

IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME IX
May 6, 1987

NUMBER 23
Pages 1789 to 1848

CONTENTS IN THIS ISSUE

Pages 1795 to 1829 include ARC 7547 to ARC 7590

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Filed, Infectious and contagious diseases, 30-16.25(1)"a" and "b" ARC 75641821

ALCOHOLIC BEVERAGES DIVISION[185]

Filed, Warehousing of beer and wine, 4.40 ARC 75621821

ATTORNEY GENERAL

Opinions summarized1833

COLLEGE AID COMMISSION[245]

Notice, Guaranteed student loans—interest subsidy, 10.23 ARC 75561795

Notice, Guaranteed student loans—delinquent accounts, 10.33 to 10.35 ARC 75511795

Notice, Guaranteed student loans—bankruptcy claim, 10.36 ARC 75531796

Filed, Guaranteed student loans, amendments to ch 10 ARC 75541821

Filed Emergency, Guaranteed student loans—delinquent accounts, 10.33 to 10.35 ARC 75501814

Filed Emergency, Guaranteed student loans—bankruptcy claim, 10.36 ARC 75521816

Filed, Rulemaking and declaratory rules, 13.3 ARC 75551824

DELAYS

Human Services Department[441], Abuse of children, amendments to ch 1751830

Nursing Board[590], Nursing education programs, ch 21830

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice, Community economic betterment program, ch 22 ARC 75711796

Filed Emergency, Community economic betterment program—project review committee, 22.3, 22.9(2)"c" ARC 75721818

EDUCATION DEPARTMENT[670]

Notice, State area school funding plan, 5.45 ARC 75481799

EXECUTIVE DEPARTMENT

Executive order number 301831

FAIR BOARD[430]

Notice, Returned checks, 1.5 ARC 75591800

HUMAN SERVICES DEPARTMENT[441]

Notice, Agency procedure for rule making, 1.5 and ch 3 ARC 75611800

Notice, Grant diversion program—ADC recipients, WIN program participants, chs 47 and 91 ARC 75691801

Notice, Amount, duration and scope of medical and remedial services, 78.1(13)"c" ARC 75581806

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice Amended, Health facilities inspections, ch 30 ARC 75651806

JOB SERVICE DIVISION[345]

Notice, Employer's—separation notices, claims and benefits, 3.12, amendments to ch 4 ARC 75681806

LABOR SERVICES DIVISION[347]

Notice, Occupational safety and health standards, 10.20 ARC 75751808

Filed Emergency, Miscellaneous amendments to reflect name and address changes ARC 75731818

Filed, Occupational safety and health inspections, amendments to ch 3 ARC 75761824

Filed, Recording and reporting occupational injuries and illnesses, amendments to ch 4 ARC 75771824

Filed, Variances—occupational safety and health rules, amendments to ch 5 ARC 75781825

Filed, Consultative services, amendments to ch 8 ARC 75791825

Filed, Discrimination against employees, amendments to ch 9 ARC 75801825

Filed, General industry—safety and health rules, amendments to ch 10 ARC 75811825

Filed Emergency, Occupational safety and health standards, 10.20 ARC 75741819

Filed, Construction—safety and health rules, 26.1 ARC 75821826

Filed, Construction—safety and health rules, 26.1 ARC 75831826

Filed, Firefighters—protective clothing and equipment, 27.10 ARC 75851827

Filed, Occupational safety and health standards for agriculture, 28.1 ARC 75841827

Filed, Hazardous chemical risks, community right to know, 110.1, 110.2, 130.6 ARC 75861827

Continued on page 1791

PREFACE

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

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

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

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

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

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

PHYLLIS BARRY, Deputy Code Editor

LAVERNE SWANSON, Administrative Code Assistant

DONNA WATERS, Administrative Code Assistant

Phone: (515) 281-3355

(515) 281-8157

PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u> | <u>ISSUE DATE</u> |
|---------------------|----------------------------|-------------------|
| 24 | Friday, May 1, 1987 | May 20, 1987 |
| 25 | Friday, May 15, 1987 | June 3, 1987 |
| 26 | Friday, May 29, 1987 | June 17, 1987 |

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, 1986, to June 30, 1987 | \$133.00 plus \$5.32 sales tax |
| Second quarter | October 1, 1986, to June 30, 1987 | \$ 99.50 plus \$3.98 sales tax |
| Third quarter | January 1, 1987, to June 30, 1987 | \$ 67.00 plus \$2.68 sales tax |
| Fourth quarter | April 1, 1987, to June 30, 1987 | \$ 33.50 plus \$1.34 sales tax |

Single copies may be purchased for \$4.00 plus \$0.16 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 - \$700.00 plus \$28.00 sales tax

(Price includes Volumes I through XII, index and binder, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$3.00 plus \$0.12 tax.)

Iowa Administrative Code Supplement - \$211.00 plus \$8.44 sales tax

(Subscription expires June 30, 1987)

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

Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515) 281-5231

Recycled
Paper

| | |
|--|------|
| LIVESTOCK HEALTH ADVISORY COUNCIL[521] | |
| Notice, Recommendation—appropriation, ch 1 ARC 7563 | 1808 |
| MANAGEMENT DEPARTMENT[541] | |
| Notice, Contract compliance, ch 4 ARC 7587 | 1809 |
| NURSING BOARD[590] | |
| Filed Emergency, Education programs—faculty, 2.6(2)“c”(3) ARC 7560 | 1819 |
| PERSONNEL DEPARTMENT[581] | |
| Filed, IPERS, federal social security, amend and transfer 370—chs 8 and 9 to 581—chs 21 and 22, rescind 370—10.8 and 10.9 ARC 7588 | 1828 |
| PHARMACY EXAMINERS, BOARD OF[620] | |
| Notice, Licensure by reciprocity, 5.4 ARC 7590 | 1811 |
| Notice, Drug name and strength on prescription label, 6.16 ARC 7589 | 1812 |
| PUBLIC HEALTH DEPARTMENT[470] | |
| Notice, Mortuary science examiners, board of, 147.105, 147.106 ARC 7547 | 1812 |
| PUBLIC HEARINGS | |
| Summarized list | 1793 |
| RACING AND GAMING DIVISION[195] | |
| Notice, Contested case proceedings, 4.14 ARC 7549 | 1812 |
| REVENUE AND FINANCE DEPARTMENT[701] | |
| Notice, Declaratory rulings, 7.25 ARC 7570 | 1813 |
| SUBSTANCE ABUSE DIVISION[805] | |
| Filed Emergency, Treatment programs—correctional facilities, 6.3(4) ARC 7557 | 1820 |
| SUPREME COURT | |
| Decisions summarized | 1836 |
| USURY | |
| Notice | 1813 |
| UTILITIES DIVISION[199] | |
| Filed, Confidential records, amendments to chs 19, 20 and 22 ARC 7566 | 1828 |
| Filed, Telephone customer trouble reports, 22.6(1)“h” ARC 7567 | 1829 |

Schedule for Rule Making 1987

| FILING DEADLINE | NOTICE PUB. DATE | HEARING OR COMMENTS 20 DAYS | FIRST POSSIBLE ADOPTION DATE 35 DAYS | ADOPTED PUB. DATE | FIRST POSSIBLE EFFECTIVE DATE | POSSIBLE EXPIRATION OF NOTICE 180 DAYS |
|-----------------|------------------|-----------------------------|--------------------------------------|-------------------|-------------------------------|--|
| Jan. 9 | Jan. 28 | Feb. 17 | Mar. 4 | Mar. 25 | Apr. 29 | July 27 |
| Jan. 23 | Feb. 11 | Mar. 3 | Mar. 18 | Apr. 8 | May 13 | Aug. 10 |
| Feb. 6 | Feb. 25 | Mar. 17 | Apr. 1 | Apr. 22 | May 27 | Aug. 24 |
| Feb. 20 | Mar. 11 | Mar. 31 | Apr. 15 | May 6 | June 10 | Sep. 7 |
| Mar. 6 | Mar. 25 | Apr. 14 | Apr. 29 | May 20 | June 24 | Sep. 21 |
| Mar. 20 | Apr. 8 | Apr. 28 | May 13 | June 3 | July 8 | Oct. 5 |
| Apr. 3 | Apr. 22 | May 12 | May 27 | June 17 | July 22 | Oct. 19 |
| Apr. 17 | May 6 | May 26 | June 10 | July 1 | Aug. 5 | Nov. 2 |
| May 1 | May 20 | June 9 | June 24 | July 15 | Aug. 19 | Nov. 16 |
| May 15 | June 3 | June 23 | July 8 | July 29 | Sep. 2 | Nov. 30 |
| May 29 | June 17 | July 7 | July 22 | Aug. 12 | Sep. 16 | Dec. 14 |
| June 12 | July 1 | July 21 | Aug. 5 | Aug. 26 | Sep. 30 | Dec. 28 |
| June 26 | July 15 | Aug. 4 | Aug. 19 | Sep. 9 | Oct. 14 | Jan. 11 '88 |
| July 10 | July 29 | Aug. 18 | Sep. 2 | Sep. 23 | Oct. 28 | Jan. 25 '88 |
| July 24 | Aug. 12 | Sep. 1 | Sep. 16 | Oct. 7 | Nov. 11 | Feb. 8 '88 |
| Aug. 7 | Aug. 26 | Sep. 15 | Sep. 30 | Oct. 21 | Nov. 25 | Feb. 22 '88 |
| Aug. 21 | Sep. 9 | Sep. 29 | Oct. 14 | Nov. 4 | Dec. 9 | Mar. 7 '88 |
| Sep. 4 | Sep. 23 | Oct. 13 | Oct. 28 | Nov. 18 | Dec. 23 | Mar. 21 '88 |
| Sep. 18 | Oct. 7 | Oct. 27 | Nov. 11 | Dec. 2 | Jan. 6 '88 | Apr. 4 '88 |
| Oct. 2 | Oct. 21 | Nov. 10 | Nov. 25 | Dec. 16 | Jan. 20 '88 | Apr. 18 '88 |
| Oct. 16 | Nov. 4 | Nov. 24 | Dec. 9 | Dec. 30 | Feb. 3 '88 | May 2 '88 |
| Oct. 30 | Nov. 18 | Dec. 8 | Dec. 23 | Jan. 13 '88 | Feb. 17 '88 | May 16 '88 |
| Nov. 13 | Dec. 2 | Dec. 22 | Jan. 6 '88 | Jan. 27 '88 | Mar. 2 '88 | May 30 '88 |
| Nov. 27 | Dec. 16 | Jan. 5 '88 | Jan. 20 '88 | Feb. 10 '88 | Mar. 16 '88 | June 13 '88 |
| Dec. 11 | Dec. 30 | Jan. 19 '88 | Feb. 3 '88 | Feb. 24 '88 | Mar. 30 '88 | June 27 '88 |
| Dec. 25 | Jan. 13 '88 | Feb. 2 '88 | Feb. 17 '88 | Mar. 9 '88 | Apr. 13 '88 | July 11 '88 |

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

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

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

NOTICE

Beginning on June 14, 1985, the deadline for filing rules with the office of the Administrative Rules Coordinator will be **12 o'clock noon** rather than 4:30 p.m.

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

UNIFORM RULES OF STATE AGENCY PROCEDURE

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

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

To All Agencies:

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

| AGENCY | HEARING LOCATION | DATE AND TIME OF HEARING |
|---|---|--|
| AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[30] Livestock importation, 17.5(2)"b" IAB 4/22/87 ARC 7546 (See ARC 7545) | Conference Room Second Floor Wallace State Office Bldg. Des Moines, Iowa | May 18, 1987 1 p.m. |
| CORRECTIONS DEPARTMENT[291] Visiting, amendments to ch 21 IAB 4/22/87 ARC 7544 | Conference Room Corrections Department Jewett Bldg. Room 250 Des Moines, Iowa Courthouse State Penitentiary 31 Ave. G Ft. Madison, Iowa | May 12, 1987 1 to 4 p.m. May 12, 1987 1 to 4 p.m. |
| HUMAN SERVICES DEPARTMENT[441] Aid to dependent children eligibility under the grant diversion program, ch 47; Grant diversion program, ch 91 IAB 5/6/87 ARC 7569 | Work Incentive (WIN) Office 1301 19th Street Des Moines, Iowa | May 27, 1987 9 a.m. |
| INDUSTRIAL SERVICES DIVISION[343] Contested cases, 4.2, 4.27 IAB 4/22/87 ARC 7539 | Hearing Room First Floor East Wing Employment Services Bldg. Des Moines, Iowa | May 12, 1987 9 a.m. |
| INSPECTIONS AND APPEALS DEPARTMENT[481] Program integrity section, ch 14 IAB 4/22/87 ARC 7537 | Conference Room 248 Second Floor Lucas State Office Bldg. Des Moines, Iowa | May 12, 1987 2 p.m. |
| Health facilities inspections, ch 30, IAB 4/8/87 ARC 7512 Amended Notice IAB 5/6/87 ARC 7565 | Conference Room 248 Second Floor Lucas State Office Bldg. Des Moines, Iowa | May 29, 1987 2 p.m. |
| JOB SERVICE DIVISION[345] Employer's contribution and charges, 3.12; Claims and benefits, amendments to ch 4 IAB 5/6/87, ARC 7568 | Department of Employment Services 1000 East Grand Ave. Des Moines, Iowa | May 27, 1987 9:30 a.m. |
| LABOR SERVICES DIVISION[347] Occupational safety and health rules, 10.20 IAB 5/6/87 ARC 7575 (See also ARC 7574, herein) | Division of Labor Services 1000 East Grand Ave. Des Moines, Iowa | May 27, 1987 9 a.m. |

LIVESTOCK HEALTH ADVISORY COUNCIL[521]

Recommendations, ch 1
IAB 5/6/87 ARC 7563

Dean's Conference Room
College of Veterinary Medicine
Iowa State University
Ames, Iowa

June 24, 1987
10 a.m.

MANAGEMENT DEPARTMENT[541]

Contract compliance, ch 4
IAB 5/6/87 ARC 7587

Conference Room 118
First Floor
State Capital Bldg.
Des Moines, Iowa

May 26, 1987
1:30 p.m.

RACING AND GAMING DIVISION[195]

Practice and procedure before
the racing commission and
board of stewards, 4.14
IAB 5/6/87 ARC 7549

Division Offices
1918 S.E. Hulsizer Ave.
Ankeny, Iowa

May 26, 1987
9 a.m.

TRANSPORTATION DEPARTMENT[820]

Special permits for
operation and movement of
vehicles and loads of excess
size and weight, [07,F] 2.7 to 2.9
IAB 3/25/87 ARC 7478

Department of Transportation
Complex
800 Lincoln Way
Ames, Iowa

May 12, 1987

ARC 7556

COLLEGE AID COMMISSION[245]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 261.37, the College Aid Commission proposes to amend Chapter 10, Iowa Administrative Code.

GSL

The amendment reflects that an interest subsidy is not paid on Guaranteed Student Loans during the repayment period.

Interested persons may submit comments orally or in writing to the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 (515-281-3501) on or before June 30, 1987.

This rule is intended to implement Iowa Code section 261.37.

Rule 245—10.23(261) "Loan eligibility for interest and special allowance." is amended by rescinding the present chart and inserting in lieu thereof the following:

PLUS

| Interest Subsidy | Special Allowance | LOAN STATUS | Interest Subsidy | Special Allowance |
|------------------|-------------------|--------------------------|------------------|-------------------|
| ----- | ----- | Disbursement | ----- | ----- |
| Yes | Yes | IN-SCHOOL | No | Yes |
| ----- | ----- | Completion or Withdrawal | ----- | ----- |
| ----- | ----- | GRACE-GSL only | ----- | ----- |
| ----- | ----- | Conversion | ----- | ----- |
| No | Yes | REPAYMENT | No | Yes |
| ----- | ----- | Reconversion | ----- | ----- |
| Yes | Yes | DEFERMENT | No | Yes |
| ----- | ----- | Conversion | ----- | ----- |
| No | Yes | FORBEARANCE | No | Yes |
| ----- | ----- | REPAYMENT | ----- | ----- |
| No | Yes | ----- | No | Yes |
| ----- | ----- | Paid-in-full | ----- | ----- |

This rule is intended to implement Iowa Code section 261.37.

ARC 7551

COLLEGE AID COMMISSION[245]

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 §17A.4(1)"b", Iowa Code.

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

Pursuant to the authority of Iowa Code section 261.37, the College Aid Commission proposes to amend Chapter

10, "Iowa Guaranteed Student Loan Program," Iowa Administrative Code.

The amendments revise the requirements for due diligence in collection of student loans to require more notices of delinquency, specify the accrued past due interest that may be paid, and redefine the date on which claim payment is made.

Interested persons may submit comments orally or in writing to the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 (515/281-3501) on or before June 30, 1987.

These rules are intended to implement Iowa Code section 261.37.

These rules are being published herein as emergency adopted and implemented, ARC 7550, and the content of that filing is incorporated here by reference.

ARC 7553**COLLEGE AID COMMISSION[245]
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 §17A.4(1)"b", Iowa Code.

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

Pursuant to the authority of Iowa Code section 261.37, the College Aid Commission proposes to amend Chapter 10, "Iowa Guaranteed Student Loan Program," Iowa Administrative Code.

The amendments require a lender to file evidence of outstanding debt with the bankruptcy court and to determine whether a borrower filed a hardship petition before filing a bankruptcy claim with the Iowa College Aid Commission. The amendments also shorten the period for filing a bankruptcy claim by 30 days, add items to the required claim documentation, and include provisions for rejection of claims and resubmission of rejected claims.

