology Board of Arts and Sciences Examiners adopted the amendment on December 18, 1995.

The amendment will increase the amount required for the examination fee and the original license to practice cosmetology arts and sciences. This includes cosmetology, electrology, esthetics and nail technology licenses. At the present time, board-generated written examinations are being used. The Board of Cosmetology Arts and Sciences will begin using a testing service of the National Interstate Council of State Board of Cosmetology for written examinations in 1996. There are approximately 39 states now using this testing service for cosmetology arts and sciences examinations. The fee charged by the national testing service for the written examinations will be \$10 per examination with an additional \$2.75 for the testing service administration of an examination over Iowa law and rules. The Board feels an increase of \$15 per applicant would cover the additional expenses incurred.

No comments were received. School personnel were present at the Board meeting when the increase was proposed. The schools would prefer that the Board collect the fees and pay the testing service rather than have each individual applicant be responsible for paying the testing service.

The amendment will become effective February 21, 1996.

This amendment is intended to implement Iowa Code chapters 157 and 272C.

The following amendment is adopted.

Amend subrule 62.1(1) as follows:

62.1(1) License to practice cosmetology arts and sciences issued upon the basis of examination by the board is ~~\$55~~ 70. (Includes cosmetology, electrology, esthetics and nail technology licenses.)

[Filed 12/28/95, effective 2/21/96]
[Published 1/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/17/96.

ARC 6185A

**PUBLIC SAFETY
DEPARTMENT[661]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 321L.8, the Iowa Department of Public Safety hereby amends Chapter 18, "Handicapped Parking," Iowa Administrative Code.

These amendments modify requirements for the dimensions of handicapped parking spaces to make Iowa requirements compatible with the federal Americans with Disabilities Act (Public Law 101-336). The major change from current Iowa rules is the imposition of a requirement that providers of parking make the first handicapped space provided and one out of each eight additional accessible spaces provided "van-accessible." An alternative offered in the federal regulations for "universally accessible" spaces is allowed for in these amendments. Another change is made to update the rule regarding handicapped parking signs to conform to requirements contained in Iowa Code section 321L.6.

A Notice of Intended Action, ARC 5749A, proposing these amendments was published in the Iowa Administrative Bulletin on August 2, 1995, and a public hearing was held on August 23, 1995. Extensive written comments were received from one citizen, who also appeared and spoke at the public hearing. The comments received advocated various means of making the requirements for providing handicapped parking spaces more stringent. These suggested changes were not adopted; the existing rules with the amendments made here implement the current state law. Requirements which go beyond the language of the current statute are appropriately pursued through the legislative process rather than through administrative rule making. One suggestion for an addition to the proposed rules was adopted. Diagrams illustrating the dimensional requirements for van-accessible and "universal" accessible parking spaces are included in the adopted rules.

These amendments are intended to implement Iowa Code sections 321L.5 and 321L.6.

These amendments will become effective March 1, 1996.

The following amendments are adopted.

ITEM 1. Amend rule 661—18.3(321L) by adding the following new subrule and diagrams:

18.3(4) Van-accessible spaces. The first handicapped parking space provided in a parking lot or parking structure, and every eighth handicapped parking space provided thereafter, shall be a van-accessible space. A "van-accessible" space shall be 96 inches wide with an adjacent access aisle at least 96 inches wide (see Figure 3). Two adjacent van-accessible spaces may share a common access aisle.

EXCEPTION: Entities providing handicapped parking spaces are not required to provide van-accessible spaces if all of the handicapped parking spaces provided in a parking lot or structure are "universally accessible." A "universally accessible" space is at least 132 inches wide with an adjacent 60-inch wide access aisle. Two adjacent universally accessible spaces may share a common access aisle (see Figure 4).

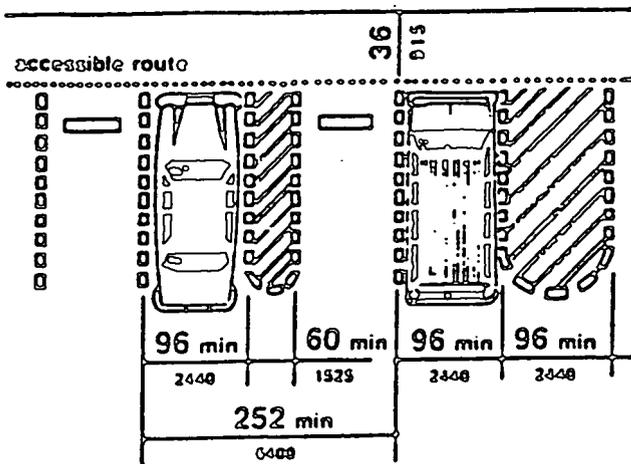


Figure 3.

Van-Accessible Space at End of Row

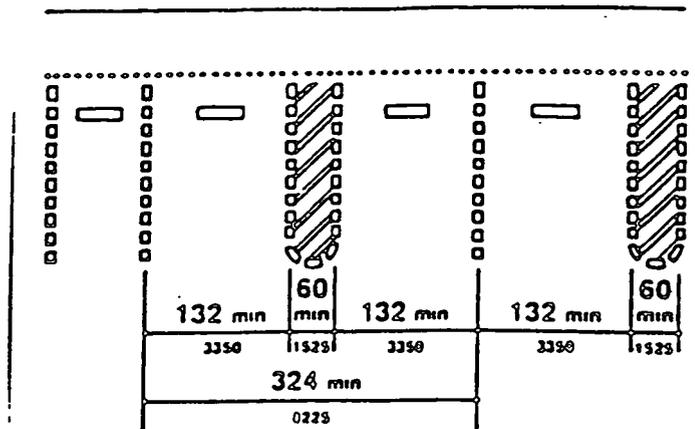


Figure 4

"Universal" Accessible Parking Spaces

ITEM 2. Rescind rule 661—18.5(321L) and insert in lieu thereof the following new rule:

661—18.5(321L) Designation. Each handicapped parking space shall be designated as reserved for physically handicapped persons by a sign meeting the following requirements established in Iowa Code section 321L.6:

18.5(1) Each handicapped parking sign shall have the international symbol of accessibility in white on a blue background.

18.5(2) Each handicapped parking sign shall be affixed vertically to another object so that it is readily visible to the driver of a vehicle approaching the handicapped parking space.

NOTE: The pavement in a handicapped parking space may be marked with the international symbol of accessibility, but such marking does not meet the requirements of this subrule.