This rule is being published herein as emergency adopted and implemented, ARC 7552, and the content of that filing is incorporated here by reference.

Interested persons may submit comments orally or in writing to the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 (515/281-3501) on or before June 30, 1987.

This rule is intended to implement Iowa Code section 261.37.

ARC 7571**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to rescind in its entirety 261—Chapter 22, "Community Economic Betterment Program," Iowa Administrative Code, and to establish a new Chapter 22.

The proposed rules clarify the purpose of the CEBA program, revise the program rating system to reflect comments from the Legislative Oversight Committee, and elaborate on the rating system to make it more consistent with the adopted strategic state plan for economic development.

Rule 22.3(71GA, ch 33) as published in this Notice is also being emergency adopted and implemented and published herein as ARC 7572.

Any interested person may make written suggestions or comments on the proposed rules prior to 4:30 p.m. on May 26, 1987. Written comments should be sent to:

Mike Miller, Division of Financial Assistance, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

These rules are intended to implement 1985 Iowa Acts, chapter 33, section 302(2) and 1986 Iowa Acts, chapter 1238, section 35.

Rescind the existing Chapter 22 and insert in lieu thereof the following new chapter:

**CHAPTER 22
COMMUNITY ECONOMIC
BETTERMENT PROGRAM**

261—22.1(71GA, ch33) Purpose. The purpose of the community economic betterment program is to increase direct and indirect employment opportunities for Iowans by increasing the level of economic activity within the state. The program is structured to provide financial assistance to businesses and industries which require such assistance in order to create new job opportunities or retain existing jobs which are in jeopardy. Such assistance may be provided to encourage:

1. New business start-ups in Iowa,
2. Expansion of existing businesses in Iowa, or
3. The relocation of out-of-state businesses into Iowa.

261—22.2 (71GA, ch33) Definitions.

"Act" means 1985 Iowa Acts, chapter 33.

"Applicant" means a city, county, or merged area school which requests state financial assistance on behalf of a business.

"Base economic activities" means those business activities which result in a net increase in the production of goods or services within the state. This would occur when either the goods or services are sold predominantly out of state, or when they are sold within the state in place of items which previously had been purchased from out of state.

"Board" means the department of economic development board established under Iowa Code section 15.103.

"Business" means a profit or not-for-profit organization, legally incorporated under state or federal law, or the laws of another country.

"Buydown" means participation by the state in a conventional loan, to an assisted business, by lowering either the effective principal or interest of the loan.

"CEBA" refers to the community economic betterment account funded by 1985 Iowa Acts, chapter 33, section 302(2).

"Committee" means the community economic betterment review committee described in rule 22.3(71GA, ch33).

"Department" means the Iowa department of economic development created by Iowa Code section 15.105.

"Director" means the director of the Iowa department of economic development.

"Grant" means an award of assistance with the expectation that, if other conditions of the award are met, no payback of funds will be required.

"Loan" means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A deferred loan is one for which payments may be postponed for a specified period. A forgivable loan is one for which payments may be eliminated entirely when the borrower satisfies specific conditions as determined by the lender.

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

"Project" means the activity, or set of activities, proposed by the recipient, which will result in the creation of employment activities and which will require state assistance to accomplish.

"Recipient" means a business which receives assistance through the CEBA program and in return agrees to provide a specified number of new jobs or retain a specified number of jobs within the state.

"Retail business" means a business whose operation consists predominantly of the purchase of a product for sale to the final user or consumer who would not be purchasing for resale.

"Service business" means a business which produces and sells a thing of value which is not a tangible product.

"Twenty-eight E (28E) agreement" means an inter-governmental agreement formed according to Iowa Code chapter 28E.

261—22.3(71 GA,ch33) Board and committee. The chairperson of the board may appoint a four-member project review committee to review applications requesting CEBA funding. The committee shall, if formed, be composed of four board members, two of whom shall be the board chairperson and vice chairperson. The director shall be an ex officio member of an active committee. A majority of those voting is necessary for action by the committee.

The board may authorize the committee to make funding recommendations to the board. Alternatively, the board may authorize the committee or the director to make final funding decisions on behalf of the board. Such authorization may be for a specific period of time, or until such time as the board rescinds the authorization.

261—22.4(71GA,ch33) Eligible applicants. Only cities, counties, and merged area schools are eligible to apply to the department for funding under this program. Applicants which are awarded funds will pass those funds on to the recipient designated in the application.

261—22.5(71GA,ch33) Eligible projects. Projects eligible for CEBA funding include, but are not limited to, the following:

1. Building construction or reconstruction;
2. Acquisition of land or buildings;
3. Equipment purchases;
4. Operating and maintenance expenses;
5. Clearance, demolition and removal of buildings to develop sites;
6. Infrastructure improvements directly related to new employment;
7. Road construction projects directly supporting and assisting economic development; and
8. Funds for guaranteeing business loans by local development corporations as described in Iowa Code section 28.29.

Assistance for such projects may be provided in any of the following forms:

1. Principal buydown to reduce the principal of a business loan;
2. Interest buydown to reduce the interest on a business loan; or
3. Grants and loans to aid in economic development.

261—22.6 (71 GA,ch33) Applications for assistance.

22.6(1) General policies.

a. An applicant may submit as many different applications as it wishes at any time. However, if the department is reviewing two or more applications from

the same applicant at the same time, it may ask the applicant to rank them in the order preferred by the applicant.

b. Only one applicant may apply for any given project.

c. No single project may be awarded more than \$1 million unless at least two-thirds of the members of the board approve the award. However, this restriction will not apply after the first \$10 have been credited to the CEBA program.

22.6(2) Ineligible applications. The department will not rate and rank ineligible applications. An application may be ruled ineligible if:

a. It is submitted by an ineligible applicant, or

b. The project consists of a business relocation from within the state, unless unusual circumstances exist which make the relocation necessary for the business's viability, or

c. CEBA funds comprise more than 50 percent of the project financing, or

d. After July 1, 1987, the applicant is located in a region which does not have an approved regional coordinating plan.

22.6(3) Procedures.

a. Applications may be submitted at any time.

b. Applications should be submitted to: Division of Financial Assistance, Department of Economic Development, CEBA Program, 200 East Grand Avenue, Des Moines, Iowa 50319. Application forms and instructions are available at this address or by calling 515/281-3746.

c. Application contents. Required contents of application will be described within the application package itself.

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

e. The department will rate and rank applications according to the criteria in rule 22.7(71GA,ch33). The department may negotiate with the applicant or proposed recipient concerning dollar amounts, terms, or any other elements of the application or project. The department may offer an award in a lesser amount or structured in a manner different than that applied for.

f. The department may approve, reject, table, defer, or refer an application to another funding program.

22.6(4) Emergency applications. Applications are sometimes made for projects which require an immediate decision on CEBA assistance in order to be successful. When the department is convinced this situation exists, it may hold electronic meetings or otherwise process the application in an accelerated manner. If approved, the project must commence within 45 days of the date of approval; failure to begin within 45 days may cause the termination of the award.

261—22.7(71GA,ch33) Selection criteria.

22.7(1) Ranking. In ranking applications for funding, the following criteria shall be considered:

a. The proportion of project funds provided by the applicant (community involvement);

b. The proportion of private contributions to be provided;

c. The total number of jobs to be created and retained;

d. The recapture, if any, of these funds by the applicant and the state that will occur;

e. The level of need in the applicant's region;

f. The impact of the proposed project on the economy of the applicant and the state; and

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

g. The extent to which CEBA funds are needed to allow the proposed project to proceed.

22.7(2) Scoring. The criteria noted above are incorporated into the scoring system as follows:

a. Local effort compared with local resources. Maximum - 40 points. This would include assistance from the city, county, community college, chambers of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. Conventional in-kind financing, and assistance under Iowa Code chapter 280B would not be considered as local effort. The form of assistance (grant, subsidized loan, equity investment, etc.) would be a consideration.

b. Community need. Maximum - 20 points. This would include considerations such as unemployment rates, per capita income, major closings and layoffs, declining tax base, etc.

c. Private contribution compared with CEBA request. Maximum - 20 points. The greater the contribution by the assisted business, the higher the score. Conventional financing would be considered as private contribution. Extra credit may be awarded for "new cash equity" by the business owners.

d. Project impact on state and local economy.

(1) Cost/benefit analysis. Maximum - 40 points. This factor would compare the amount requested to the number of jobs to be created and the projected increase in state and local tax revenues. Also considered here would be the form of assistance (e.g. a grant is more costly to the state than a loan).

(2) Quality of jobs to be created. Maximum - 40 points. Higher points to be awarded for:

- Higher wage rates
- Lower turnover rates
- Full-time, career-type positions
- Other related factors

(3) Economic impact. Maximum - 40 points. Higher points to be awarded for base economic activities, e.g.:

Greater percentage of sales out of state, or import substitution;

- Higher proportion of in-state suppliers;
- Greater diversification of state economy;
- Fewer in-state competitors;

Retail operations generally not considered as base economic activity; tourism activities probably would qualify;

Consistency with the state strategic plan for economic development prepared in compliance with Iowa Code section 15.104(2).

Maximum preliminary points for project impact - 120 points.

(4) Final impact score. Maximum - 120 points. Equal to Preliminary Impact Score X Reliability Factor (in percent).

(NOTE OF EXPLANATION - Rating Factor "d" attempts to measure the expected impact of the project, if all predictions and projections in the application turn out to be accurate. Up to this point in the proposed rating system, no attempt has been made to judge the feasibility of the business venture, the reliability of the job creation and financial estimates, the likelihood of success, the creditworthiness of the business recipient, and whether the project would occur without state assistance. An attempt to analyze projects against these factors is also important. In order to incorporate this judgment into the rating system, the Preliminary Impact Score

(Maximum of 120 points) is multiplied by a "Reliability and Feasibility" factor. This factor would range from 0 to 100%, depending upon the department's judgment as to the likelihood of the projections turning out as planned.)

If, in the department's judgment, the project would proceed whether it was funded or not, it would be assigned a 0% on the Reliability and Feasibility Factor and the Final Impact Score would be 0. This would be consistent with the intent of the program, to use funds only where the state assistance will make a difference.

The complete rating system, as proposed, is as follows:

| | Maximum Score |
|---|---------------|
| Local effort compared with local resources | 40 |
| Community need | 20 |
| Private contribution compared with CEBA request | 20 |
| Project impact | 120 |
| Total Possible Score | 200 |

261—22.8 (71GA, ch33) Award process. Every applicant will be notified in writing of the disposition of their application, within two weeks of final department action on it.

Successful applicants will be required to sign an agreement with the recipient, which clarifies the applicant's responsibility to provide funds to the recipient in return for the jobs created by the recipient. Applicants may be requested to obtain mortgages, liens, or other security from the recipient in return for the provision of funds.

Successful applicants will also be required to sign an agreement with the department which clarifies the applicant's responsibilities for oversight of the project, reporting to the department, and other responsibilities, in return for the provision of funds to the applicant and the recipient.

Certain other activities may be required of applicants or recipients before funds may be obtained from the department. Any such requirements will be spelled out in the agreement between the department and the applicant.

261—22.9 (71GA, ch33) Administration of projects—financial management.

22.9(1) Audits. All contracts made under the CEBA program are subject to audit. Recipients shall be responsible for the procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor. Audits shall be performed in accordance with applicable state and federal laws.

22.9(2) Program income.

a. Applicants and business benefactors shall be required to return to the CEB account any interest earned on awarded funds.

b. The recipients shall record the receipt and expenditure of revenues related to the program (such as taxes, special assessments, levies, fines, etc.) as part of the grant program expenditures.

22.9(3) Record keeping and retention requirements.

a. Financial records, supporting documents, statistical records, and all other records pertinent to the grant or loan program shall be retained by the applicant. All records shall be retained for three years beyond the grant or loan or longer if any litigation is begun or if a claim is initiated involving the loan or grant covered by the

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

record. In these instances, the records will be retained until the litigation claim has been resolved.

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

22.9(4) Performance reports and reviews.

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

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

22.9(5) Remedies for noncompliance. At any time before project closeout, the department may, for cause, find that an applicant is not in compliance with its requirements under this program. At the department's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to the CEB account. Reasons for a finding of noncompliance include, but are not limited to: the applicant's or recipient's using program funds for activities not described in its application; the political subdivision or business benefactor's failure to complete approved activities in a timely manner; the applicant's or recipient's failure to comply with any applicable state rules or regulations; or the lack of a continuing capacity of the applicant or recipient to carry out the approved program in a timely manner.

261—22.10 (71GA, ch33) Miscellaneous.

22.10(1) Amendments. Any substantive change to a funded CEB program will be considered a contract amendment. Such changes could include contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries. The amendment must be requested in writing. No amendment will be valid until approved by the department.

22.10(2) Annual report. The department shall submit to the governor and the general assembly an annual report setting forth the details of the operation of the program. The report shall cover the operations of the program on a fiscal year basis, from July 1 through June 30.

22.10(3) Appeals. Appeals will be entertained in instances where it can be demonstrated that either staff or board members participated in a decision where a conflict of interest existed, or that applicable rules and regulations were not complied with. Appeals should be addressed to the board chairperson, either directly or through the department.

22.10(4) Forms. The following forms will be used by the department in the administration of the CEBA program:

1. Generic application form,
2. Grant agreement,
3. Loan agreement,
4. Loan subsidy (buydown) agreement,
5. Sample grant subagreement,
6. Sample loan subagreement,
7. Sample loan subsidy (buydown) agreement,

8. Applicant program budget and schedule,
9. Applicant quarterly performance report, and
10. Applicant status of funds report.

ARC 7548**EDUCATION DEPARTMENT[670]
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 286A.16, the Iowa Department of Education hereby gives Notice of Intended Action to amend 670—Chapter 5, "Area Vocational Schools and Community Colleges," Iowa Administrative Code, by adding a new Division V, "State Area School Funding Plan" and rule 5.45(286A).

This rule will provide the procedure for the reporting of contact hours of enrollment and physical plant function costs required for the state area school funding plan.

Any interested person may make written comments or suggestions on the proposed amendment prior to May 26, 1987. Written materials should be directed to Chief, Bureau of Area Schools, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. Persons who wish to convey their views orally should contact the Chief, Bureau of Area Schools at (515) 281-3599, or in the Bureau of Area Schools on the third floor of the Grimes State Office Building.

No public hearing is planned.

The following amendment is proposed.

In Division IV reserve rules 5.40 to 5.44.

Chapter 5 is amended by adding the following:

DIVISION V**STATE AREA SCHOOL FUNDING PLAN****670—5.45(286A) State area school funding plan.**

5.45(1) Area schools shall submit to the department of education by September 1 of each year a report that identifies contact hours and full-time equivalent enrollments for the preceding fiscal year. This report of contact hours and full-time equivalent enrollments shall be submitted on forms prepared by the department of education.

5.45(2) Area schools shall report contact hours and full-time equivalent enrollments for fiscal year 1988 (July 1, 1987 to June 30, 1988) in conformity with instructions prepared by the department of education and distributed to area schools in the manual entitled "Instructions for Reporting Contact Hours of Enrollment and Full-Time Equivalent Enrollment for Fiscal Year 1988."

5.45(3) Area schools shall submit to the department of education by September 1 of each year a report that identifies plant maintenance—costs, utility costs and square feet and cubic feet of physical facilities. This report shall be submitted on forms prepared by the department of education.

This rule is intended to implement Iowa Code section 286A.16.

ARC 7559**FAIR BOARD[430]****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 §17A.4(1)"b", Iowa Code.

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 173.14(8) and chapter 17A, the Iowa State Fair Board proposes to amend Chapter 1, "General Rules," Iowa Administrative Code.

The proposed amendment to rule 1.5(173) relative to returned checks changes the fee from \$10 to \$15 and adds a liability provision.

Interested persons may present written comments or statements on the proposed amendment not later than 1:30 p.m., May 26, 1987, to Secretary/Manager, Iowa State Fair, Statehouse, Des Moines, Iowa 50319, at the Administration Building, Iowa State Fairgrounds, Des Moines, Iowa.

The Iowa State Fair Board approved this intended action at its regular meeting on March 25, 1987.

This rule is intended to implement Iowa Code section 173.14.

Amend rule 1.5(173) to read as follows:

430—1.5(173) Returned checks. A fee of ~~\$10~~ \$15 will be charged to anyone whose issued document is not honored by the issuing institution *and the issuer could be liable for up to three times the amount of the document as per Iowa Code section 554.3806.*

ARC 7561**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 17A.3, the Department of Human Services proposes to amend Chapter 1, "Departmental Organization and Procedures," and to rescind Chapter 3, "Oral Presentations on Proposed Rules," appearing in the Iowa Administrative Code and to adopt Chapter 3, "Agency Procedures for Rule Making," Iowa Administrative Code.

Governor Terry E. Branstad appointed a nine (9)-member task force in the summer of 1985 to draft proposed uniform rules of agency procedure.

On December 5, 1986, the task force presented a report to the Governor. The Governor has accepted the task force recommendations on agency procedure for rule making.

This amendment adopts the uniform rules recommended by the task force with the following exceptions:

1. The definition of an "anticipated" rule-making proceeding was revised to provide that it is "anticipated" from the time the Bureau of Policy Coordination distributes it for internal discussion within the Department.

2. The name and number of a form which must accompany payment for a subscription to the Notices of Intended Action is included in the rules. Persons are given the option of subscribing to all notices, or to only notices pertaining to the service programs or to the income maintenance programs, including Medicaid.

The subscription price for first-time subscribers will be prorated by quarter, similar to a subscription to the Iowa Administrative Bulletin. Subscription renewals will be for a year.

The price will be determined by multiplying the number of pages issued over a year times the cost of copying and mailing the notices. A full subscription for the first year will be \$180 (450 times \$.40). Service notices constitute forty percent (40%) of all notices published and income maintenance notices sixty percent (60%). Thus a full year's subscription for service and income maintenance notices will be \$72 and \$108, respectively.

3. A provision was added that the Department may waive technical compliance with the oral proceeding procedures to avoid the possibility of having to deny a request because a person neglects to include an address or telephone number.

4. The Department's policy for determining the location of oral proceedings was added. This policy was developed in response to a court case which ordered the Department not to compel indigents to travel at their own expense beyond the major population center in their own administrative area.

5. The rule on the presiding officer was revised to provide that an employee of the Department shall preside at the oral proceeding and will present a prepared statement on the substance of the rule.

6. Persons making oral presentations at oral proceedings are requested to submit their testimony in writing whenever possible.

7. A sentence was added to the rule on additional information to emphasize the importance the Department attaches to securing input on proposed rules from advocate and provider groups whenever possible.

8. Current Department policy on categories of rules exempt from notice and public participation located at rule 441—1.5(17A) was transferred to this chapter.

9. The requirement to keep copies of publications from the Iowa Administrative Bulletin (IAB) in the rule records was changed to require a reference to all publications in the IAB since all of the Bulletins are located in the same area as the rule records and can be easily copied if needed. The requirement to put copies of the docket in the rule records was changed to require instead Form 470-0096, Rule Log, which contains entries relating to the rule and proceedings upon which the rule is based.

Also, the docket will be updated on a daily basis, and it would be very difficult to make sure that a copy was made for each rule record every time a change is made to the docket.

10. The rule relating to general statements of policy was deleted. The Department can only do what is required by the Iowa Code. The Department does index its manuals and make available for public inspection the rules and manuals, but it does not have administrative

HUMAN SERVICES DEPARTMENT[441] (cont'd)

staff available to do other indexing. However, we generally do not use contested cases as precedent.

Consideration will be given to all written data, views, or arguments thereto received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before April 29, 1987.

These rules are intended to implement Iowa Code section 17A.3.

ITEM 1. Rescind and reserve rule 441—1.5(17A).

ITEM 2. Rescind 441—Chapter 3 and insert in lieu thereof the agency procedure for rule-making segments of the Uniform Administrative Rules which are printed in the front of volume I of the Iowa Administrative Code with the following amendments:

CHAPTER 3

AGENCY PROCEDURE FOR RULE MAKING

Amend the second sentence of subrule 3.3(2) as follows:

A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed by the *Bureau of Policy Coordination* for internal discussion within the agency.

Substitute the following for subrule 3.4(3):

3.4(3) Notices mailed. Persons desiring to receive mailed copies of future Notices of Intended Action by subscription shall complete Form 470-2250, Notice Subscription, which is available from the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. The form shall indicate the name and address to which the notices shall be sent. Persons may subscribe to all notices of the department, or to only notices pertaining to the service or income maintenance and medical programs. Within seven (7) days after submission of a Notice of Intended Action to the Administrative Rules Coordinator for publication in the Iowa Administrative Bulletin, the Bureau shall mail a copy of the notice to subscribers who have completed Form 470-2250 and paid the subscription price. The subscription price includes the cost of labor and supplies for copying and mailing of the notices. Subscribers will be sent Form 470-2250 at the end of each year to complete if they wish to continue on the mailing list.

3.5(1) Written comments. In lieu of the words "identify office and address" insert "the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114."

Amend subrule 3.5(2) by adding the following paragraphs at the end of the subrule.

The department may waive technical compliance with these procedures.

Oral proceedings scheduled by the department shall be held in the districts as defined in rule 441—1.4(17A). The department will determine for each rule for which oral proceedings are scheduled whether it will be necessary to hold presentations in all districts, based on client impact. Anyone may object to the department's decision prior to the date of the proceeding(s) by writing the same addressee specified in the Notice of Intended Action for receiving written data, views, or arguments. The department will review the adequacy of the number of locations in light of the comments received.

Oral proceedings scheduled following a request as defined above shall be scheduled in the county or district of the principal administrative headquarters of the

governmental subdivision, agency, or association, where the majority of persons requesting a hearing reside, or in an alternate county or district when specifically requested by the agency, association, or group of persons.

Substitute the following for subrule 3.5(3), paragraph "c":

c. Presiding officer. An employee of the department shall preside at the oral proceeding on a proposed rule and will present a prepared statement on the substance of the rule.

Substitute the following for subrule 3.5(3), paragraph "d," subparagraph (2):

Whenever possible persons making oral presentations should submit their testimony in writing.

Amend subrule 3.5(4) by adding the following sentence at the end of the subrule:

The agency may send notices of proposed rule making and a request for comments to each agency, organization, or association known to it to have a direct interest or expertise pertaining to the substance of the proposed rule.

3.6(3) Mailing list. In lieu of the words "designate office" insert "the Bureau of Policy Coordination."

3.10(2) Categories exempt. Insert the following paragraphs for the parenthetical sentence at the end:

These rules shall be those that are mandated by federal law or regulation; where the department has no option but to adopt the rules as specified; where federal funding is contingent upon the adoption of the rules, and the rules are promulgated in accordance with Title IV, XIX, or XX of the Social Security Act or the federal Food Stamp Act.

Notice and public participation would be unnecessary since the provisions of the law or regulation must be adopted in order to maintain federal funding and the department would have no option in the rule which was adopted.

3.11(1) General. In lieu of the words "specify office and address" insert "the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114."

3.13(2) Contents. In lieu of the words "Copies of" in paragraph "a" insert "Reference to".

Substitute the following for 3.13(2), paragraph "b":
Copies of Form 470-0096, Rule Log, containing entries relating to the rule or the proceeding upon which the rule is based;

In lieu of the words "(agency head)" in paragraph "c" insert "Commissioner".

Rule 441—3.16(17A) is not adopted.

ARC 7569

**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 sections 239.18, 249A.4, and 249C.15, the Department of Human Services

HUMAN SERVICES DEPARTMENT[441] (cont'd)

proposes to adopt Chapter 47, "Aid-to-Dependent-Children Eligibility Under the Grant Diversion Program," and Chapter 91, "Grant Diversion Program," Iowa Administrative Code.

These rules establish policy for implementing a two-year pilot grant diversion program for Aid-to-Dependent-Children (ADC) recipients in the Des Moines district.

This program, to be operated by work incentive demonstration (WIN) staff, is designed to increase employment opportunities for ADC recipients who have been unable to secure employment through traditional WIN services. Once a recipient begins employment, all or part of the recipient's ADC grant is withheld by the Department, and a portion is paid to the private-for-profit employer as compensation for providing training. The recipient's loss of ADC is compensated for by wages earned.

The pilot project will handle no more than 25 persons at a time. Employers are paid \$100 for each half month the recipient is enrolled. Each recipient can be enrolled for up to six months after which the employer is expected to hire the recipient as a regular employee.

The grant diversion concept is advantageous in that it allows the provision of additional services to recipients without additional program expenditures. It also offers the potential of expanding the job market for ADC recipients.

Operation of a grant diversion program is optional for states under federal law and regulations. However, once a state elects to operate a grant diversion program, there are certain mandatory guidelines that must be followed and certain optional provisions.

The mandatory guidelines are as follows:

1. Federal policy limits eligibility for grant diversion services to those clients who would have been eligible for ADC under the May 1981 state plan and as modified thereafter as required by federal law. Therefore, ADC-unemployed parents will not be eligible for this program.

2. The acceptance of any job position must be voluntary for the client.

3. Federal policy requires that once a client is enrolled in grant diversion, the client shall remain eligible for grant diversion for the duration of the contract, even if direct ADC assistance becomes zero. The grant diversion participant is considered an ADC recipient for the duration of the contract.

The optional provisions of the program and the Department's proposed recommendations for the options are listed below:

1. Duration of the program. The program can either be ongoing or established as a pilot of limited duration. Although an ongoing program would imply a commitment by the Department to continue program availability and employers might be more willing to participate if they believe the program is permanent, the Department is proposing the program be established as a two-year pilot. Pilot status acknowledges that the program is experimental, subject to design modifications and possible cancellation.

2. Location of the program. The program can either be statewide or limited to geographic location(s). A statewide program would provide for the provision of uniform services but is not a suitable approach when implementing an experimental program where close monitoring is needed and rapid adjustment of program design may be required. The Department is proposing the pilot project be established in the Des Moines district

as part of the WIN program. The proximity of the eight counties in the Des Moines district to the central office will enable close program monitoring. Also, the Des Moines WIN program includes staff who have previous experience in job development and operation of on-the-job training programs. If the pilot is successful, the program can then be expanded into other locations.

3. Caseload size. The program could either provide services to all qualifying clients within the project location or restrict enrollment. Unrestricted enrollment ensures the provision of service without discrimination but can result in unwieldy caseload size. It may also result in a misuse of the component by providing jobs for clients who could secure their own employment without use of grant diversion. The Department is proposing that participation be restricted to those clients who have completed job club and work experience and who have received positive monthly evaluations from their supervisors while in work experience. This will ensure that the Department is not providing jobs to clients who would otherwise be able to secure their own employment.

The Department is also proposing that caseload size be limited to a maximum of 25 slots to allow close monitoring and evaluation of services during the experimental period.

4. Client participation. Once a client has voluntarily accepted a job position, if the client then withdraws, the state has the option either of allowing the client to withdraw without penalty or of sanctioning the client. More clients may be willing to volunteer initially if they are not required to remain active in the component. The Department is proposing that participation after enrollment be mandatory to secure clients who have a strong commitment to become employed. Motivated clients are most likely to create a favorable impression on employers.

5. Length of participation. The length of participation can be variable, based on a variety of factors such as length of time needed for training and client skill level at points of enrollment. The length of participation can also be fixed. Under the variable option the employer contract would be custom-tailored to address the needs of both the client and the employer. Under federal policy, the maximum length of participation is nine months. The Department is proposing that participation be established at a fixed six months. A fixed period simplifies program administration and ensures that all employers receive equal treatment. Six months was selected based on prior experience with WIN on-the-job training which was established at six months and proved to be of sufficient duration.

6. Employer selection. The state has the option of selecting public, nonprofit or private-for-profit employers. The Department is recommending that placement be limited to private-for-profit employers who are most likely to be able to provide jobs and retain clients once the grant diversion contract has expired. Staff will attempt to recruit employers from small, medium and large firms to enable the Department to determine what size employer is generally most suitable for grant diversion.

7. Full-time or part-time employment. The use of full-time or part-time employment would increase the availability of jobs for participants. However, the Department is proposing that jobs be restricted to full-time positions of at least 30 hours per week, which also

HUMAN SERVICES DEPARTMENT[441] (cont'd)

provide health insurance coverage. These jobs will offer the greatest potential for enabling recipients to become economically self-sufficient.

8. Amount of employer incentive payment. The amount of the employer incentive payment can be variable or fixed. A variable payment could be based on a variety of factors, such as the amount of salary paid to the client, sophistication of the job, or the amount of time required to train the client. The Department is proposing that employers receive a maximum payment of \$100 for each half-month period or part thereof that the client works, for a maximum monthly payment of \$200. It is also recommended that the amount of payment not exceed the gross wages earned by the participant during the month because federal financial participation is not available for payments exceeding earnings. The \$200 payment standard is based on an analysis of grant reductions over the past three years for WIN clients who became employed and should ensure that sufficient moneys have been diverted from the ADC grants of participants to fulfill financial commitments to employers.

9. Employer documentation. The state has the option of automatically issuing employers their monthly payments without requiring them to submit any forms of documentation or of requiring the employers to submit documentation at the end of each month that the client was present. The Department is requiring that employers be required to submit monthly billings to verify client participation. This will reduce the possibility of the erroneous issuance of checks and the billing can be used to track wages earned by clients.

10. Continuing eligibility for ADC assistance-treatment of ADC grant. There are four basic options for treatment of the ADC grant under grant diversion. The grant can be reduced to zero; the state can lock in on a fixed amount of ADC that a client can receive while participating in grant diversion; the state can continue to compute the grant amount utilizing standards which differ from those applied to regular earned income cases; or the grant diversion earnings and other income can be treated in the usual manner.

Reducing all grants to zero would ensure that the maximum amount of funds are available to pay employer incentives, but some clients could have less available money from earnings than they had before grant diversion. With the fixed amount, the state would need to determine what, if any, circumstances would affect the amount of assistance such as the receipt of child support or increased earnings. The income of certain clients could increase significantly. The intent of allowing states to expand the earned income disregards is to provide special incentives to encourage recipients to participate. All of these three options would require special training of the income maintenance workers and could be difficult to administer.

The Department is recommending that earnings from grant diversion and other income be treated in the same way as in any other case. This will ensure that grant diversion clients receive the same treatment as other clients with earned income.

The Department has elected to provide medical assistance throughout the grant diversion contract period as an incentive to participation.

The only additional cost associated with the grant diversion pilot is the cost of a social worker position and administrative costs. The program costs will be paid from

welfare savings (the amount by which the ADC grant is reduced because of earnings). The Department will be contracting with the Department of Employment Services to issue the monthly payments to the grant diversion employers.

Consideration will be given to all written data, views, or arguments thereto received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before May 27, 1987.

Oral presentation may be made by appearing at the following meeting. Written comments will also be accepted at that time.

Des Moines — May 27, 1987

9 a.m.

Work Incentive (WIN) Office

1301 19th Street

Des Moines, Iowa 50314

These rules are intended to implement Iowa Code sections 239.5, 249A.4, 249C.3, and 249C.5.

Adopt the following new chapters:

CHAPTER 47
AID-TO-DEPENDENT CHILDREN
ELIGIBILITY UNDER THE
GRANT DIVERSION PROGRAM

Preamble

This chapter is established to supplement 441—chapter 91. Chapter 91 specifies the rules to be used by the work incentive demonstration program (WIN) in placing individuals in employment through the grant diversion program. This chapter establishes the special rules to be applied to aid-to-dependent-children recipients who choose to participate in the grant diversion program.

441—47.1(239, 249C) Program description. The grant diversion program described in 441—chapter 91 is a component of Iowa's work incentive demonstration program. Aid-to-dependent-children recipients who choose to participate in the grant diversion program are placed in salaried, on-the-job-training positions with private employers. Employers providing jobs receive financial compensation for training provided. The financial compensation paid to employers is funded by welfare savings.

Although enrollment in the grant diversion program is voluntary, participation is mandatory once the client begins work in a position provided through the program. Once employment begins, the recipient must cooperate with all grant diversion program requirements for a maximum of six months. The first month of program participation is the first month in which employment begins, regardless of when the first paycheck is received.

Although grant diversion program participants are generally treated the same as other aid-to-dependent-children recipients, there are some differences in treatment. This chapter has been established to specify those differences in treatment.

This rule is intended to implement Iowa Code sections 239.5, 249C.3, and 249C.5.

441—47.2(239, 249C) Aid-to-dependent-children eligibility. Except as specified below, aid-to-dependent-children recipients participating in the grant diversion program shall be treated in accordance with 441—chapters 7, 40, 41, 43, 45 and 46.

47.2(1) Recipient status. When an aid-to-dependent -children recipient is a grant diversion program

HUMAN SERVICES DEPARTMENT[441] (cont'd)

participant, that person and any other person included in the same eligible group, in accordance with subrule 41.8(1) or 41.8(2), paragraph "b," shall be considered aid-to-dependent-children recipients regardless of whether a direct aid-to-dependent-children assistance grant is received. The financial compensation paid to the employer shall be considered aid-to-dependent-children assistance paid on behalf of the grant diversion participant. The grant diversion participant shall become ineligible for the grant diversion program and aid to dependent children only under the circumstances described in rule 441—91.11(249C). Otherwise, grant diversion participants failing to meet the eligibility requirements of 441—chapters 40 and 41 shall become ineligible for a direct cash assistance grant but shall remain grant diversion participants and aid-to-dependent-children recipients.

47.2(2) Work incentive program. Grant diversion program participants shall be considered registered with and referred to the work incentive demonstration program throughout the entirety of grant diversion participation. Volunteers who are sanctioned for failure to participate are subject to the sanctions described at subrule 41.4(8). Mandatory referrals who fail to participate are subject to the sanctions described at subrule 41.4(7).

47.2(3) Child support requirements. Grant diversion program participants and other members of the participant's eligible group shall cooperate with the child support requirements described at subrule 41.2(6). In addition, support payments assigned to the state in accordance with subrule 41.2(7) shall remain assigned during the period of grant diversion participation. However, the release of child support payment provisions specified at subrule 41.2(7), paragraphs "a" and "e," are not applicable to cases with grant diversion participants.

47.2(4) Recoupment. Recoupment of an aid-to-dependent-children overpayment shall not be made by withholding any amount from the financial compensation paid to the employer of the grant diversion participant.

This rule is intended to implement Iowa Code sections 239.5, 249C.3, and 249C.5.

441—47.3(249A, 249C) Medical assistance eligibility. For the purpose of medical assistance eligibility, a grant diversion participant and other members of the participant's eligible group shall be considered aid-to-dependent-children recipients, as specified at subrule 75.1(1), regardless of whether a direct cash assistance grant is received.

This rule is intended to implement Iowa Code sections 249A.4, 249C.3, and 249C.5.