18.5(3) Each handicapped parking sign shall include language stating the amount of the fine for improperly using the handicapped parking space.

[Filed 12/28/95, effective 3/1/96]
[Published 1/17/96]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/17/96.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION

WHEREAS, the Office of State Representative from the Thirty-Fourth Representative District, consisting of the following areas:

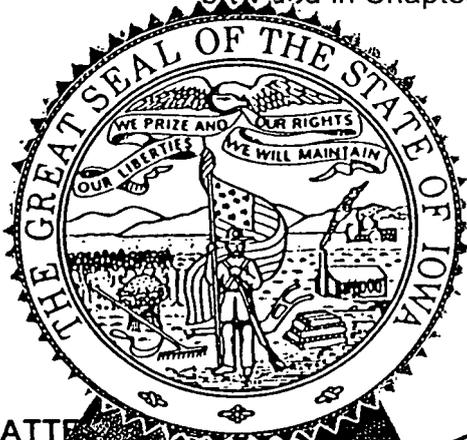
- A. Jackson County.
- B. In Dubuque County:
 - (1) Prairie Creek, Washington, and Mosalem townships.
 - (2) That portion of Table Mound township not contained in the Thirty-Sixth Representative District.
 - (3) That portion of Dubuque township bounded by a line commencing at the point the south boundary of Dubuque township intersects the west corporate limit of the City of Dubuque, then proceeding first north and then in a clockwise manner along the corporate limits of the City of Dubuque until it intersects John F. Kennedy Road, then proceeding northwesterly along John F. Kennedy Road until it intersects Derby Grange Road, then proceeding westerly along Derby Grange Road until it intersects the west boundary of Dubuque township, then proceeding first south and then in a counterclockwise manner along the boundary of Dubuque township to the point of origin.

has become vacant by the reason of the death of Jerry E. Cornelius.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by law do hereby proclaim and direct that a special election to fill said vacancy shall be held within said District on

TUESDAY, THE 16th DAY OF JANUARY, 1996, A.D.

WHEREFORE, all electors within said Thirty-Fourth Representative District will take due notice and the County Commissioner of Elections of said county will take official notice as provided in Chapter 39, Code of Iowa, 1995.



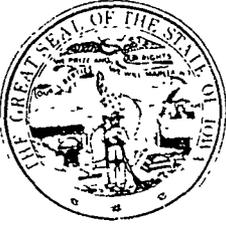
IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 18th day of December in the year of our Lord one thousand nine hundred ninety-five.

Ken E. Branstad

 GOVERNOR

ATTEST


 SECRETARY OF STATE



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

- WHEREAS, Due to excessive rainfalls in the state this past spring, farmers in Southern Iowa were frustrated in their efforts to plant their grain and forage crops and in many cases were prevented from doing so by the wet weather conditions; and
- WHEREAS, a disaster emergency proclamation was issued on June 6, 1995, to provide relief to Southern Iowa farmers facing extreme personal and financial hardship as a result of their inability to plant this year's crops, and
- WHEREAS, despite the adverse planting conditions in some parts of the state, the 1995 grain harvest across Iowa has been abundant with yields in many areas greatly exceeding expectations; and
- WHEREAS, at the beginning of the 1995 harvest season, the bumper harvest of 1994 still occupied a major portion of Iowa's grain storage capacity forcing grain to be stored at great risk on the ground, outside and unprotected from the elements; and
- WHEREAS, efforts to move last year's crop to market by rail and barge in order to make room for this year's harvest have been hampered by circumstances beyond the control of Iowa's farmers and grain cooperatives,
- WHEREAS, livestock producers in southern Iowa continue to suffer extreme hardship due to the lack of locally-grown forage, and
- WHEREAS, a crisis situation has developed as a result of the inability to transport last year's grain crop to market and to effectively move hay, straw and stover to Southern Iowa where a severe shortage exists; and

WHEREAS, with the potential loss of millions of bushels of grain and the increased financial burden of acquiring forage material for livestock, this crisis presents an imminent threat of property damage and severe economic hardship for Iowa farmers and grain cooperatives, the consequences of which may have long term and devastating impacts; and

WHEREAS, strict compliance with the permit and fee requirements of Iowa Code section 321E.29 and 761 IAC 511 allowing oversize and overweight divisible loads under certain circumstances would prevent or hinder efforts to cope with this disaster emergency.

NOW, THEREFORE, I, Terry E. Branstad, Governor of Iowa, acting under the authority vested in me by Iowa Constitution Article IV, sections 1 and 8 and Iowa Code section 29C.6(1) do hereby declare the entire state to be in a state of disaster emergency. Further, pursuant to Iowa Code section 29C6.(6), I do hereby suspend the regulatory provisions of Iowa Code sections 321.463 and 321E.29, and 761 IAC 511 to the extent that those provisions restrict the movement of oversize and overweight loads of soybeans, corn, hay, straw and stover and require a permit to transport such loads. Suspension of these provisions applies to loads transported on all highways within Iowa, excluding the Interstate System, and which do not exceed a maximum of 90,000 pounds gross weight. This action is intended to allow vehicles transporting soybeans, corn, hay, straw, and stover to be oversize and overweight, not exceeding 90,000 pounds gross weight, without a permit, but only for the duration of this proclamation.

This proclamation expires 30 days from the date issued. The Iowa Department of Transportation is hereby directed to monitor the operation of this proclamation to assure the public's safety and facilitate the movement of the trucks involved.

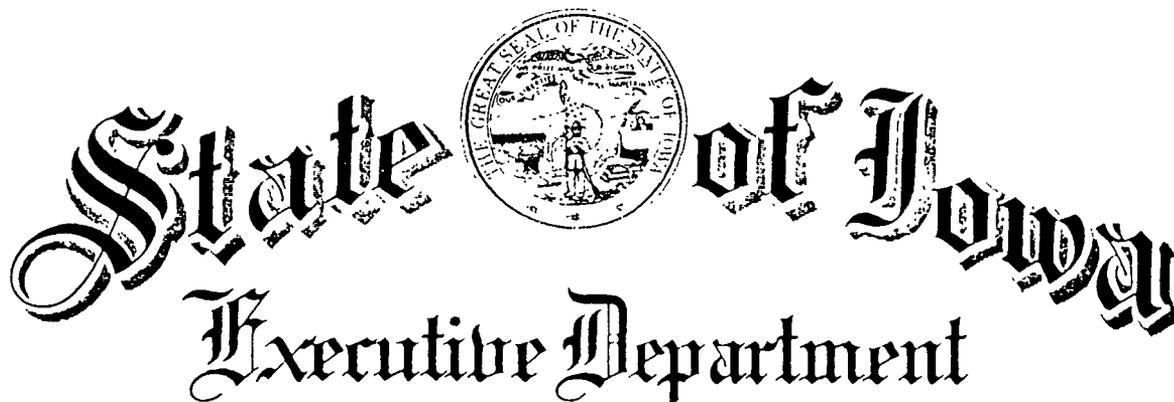
IN TESTIMONY WHEREOF, I have here-
unto subscribed my name and caused the Great
Seal of the State of Iowa to be affixed. Done at
Des Moines this 10th day of November in the
year of our Lord one thousand nine hundred and
and ninety-five