**CHAPTER 91
GRANT DIVERSION PROGRAM
Preamble**

This chapter implements the grant diversion program which is designed to provide employment opportunities for work incentive demonstration (WIN) program participants who have been unable to secure employment through the provision of other WIN services. Grant diversion participants are placed at jobs with private-for-profit employers where they receive on-the-job training. In return for training services provided, employers receive financial compensation. The name "grant diversion" is derived from the program's primary funding source; welfare moneys previously received by

the participant are instead diverted to compensate the employer.

Grant diversion jobs are established for a contract period of a maximum of six months after which the employer is expected to retain the participant as a regular unsubsidized employee.

441—91.1(249C) Program area. The Des Moines district work incentive demonstration (WIN) project shall operate a grant diversion program as a component of the WIN program. The Des Moines district WIN project includes the counties of Boone, Story, Dallas, Polk, Jasper, Madison, Warren, and Marion. The grant diversion program in the Des Moines district shall be known as the job ready program.

441—91.2(249C) Program description.

91.2(1) Participants in grant diversion shall be placed at salaried jobs where they shall receive on-the-job training while earning wages.

91.2(2) Employers who provide jobs shall receive financial compensation in return for training provided.

91.2(3) Welfare savings shall be used to fund employer compensation and costs associated with the administration of the program.

91.2(4) The Des Moines district grant diversion program shall be operated as a pilot for a 24-month period beginning July 1, 1987, and ending June 30, 1989.

91.2(5) The number of employed participants shall be limited to 25 at any given time.

441—91.3(249C) Eligibility requirements.

91.3(1) To be eligible for grant diversion, a WIN participant must be eligible for aid-to-dependent-children assistance based on Iowa rules which were in effect in May 1981, or as modified thereafter as required by federal law.

91.3(2) Only WIN participants who remain unemployed after completing job club and work experience shall qualify for participation in grant diversion.

91.3(3) Participants must have received an overall evaluation of at least "good," as specified on the Work Experience Participation Evaluation, Form WI-1103-5, from the work site sponsor during their final three months of work experience participation.

441—91.4(249C) Length of enrollment. Participation in grant diversion for any person is limited to one enrollment for a maximum of six months. Six months means 180 calendar days, beginning with the first day of employment. The limit of one enrollment is waived if a job site terminates during the six-month period for reasons beyond the control of the participant. For persons allowed two enrollments, total participation in grant diversion shall not exceed nine months or 270 days.

441—91.5(249C) Enrollment requirements.

91.5(1) Initial enrollment in grant diversion shall be voluntary. Once a participant has started employment, participation shall be mandatory.

91.5(2) Participants who volunteer for grant diversion shall receive an orientation to the program which shall include, at a minimum, an explanation of how the program works, an explanation of the benefits derived as a result of participation, an explanation of participation requirements and possible sanctions for failure to participate and an explanation of the effects that participation may have on the participant's aid-to-dependent-children eligibility. At the completion of

HUMAN SERVICES DEPARTMENT[441] (cont'd)

orientation, the client shall be required to sign the Case Plan Addendum: Grant Diversion, Form 470-2258.

91.5(3) Participants shall have the option of accepting any job referral offered by the program. An offer of a job referral must include a job description with a statement of job responsibilities, location, salary, required hours and days of work and fringe benefits.

441—91.6(249C) Not eligible for participation allowances. Participants in grant diversion are not eligible for direct payment of training-related expense or child care allowances by the department.

441—91.7(249C) Referral procedures.

91.7(1) Participants shall be referred to job interviews using the Referral for Grant Diversion Placement, Form 470-2256.

91.7(2) The time, date and location of the interview shall be prearranged by WIN staff prior to referring the participant.

441—91.8(249C) Employer requirements.

91.8(1) Employers who wish to participate in the grant diversion program shall complete the Grant Diversion Placement Contract, Form 470-2257, which shall include, at a minimum, a complete job description of the position offered, minimum qualifications of participants to be referred, location of the job, hours and days that the individual will be required to work, salary and fringe benefits. At a minimum, fringe benefits must include the provision of workers' compensation insurance and health insurance. Health insurance shall be paid in whole or in part by the employer and provided under the same terms that coverage is provided to unsubsidized employees.

91.8(2) Employers shall meet the following job site requirements:

a. Grant diversion job sites shall be restricted to private-for-profit employers.

b. Job sites must provide employment for at least 30 hours per week.

c. The rate of pay must be at least equal to the rate the employer would pay a newly hired unsubsidized employee for a same or similar position.

d. Pay must be at least equal to the hourly federal minimum wage, not including tips, commissions, or production-based payments.

e. Job sites shall be established for a fixed 180-calendar-day period, unless the employer requests a shorter time frame, or unless this is prohibited by the time limits specified in rule 91.4(249C).

f. Grant diversion positions shall:

(1) Not be used to displace current employees.

(2) Not be developed in response to or in any way be associated with the existence of a strike, lockout or other bona fide labor dispute.

(3) Not violate any existing labor agreement between employees and employer.

(4) Comply with applicable state and federal health and safety standards.

(5) Afford the participant all employee benefits offered to unsubsidized employees.

91.8(3) Hiring the referral is at the discretion of the employer. Employers, however, shall not discriminate against any referral because of race, color, religion, sex, age, creed, physical or mental disability, political affiliation or national origin.

91.8(4) Employers must notify WIN of the acceptance or denial of a referral using the Referral for Grant

Diversion Placement, Form 470-2256. Reasons for denial of a referral must be given on the form.

441—91.9(249C) Employer compensation.

91.9(1) In return for training services provided, employers shall receive a maximum payment of \$100 for each half-month period that the client works, for a maximum monthly payment of \$200. The amount of payment, however, shall not exceed the gross wages earned by the participant during the month for which the payment is being issued.

a. A half-month period is either the first through the fifteenth day or the sixteenth through the last day of the month.

b. If a participant works any amount of time during a half-month period, the employer is entitled to a half-month payment. However, the total monthly payment shall not exceed the gross wages earned during the month.

91.9(2) Employer payments shall be issued monthly after the last day of the calendar month of participation.

91.9(3) To receive payment, the employer shall submit the Grant Diversion Participant Evaluation, Form 470-2259, to the department specifying the days worked and gross wages earned by the participant during the month. A copy of this report shall also be provided by the employer to the participant.

441—91.10(249C) Continuing eligibility. A grant diversion participant who, for any reason, becomes ineligible for a direct aid-to-dependent-children cash assistance grant shall remain eligible for grant diversion participation for the duration of the assignment in accordance with subrule 47.2(1).

441—91.11(249C) Sanctions for failure to participate. Participants who fail to participate after beginning employment shall be sanctioned in accordance with rule 441—90.14(249C) if the participant is a volunteer WIN referral, or 441—90.16(249C) if the participant is a mandatory WIN referral. Sanctionable issues are as follows:

91.11(1) A participant whose job is terminated by the employer for lateness, absenteeism, refusal to follow instructions, disruptive behavior, theft or embezzlement and who does not have good cause shall be sanctioned. Documentation of good cause may be required.

a. The standards used to judge the participant's behavior must be the same as those used to judge the employers' unsubsidized employees.

b. The employer must first confer with WIN regarding the problem as well as notify the client of and provide the client with the opportunity to rectify the problem.

c. Grounds for good cause are the same as those specified in subrule 90.16(3) with the exception of paragraph "f."

91.11(2) A participant who terminates employment during the contract period without having good cause shall be sanctioned. Documentation of good cause may be required.

a. Good cause reasons for terminating employment are the same as those specified in subrule 90.16(2), paragraph "i."

b. Other grounds for good cause include lack of transportation, long-term illness or disability which precludes continuation of employment, or sexual harassment.

c. In addition, good cause exists if an employer alters any provision of the contract without prior approval from

HUMAN SERVICES DEPARTMENT[441] (cont'd)

both the department and the participant or a participant accepts unsubsidized employment of 30 or more hours per week. Participants, however, are not required to accept offers of unsubsidized employment while participating in grant diversion.

441—91.12(249C) Right of appeal. Each participant is entitled to a fair hearing regarding application for services, services being received, or services which have been denied, reduced, canceled, or inadequately provided according to 441—chapter 7.

These rules are intended to implement Iowa Code sections 249C.3 and 249C.5.

ARC 7565**INSPECTIONS AND APPEALS
DEPARTMENT[481]****AMENDED NOTICE OF INTENDED ACTION**

Pursuant to the authority of the Iowa Code section 10A.104, the Department of Inspections and Appeals hereby gives Notice of Intended Action to hold a public hearing on May 29, 1987, at 2 p.m. in the Lucas State Office Building, Room 248. This hearing is scheduled to allow interested people to comment about proposed Iowa Administrative Code rules 481—Chapter 30, "Health Facilities Inspections." These proposed rules were published in the Iowa Administrative Bulletin April 8, 1987, as **ARC 7512**.

ARC 7558**HUMAN SERVICES
DEPARTMENT[441]****NOTICE OF INTENDED ACTION**

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

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

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

Medicare has revised its policy concerning physician's assistants employed by physicians. Effective January 1, 1987, services provided by the physician's assistant need not be limited only to the office setting, but may also be provided in a hospital, skilled nursing facility, or intermediate care facility. The revision also liberalized the supervisory requirement that the physician be physically on the premises at the time the physician's assistant was rendering services to provide immediate and direct supervision and assistance. The physician must still exercise general supervision, but does not have to be on the premises. The physician must, however, be available by telephone to provide assistance.

This amendment revises Medicaid policy to bring it into consistency with Medicare policy.

Consideration will be given to all written data, views, or arguments thereto received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before May 27, 1987.

This rule is intended to implement Iowa Code section 249A.4.

Delete the fourth paragraph of subrule **78.1(13)**, paragraph "c," and insert the following in lieu thereof:

A physician's assistant certified under 470—chapter 136 is exempt from the direct personal supervision requirement but the physician must still provide general supervision and be available to provide immediate needed assistance by telephone.

ARC 7568**JOB SERVICE DIVISION[345]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 17A.3, the Director of the Department of Employment Services hereby gives Notice of Intended Action to amend Chapter 3, "Employer's Contribution and Charges," and Chapter 4, "Claims and Benefits," Iowa Administrative Code.

Rule 3.12(96)—this rule is merely being transferred to the correct chapter of the Iowa Administrative Code. This rule is being combined in Chapter 4, subrule 4.8(7).

Subrules 4.8(4) and 4.8(5)—the current wording in 4.8(5) requires the signatures on documents submitted by a base period employer, other than the most recent employer, of a claimant when the benefit rights of the claimant are not affected. Pursuant to Iowa Code section 96.6, subsection 2, "Initial determination," the Division of Job Service requires signatures on all protest documents submitted by base period and the most recent employing unit where the benefit rights of a claimant may be affected. Subrule 4.8(5) is misleading and serves no useful purpose. The employer or designated representative of the employer must sign the protest document to be legally acceptable. This change combines subrules 4.8(4) and 4.8(5) into one rule.

Subrule 4.8(7)—rule 3.12(96) is combined with this subrule to allow the employer the opportunity to go on record with a protest of unemployment insurance within ten days of the workers' separation on issues pertaining to Iowa Code section 96.5.

Subrule 4.13(1), paragraph "a"—the current wording in 4.13(1)"a" allows for a different application to the deduction of holiday pay. In some cases, holiday pay is not deducted and the individual normally will still receive the holiday pay upon return to work, as well as receiving

JOB SERVICE DIVISION[345] (cont'd)

full benefits. This amendment will eliminate this inconsistency and also ensure an individual an adjustment in the event it is not paid by the employer.

Subrule 4.25(14)—this subrule is basically the same as subrule 4.25(35). Subrule 4.25(14) is being rescinded and subrule 4.25(35) is being rewritten to consolidate references to illness and injury together so that it is simplified and more understandable.

Subrule 4.25(15)—this subrule is being rescinded which refers to illness. However, subrule 4.25(39) correctly refers to illness and injury as well as pregnancy and is the correct consolidated version.

Subrule 4.25(35)—this subrule is combined with subrule 4.25(14) which is basically the same. If the claimant fails to return to work after having been released by the doctor following separation caused by illness, injury or pregnancy, the claimant is disqualified.

Subrule 4.25(36)—this subrule is being rescinded which refers to injury. However subrule 4.25(39) correctly refers to illness and injury as well as pregnancy and is the correct consolidated version.

Subrule 4.26(6)—this subrule simplifies and consolidates all of the separate subrules 4.26(7), 4.26(18), 4.26(24), and 4.26(16) pertaining to separation issues involving illness, injury and pregnancy.

Subrules 4.26(7), 4.26(18), 4.26(24), and 4.26(26) are being rescinded as they are consolidated with 4.26(6).

Interested persons, governmental agencies, and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m., May 27, 1987, to Paul H. Moran, Department of Employment Services, Division of Job Service, 1000 East Grand Avenue, Des Moines, Iowa 50319. A public hearing will be held at 9:30 a.m., May 27, 1987, at the above address. The proposed amendments are subject to revision after the Department considers all written and oral presentations. Persons who want to convey their views orally should contact Mr. Moran at 515/281-4986 or at the above address.

These rules are intended to implement Iowa Code sections 96.5(1)"d," 96.6(2), 96.11(2), and 96.19(12).

The amendments are as follows:

ITEM 1. Rescind rule 345—3.12(96) in its entirety and reserve the number for future use.

ITEM 2. Amend subrule 4.8(4) as follows:

4.8(4) A Signatures is required on the protest documents submitted by a most recent an employing unit when the benefit rights of a claimant may be affected.

a. Replies to a notices of claim filing, claim protests, requests for determinations, redeterminations, or decisions, and statement of facts, or any other document relating to the adjudication of a claims, which are is submitted by an most recent employing unit, or the employing unit's authorized agent, must be executed by the employing unit under the signature of an individual proprietor, a partner, an executive officer, a department manager or other responsible employee who handles employee information, or who has direct knowledge of the reasons for the claimant's separation from employment.

b. Appeals from division determination (decisions) must be signed by the appellant or interested party.

ITEM 3. Rescind subrule 4.8(5) in its entirety and reserve the number for future use.

ITEM 4. Amend subrule 4.8(7) as follows:

4.8(7) Protest information initiated by the employer.

a. The employer has the option to initiate a separation notice to the division of job service under conditions which, in the opinion of the employer, may disqualify an individual from receiving benefits for any reason defined in Iowa Code section 96.5. To exercise this option the employer shall must, within ten days after such separation, notify the division of such separation on a Form 60-0154, notice of separation. The ten-day protest period shall be determined by the postmark on the envelope which contains the notice of separation. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the division.

b. The employer shall also deliver to the worker a copy of the notice at the time of the separation, or shall mail a copy of the notice to the last known address of the worker. See subrules ~~3.12(2)~~ and 4.1(85).

ITEM 5. Amend subrule 4.13(1), paragraph "a," as follows:

a. Holiday pay—apply as wages but only if the claimant is entitled to receive holiday pay at the time that the week containing the holiday is claimed. However, if the actual entitlement to of the holiday pay is subsequently not paid by the employer, based on a future contingency, it is not deductible on a current claim for payment the claimant may request an underpayment adjustment from the division.

ITEM 6. Rescind subrule 4.25(14) in its entirety and reserve the number for future use.

ITEM 7. Rescind subrule 4.25(15) in its entirety and reserve the number for future use.

ITEM 8. Amend subrule 4.25(35) as follows:

4.25(35) The claimant left because of due to illness, an injury, or pregnancy and failed to:

a. Obtain Upon the advice of a licensed and practicing physician; but failed to return to the employer upon recovery.

b. Obtain certification of release for work from a licensed and practicing physician; or

c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician.

ITEM 9. Rescind subrule 4.25(36) in its entirety and reserve the number for future use.

ITEM 10. Amend subrule 4.26(6) as follows:

4.26(6) Separation because of illness, injury and pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. However, where the claimant has been replaced by the employer before an attempt is made to resume working, there is no decision for the employer to make and the physician's certification is not essential to the voluntary quit decision. The issue of ability to work and availability for work by the claimant must be determined before payment can be released.

b. Employment related separation. The claimant was compelled to leave employment upon the advice of a licensed and practicing physician because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected

JOB SERVICE DIVISION[345] (cont'd)

with the employment which resulted in the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer if, when recovery was certified by a licensed and practicing physician, the claimant returned to the employer and offered to perform services and suitable comparable work which would not aggravate the illness, injury, or allergy was not available.

ITEM 11. Subrules 4.26(7), 4.26(18), 4.26(24), and 4.26(26) are rescinded and the numbers reserved.

ARC 7575

LABOR SERVICES DIVISION[347]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to adopt an amendment to rule 347—10.20(88) relating to occupational safety and health rules for general industry. The amendment relates to record keeping requirements for tests, inspections, and maintenance checks and hazardous waste operations and emergency response.

In compliance with Iowa Code section 88.5(1)"b," a public hearing will be held on May 27, 1987, at 9 a.m. in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than May 27, 1987, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The agency has determined that this Notice of Intended Action may have an impact on small business. The agency has considered the factors listed in Iowa Code section 17A.31. The agency will issue a regulatory flexibility analysis as provided in Iowa Code section 17A.31 if a written request is filed by delivery or by mailing post-marked no later than May 27, 1987, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

These rules were filed as emergency rules effective on April 17, 1987, ARC 7574, and the content of that filing is incorporated herein by reference.

ARC 7563

LIVESTOCK HEALTH
ADVISORY COUNCIL[521]

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 §17A.4(1)"b", Iowa Code.

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 267.5, subsection 3, the Livestock Health Advisory Council proposes to amend Chapter 1, "Recommendations," by rescinding the chapter and replacing it with the Council's recommendations for fiscal year 1987-1988.