Terry E. Branstad
GOVERNOR

ATTEST

Paul D. Cato
SECRETARY OF STATE

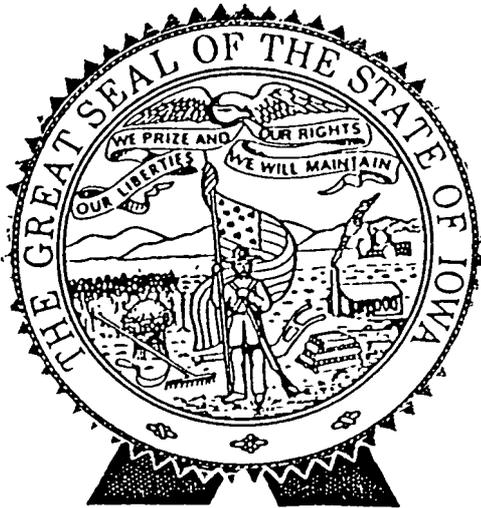


IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY EXTENDED

- WHEREAS, On November 10, 1995, a state of disaster emergency affecting the entire state was declared due to the inability to transport grain crops to market and to effectively move forage crops to parts of the state where shortages exist, and
- WHEREAS, both of these crisis situations presented an imminent threat of property damage and severe economic hardship for Iowa farmers and grain cooperatives throughout state; and
- WHEREAS, the permit and fee requirements of Iowa Code section 321E.29 and 761 IAC 511 allowing oversize and overweight loads under certain circumstances were suspended to assist farmers and grain cooperatives in transporting their crops to market and to feed livestock; and
- WHEREAS, suspension of the permit and fee requirements has made it possible for farmers and grain cooperatives to avoid significant loss of crops and damage to their property; and
- WHEREAS, harvesting and transporting of this year's crops is not yet complete, therefore additional time is needed to assure farmers and grain cooperatives receive the protections intended by this temporary suspension.

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby extend the Proclamation of Disaster Emergency issued on November 10, 1995, an additional 30 days. Pursuant to this extension, the declaration of a state of disaster emergency will remain in effect through January 9, 1996.

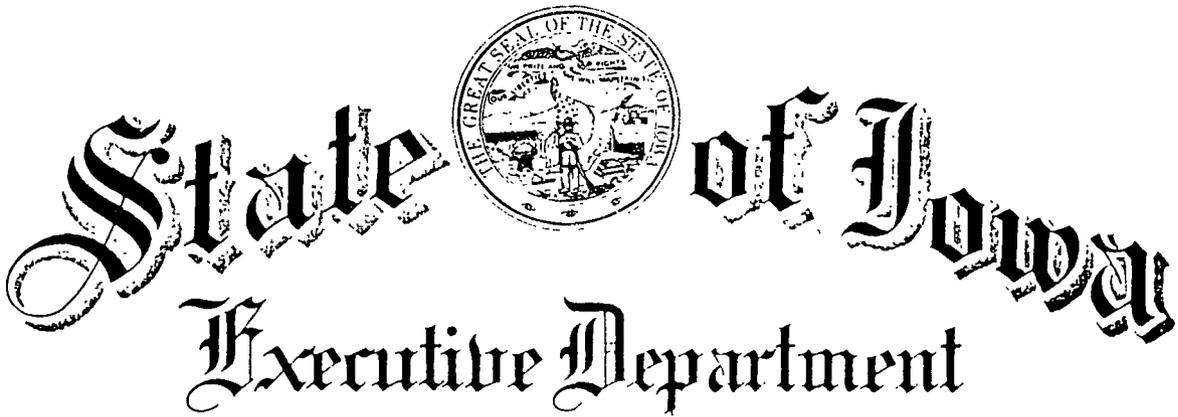


IN TESTIMONY WHEREOF, I have here-
unto subscribed my name and caused the Great
Seal of the State of Iowa to be affixed Done
at Des Moines this 6th day of December in the
year of our Lord one thousand nine hundred and
ninety-five

Terry E. Branstad
GOVERNOR

ATTEST

Paul D. Garte
SECRETARY OF STATE



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 56

WHEREAS, reduction of solid waste at the source and the reuse and recycling of waste materials will reduce the flow of waste to sanitary landfills and increase the supply of reusable materials for the use of the public; an

WHEREAS, the State of Iowa has taken significant measures to promote alternatives to landfilling by establishing solid waste reduction goals 25 percent by 1994 and 50 percent by the year 2000; and

WHEREAS, the purchase of recycled products helps conserve natural resources, reduce energy consumption, and strengthen the state's economy by developing innovative technologies, new industry and jobs; and

WHEREAS, state government has a role to play as a model for the public and private sectors in Iowa in developing and implementing comprehensive programs for waste reduction, reuse, recycling, and the use of recycled products.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by the laws and Constitution of the State of Iowa, do hereby order that:

- I. All state agencies shall maximize their efforts to :
 - A. reduce the amount of solid waste they generate;
 - B. recycle material recoverable from solid waste originating at their facilities; and
 - C. purchase and use products made from recycled materials.

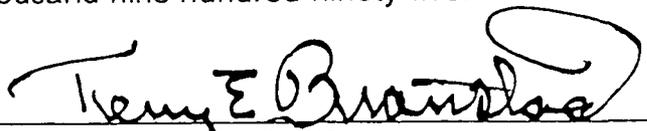
- II. All state agencies shall discourage the use of disposable products where reusable products are available, economically viable for use, and concur with health and safety regulations. Further, state agencies shall assess their waste generation with regard to purchasing decisions and make every attempt to purchase items only when needed and in amounts that are not excessive. When purchases are necessary, state agencies shall, to the extent feasible and practicable, acquire durable items or items that are readily recyclable when discarded, have minimal packaging, and are less toxic.
- III. All state agencies shall avoid unnecessary printing or photocopying of printed materials, and shall require two-sided copying on all documents when feasible and practicable.
- IV. All state agencies shall apply computer technology to reduce the generation of waste paper through electronic bulletin boards, electronic vs. paper form, and other computer technology, as available resources permit such development.
- V. All state agencies shall review and expand the collection of recyclable materials at state office facilities in accordance with current recyclable markets in order to increase the quantity of materials recycled by state government and to diminish reliance on land disposal.
- VI. As provided in this Order, all state agencies shall aggressively explore opportunities for purchasing products having recycled content in place of virgin products, and in cooperation with the Department of Natural Resources, shall actively promote the purchase of recycled products by state agencies and others eligible to purchase items from state contracts.
- VII. Product specifications shall be written to encourage vendors to offer products having recycled content. When products having recycled content are offered that are comparable in quality, performance, availability, and price to products not having recycled content, and there are no other mitigating factors, term contracts shall carry only the recycled products.
- VIII. All state agencies shall meet the following goals for the purchase and use of recycled printing and writing paper in conducting their official business:
 - A. Seventy-five percent by January 1, 1996, and

B. Ninety percent by January 1, 2000.

For the purposes of this Executive Order, the definition of "recycled paper" will follow current EPA standards and guidelines and any subsequent modifications thereto. Current EPA standards and guidelines define "recycled paper" products as a product with a minimum of twenty percent (20%) postconsumer waste.

- IX. All state agencies are directed to purchase and use recycled paper for all letterhead stationery, reports, memoranda, and other documents when feasible and practicable. All documents that are printed on recycled paper should prominently display the recycled paper symbol and, when practical and feasible, the words "printed on recycled paper".
- X. All state agencies shall work together in an effort to make joint purchases of recycled products whenever practical in order to acquire these products at the lowest possible cost.
- XI. The Department of Natural Resources, in cooperation with the Department of Economic Development, will establish additional mechanisms for state government to develop markets for recyclable materials.
- XII Executive Order Number 37, dated February 13, 1989, is rescinded and replaced with Executive Order Number 56.

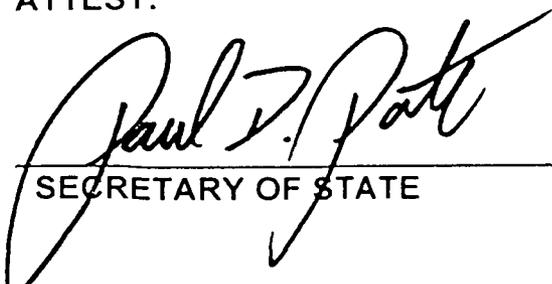
IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done on this 18th day of December in the year of our Lord one thousand nine hundred ninety-five.



 GOVERNOR



ATTEST:



 SECRETARY OF STATE

* SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED DECEMBER 20, 1995

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. 94-130. WILLEY v. RILEY.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge. **REVERSED ON APPEAL; AFFIRMED ON CROSS-APPEAL; REMANDED.** Considered by McGiverin, C.J., and Larson, Neuman, Andreasen, and Ternus, JJ. Opinion by McGiverin, C.J. (20 pages \$8.00)

This is an action by plaintiff attorney, Willey, against defendants, collectively referred to as Riley, his former law firm and employer. On appeal, Riley contends substantial evidence did not support submission by the district court to the jury of Willey's claim for intentional interference with a prospective contract. On cross-appeal, Willey contends the court erred in granting Riley summary judgment on his claim for conversion concerning the handling of a case settlement check. The judgment entered on Willey's claim under Iowa Code chapter 91A is not challenged by either party. **OPINION HOLDS:** I. Willey has presented no evidence that Riley's two telephone calls were made for the sole or predominant purpose to financially injure or destroy him. The motion for judgment notwithstanding the verdict on Willey's claim for intentional interference with a prospective contract should have been sustained. We reverse the district court's ruling to the contrary. II. Willey's argument on cross-appeal hinges on his belief that he had a future possessory interest in a settlement check, and, therefore, Riley committed the tort of conversion when he endorsed the check in Willey's name and deposited it in the bank in the law firm's trust account. The court did not err when it granted Riley's motion for summary judgment on the conversion claim. First, we find Riley had implied authority to sign Willey's name to the \$650,000 settlement check. Second, Willey, an associate of the law firm, had no right to any attorney fees from the check until the probate court authorized the estate to pay the law firm its one-third contingency fee. A conversion claim cannot lie on behalf of a party who has no right to control the chattel which the party claims was converted. The case is remanded for entry of judgment consistent with this opinion. Costs on appeal are taxed to Willey.

No. 94-1942. STATE ex rel. ATTORNEY GENERAL v. TERRY.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge. **AFFIRMED IN PART AND REVERSED IN PART.** Considered by McGiverin, C.J., and Larson, Neuman, Andreasen and Ternus, JJ. Opinion by McGiverin, C.J. Special concurrence by Ternus, J. (15 pages \$6.00)

We are called upon to interpret Iowa Code section 566.33 (1993) concerning a governmental subdivision's responsibility for a cemetery, privately-

No. 94-1942. STATE ex rel. ATTORNEY GENERAL v. TERRY.
(continued)

owned and devoted to public use, presently under a receivership and being maintained by volunteers. The district court held that Table Mound Township has the duty to preserve and maintain the cemetery. It also declared that the township's duty includes the upkeep of the cemetery grounds and the preservation of the burial records. Defendant township appealed. **OPINION HOLDS:** I. The statute imposes an active duty on governmental subdivisions to maintain the physical integrity of certain burial sites. We conclude upkeep of the cemetery grounds is clearly necessary to "maintain" the cemetery's "physical integrity." Until upkeep of the cemetery grounds is otherwise provided, 566.33 imposes a duty on the township to maintain the burial site grounds. The township's obligation is limited to the funds available through appropriate tax levies. II. Because the court-appointed receiver already has the legal duty to preserve the burial records, their protection and preservation is already provided for. Therefore, the district court erred when it ordered the township to preserve the cemetery's burial records prior to the termination of the receivership. **SPECIAL CONCURRENCE ASSERTS:** I believe that the district court was incorrect in imposing a duty on the township to preserve the cemetery's records because section 566.33 does not provide for such a duty under any circumstances.