The Livestock Health Advisory Council recommendations contained in the Iowa Administrative Code set forth the recommendations of the Council for expenditure of an annual state appropriation to be used by the Iowa State University College of Veterinary Medicine for research into livestock diseases. The statute provides for a standing appropriation of \$300,000. The proposed recommendation for fiscal year 1987-1988 is the same as the 1986-1987 recommendation.

The Council will meet at 10 a.m. on Wednesday, June 24, 1987, at the Dean's Conference Room at the College of Veterinary Medicine of Iowa State University, Ames, Iowa, to make its recommendation for expenditure of the 1987-1988 appropriation. This meeting will constitute the public hearing on the proposed recommendation. Persons may present their views at this public hearing either orally or in writing.

Persons who wish to make oral presentations at the public hearing should contact the Chairperson of the Council, Connie Greig, R.R. 1, Box 57, Estherville, Iowa 51334, phone number 712/362-3330, at least one day prior to the date of the public hearing. Persons desiring to submit written comments may submit them to the Livestock Health Advisory Council in care of Connie Greig, R.R. 1, Box 57, Estherville, Iowa 51334 on or before June 24, 1987.

This recommendation is intended to implement Iowa Code section 267.5, subsection 3.

The following recommendation is proposed:

Rescind 521—Chapter 1 and insert in lieu thereof the following:

CHAPTER 1

RECOMMENDATIONS

521—1.1(267) Recommendation for fiscal year 1987-1988. Iowa Code chapter 267 makes an appropriation for \$300,000 for fiscal year 1987-1988 to be used by the Iowa State University College of Veterinary Medicine for research into livestock disease. The livestock health advisory council recommends that this appropriation for fiscal year 1987-1988 be applied in the following manner:

1. \$31,200 for pseudorabies research.
2. \$28,600 for bovine respiratory diseases research.
3. \$29,100 for transmissible gastroenteritis research.
4. \$10,400 for calf and lamb viral enteritis research.
5. \$15,600 for turkey coryza research.
6. \$30,200 for pasteurilla subunit research.
7. \$34,300 for pinkeye research.
8. \$20,750 for necroproliferative enteritis research.
9. \$36,400 for swine pneumonia research.
10. \$21,850 for bovine virus diarrhea research.

LIVESTOCK HEALTH ADVISORY COUNCIL[521] (cont'd)

11. \$15,600 for Newcastle disease research.
 12. \$15,600 for sheep pneumonia research.
 13. \$10,400 for bovine respiratory syncytial virus research.
- This recommendation is intended to implement Iowa Code section 267.5(3).

ARC 7587**MANAGEMENT DEPARTMENT[541]****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 §17A.4(1)"b", Iowa Code.

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 19B.7(1)"b," the Iowa Department of Management hereby gives Notice of Intended Action to promulgate Chapter 4, "Contract Compliance," Iowa Administrative Code.

The 1986 Iowa Acts, chapter 1245, provide, in part, for the administration and promotion of equal opportunity in all state contracts and services and for the prohibition of discrimination and unfair practices within any program receiving or benefiting from state financial assistance.

The rules set forth standards and assessment thereof for equal opportunity in the equitable provision of services within state programs, nondiscrimination in employment by state contractors and subcontractors, and the utilization of minority and women's business enterprises as sources of supplies, equipment, construction, and services.

Any interested person may make written suggestions or comments on these proposed rules prior to May 26, 1987. Written materials should be sent to the Director, Iowa Department of Management, State Capitol Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Director, Iowa Department of Management at 515/281-3322 or in the Department of Management offices on the ground floor of the State Capitol Building. Also, there will be a public hearing on Tuesday, May 26, 1987, at 1:30 p.m. in conference room 118, first floor, State Capitol Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Director of the Department of Management at least one day prior to the date of the public hearing.

These rules are intended to implement Iowa Code section 19B.7.

CHAPTERS 1 to 3

RESERVED

CHAPTER 4

CONTRACT COMPLIANCE

541—4.1(19B) Responsibilities. The department of management is responsible for the administration and promotion of equal opportunity in all state contracts and services. It is also responsible for the prohibition of dis-

crimatory and unfair practices within any program receiving or benefiting from state financial assistance in whole or in part.

4.1(1) The department of management shall:

a. Establish for all state agencies and departments a contract compliance policy applicable to state contracts, services, and programs receiving or benefiting from state financial assistance.

b. Adopt administrative rules to implement the contract compliance policy.

c. Monitor the actions of state agencies to ensure compliance in:

(1) Equitable provision of services within state programs;

(2) Nondiscrimination in employment by state contractors and subcontractors;

(3) The utilization of minority and women business enterprises, Disadvantaged Business Enterprises (DBE) as sources of supplies, equipment, construction, and services.

d. Consider appropriate sanctions on individual state agencies and departments including the state board of regents and its institutions to ensure compliance with state programs emphasizing equal opportunity through affirmative action, contract compliance policies, and procurement set-aside programs.

e. Report results of contract compliance to the governor and the general assembly annually.

541—4.2(19B) Policy. It is the policy of the state of Iowa to promote equal opportunity in all state contracts and services and to provide leadership in developing affirmative action practices to assure fair and equitable participation within all programs receiving or benefiting from state financial assistance in whole or in part.

4.2(1) No individual, except as specifically authorized by law, shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program receiving or benefiting from state financial assistance because of race, creed, color, religion, sex, national origin, age, physical or mental disability.

4.2(2) As authorized by rule, contractors, vendors, and suppliers doing business with the state of Iowa shall have an affirmative action program to ensure that members of protected classes are effectively afforded equal employment opportunities.

4.2(3) All agencies and departments within Iowa state government shall provide opportunities for women and minority businesses in the awarding of contracts through a procurement set-aside program provided in Iowa Code subsection 73.16(2) and administrative rules of Iowa department of economic development.

541—4.3(19B) Contract compliance.

4.3(1) Equitable provision of service within state programs. No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program receiving or benefiting from state financial assistance because of race, creed, color, religion, sex, national origin, age, physical or mental disability. These programs shall include, but not be limited to the following:

1. State services and facilities,
2. State employment service,
3. State contracts and subcontracts,
4. State licensing and regulatory agencies,
5. State financial assistance.

MANAGEMENT DEPARTMENT[541] (cont'd)

4.3(2) Nondiscrimination in employment by contractors and subcontractors:

a. Every department, agency, board, and commission authorized to make contracts or subcontracts for construction, goods and supplies, professional services, and grant-in-aid, shall secure agreement from contractors or subcontractors that:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age, physical or mental disability.

The subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, religion, sex, national origin, age, physical or mental disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor will post notices in conspicuous places available to employees and applicants for employment.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, sex, national origin, age, physical or mental disability.

(3) The contractor will send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the contractor's commitment, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor shall comply with all provisions of Iowa Code section 19B.7 and of the rules, regulations, and relevant Executive Orders of the state of Iowa.

(5) The contractor will furnish all information and reports required by the rules, regulations and Executive Orders, and will permit access to the contractor's books, records, and accounts by the contracting agency and the department of management for purposes of investigation to ascertain compliance with the rules, regulations and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further state contracts in accordance with procedures authorized, and such other sanctions may be imposed and remedies invoked as provided by rule, regulation or order, or as otherwise provided by law.

(7) The contractor will include the provisions of this paragraph in every subcontract or purchase order unless exempted by rules, regulations or orders, so that such provisions will be binding upon each subcontractor or vendor.

b. Each agency and department shall require:

(1) All contractors, vendors, and suppliers to submit with their bid all relevant assurances that include or make reference to the state's equal employment opportunity, rules, regulations, and Executive Orders.

(2) Contractors, vendors, or suppliers doing business with the state in excess of \$50,000 and employing more than 25 employees, in any calendar year, to submit a contract compliance data form, as prescribed by the department of management. This form will request the following information:

1. Equal employment opportunity and affirmative action program information,

2. Authorized person to carry out responsibilities,

3. Policies and practices that are known and implemented, and

4. Work force composition by race and sex.

c. Each agency and department shall: compare contractors', vendors', and suppliers' contract compliance data with such sources as relevant labor market and other data provided by the department of management. This comparison shall determine:

(1) Underutilization of protected classes.

(2) Which contractor, vendor, supplier is required to submit an affirmative action plan.

(3) Assess progress toward correcting underutilization.

d. If it is determined there is significant underutilization, each agency and department shall require the contractors, vendors, or suppliers to submit an affirmative action plan, which shall include, but not be limited to:

(1) The contractor's, vendor's, and supplier's publicly stated and posted policy regarding equal opportunity employment,

(2) The method by which and places where the contractor, vendor, and supplier seeks to recruit employees,

(3) Classification and compensation plans which apply equally to all employees,

(4) Training programs which provide all persons including those in protected classes with an equal opportunity to qualify for employment and advancement,

(5) The contractor's, vendor's, and supplier's active support of local and national community action programs,

(6) The effectiveness of the contractor's, vendor's, and supplier's affirmative action program as evidenced, in part, by the number or percentage of persons of the protected classes employed at all levels, taking into account the geographical location of the contractor's, vendor's, and supplier's work force.

(7) The judgment regarding compliance shall be favorable if it is determined that the contractor, vendor, and supplier is working affirmatively toward extending opportunities for members of the protected classes and is not discriminating against such persons. Contractors, vendors, and suppliers must be able to demonstrate to the satisfaction of the contracting agency that their affirmative action program is productive.

4.3(3) Utilization of minority and women business enterprises as sources of supplies, equipment, construction and service.

a. State agencies and departments having purchasing authority shall utilize minority and women business enterprises by means of the procurement set-aside program as required by Iowa Code subsection 73.16(2) and rules of the department of economic development.

b. Each agency and department shall require all other recipients of state funds in excess of \$100,000 annually whose funds shall be used to contract or subcontract for goods and supplies, construction and professional services, shall dedicate no less than two percent of the total amount received from the state, for minority and women business participa-

MANAGEMENT DEPARTMENT[541] (cont'd)

tion. To achieve these goals, the recipient may take the following actions when feasible:

(1) Divide the proposed procurement of supplies and services into reasonably small unit(s) to permit offers on smaller quantities.

(2) Plan procurements so that, if practicable, more than one minority or women business enterprise may perform the work, if the work exceeds the amount which a surety may be guaranteed.

(3) Ensure that delivery schedules are established on a realistic basis that will reasonably encourage minority and women business participants.

(4) Encourage prime contractors to subcontract with minority and women business enterprises.

c. A recipient of state funds subject to subrule 1.3(3), paragraph "b," may request approval of the contracting agency for an overall goal of less than two percent when it is shown that meeting the two percent goal would be unreasonable, impose an undue hardship on the recipient, or be contrary to the public's interest.

d. If a recipient of state funds in excess of \$100,000 requests approval of an overall goal of less than two percent, the recipient shall submit with its request for goal reduction, to the contracting or granting agency, a justification which may include but not be limited to the following:

(1) The recipient's efforts to locate minority and women businesses;

(2) The recipient's efforts to make minority and women businesses aware of contracting opportunities;

(3) The recipient's initiatives to encourage and develop minority and women business enterprises;

(4) Legal or other barriers impeding the participation of minority and women businesses at two percent level in the recipient's state-assisted contracts and the recipient's efforts to overcome or mitigate the effects of these barriers;

(5) The availability of minority and women businesses to work on the recipient's state-assisted contracts within the community of interests served by the contract;

(6) The size and other characteristics of the minority and women population of the recipient's community of interest and the relevance of these factors to the availability or potential availability of minority and women businesses to work on the recipient's state-funded contracts; and

(7) A summary of the views and information concerning the availability of minority and women businesses and the adequacy of the recipient's efforts to increase the participation of such businesses by the persons and the organizations consulted by the recipient.

e. Based on its review of the recipient's request for goal reduction, the agency or department may deny the recipient's request in total, reduce the recipient's goals below two percent, or exempt the recipient from any goal. However, any goal exemption or reduction granted by the agency or department shall not reduce that agency's or department's goal as established by law.

f. Any person aggrieved by the decision of the contracting or granting agency on a request for approval may appeal the decision in accordance with Iowa Code chapter 17A.

541—4.4(19B) Monitoring. The department of management shall monitor the contract compliance activities of state agencies and departments by requiring that all agencies and departments, except the state board of regents, submit to the department of management an annual contract compliance plan consisting of the following:

1. Projected staff time that will be made available for contract compliance.

2. Projected number of contractors in excess of \$5,000.

3. Projected number of contract and grant awards that will require at least two percent women and minority business participation.

By the end of the month following the end of a calendar quarter, all agencies and departments except the board of regents, shall submit to the department of management a quarterly contract compliance report consisting of the following:

1. Staff time made available for contract compliance.

2. Number of contractors, vendors, and suppliers required to submit an affirmative action plan.

3. The number and dollar value of contracts and grant awards assigned at least two percent women and minority business participation.

4. Percentage of required affirmative action plans that corrected underutilization.

5. Number of recipients requesting approval of goal reduction.

6. Number of recipients granted goal reduction or exemption of two percent goal.

541—4.5(19B) Sanctions. The department of management may impose appropriate sanctions on individual state agencies and departments, including the state board of regents and its institutions, in order to ensure compliance in the aforementioned program.

541—4.6(19B) Reporting. The department of management shall report annually to the governor and the general assembly the results under the contract compliance policy and rules. The report shall include but not be limited to:

1. Details of specific efforts to promote equal opportunity through state contracts and services;

2. Details of specific efforts to promote, develop, and stimulate the utilization of minority and women's business enterprises in programs receiving or benefiting from state financial assistance;

3. Recommendations regarding strengthening contract compliance activities by state agencies and departments.

ARC 7590

**PHARMACY EXAMINERS, BOARD
OF[620]**

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 147.53, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 5, "Licensure by Reciprocity," Iowa Administrative Code. The proposed amendment was approved during the April 7, 1987, meeting of the Iowa Board of Pharmacy Examiners.

The proposed amendment will require that candidates for reciprocity who have not taken and passed the Federal Drug Law Exam (FDLE) will be required to take the exam as a requirement for licensure in Iowa.

PHARMACY EXAMINERS, BOARD OF[620] (cont'd)

Any interested person may submit data, views, or written comments on or before May 26, 1987, to Norman C. Johnson, Executive Secretary, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 147.94.

Amend rule 620—5.4(147) to read as follows:

620—5.4(147) Eligibility for reciprocity. The applicant must be a licensed pharmacist by examination in some state of the United States with which Iowa has a reciprocal agreement and must be in good standing at the time of the application. Further, all applicants for reciprocity to this state who obtain their original licensure after January 1, 1980, must have passed the National Association of Boards of Pharmacy (NABP) Licensure Examination (NABPLEX) or its equivalent as determined by NABP. *Effective January 1, 1988, candidates who have not taken and passed the NABP Federal Drug Law Examination (FDLE) in their original state of licensure shall be required to take the FDLE exam and obtain a passing score of 75.* Reciprocal licensure will not be granted until after the application is approved by the secretary of the board and after the applicant has made a personal appearance before at least one member of the board, showing proof of qualifications, and has passed an examination on the Iowa drug laws.

ARC 7589

**PHARMACY EXAMINERS,
BOARD OF[620]**

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 155.19, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 6, “Minimum Standards for the Practice of Pharmacy,” Iowa Administrative Code. The proposed rule was approved during the April 7, 1987, meeting of the Iowa Board of Pharmacy Examiners.

The proposed rule clarifies Iowa Code section 155.35 regarding name and strength of drug on prescription labels by requiring the pharmacist to place both the brand name and the generic name on the prescription label.

Any interested person may submit data, views, or written comments on or before May 26, 1987, to Norman C. Johnson, Executive Secretary, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 155.35.

Amend 620—Chapter 6 by adding the following new rule:

620—6.16(155) Drug name and strength on prescription label. When drug product selection is made, the pharmacist shall identify, where applicable, the brand name and generic name of the product dispensed. This rule applies to the labeling requirements of subrules 6.11(3) and 6.15(3).

ARC 7547

**PUBLIC HEALTH
DEPARTMENT[470]**

BOARD OF MORTUARY SCIENCE EXAMINERS

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 258A.2, the Board of Mortuary Science Examiners gives Notice of Intended Action to amend Chapter 147 of the Iowa Administrative Code.

The proposed rules remove the requirement for the licensee to report continuing education and require the person or organization sponsoring continuing education to send the report of continuing education not later than thirty (30) days after the completion of the continuing education.

Any interested person may make written comments concerning the proposed rules not later than May 26, 1987, addressed to Irene G. Howard, Director, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code section 258A.2.

ITEM 1. Rule 470—147.105(258A) is rescinded.

ITEM 2. Rule 470—147.106(258A) is rescinded and the following adopted in lieu thereof:

470—147.106(258A) Attendance record report. The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees in attendance and send a signed copy of the attendance record not later than thirty (30) days after the completion of the continuing education activity to the Iowa Department of Public Health, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319.

ARC 7549

**RACING AND GAMING
DIVISION[195]**

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 99D.7 and 99D.8, the State Racing Commission hereby gives Notice of Intended Action to amend Chapter 4, “Practice and Procedure Before the Racing Commission and Board of Stewards,” Iowa Administrative Code.

The amendment allows an administrative hearing officer, under the direction of the commission, to conduct contested case proceedings and other hearings to the

RACING AND GAMING DIVISION[195] (cont'd)

extent and manner provided by Iowa Code sections 17A.11 to 17A.15.

Any interested person may make written suggestions or comments on this proposed amendment prior to May 26, 1987. Such written material should be directed to the Racing and Gaming Division, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who wish to convey their views orally should contact the division office at 515/281-7352.