No. 94-1522. GRANGE v. GENERAL GROWTH COMPANIES.

Appeal from the Iowa District Court for Polk County, Gene Needles, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Neuman, Andreasen, and Ternus, JJ. Per curiam. (4 pages \$1.60)

Grange seeks reversal of an adverse jury verdict in her slip-and-fall negligence suit against defendants. She claims women were underrepresented on the jury and that there was juror misconduct. **OPINION HOLDS:** I. Grange suggests that the composition of the panel from which the petit jury was chosen departed statistically from the female population of Polk County. The record is devoid of any proof that this disparity existed in the jury pool as a whole or that the disparity was the result of systematic exclusion of women. II. One of the jurors complained to the court attendant about unnecessary delay and the poor way jurors were treated. These remarks did not violate the juror's oath. Even if they did, we have no basis from which to reasonably conclude that the alleged "misconduct" probably influenced the verdict.

No. 94-1771. IN THE INTEREST OF C.J.L.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, Judge. **DECISION OF DISTRICT COURT AND COURT OF APPEALS AFFIRMED.** Considered by Larson, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Per curiam. (2 pages \$.80)

We granted the State's petition for further review contesting the court of appeals' affirmance of a juvenile court order denying the State's petition to terminate parental rights. **OPINION HOLDS:** We are convinced the challenged decisions are correct. The State has not established by clear and convincing proof that the factors warranting termination under Iowa Code section 232.116 (1995) exist. We, therefore, affirm the judgment of the juvenile court and the court of appeals.

No. 94-208. HUGHES v. STATE.

Appeal from the Iowa District Court for Lee County, Harlan W. Bainter, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Per curiam. (8 pages \$3.20)

Hughes appeals the district court's denial of his application for postconviction relief from prison disciplinary proceedings. Hughes contends the prison investigator had a duty to locate and obtain statements from witnesses whether or not Hughes actually knew the identity of the requested witnesses. **OPINION HOLDS:** Hughes made a general request for witnesses. Because he did not name any witnesses, and failure to do so did not fall within exceptions under the prison rules, the investigator was not under a duty to investigate and take statements.

No. 94-1635. FREEMAN v. ERNST & YOUNG.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge. **AFFIRMED AS MODIFIED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Neuman, Andreasen, and Ternus, JJ. Per curiam. (6 pages \$2.40)

Pursuant to the district court's ruling awarding interest on the plaintiff's judgment in this case "as provided by law," the clerk entered judgment under the general interest statute. As the plaintiff brought this action pursuant to Iowa's Comparative Fault Act, Iowa Code chapter 668 (1993), interest should have conformed to the dictates of section 668.13. The district court entered a nunc pro tunc order correcting the rate of interest. Plaintiff now appeals, challenging the use of the nunc pro tunc order in this situation and the court's failure to honor a stipulation between the parties providing the interest rate should be the rate applicable as of a certain date. **OPINION HOLDS:** I. The court properly used a nunc pro tunc order to correct the rate of interest awarded on the

No. 94-1635. FREEMAN v. ERNST & YOUNG. (continued)

judgment. As the court's intention could be inferred from the action before it, it was appropriate to make the record show truthfully what judgment was actually rendered. Because of this ruling, we do not address plaintiff's contention that the court could not modify the judgment pursuant to an untimely Iowa Rule of Civil Procedure 252 motion. II. The question of which date should be used to calculate interest is one of law and therefore the court was not bound by the parties' stipulation. We remand to the district court for entry of an order awarding interest on the judgment at the interest rate applicable on February 5, 1993, the date of the judgment being corrected by the order nunc pro tunc.

No. 94-561. MARSHALL v. CITY OF BURLINGTON.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Des Moines County, Harlan Bainter, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Neuman, Andreasen, and Ternus, JJ. Per curiam. (5 pages \$2.00)

Marjorie Marshall sustained serious injuries when she tripped and fell over the remains of a vandalized park bench situated on the pedestrian mall outside her place of employment. She sued the city of Burlington for negligence. A jury returned a verdict finding Marshall and the city each fifty percent at fault, and the court entered judgment against the city for one-half of Marshall's damages, roughly \$16,000. The court of appeals reversed the judgment, concluding the record contained insufficient proof that the city breached its duty of inspection. We granted Marshall's petition for further review. **OPINION HOLDS:** I. The evidence introduced at trial regarding the mall's history of vandalism and the city's after-the-fact method of inspection could lead reasonable minds to conclude the city had constructive notice of the hazardous condition and failed to exercise reasonable care under the circumstances. II. We have also considered two issues not addressed by the court of appeals, the city's argument concerning the court's instructions to the jury, and its complaint that the city was effectively held to a strict liability standard. We find no merit in either contention. We vacate the decision of the court of appeals and affirm the judgment of the district court.

No. 95-107. STATE v. UTHE.

Appeal from the Iowa District Court for Warren County, Dale B. Hagan, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Per curiam. (4 pages \$1.60)

The question is whether the district court has a duty to provide the department of corrections with an updated presentence investigation report after a defendant has noted inaccuracies in the report before the court. **OPINION HOLDS:** The primary function of the presentence investigation report is to provide pertinent information to aid the district court in sentencing. The district court acknowledged the alleged inaccuracies and stated for the record it would not consider them when rendering Uthe's sentence. The district court was not required to do more. Uthe may, of course, raise any issues regarding inaccuracies in the report with the department of corrections.

No. 94-1469. SCHROCK v. IOWA DIST. COURT.

Certiorari to the Iowa District Court for Polk County, A. Patricia Houlihan, District Associate Judge. **WRIT SUSTAINED.** Considered by McGiverin, C.J., and Larson, Neuman, Andreasen, and Ternus, JJ. Per curiam. (5 pages \$2.00)

Jim Schrock and McAninch Corporation (defendants in the underlying action) brought this original writ of certiorari challenging the small claims court's action in setting aside a judgment entered against them in small claims court. They maintain the court exceeded its jurisdiction in addressing a posttrial motion and improperly applied Iowa Rules of Civil Procedure 256 and 257 in setting aside the judgment. **OPINION HOLDS:** Iowa Code chapter 631 makes no provision for posttrial motions and therefore the small claims court did not have jurisdiction to consider and rule on the posttrial motion. Because of this conclusion, we need not determine whether the court properly applied Iowa Rules of Civil Procedure 256 and 257. The writ is sustained.

No. 95-1164. BOARD OF PROFESSIONAL ETHICS AND CONDUCT v. WINKEL.

On review of the report of the Grievance Commission. **ATTORNEY REPRIMANDED.** Considered by Harris, P.J., and Carter, Lavorato, Snell, and Ternus, JJ. Opinion by Harris, J. (5 pages \$2.00)

Attorney Eldon J. Winkel prepared a number of wills for a difficult client, Robert Bickert. The last will, executed shortly before Bickert's death, included a \$20,000 bequest to Winkel. Winkel had refused to include the bequest in previous drafts. Winkel's secretary however added the bequest to the latest draft after she went to the hospital at Winkel's direction and received instructions from Bickert. The secretary typed the new will on Winkel's office equipment. The board of ethics brought a complaint alleging Winkel had violated a disciplinary rule preventing a lawyer from preparing a will in which the client names the lawyer beneficially. The grievance commission agreed and determined Winkel should receive a private admonition. We granted the board of ethics' application for permission to appeal. **OPINION HOLDS:** I. We conclude the board proved the ethical violation and find the misconduct was not excused by Bickert's insistence on the bequest or the alleged lack of undue influence. II. We believe Winkel's conduct requires a severe public reprimand.

No. 94-813. PRENGER v. BAKER.

Appeal from the Iowa District Court for Cerro Gordo County, John Mackey, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Lavorato, and Snell, JJ. Opinion by Snell, J. (11 pages \$4.40)

Gene Baker purchased two pairs of adult breeding ostriches and entrusted their care to Ron Rasmus at the Rasmus farm. Baker sold one of the breeding pair to his father, Don Baker. Don Baker also left the birds in Rasmus's care. Mike Pickard, acting on behalf of Missouri Ratite Center, Inc. (MRC), purchased the

No. 94-813. PRENGER v. BAKER. (continued)

two pairs of ostriches from Rasmus. Pickard then sold one pair to Gary Prenger. Prenger also traded Rasmus two adult emus in return for two juvenile ostrich pairs. Both Prenger and MRC left the ostriches with Rasmus. Gene Baker then removed the pair purchased by Prengers, the male purchased by MRC, and several juvenile ostriches from the Rasmus farm. The female of the pair claimed by Pickard (MRC) was not found at this time. The female of the Prenger pair later died while at Baker's farm. MRC and Prengers filed replevin actions against Gene Baker. Donald Baker filed a petition of intervention. The district court decreed Prengers were absolute owners of one male ostrich denominated the "Prenger Male" and MRC was absolute owner of one male ostrich denominated the "Pickard Male." Bakers appeal. MRC and Prengers cross-appeal on the trial court's failure to find the "Pickard Female" and the "Prenger Female," respectively, were wrongfully converted by Bakers. Prengers also appeal the trial court's findings with regard to the cause of death of the "Prenger Female" and the trial court's findings the three juvenile birds were never owned by Bakers. **OPINION HOLDS:** I. Substantial evidence supports a finding under the U.C.C. that Baker entrusted the ostriches to Rasmus, a merchant dealing in goods of that kind, giving Rasmus the power to transfer Baker's rights to MRC, then Prengers, who were buyers in the ordinary course of business. Thus ownership of the "Prenger Male" and the "Pickard Male" is affirmed. II. With respect to the female birds and the juveniles, the question is one of identification. The record is replete with contradictory testimony in this regard. Substantial evidence supports the trial court's finding that plaintiffs failed to meet their burden of proof to obtain judgment with respect to the two female ostriches and the juveniles.

No. 94-987. STATE v. STALLINGS.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. **REVERSED AND REMANDED.** Considered by Larson, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (7 pages \$2.80)

Defendant was convicted of willful injury following a jury trial. On appeal the defendant challenges the sufficiency of the evidence, the court's instruction on the use of deadly force, and the court's exclusion of expert witness testimony. **OPINION HOLDS:** I. We find there was substantial evidence that the shooting was without justification. II. The court's "reasonable force" instruction stated "the use of deadly force is reasonable *only* to resist a similar force or threat." (Emphasis added.) A 1981 amendment to Iowa Code section 704.1 allows a person to use deadly force "if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety." The court erred by failing to fully and fairly instruct on the use of deadly force. We therefore reverse and remand for retrial. III. The district court abused its discretion by excluding the proposed expert testimony. Upon retrial Stallings should be permitted to present expert testimony regarding the nature and extent of the injury resulting from Taylor's assault on him.

No. 94-2020. STATE v. ELDRENKAMP.

Appeal from the Iowa District Court for Jackson County, James R. Havercamp and David H. Sivright, Judges. **AFFIRMED.** Considered by Harris, P.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (10 pages \$4.00)

Eldrenkamp was convicted of vehicular homicide, child endangerment, and operating a motor vehicle while license was revoked. On appeal he urges (1) his motion to suppress should have been granted because the blood sample was seized in violation of his physician-patient privilege, and (2) the motion for judgments of acquittal on all charges should have been granted because there was insufficient evidence to establish that he was the driver of the motorcycle. **OPINION HOLDS.** I. The trial court correctly denied Eldrenkamp's motion to suppress. A. No physician-patient privilege existed at the time blood was withdrawn from him by hospital personnel in Illinois. Illinois specifically excludes the privilege in homicide cases. B. As an Illinois resident, in a hospital in Illinois, and under the care of an Illinois doctor, Eldrenkamp should reasonably have expected Illinois law to control the extent of the privilege. C. The blood was subject to seizure by warrant. II. We find substantial evidence was received at trial to support a finding Eldrenkamp was the operator of the motorcycle at the time it collided with the warning post and guard rail.

No. 94-1576. STATE v. MILLER.

Appeal from the Iowa District Court for Washington County, Daniel F. Morrison and James P. Rielly, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Neuman, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (11 pages \$4.40)

Albert C. Miller appeals from his convictions for practicing medicine without a license in violation of sections 147.2, 147.86, and 147.103A(1) of the Iowa Code, 1991 (as amended). He urges that he did not knowingly and intelligently waive his Sixth Amendment right to counsel, and that the record contains insufficient evidence to support his convictions. **OPINION HOLDS:** I. The district court adequately advised Miller of his right to counsel, explained the nature of the charges, and warned of the ramifications of self-representation. Miller was competent to make the choice of self-representation and his case was not so complicated to disallow it. Miller knowingly and intelligently waived his right to counsel. II. A. The jury instruction defining the practice of medicine and osteopathic medicine based on the Iowa Administrative Code, although a more specific definition, is neither inconsistent nor an incorrect statement of the law. B. We conclude there is sufficient evidence to conclude that Miller publicly professed to assume the duties incident to the practice of medicine and osteopathic medicine and routinely prescribed and furnished medicine. Consequently, there is sufficient evidence to convince a rational jury beyond a reasonable doubt that Miller was guilty of practicing medicine and osteopathic medicine without a license.