Also, there will be a public hearing on May 26, 1987, at 9 a.m. at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons may present their views at the public hearing either orally or in writing.

This rule is intended to implement Iowa Code chapter 99D.

Amend rule 4.14(99D) by adding a new paragraph following the third unnumbered paragraph.

The commission may delegate to an administrative hearing officer its authority under the Iowa administrative procedure Act and these rules to conduct contested case proceedings and other hearings to the extent and manner provided by Iowa Code sections 17A.11 to 17A.15. The hearing officer shall have the authority granted under these rules to the commission, the chair, the vice chair and administrator in regard to the conduct of proceedings and decision making to the extent permitted by the Iowa administrative procedure Act unless specifically limited by the commission. A decision by the hearing officer shall be treated in the manner prescribed by Iowa Code section 17A.15. Further review by the commission of a hearing officer's decision may be requested in writing by any party, or the administrator, or by the commission. A request for further consideration of a hearing officer's decision by a party or the administrator shall specify those portions of the decision which are to be reviewed and the reasons for disagreement with the decision.

ARC 7570

REVENUE AND FINANCE
DEPARTMENT[701]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 17A.22 and 421.14, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 7, "Practice and Procedure Before the Department of Revenue and Finance," Iowa Administrative Code.

The amendments to Chapter 7 are proposed in order to implement Iowa Code chapters 17A and 421.

The amendments to Chapter 7 provide an additional example of what constitutes good cause for the Department to refuse to issue a declaratory ruling.

The Department has determined that the proposed amendments to rule 7.25(17A) will not have an impact on small business as defined in Iowa Code section 17A.31(1).

The proposed amendments to the rule will not necessitate additional expenditures by political subdivisions or

agencies and entities which contract with political subdivisions.

Any interested person may make written suggestions or comments on these proposed amendments on or before June 5, 1987. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, Post Office Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact Clair R. Cramer, Policy Section, Technical Services 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.

Request for a public hearing must be received by May 29, 1987.

These amendments to rule 7.25(17A) are intended to implement Iowa Code chapters 17A and 421.

The following amendments to Chapter 7 are proposed:

ITEM 1. Amend rule 7.25(17A), the second unnumbered paragraph, to read as follows:

The department may, ~~in its discretion~~, dismiss the petition or a portion thereof and refuse to issue a declaratory ruling for ~~any reason which it deems just and proper, including good cause which includes~~, but is not limited to the following:

ITEM 2. Further amend rule 7.25(17A) by adding a new numbered paragraph "13" to unnumbered paragraph two.

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

NOTICE — USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

| | |
|--|--------|
| August 1, 1985 - August 31, 1985 | 12.25% |
| September 1, 1985 - September 30, 1985 | 12.25% |
| October 1, 1985 - October 31, 1985 | 12.25% |
| November 1, 1985 - November 30, 1985 | 12.25% |
| December 1, 1985 - December 31, 1985 | 12.25% |
| January 1, 1986 - January 31, 1986 | 11.75% |
| February 1, 1986 - February 28, 1986 | 11.25% |
| March 1, 1986 - March 31, 1986 | 11.25% |
| April 1, 1986 - April 30, 1986 | 10.75% |
| May 1, 1986 - May 31, 1986 | 9.75% |
| June 1, 1986 - June 30, 1986 | 9.25% |
| July 1, 1986 - July 31, 1986 | 9.75% |
| August 1, 1986 - August 31, 1986 | 9.75% |
| September 1, 1986 - September 30, 1986 | 9.25% |
| October 1, 1986 - October 31, 1986 | 9.25% |
| November 1, 1986 - November 30, 1986 | 9.50% |
| December 1, 1986 - December 31, 1986 | 9.50% |
| January 1, 1987 - January 31, 1987 | 9.25% |
| February 1, 1987 - February 28, 1987 | 9.00% |
| March 1, 1987 - March 31, 1987 | 9.00% |
| April 1, 1987 - April 30, 1987 | 9.25% |
| May 1, 1987 - May 31, 1987 | 9.25% |

ARC 7550

COLLEGE AID COMMISSION[245]

Pursuant to the authority of Iowa Code section 261.37, the College Aid Commission emergency adopts amendments to Chapter 10, "Iowa Guaranteed Student Loan Program," Iowa Administrative Code.

The amendments revise the requirements for due diligence in collection of student loans to require more notices of delinquency, specify the accrued past due interest that may be paid, and redefine the date on which claim payment is made.

In accordance with Iowa Code section 17A.4(2), the College Aid Commission finds that public notice and participation are impracticable to ensure speedy implementation of federal Guaranteed Student Loan Program regulations.

The Commission finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules, 35 days after publication, should be waived and the rules made effective upon filing with the Administrative Rules Coordinator on April 17, 1987, as it confers a benefit upon the public to ensure speedy implementation of these rules.

The Commission adopted these rules at its April 14, 1987, meeting.

These rules are intended to implement Iowa Code section 261.37.

These rules also are being filed as a Notice of Intended Action, ARC 7551, to solicit further public comment.

ITEM 1. Amend rule 245-10.33(261) to read as follows: 245-10.33(261) Due diligence in collection. Reference: Code of Federal Regulations, Title 34, Section 682.511, 682.411 as in effect December 26, 1986.

A loan is delinquent when a borrower fails to make a payment when due, or to meet other terms of the promissory note. A borrower's failure to sign a repayment schedule, in and of itself, is not cause for a claim.

During any period of delinquency, a lender must exercise due diligence in collection of the delinquent account with respect to the borrower and any cosigner(s). ~~to collect the delinquent account.~~ Efforts to collect may include all methods used by commercial lenders for collecting delinquencies, such as correspondence, telephone inquiries, routine skip-tracing, and personal interviews. The ICAC requires that a lender use all means that would be used in collecting an uninsured loan of a comparable amount except litigation. A lender must make every effort to determine if a borrower is entitled to a deferment or eligible for forbearance.

Each time a borrower's account becomes delinquent, a lender must take the following minimum steps to bring the borrower current in payments.

Days Delinquent

Action Required

15 1 - 30

Send a notice of delinquency marked, "Address Correction Requested." If it is returned, initiate skip-tracing procedures. Send at least two written notices of delinquency or collection letters with envelopes marked, "Address Correction Requested."

31 - 45 60

Send a second notice of delinquency. Initiate phone calls to the borrower and any cosigner.

Make diligent efforts to contact the borrower and any cosigner by telephone. If a borrower cannot be reached by telephone, send at least two forceful collection letters. The letters must warn the borrower that, if the delinquency is not cured, the lender will assign the loan to the guaranty agency which will report the default to all national credit bureaus, thereby damaging the borrower's credit rating, and may bring suit against the borrower to compel repayment of the loan.

46 - 70

Send a third notice of delinquency. Continue phone calls if contact has not been made or if a promise to pay has been broken.

71 - 120

Complete a Lender Request for Assistance (ICAC LRA-10); send it to the ICAC Processing Center; and allow at least 60 days for the Processing Center to help resolve the delinquency. Continue attempts to contact the borrower and any cosigner.

120 - 150

Send a Notice to Cure to the borrower and a separate Notice to Cure to any cosigner if a notice has not been sent in the previous 12 months and if the collection effort has not been resolved satisfactorily and the LRA has been on file at least 60 days.

61 - 150

During each 30-day period, make diligent efforts to contact the borrower and any cosigner by telephone. If unable to reach the borrower, and any cosigner by telephone, during each 30-day period, send at least one collection letter no less forceful than the previous collection letters. Complete a Lender Request for Assistance (ICAC-06 6/84) and send it to the ICAC Processing Center. A Lender Request for Assistance (LRA) may be sent no earlier than the 71st day of delinquency and no later than the 81st day of delinquency unless a borrower cannot be located through normal skip-tracing procedures, in which case an LRA may be sent before the 71st day of delinquency. Allow at least 60 days for the ICAC Processing Center to help resolve the delinquency. Continue attempts to contact the borrower and any cosigner during this period. A lender must submit an LRA each time a borrower reaches this point

COLLEGE AID COMMISSION[245] (cont'd)

in delinquency even though a previous LRA may have been resolved satisfactorily. Send a Notice to Cure to the borrower and a separate Notice to Cure to any cosigner if a notice has not been sent in the previous 12 months and if the collection effort has not been resolved satisfactorily and the LRA has been on file at least 60 days. A Notice to Cure identifies the terms and conditions necessary to cure the delinquency and allows 20 days for the account to be resolved. Before filing a default claim, a lender must have sent a Notice to Cure within the past 12 months.

151 — ~~230~~ 240 Send a Final Demand Letter to the borrower and a separate Final Demand letter to any cosigner. See below for appropriate language.

181 — 270 Submit a Notice of Default (ICAC 1908) and the required documentation to the ICAC. ~~Processing Center.~~ A borrower must be at least 180 days delinquent but not more than 270 days delinquent for a default claim to be filed. *If due diligence in collection has been followed and all required documentation is submitted, A a claim is paid in approximately within 30 days if due diligence has been followed and all required documentation is submitted. of the date the claim is filed or on the 270th day of delinquency, whichever is later.*

271 A claim filed after the 270th day of delinquency is denied and the loan's guarantee is canceled. A lender may request the ICAC to further review a rejected claim if there are extenuating circumstances.

A Notice to Cure, which identifies the terms and conditions necessary to cure the delinquency and allows twenty days for the account to be resolved, must be sent separately to the borrower and to any cosigner(s). Before filing a default claim, a lender must have sent a Notice to Cure within the past twelve months.

If a borrower cannot be located through normal skip-tracing procedures, an LRA may be sent before the seventieth day of delinquency. A lender must continue to pursue the borrower even after an LRA has been submitted.

A lender must submit an LRA each time a borrower becomes seventy days delinquent even though a previous LRA may have been resolved satisfactorily.

All written notices of delinquency and collection letters must be sent "Address Correction Requested." Within ten days of receiving information that indicates the lender does not know a borrower's current address, a lender must diligently attempt to locate the borrower using normal commercial skip-tracing techniques. These efforts include, but are not limited to, contacting the cosigner, relatives, refer-

ences, and any other individuals and entities identified in the borrower's loan file.

A lender may send a Notice to Cure before submitting a Lender's Request for Assistance (LRA) to the ICAC Processing Center as long as the Notice to Cure is submitted by the 61st day of delinquency; however, †The 20-day cure period specified in the Notice to Cure must expire before the LRA is sent.

A Final Demand letter, which identifies the terms and conditions of the demand and, except in unusual circumstances, allows 30 days for the account to be resolved, must be sent separately to the borrower and to any cosigner(s) when a lender learns from the ICAC Processing Center that an LRA has not been satisfactorily resolved after at least 30 days' work by the ICAC Processing Center. The Final Demand letter must contain the following statement:

"The option to accelerate maturity of your note(s) is exercised at this time because of your failure to comply with the terms and conditions therein. The entire unpaid balance of principal (\$ _____) and interest (\$ _____) in the aggregate amount of \$ _____ is herein demanded by no later than _____."

If a lender receives, in response to a Final Demand letter, payment of less than the full amount demanded, the lender may:

1. Accept the partial payment and continue to work with the borrower,
2. Accept the partial payment and resume due diligence according to the number of days past due, or
3. Return the partial payment and proceed with due diligence.

If a borrower fails to respond satisfactorily to the Final Demand letter within 30 days, a lender should file a claim.

ITEM 2. Amend rule 245—10.34(261) to read as follows:
245—10.34(261) Claim processing. A lender files a claim on an ICAC-guaranteed loan by sending a completed Notice of Default and other required documentation to the ICAC. ~~Processing Center.~~

All claims are reviewed for completeness. A claim submitted on time but returned because of missing or inadequate assignment language, missing document(s), or no record of an LRA having been submitted, must be corrected then resubmitted to the ICAC ~~Processing Center~~ within 60 days.

Assignment language must be placed on or attached to each original promissory note submitted for claim payment. It should read:

"All Right, Title, and Interest of the undersigned (without warranty, except that the note qualifies for insurance) is hereby assigned to the Iowa College Aid Commission."

Name of lender _____

Signature _____

Date _____

A default claim filed after the two hundred seventieth day of delinquency or a bankruptcy claim filed more than sixty days after receipt of the Notice of First Meeting of Creditors not submitted in a timely manner in accordance with rule 10.33(261) is rejected. A rejected claim is returned with a summary of all defects such as due diligence deficiency or late filing and with instructions that the claim may be refiled with the ICAC office in Des Moines if there are extenuating circumstances. Rejected

COLLEGE AID COMMISSION[245] (cont'd)

claims that are refiled are evaluated on a case-by-case basis.

A claim that remains rejected after ICAC review may be cured if payments are secured from the borrower to bring the loan to within 90 days of being current. If the loan remains delinquent, the ICAC will accept a claim for processing after completion of required due diligence in collection.

The ICAC pays a *bankruptcy, death, or total and permanent disability* claim approximately 30 days after it has been the claim is filed; as long as and a default claim, approximately 30 days after the claim is filed or on the two hundred seventieth day of delinquency, whichever is later. Claim payment is made only if all required forms and documentation are provided, required due diligence in collection has been performed, and filing is on a timely basis.

ITEM 3. Amend rule 245—10.35(261) to read as follows:

245—10.35(261) Default claim. A loan is in default when a borrower exceeds 180 days of delinquency. *Delinquency on a loan begins on the first day after the due date of the first missed payment not later made or 30 days after the day the lender discovers that the borrower has entered the repayment period, whichever is later.*

A lender may not file a default claim simply because a borrower fails to sign a Repayment and Disclosure Statement (ICAC 1906). The lender must exercise the due diligence in collection outlined in rule 10.33(261).

A lender should prepare and submit a default claim as soon as possible; however, a default claim may be filed only after the loan is a minimum of 180 days delinquent and after the due diligence in collection steps outlined in rule 10.33(261) have been followed. The following must be sent to the ICAC: ~~Processing Center:~~

1. A completed Notice of Default (ICAC Form 1908),
2. The original promissory note(s) and repayment schedule(s) assigned to the ICAC and signed by an authorized lending officer,
3. The loan application(s),
4. A copy of the Notice to Cosigner, if applicable,
5. A history of loan payments, including date and amount of each payment, if applicable,
6. A copy of all documentation for forbearance and deferments granted.
7. A history of correspondence and phone contacts attempted, including a copy of correspondence with the borrower or the cosigner that indicates a refusal to make satisfactory arrangements or that shows the lender's inability to locate the borrower or cosigner,
8. Written verification of the date of withdrawal, or early graduation, or change in enrollment status, if applicable, which may be a copy of the *Loan Transaction Statement* or written notice from the school, either of which is preferred, or a lender's written record of phone contact with the school regarding the student's status change, and
9. A copy of the Notice to Cure and a copy of the Final Demand letter.

If a claim lacks evidence of due diligence in collection, it is returned to the lender for additional collection activity. An ICAC guarantee is contingent on a lender's performance of required due diligence in collection.

On a default claim, the ICAC pays the following:

1. The unpaid loan principal,
2. Accrued past due interest, not to exceed two hundred ten 300 days' interest, and

3. Interest for the time the ICAC requires to process the claim, not to exceed 30 days' interest.

Documented forbearance and deferment periods are not counted as part of the two hundred ten 300-day limit on accrued past due interest. Past due interest includes interest due from the borrower on the due date of the first missed payment and interest that is accrued from the date a borrower becomes delinquent through the date the claim is filed. Past due interest for a borrower who has made no payments is accrued from the borrower's conversion date through the date a claim is filed.

A default claim rejected because it exceeds more than two hundred ten 270 days of delinquency prior to claim filing may be submitted to the ICAC with an explanation regarding the delayed filing of the claim for reinstatement of the guarantee. If extenuating circumstances warrant, the guarantee may be reinstated and the claim approved, but the holder of the loan is entitled only to two hundred ten 300 days' accrued past due interest plus up to 30 days' interest for claim processing. In no case may payment include more than two hundred forty 330 days' interest. If a default claim is rejected by the ICAC as not having met extenuating circumstances, the holder of the loan may appeal to the ICAC executive director.

The ICAC continues collection activities on defaulted loans for which claims have been paid in an effort to make the defaulter pay the total amount due on the loan. A lender who receives correspondence relating to a default after a claim has been filed should forward it, on a timely basis, to the ICAC office in Des Moines.

If a lender receives a payment after a default claim has been filed, but before the claim has been paid, the lender should credit the payment to the account and notify the ICAC Processing Center immediately of the change in the amount of the claim. If a lender receives a payment after a claim payment has been received, the lender should forward the payment to the ICAC office in Des Moines immediately with an explanation.

If the ICAC rejects a default claim for a loan, the lender is not entitled to special allowance past the two hundred tenth seventieth day of delinquency unless the loan's guarantee is later reinstated by the ICAC.

These rules are intended to implement Iowa Code section 261.37.

[Filed emergency 4/16/87, effective 4/17/87]

[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7552

COLLEGE AID COMMISSION[245]

Pursuant to the authority of Iowa Code section 261.37, the College Aid Commission emergency adopts amendments to Chapter 10, "Iowa Guaranteed Student Loan Program," Iowa Administrative Code.

The amendments require a lender to file evidence of outstanding debt with the bankruptcy court and to determine whether a borrower filed a hardship petition before filing a bankruptcy claim with the Iowa College Aid Commission. The amendments also shorten the period for filing a bankruptcy claim by 30 days, add items to the required claim documentation, and include provisions for rejection of claims and resubmission of rejected claims.

COLLEGE AID COMMISSION[245] (cont'd)

In accordance with section 17A.4(2) the College Aid Commission finds that public notice and participation are impracticable to ensure speedy implementation of federal Guaranteed Student Loan Program regulations.