No. 94-1413. UNITED FIRE & CASUALTY CO. v. ELWORTH HARLEY DAVIDSON SALES & SERVICE, INC.

Appeal from the Iowa District Court for Louisa County, Harlan W. Bainter, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (8 pages \$3.20)

In this declaratory judgment action, we are asked to define the scope of our retail motor vehicle surety bond statute, Iowa Code section 322.4(7) (1991). We must decide whether the “any person” language in this section indemnifies a motor vehicle dealer who purchases at wholesale from another dealer and then suffers a loss. The district court concluded only consumers are indemnified under the statute and granted summary judgment to the surety. **OPINION HOLDS:** We conclude the legislature intended the bond provision in section 322.4(7) to indemnify only consumers. Thus, the language “any person” in section 322.4(7) does not include a motor vehicle dealer who purchases at wholesale from a dealer selling at retail. We affirm.

No. 94-967. SECOND INJURY FUND v. NELSON.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Harris, P.J., and Carter, Neuman, Snell, and Ternus, JJ. Opinion by Ternus, J. (19 pages \$7.60)

Perry Nelson worked in a rock quarry ultimately purchased by Basic Materials. In 1963 Nelson suffered a serious leg injury at work for which he received workers' compensation benefits including an award for a thirty-percent impairment to his left lower extremity. He continued to suffer from the residual effects of this injury up to the date of his second injury. In 1988 Nelson fell from a ladder at work hitting his left shoulder on the ground, resulting in a rotator cuff tear. He was also diagnosed as having severe degenerative arthritis in his left shoulder and both knees. In November 1988 Nelson had surgery on his left shoulder leaving him with a thirteen percent functional impairment rating to the left upper extremity. Nelson decided not to return to work and was terminated by Basic Materials in August 1990. Nelson filed a petition for workers' compensation benefits for his 1988 shoulder injury. The deputy industrial commissioner concluded Nelson had an eighteen percent industrial disability from his shoulder injury for which Basic Materials was liable. The deputy concluded that the odd-lot doctrine did not apply because Nelson's inability to obtain employment was due to his knee injury, not his shoulder injury, and because Anderson had not looked for a job. The deputy considered Nelson's age when compared with younger workers as affecting his earning capacity. Finally, the deputy decided the Second Injury Fund had no liability because Nelson's shoulder injury was considered an injury to the body as a whole. The commissioner adopted the deputy's decision except he found that Nelson's shoulder injury affected his arm and therefore, the Second Injury Fund was liable for Nelson's cumulative industrial disability. On judicial review the district court affirmed the commissioner's industrial disability determination but reversed the commissioner's decision to award benefits from the Second Injury Fund. The court held that because Nelson's second injury was not to a scheduled member, Fund liability was not triggered. Nelson appealed. **OPINION HOLDS:** I. The

No. 94-967. SECOND INJURY FUND v. NELSON. (continued)

industrial commissioner clearly erred here when he applied the apportionment rule to the industrial disability resulting from Nelson's 1963 injury to his left leg without considering whether some or all of that disability was subject to the rule placing full responsibility on the employer for successive work related injuries. II. The commissioner committed reversible error in concluding that Nelson had less industrial disability than he otherwise would had merely because he was near retirement age. III. Proof that the injured employee looked for work is not an absolute prerequisite for application of the odd-lot doctrine if the employee introduces other *substantial* evidence that he has no reasonable prospect of steady employment. Nelson has established a prima facie case that he is an odd-lot employee through the consistent testimony of the medical and vocational experts that he cannot work in the competitive job market together with evidence of his age, his multiple physical impairments (knees, shoulder and deafness) and his lack of education and training for any employment other than manual labor. However, a conclusion that Basic Materials is liable for Nelson's total and permanent disability is not compelled as a matter of law because it is still essential that Nelson's disability be caused by conditions and injuries for which Basic Materials must compensate him. IV. Iowa Code section 85.64 requires two scheduled injuries to invoke fund liability. We disavow any contrary implication in prior case law. Because Nelson's shoulder injury is not a scheduled injury the Second Injury Fund has no liability. The district court correctly ruled that the commissioner erred in holding otherwise. The judgment entered against Basic Materials and Wausau is reversed and the case is remanded so the commissioner can make new findings of fact and conclusions of law in accordance with this decision. The judgment in favor of the Second Injury Fund is affirmed.

No. 94-1003. CELOTEX CORP. v. AUTEN.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Ross A. Walters, Judge. **DECISION OF COURT OF APPEALS AFFIRMED; JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Lavorato, Neuman, and Andreasen, JJ. Opinion by Lavorato, J. (11 pages \$4.40)

In 1977 Douglas B. Auten sustained an injury to his neck while in Celotex Corporation's employment. Auten and Celotex agreed to settlement for permanent partial disability benefits. In 1984, after another work-related injury, Auten received a lump-sum payment of \$10,000 in a special case settlement. In May 1987 Auten was again injured during the course of his employment with Celotex causing him to receive work-related restrictions. Celotex subsequently terminated Auten after another employee with more seniority bid for—and bumped Auten out of—the janitorial position. Celotex refused Auten's three attempts to bid for other positions at the plant because none of the jobs met his work-related restrictions. Auten remains unemployed. Auten filed a petition with the industrial commissioner, alleging that his 1987 injury was work-related. Following a hearing, a deputy industrial commissioner awarded Auten 100% permanent total industrial disability benefits under Iowa Code section 85.34(3). Celotex appealed to the industrial commissioner, who affirmed the deputy's

No. 94-1003. CELOTEX CORP. v. AUTEN. (continued)

decision. On judicial review, the district court affirmed the industrial commissioner's decision. On Celotex's appeal, the court of appeals affirmed. We granted further review. **OPINION HOLDS:** I. There is substantial evidence to support the commissioner's decision that Auten is 100% permanently and totally disabled by an employment-related injury. II. Under the facts of this case, our workers' compensation law does not expressly provide for apportionment in the case of successive injuries sustained by an employee in the same employment, regardless of whether or not the employee receives compensation for the prior injury. Consequently, we think the legislature did not intend to allow such apportionment. The industrial commissioner correctly refused to apportion a part of Auten's permanent total disability to his two prior work-related injuries.