The Commission finds, pursuant to section 17A.5(2)"b"(2), that the normal effective date of this rule, 35 days after publication, should be waived and the rule made effective upon filing with the Administrative Rules Coordinator on April 17, 1987, as it confers a benefit upon the public to ensure speedy implementation of this rule.

The Commission adopted this rule at its regular April 14, 1987, meeting.

This rule is intended to implement Iowa Code section 261.37.

This rule is also being filed as a Notice of Intended Action, ARC 7553, to solicit further public comment.

Amend rule 245—10.36(261) to read as follows:

245—10.36(261) Bankruptcy claim. A lender must prepare and file a Proof of Claim with the bankruptcy court within 30 days of receiving a Notice of First Meeting of Creditors.

If a loan has not been in repayment for at least five years (exclusive of any deferment or forbearance period), the lender must hold the loan and contact the bankruptcy court to determine if a Petition for Undue Hardship (hereinafter called "hardship petition") has been filed by the borrower. If the borrower has not filed a hardship petition, the lender must hold the loan and not attempt collection until the bankruptcy action is concluded. The lender may treat the loan as if it were in forbearance or accept voluntary monthly payments from the borrower. When the lender receives notification from the court that the bankruptcy action is concluded, the loan resumes the status it held before the bankruptcy was filed.

A lender must prepare and submit a bankruptcy claim within ~~sixty~~ 30 days of receiving a Notice of First Meeting of Creditors if the loan has been in repayment for more than five years (exclusive of any deferment or forbearance period) or if the borrower files a petition for relief under Chapter 11, 12, or 13 of the Bankruptcy Code. ~~The following must be sent to the ICAC Processing Center:~~

If a loan has not been in repayment for at least five years (exclusive of any deferment or forbearance period) and a lender determines a borrower has filed a hardship petition, the lender must prepare and submit a bankruptcy claim within 30 days of receiving notification that a hardship petition has been filed.

A bankruptcy claim submitted to the ICAC must include the following:

1. A completed Notice of Default (ICAC 1908),
2. The original promissory note(s) ~~and repayment schedule(s)~~ assigned to the ICAC and signed by an authorized lending officer,
3. The loan application(s),
4. A copy of the Notice to Cosigner, if applicable,
5. A history of loan payments, including date and amount of each payment, if applicable,
6. A copy of all documentation for forbearance and deferments granted,
7. *Written verification of the date of withdrawal, early graduation, or change in enrollment status, if applicable, which may be a copy of the Loan Transaction Statement or a written notice from the school, either of which is preferred, or a lender's written record of telephone contact with the school regarding the student's status change,*
- 7 8. The Notice of First Meeting of Creditors,

9. *A copy of the Proof of Claim,*
10. *A copy of the Assignment of Claim and Petition,*
11. *All other pertinent documents sent to or received from the bankruptcy court,*
12. *Written evidence of the lender's efforts to determine if the borrower filed a hardship petition, if applicable, and*
13. *A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy and all supporting documents.*

A bankruptcy claim must be filed within ~~sixty~~ 30 days of a lender receiving a Notice of First Meeting of Creditors; or determining a borrower has filed a hardship petition, whichever applies, or the claim is rejected and the loan guarantee canceled unless there is:

1. Acceptance of a Proof of Claim by the bankruptcy court, or
2. Approval and acceptance of a reaffirmation claim by the bankruptcy court.

On a bankruptcy claim, the ICAC pays the following, if applicable:

1. The unpaid loan principal,
2. Interest accrued, but not past due, from the date of a borrower's most recent payment to the date a lender receives the Notice of First Meeting of Creditors,
3. Interest accrued from the date a lender receives the Notice of First Meeting of Creditors,
4. Accrued past due interest, not to exceed two hundred ~~ten~~ 270 days' interest, and
5. Interest for the time the ICAC requires to process the claim, not to exceed ~~thirty~~ 30 days' interest.

The ICAC contests the discharge of a loan by the bankruptcy court in an effort to make the borrower pay the total amount due on the loan. A lender who receives correspondence relating to the bankruptcy after a claim has been filed should forward it, on a timely basis, to the ICAC office in Des Moines.

If the bankruptcy court determines a loan to be nondischargeable, the ICAC may require the lender that filed the claim to repurchase the loan or permit another eligible lender to purchase the loan.

A bankruptcy claim rejected because it was not submitted in a timely manner may be resubmitted to the ICAC with an explanation regarding the delayed filing of the claim for reinstatement of the guarantee. If extenuating circumstances warrant, the guarantee may be reinstated and the claim approved. If a bankruptcy claim is rejected by the ICAC as not having met extenuating circumstances, the holder of the loan may appeal to the ICAC executive director.

Any cosigner is not relieved of the repayment obligation for a loan for which a bankruptcy claim is paid unless the cosigner also files bankruptcy. The ICAC, through its collection activity, pursues repayment by the cosigner.

A lender may not bill the U.S. Department of Education for interest on a GSL in in-school, grace or deferment status past the date that the lender is officially notified of the bankruptcy; however, a lender is entitled to special allowance on the loan through the date the claim is paid by the ICAC.

This rule is intended to implement Iowa Code section 261.37.

[Filed emergency 4/16/87, effective 4/17/87]

[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7572**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby emergency adopts and implements an amendment to Chapter 22, "Community Economic Betterment Program," Iowa Administrative Code. These rules were adopted by the Department of Economic Development Board on April 17, 1987, and became effective on May 1, 1987.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are unnecessary, impracticable, and contrary to the public interest because by state legislation the number of voting members of the Iowa Department of Economic Development Board is reduced from 11 to 9 members beginning May 1, 1987.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules, 35 days after publication, should be waived and the rules made effective May 1, 1987, because state law reduces the number of voting members of the Board and the amendment adjusts the number of Board members on the project review committee in response to changes in the size of the Board. The amendment also allows the the subcommittee to make final funding recommendations to the Board or to make final funding decisions on behalf of the Board.

Item 1 of these rules is also included in a Notice of Intended Action published herein as **ARC 7571**.

These rules are intended to implement 1985 Iowa Acts, chapter 33, section 302(2) and 1986 Iowa Acts, chapter 1238, section 35.

These rules became effective on May 1, 1987.

The following amendments are adopted:

ITEM 1. Rescind rule 261—22.3(71GA, ch 33) and insert in lieu thereof the following:

261—22.3(71GA, ch 33) Board and committee. The chairperson of the board may appoint a four-member project review committee to review applications requesting CEBA funding. The committee shall, if formed, be composed of four board members, two of whom shall be the board chairperson and vice chairperson. The director shall be an ex officio member of an active committee. A majority of those voting is necessary for action by the committee.

The board may authorize the committee to make funding recommendations to the board. Alternatively, the board may authorize the committee or the director to make final funding decisions on behalf of the board. Such authorization may be for a specific period of time, or until such time as the board rescinds the authorization.

ITEM 2. Amend subrule 22.9(2)"c" as follows:

c. The project review committee may reject any application. An affirmative vote of seven five members of the IDED board is required to reject or approve the project review committee's recommendation.

[Filed emergency 4/17/87, effective 5/1/87]

[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7573**LABOR SERVICES DIVISION[347]**

Pursuant to the authority of Iowa Code section 17A.3, the Labor Commissioner adopts miscellaneous amendments to division rules relating to changes made by 1986 Iowa Acts, chapter 1245.

Pursuant to Iowa Code section 17A.4(2) notice and public participation regarding this amendment are not necessary. The amendments confer a benefit to the public by changing the address of the offices of the Division of Labor Services to its current address. The public will be informed as to how to contact the Division of Labor Services. Additionally, the amendments make corrections to reflect chapters relocated in the 1987 Iowa Code and amendments to reflect name changes as a result of 1986 Iowa Acts, chapter 1245.

The Division further finds that, pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of this amendment thirty-five days after publication should be waived and the rule be made effective April 17, 1987, upon filing with the Administrative Rules Coordinator.

ITEM 1. Amend the following rules by striking from the address for the division of labor services the words "307 East 7th Street" or "Capitol Complex" and inserting in lieu thereof the words "1000 East Grand Avenue".

347—1.3(91)

3.13(2)"e"

347—3.15(88)

347—8.1(88)

347—35.2(91A)

38.8(2)"g"

ITEM 2. Amend rule 347—72.2(104) by changing the Iowa Code reference from chapter 104 to chapter 89A.

ITEM 3. Amend rule 347—77.1(104) by striking "Iowa Code section 104.11" and inserting in lieu thereof the words "Iowa Code section 89A.11".

ITEM 4. Amend subrules 77.2(1) and 77.2(2) by striking the words "chapter 104" and inserting in lieu thereof the words "chapter 89A".

ITEM 5. Amend rule 347—78.10(104) by striking the words "Iowa Occupational Safety and Health Review Commission" and inserting in lieu thereof the words "Employment Appeal Board".

ITEM 6. Amend subrule 82.3(4) by striking the word "bureau" and inserting in lieu thereof the word "division".

ITEM 7. Amend the following rules by striking "455D" and inserting in lieu thereof "89B".

110.1(1)

110.1(3)"c"

110.1(4)

110.1(4)"c"

110.1(5)

110.1(6)

347—110.2(88,455D) "Act" and "Purchaser"

110.3(2)

110.4(4)

110.5(2)"a"

347—120.1(88,455D)

LABOR SERVICES DIVISION[347] (cont'd)

347—120.2(88,455D)

347—120.3(88,455D)

347—120.4(88,455D)

347—120.8(88,455D)
120.9(2)

347—120.12(88,455D)

347—130.3(455D)
130.4(1)

347—130.7(455D)

347—130.8(455D)
140.2(2)

347—140.3(455D)

347—140.5(455D)

These amendments are intended to implement Iowa Code section 88.5.

[Filed emergency 4/17/87, effective 4/17/87]

[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7574**LABOR SERVICES DIVISION[347]**

Pursuant to the authority of Iowa Code section 88.5, rule 347—10.20(88) appearing in Iowa Administrative Code relating to Occupational Safety and Health Standards for General Industry is hereby amended.

This emergency rule is filed under Iowa Code sections 17A.4(2) and 17A.5(2). Pursuant to Iowa Code section 17A.4(2) notice and public participation regarding this amendment are not necessary. The adoption of federal occupational safety and health standards adopted as permanent standards by the U.S. Secretary of Labor are required to be adopted by the Labor Commissioner pursuant to Iowa Code section 88.5. Notice of Intended Action regarding the adoption of this rule is being published herein as ARC 7575. A public hearing will be held on May 27, 1987, to solicit public comment. This rule relates to record-keeping requirements for tests, inspections, and maintenance checks and hazardous waste operations and emergency response.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of this amendment thirty-five days after publication should be waived and the rule be made effective upon April 17, 1987.

This filing of the emergency rule permits Iowa employers and employees to be governed by the same provisions relative to record-keeping requirements for tests, inspections, and maintenance checks and hazardous waste operations and emergency response as those similarly located in other states. Because the Labor Commissioner has no option in the adoption of the rule, public participation is not required and is not necessary.

Pursuant to the authority of Iowa Code section 88.5, rule 347—10.20(88) is amended by adding at the end thereof the words:

51 Fed. Reg. 34560 (September 29, 1986)

51 Fed. Reg. 45663 (December 19, 1986)

This rule is intended to implement Iowa Code section 88.5.

[Filed emergency 4/17/87, effective 4/17/87]

[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7560**NURSING BOARD[590]**

Pursuant to the authority of Iowa Code sections 17A.3, 147.76, and 258A.3, the Iowa Board of Nursing hereby emergency adopts an amendment to Chapter 2, "Nursing Education Programs," appearing in the Iowa Administrative Code. Chapter 2 was published as adopted in the Iowa Administrative Bulletin on March 11, 1987, as ARC 7409, and was to become effective on April 15, 1987. The Administrative Rules Review Committee delayed the rules on April 14, 1987.

This amendment relates to requirements of faculty members who teach nursing.

In compliance with Iowa Code section 17A.4(2), the Iowa Board of Nursing finds that public notice and participation are impracticable in that the amendment was caused because of a typographical error whereby part of a sentence was omitted when Chapter 2 was typed for publication in the Iowa Administrative Bulletin.

The Iowa Board of Nursing also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of this amendment thirty-five days after publication should be waived so that the amendment may be made effective on the same day as Chapter 2 (ARC 7409). The Iowa Board of Nursing adopted Chapter 2 during a meeting held on February 11, 1987.

This rule amendment implements Iowa Code section 152.5.

Amend subrule 2.6(2), paragraph "c," subparagraph (3) to read as follows:

(3) A person who is a faculty member on September 1, 1987, and who does not hold a baccalaureate degree shall obtain a baccalaureate degree in an applicable field by September 1, 1995, and a master's degree in an applicable field by September 1, 1998.

[Filed emergency 4/15/87, effective 4/15/87]

[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7557
SUBSTANCE ABUSE
DIVISION[805]

Pursuant to the authority of Iowa Code section 125.7, the Iowa Department of Public Health, Division of Substance Abuse, hereby emergency adopts the following amendment to implement Chapter 6 of the Iowa Administrative Code entitled "Licensure Standards for Correctional Facilities."

The Department of Substance Abuse was renamed by Iowa Code section 135.11, subsection 12, and will appear as Division of Substance Abuse within the Department of Public Health.

The 1986 Iowa Acts, chapters 1246 and 1220 established an additional category for treatment services which requires licensure by the Division of Substance Abuse. Chapters 1246 and 1220 became effective July 1, 1986, and October 1, 1986, respectively.

In response to the Administrative Rules Review Committee suggestion, subrule 6.3(4) is being clarified. Clarification is being made in terms of definition and content. The term "substance abuse" is being added to subrule 805—6.3(4).

In compliance with Iowa Code section 17A.4(2), the Division finds it impractical for public notice and participation inasmuch as this is a clarification and the legislation became effective March 18, 1987.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(3), that the normal effective date of these rules, thirty-five days after publication, should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on April 17, 1987, because they will more adequately define what records are confidential for correctional facilities providing substance abuse treatment services.

This rule shall become effective immediately upon filing with the Administrative Rules Coordinator on April 17, 1987, and shall be published in the May 6, 1987, Iowa Administrative Bulletin.

This rule is intended to implement 1986 Iowa Acts, chapter 1246, section 402(2)"c" and Iowa Code section 246.513(1)"a."

Amend subrule 805—6.3(4), first sentence, to read as follows:

6.3(4) Confidentiality. All inmate *substance abuse* records shall be kept confidential and shall be handled in compliance with the federal confidentiality regulations (Department of Health, Education and Welfare, Public Health Services—Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2, effective August 1, 1975), and with applicable federal and state rules.

[Filed emergency 4/16/87, effective 4/17/87]

[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7564**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]**

Pursuant to the authority of Iowa Code section 159.5(11), the Iowa Department of Agriculture and Land Stewardship hereby adopts rules amending 30—Chapter 16, "Infectious and Contagious Diseases," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin March 11, 1987, as **ARC 7422**. Public comments were solicited until March 31, 1987, and no comments or suggestions were received.

This rule is identical to that published under Notice and will become effective June 10, 1987.

This rule is intended to implement Iowa Code section 351.35.

Rescind subrule 30—16.25(1), paragraphs "a" and "b," and insert in lieu thereof the following:

a. Vaccines and immunization procedures recommended in the Compendium of Animal Rabies Vaccines prepared by the National Association of Public Health Veterinarians, Inc. are approved by the Iowa Department of Agriculture and Land Stewardship.

b. Reserved.

This rule is intended to implement Iowa Code section 351.35.

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7562**ALCOHOLIC BEVERAGES
DIVISION[185]**

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Commission, on March 20, 1987, adopted an amendment to 185—Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, December 31, 1986, as **ARC 7248**.

This rule requires wine and beer wholesalers to warehouse beer and wine within the state of Iowa.

Interested persons were allowed to comment on the proposed rule. An oral hearing was held on January 21, 1987, to solicit public comment with regard to the proposed rule. At the public hearing, Russell E. Laird appeared and supported the proposed rule. K & K Distributing Company submitted written comment opposing the proposed rule, and it was duly recorded in the rule making. Additionally, affected wine and beer wholesalers were notified by letter from this division on April 2, 1987.

The adopted rule is identical to the one published under Notice of Intended Action.

The rule is intended to implement Iowa Code section 123.21.

This rule will become effective June 10, 1987.

The following amendment was adopted:

Amend 185—Chapter 4 by adding a new rule as follows:

185—4.40(123) Warehousing of beer and wine. A person holding a Class "A" wine permit or a Class "A" or "F" beer permit shall warehouse their wine or beer inventory within the state of Iowa. Persons issued a Class "A" wine permit or Class "A" or "F" beer permit prior to June 10, 1987, shall comply upon renewal or November 1, 1987, whichever date occurs first. A warehouse of a person holding a Class "A" wine permit or a Class "A" or "F" beer permit shall be considered a licensed premise.

This rule is intended to implement Iowa Code section 123.127.

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7554**COLLEGE AID COMMISSION[245]**

Pursuant to the authority of Iowa Code section 261.37, the College Aid Commission adopts amendments to Chapter 10, Iowa Administrative Code.

The amendments alter fees for guaranteed student loans to a percent of the loan amount, incorporate need analysis as a requirement of receiving a guaranteed student loan, introduce a new definition of independent undergraduate, increase loan amounts for guaranteed student loans, and permit more frequent capitalization of interest on PLUS Loans.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 11, 1987, as **ARC 7360** and these rules are the same as published, except Item 3 of the Notice will not be adopted at this time.