No. 95-298. JAMES v. STATE.

Appeal from the Iowa District Court for Jones County, David M. Remley, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (18 pages \$7.20)

In this postconviction relief proceeding, the district court affirmed a prison disciplinary committee decision. The committee found that Kenneth James had violated prison disciplinary rule 42 prohibiting involvement in gang activity. James' appeals to the warden and the Iowa department of corrections were denied. Following a hearing on James' postconviction relief application, the district court upheld the committee's decision. James appeals, alleging procedural due process violations and challenging the legal sufficiency of the evidence against him. James contends (1) the notice prison officials provided him was inadequate, (2) the rule he allegedly violated was unconstitutionally vague on its face and as applied to his conduct, (3) prison officials should provide inmates substitute counsel in complex cases—as he alleges this is—where the basis of the charge is supplied by confidential informants, and (4) there is insufficient evidence to support the discipline imposed. **OPINION HOLDS:** I. Direct appeal rather than certiorari is the proper manner by which to challenge a district court ruling in a prison disciplinary proceeding. To the extent that *Bryson v. Iowa District Court*, 515 N.W.2d 10 (Iowa 1994) (per curiam), holds otherwise, it is overruled. II. The notice James received generally informing him of the date the alleged rule infraction occurred, of the relevant charge against him, and that the charge was premised on confidential information, was sufficient to enable him to marshal facts and prepare his defense. III. Rule 42 is not unconstitutionally vague on its face or as applied to James. IV. James was not entitled to counsel substitute. V. There was some evidence to support the committee's conclusion. We affirm.

No. 95-63. STATE v. BURNS.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, District Associate Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Laborato, Snell, and Andreasen, JJ. Opinion by Carter, J. (4 pages \$ 1.60)

Burns, appeals from his conviction of operating a motor vehicle during the period of time he was prohibited from doing so as a result of being convicted as an habitual offender. He argues that, because his operation occurred on private property where he was carrying on a farming operation, the statute does not apply. **OPINION HOLDS:** I. The section 321.561 penalty is predicated on driving following conviction as an habitual offender rather than driving in violation of statutory licensing provisions. Therefore, any operation of a motor vehicle during the prohibited period is proscribed by this statute. II. A. An exemption under section 321.176 is only from the motor vehicle licensing requirements and is thus not applicable here. B. Moreover, the Chevrolet Blazer automobile operated by Burns is not an implement of husbandry.

No. 94-1643. IN RE ESTATE OF RAGAN.

Appeal from the Iowa District Court for Greene County, Joel E. Swanson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Neuman, Andreasen, and Ternus, JJ. Opinion by Larson, J. (7 pages \$ 2.80)

The will of Dorothy Ragan devised outright one-half of her real estate to her daughter Lois Lynch and the other half she placed in a spendthrift trust for another daughter, Donna Tiffany. The original will named the Citizens' National Bank of Boone as trustee. Dorothy later executed two codicils. The first appointed John F. Tiffany (Donna's husband) and Rhonda Tiffany as trustees. A second codicil deleted Rhonda and named John as the sole trustee. Dorothy named Brian Tiffany, John's son, as an alternate. On Dorothy's death, John, a resident of Wyoming, and his son, Brian, a resident of Iowa, petitioned for their appointment as cotrustees. Donna resisted their appointment due to her and John's pending dissolution action. The district court agreed with the trust beneficiary that John and Brian were unsuitable to be trustees. John and Brian appealed, together with other residual beneficiaries under the trust. The appeal was transferred to the court of appeals, which reversed and remanded because of a failure to notify all of the interested parties of the pending application. Following a second hearing, the court again found the petitioners to be unqualified. John and Brian again appeal. **OPINION HOLDS:** I. Under our view of Iowa Code section 633.63 (1993), these trustees need not be removed if they have failed to qualify in the first instance. II. John's previous self-dealing as a fiduciary establishes he is unsuitable to be a trustee. Brian has no previous experience in money management and is dominated and controlled by this father. We affirm the district court order finding these two unsuitable to act as trustees and appointing a substitute trustee.

No. 94-139. IN RE MARRIAGE OF BELZ.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Neuman, Andreasen, and Ternus, JJ. Opinion by Larson, J. (3 pages \$ 1.20)

Tami Belz appeals from a judgment of the district court allowing R.J. Belz to execute a judgment lien against Tami's homestead to implement the property division in the parties' dissolution decree. **OPINION HOLDS:** Tami claims that, because this is an ordinary action to enforce a lien, the homestead exemption of Iowa Code section 561.16 (1993) applies. This is not strictly a dissolution order for a property division, but it is an action to enforce a property division. We hold the homestead exemption is thus inapplicable.

No. 94-1454. SHUMAKER v. IOWA DEPT' OF TRANSP.

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Opinion by Larson, J. Dissent in part and concurrence in part by Carter, J. (10 pages \$ 4.00)

Rebecca Shumaker filed suit against the Iowa Department of Transportation and her immediate supervisors in federal district court, alleging employment discrimination and sexual harassment. Her complaint included a federal claim and an Iowa civil rights claim under Iowa Code chapter 601A. The federal court found that Shumaker had been subjected to sexual harassment resulting from a hostile work environment. It granted relief on the federal claim. The court denied her state claim as moot. The court concluded she withdrew the claim due to her concession that the Eleventh Amendment barred it. Shumaker then filed a petition against the same defendants in the Iowa District Court. She alleged the same federal and chapter 601A violations and added related tort and contract grounds for recovery. Both parties filed motions for summary judgment. The district court granted the defendants' motion, ruling that Shumaker was barred by claim preclusion from litigating her Iowa civil rights claim in state court. **OPINION HOLDS:** The plaintiff in the present case, at the worst, abandoned her state claim in federal court. At best, she failed to seek an adjudication of it under that court's pendent jurisdiction. In either event, we hold that her later state suit is barred under claim preclusion by the failure to seek a resolution in the prior federal action. **CONCURRENCE IN PART AND DISSENT IN PART ASSERTS:** I concur in the opinion of the court as to the individual defendants but not as to the Iowa Department of Transportation, which is the alter ego of the State of Iowa. The federal court in the prior action was unable to entertain the claim for money damages due to an Eleventh Amendment bar. I would hold that the claim for money damages is not barred by any theory of claim preclusion.

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