These rules also were published as emergency adopted and implemented, **ARC 7359**, Iowa Administrative Bulletin, February 11, 1987.

These rules will become effective June 10, 1987, and the emergency adopted rules, **ARC 7359**, will be rescinded effective June 10, 1987.

These rules are intended to implement Iowa Code chapter 261.

ITEM 1. Amend 245—Chapter 10, second paragraph of the Preamble, as follows:

References to Code of Federal Regulations are those in effect as of July 1, 1983, *unless specified otherwise*.

ITEM 2. Subrule 10.2(1) is rearranged starting with unnumbered paragraph 3 and amended to read as follows:

An applicant who has taken bankruptcy may be eligible for a loan, if, at the time of bankruptcy filing, the applicant was not in default on any previous student loan.

A student must show need to qualify for a federally subsidized Guaranteed Student Loan (GSL). A need analysis system approved by the U.S. Secretary of Education for use with campus-based programs, i.e., the Supplemental Educational Opportunity Grant Program, the College Work-Study Program, and the Perkins Loan Program

COLLEGE AID COMMISSION[245] (cont'd)

(formerly the National Direct Student Loan Program), must be used to determine the expected family contribution and resultant unmet need. (Forms available upon request.) A lender may not make a Guaranteed Student Loan for more than the unmet need, as certified by the school.

A student's dependency status and marital status determines the adjusted gross income (AGI) that must be reported criteria that are applied in need analysis to establish eligibility for a Guaranteed Student Loan (GSL). Dependency status is ascertained by a school official in accordance with these specifications:

A student is considered to have no dependence on parents for financial support, and thus to be independent if the student is: does not meet the qualifications for dependent status:

1. Twenty-four (24) years old or older by December 31 of the award year;
2. An orphan or ward of the court;
3. A veteran of the U.S. Armed Forces;
4. A graduate or professional student declaring not to be claimed as a dependent on parents' income tax return for the first calendar year of the award;
5. Married and declaring not to be claimed as a dependent on parents' income tax return for the first calendar year of the award;
6. One who has legal dependents other than a spouse;
7. Unclaimed on parents' income tax return for the two (2) years preceding the award year and an earner of annual income of \$4,000 or more during the two (2) years; or
8. Determined through documentation by the aid administrator to be independent by reason of unusual circumstances.

The four student status possibilities and the corresponding AGIs that must be reported are:

| Student Status | Incomes Included in Need Analysis |
|-------------------------|-----------------------------------|
| Dependent, unmarried* | Parent and student |
| Dependent, married | Parent, student, and spouse |
| Independent, unmarried* | Student only |
| Independent, married | Student and spouse |

*Single, separated, divorced, or widowed

A student is considered dependent on parents for financial support if the student is: does not meet the qualifications for independent status.

Unmarried and, during the past or current year, has met or will meet at least one of these three conditions:

1. Lived with parents for more than six weeks;
2. Been claimed as a U.S. income tax exemption by parents; or
3. Received more than \$750 worth of support from parents; or

Married and, during the current year, has met or will meet at least one of the above three conditions.

A student with an applicable adjusted gross income (AGI) of up to \$30,000 is eligible for a Guaranteed Student Loan without further determination of need, provided that the loan plus all other financial aid does not exceed the cost of attendance. A student with an applicable AGI over \$30,000 is subject to a need analysis specified by the U.S. Secretary of Education and may apply for a loan in accordance with the unmet need determined by the need analysis. (Forms available upon request.) A lender may not make a Guaranteed Student Loan for more than the unmet need, as certified by the school. The \$30,000 income level triggers the need process but does not automatically deny access to loans.

The Iowa Guaranteed Student Loan Program is subject to federal and state laws that prohibit discrimination of a person from equal opportunity because of race, religion, color, sex, age, national origin, ancestry, marital status, or physically handicapped condition.

ITEM 3. Rule 245—10.3(261) is amended by rescinding the table and inserting the following new table.

| Type of Student | A Guaranteed Student Loan is limited to the lesser of: | Cumulative Maximum |
|--------------------------|---|--|
| Undergraduate | For each of the first two (2) years of study: Maximum of \$2,625 or unmet need indicated by need analysis | \$17,250 |
| | For each of the remaining years: Maximum of \$4,000 or unmet need indicated by need analysis | |
| Graduate or Professional | Maximum of \$7,500 or unmet need indicated by need analysis | \$54,700 including amounts borrowed by the student under the GSL, PLUS, and SLS programs for undergraduate study |

Unmet need is defined as the cost of education less all other financial aid and less the expected family contribution.

A GSL is also limited to: — the amount requested by the borrower, — the amount recommended by the school, or — the amount approved by the lender in accordance with the lender's policy, whichever is less.

Further amend rule 245—10.3(261), unnumbered paragraphs 1, 5, 6, and 8, to read as follows:

Financial aid officers are urged to counsel students that repeat borrowing may result in reaching the cumulative limit of \$12,500 for undergraduate or for graduate/professional students before a course of study is completed.

A student is eligible for an additional loan \$2,500 (or \$5,000 for a graduate student) providing eight (8) months elapse from the beginning date of the loan period on the previous application to the beginning date of the loan period on the new application and providing the loan periods do not overlap.

If eight (8) months do not elapse, a student is eligible for an additional loan providing:

1. The previous loan was less than the maximum (\$2,500 or \$5,000), in which case the new loan will be approved for the difference between the previous loan and the maximum; or
2. The student has advanced to the next grade level and is applying for a loan period that does not overlap with the loan period of the previous loan.

COLLEGE AID COMMISSION[245] (cont'd)

A student is limited to two (2) maximum loans per grade level. An undergraduate may borrow no more than two (2) maximum loans or a total of \$5,000 for a grade level \$5,250 for either of the first two (2) grade levels of undergraduate study or \$8,000 for a remaining grade level of undergraduate study. A graduate student may borrow no more than two (2) maximum loans or a total of \$10,000 \$15,000 for a grade level.

ITEM 4. Rule 245—10.24(261), the introductory paragraph and unnumbered paragraphs 6 and 7 are amended to read as follows:

245—10.24(261) Guarantee fee. Reference: Code of Federal Regulations, Title 34, Sections 682.202(d) and 682.401(b)(6) as in effect December 26, 1986. The ICAC guarantee fee is an amount a borrower pays to the ICAC for guaranteeing repayment of a loan. Its rate is determined by the ICAC with consideration given to the ICAC Reserve Fund and the requirements of the U.S. Department of Education regulations.

Lenders may disburse GSL proceeds up to one hundred twenty days before or after the original anticipated date of disbursement and still collect the guarantee fee disclosed on the Notice of Loan Guarantee and Disclosure Statement (NOG/DS). (Lenders may not disburse any earlier than thirty days prior to the start of the loan period as stated on the application, however.) Disbursement outside of the one hundred twenty day before/after timeframe requires that the lender recalculate the guarantee fee and redisclose to the borrower.

A lender must recalculate the guarantee fee of a loan and prepare a new Notice of Loan Guarantee and Disclosure Statement (NOG/DS) or make changes to the original NOG/DS and have the borrower initiate the changes if:

1. Disbursement is outside the one hundred twenty day before/after anticipated disbursement timeframe;
2. An amount less than the original amount guaranteed is disbursed; or
3. A loan is changed from single to multiple disbursement.

In the latter two cases, it is acceptable to make changes to the original NOG/DS and have the borrower initial the changes.

ITEM 5. Rule 245—10.59(261), the introductory paragraph and unnumbered paragraphs 6, 7, and 8 are amended to read as follows:

245—10.59(261) Interest. Reference: Code of Federal Regulations, Title 34, Section ~~682.13(a)~~ 682.202, as in effect December 26, 1986.

A borrower remains responsible for interest during any authorized deferment period. A lender may require the a borrower who qualifies to defer repayment of principal to pay monthly or quarterly interest payments during the in-school period or any period of deferment or forbearance or may allow the borrower's interest to accrue and be capitalized.

Interest which has accrued on a PLUS Loan may be capitalized, that is, added to the unpaid principal of the loan, in these instances only:

1. Interest accrued during the in-school period provided attendance is full-time and capitalization is expressly authorized by the promissory note;
2. Interest accrued during a period of deferment including full-time school attendance;
3. Interest accrued from a period of forbearance;

34. Interest accrued from the date the loan was required to enter repayment until the actual repayment start date; and the

45. Interest accrued from most recent payment to the execution of a promissory note to consolidate loans.

A lender may not consolidate PLUS Loans that have different interest rates.

For PLUS Loans for periods of enrollment beginning before May 1, 1987, a lender may capitalize accrued interest as specified in "1" to "3" above only when repayment of principal is required to begin or resume.

For PLUS Loans to student borrowers for periods of enrollment beginning on or after May 1, 1987, accrued interest, as specified in "1" to "3" above, may be capitalized no more frequently than once a year. However, if agreed upon by the borrower and the lender, capitalization may be on a quarterly basis during any period when the borrower is pursuing:

1. Full-time study at an eligible institution;
2. Half-time study during an enrollment period for which the student has obtained a GSL or Supplemental Loan;

3. An approved graduate fellowship program; or
4. An approved rehabilitation training program.
Capitalization of accrued interest in all circumstances included in this paragraph is also permitted when repayment is required to begin or resume.

Interest accrued from the date a loan was required to enter repayment until the actual repayment start date may be capitalized only on the date the repayment period actually begins.

Interest accrued from the most recent payment to the execution of a promissory note to consolidate loans may be capitalized only at execution of consolidation.

ITEM 6. Rule 245—10.62(261), introductory and unnumbered paragraphs 2, 3, 4, 7, 8, and 9 are amended to read as follows:

245—10.62(261) Guarantee fee. Reference: Code of Federal Regulations, Title 34, Sections ~~682.13(b)~~ and ~~682.31(a)(1)~~ 682.202(d) and 682.401(b)(6), as in effect December 26, 1986.

The guarantee fee for an Iowa PLUS Loan with a period of instruction beginning prior to May 1, 1987, is one percent (1%) per year on the declining principal balance for the life of the loan. The guarantee fee for an Iowa PLUS Loan for a period of instruction beginning on or after May 1, 1987, is three percent (3%) of the loan amount. The amount of the guarantee fee is computed by the ICAC and reported to a lender on the Notice of Loan Guarantee.

Guarantee fee rate tables are provided by the College Aid Commission office on request.

A PLUS Loan for which the borrower qualifies for deferment for full-time school attendance is assessed a fee that covers the deferment period as well as the repayment term. The fee is one percent per year on the principal loan amount during the deferment period and one percent per year on the declining principal balance for the repayment term. Calculation of this fee is included on the PLUS Deferment Loan Calculation.

A lender may disburse PLUS proceeds any time during the calendar month of the anticipated disbursement date without having to adjust the guarantee fee disclosed on the Notice of Loan Guarantee.

COLLEGE AID COMMISSION[245] (cont'd)

A lender must ascertain a new guarantee fee for a loan and disclose it to the borrower on the promissory note if:

1. Disbursement is in a calendar month other than that of the anticipated disbursement date
2. An amount less than the original amount guaranteed is disbursed; or
3. The terms of repayment are changed from those submitted on the application.

The ICAC does not charge an additional guarantee fee for extension, deferment (except full-time attendance at the time of application), forbearance, refinancing, or consolidation.

These rules are intended to implement Iowa Code chapter 261.

[Filed 4/16/87, effective 6/10/87]

[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7555

COLLEGE AID COMMISSION[245]

Pursuant to the authority of Iowa Code section 261.15, the College Aid Commission adopts amendments to Chapter 13, "Rulemaking and Declaratory Rules," Iowa Administrative Code.

The adopted amendment will eliminate rule 13.3(261) which exempts certain rules from public participation since the fact that funding may be diminished or lost by the Commission's failure to adopt a suggested rule is not relevant to the issue of whether public participation in the Iowa rule-making process should occur. Instead, participation should be allowed and the Commission should make its decision — noting both the public comment and the necessity of adopting rules if the federal funding is to be obtained. Public comment is appropriate on this issue — despite the fact refusal of federal funding (and conditions attached) is going to be rare.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 11, 1987, as ARC 7343. This rule is identical to that filing.

This rule was adopted in final form on April 14, 1987, and will become effective on June 10, 1987.

This rule is intended to implement Iowa Code chapter 261.

Rescind rule 245—13.3(261) in its entirety.

[Filed 4/16/87, effective 6/10/87]

[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7576

LABOR SERVICES DIVISION[347]

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts amendments to rules in 347—Chapter 3 relating to procedures for occupational safety and health inspections. The amendments make changes to reflect the current organization of the Division of Labor Services and the final determination of the state's occupational safety and health plan.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as ARC 6977.

A public hearing was held on October 20, 1986. No comments were received.

The amendments shall become effective June 10, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules (amendments to ch 3) is being omitted. These rules are identical to those published under Notice as ARC 6977, Iowa Administrative Bulletin 9/24/86.

[Filed 4/17/87, effective 6/10/87]

[Published 5/6/87]

[For replacement pages for IAC, see IAC Supplement, 5/6/87.]

ARC 7577

LABOR SERVICES DIVISION[347]

Pursuant to the authority of Iowa Code sections 88.18 and 17A.3(1), the Labor Commissioner adopts amendments to 347—Chapter 4, "Recording and Reporting Occupational Injuries and Illnesses," Iowa Administrative Code.

The amendments make changes to reflect the current organization of the Division of Labor Services, the final determination of the state's occupational safety and health plan, and gender changes.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as ARC 6978.

A public hearing was held on October 20, 1986. No comments were received.

These amendments shall become effective June 10, 1987, and are identical to the Notice of Intended Action published as ARC 6978.

EDITOR'S NOTE: Pursuant to Administrative Rules Review Committee's recommendation published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules (4.4 to 4.7, 4.12, 4.16 to 4.18) is being omitted. These rules are identical to those published under Notice as ARC 6978, IAB 9/24/86.

[Filed 4/17/87, effective 6/10/87]

[Published 5/6/87]

[For replacement pages for IAC, see IAC Supplement, 5/6/87.]

ARC 7578**LABOR SERVICES DIVISION[347]**

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts amendments to rules in 347—Chapter 5 relating to procedures for variances from occupational safety and health rules. The amendments make changes to reflect the current organization of the Division of Labor Services and make gender changes.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as **ARC 6979**.

A public hearing was held on October 20, 1986. No comments were received.

These amendments shall become effective June 10, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules (amendments to ch 5) is being omitted. These rules are identical to those published under Notice as **ARC 6979**, Iowa Administrative Bulletin 9/24/86.

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

[For replacement pages for IAC, see IAC Supplement, 5/6/87.]

ARC 7580**LABOR SERVICES DIVISION[347]**

Pursuant to the authority of Iowa Code sections 88.9(3) and 17A.3(1), the Labor Commissioner adopts amendments to 347—Chapter 9 relating to procedures for determining and resolving allegations of discrimination due to an employee's exercise of rights under Iowa Code section 88.9(3). These amendments make changes to reflect the current organization of the division of labor services, the final determination of the state's occupational safety and health plan, and gender changes.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as **ARC 6981**.

A public hearing was held on October 20, 1986. No comments were received.

These rules shall become effective June 10, 1987, and are identical to the Notice of Intended Action as published as **ARC 6981**.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules (amendments to ch 9) is being omitted. These rules are identical to those published under Notice, IAB 9/24/86 as **ARC 6981**.

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

[For replacement pages for IAC, see IAC Supplement, 5/6/87.]

ARC 7579**LABOR SERVICES DIVISION[347]**

Pursuant to the authority of Iowa Code sections 88.16 and 17A.3(1), the Labor Commissioner adopts amendments to 347—Chapter 8, "Consultative Services," Iowa Administrative Code. The amendments are to conform state rules to federal rules.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as **ARC 6980**.

A public hearing was held on October 20, 1986. No comments were received.

These rules shall become effective June 10, 1987, and are identical to the Notice of Intended Action as published as **ARC 6980**.

EDITOR'S NOTE: Pursuant to Administrative Rules Review Committee recommendation published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules (amendments to ch 8) is being omitted. These rules are identical to those published under Notice as **ARC 6980**, IAB 9/24/86.

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

[For replacement pages for IAC, see IAC Supplement, 5/6/87.]

ARC 7581**LABOR SERVICES DIVISION[347]**

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts amendments to 347—Chapter 10 relating to occupational safety and health rules for general industry. The amendments adopt current federal standards as state standards.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as **ARC 6982**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was held on October 20, 1986. No comments were received.

These rules shall become effective June 10, 1987, and are identical to the Notice of Intended Action published as **ARC 6982**.

ITEM 1. Amend the title of 347—Chapter 10 as follows:

**GENERAL INDUSTRY SAFETY AND
HEALTH RULES**

ITEM 2. Amend rule 347—10.1(88) by arranging the subrules in alphabetical order without subrule numbers and amend to read as follows:

LABOR SERVICES DIVISION[347] (cont'd)

347—10.1(88) Definitions. As used in these rules, unless the context clearly requires otherwise:

10.1(1) "Standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

10.1(2) "Part" means 347—chapter 10, Iowa Administrative Code of the division of labor rules.

ITEM 3. Amend subrule 10.2(1) to read as follows:

10.2(1) None of the standards in this chapter shall apply to working conditions of employees with respect to which federal agencies other than the *United States* Department of Labor, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

ITEM 4. Adopt a new rule 347—10.3(88) as follows:

347—10.3(88) Incorporation by reference. The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this chapter have the same force and effect as other standards in this chapter. Only mandatory provisions (i.e., provisions containing the word "shall" or other mandatory language) of standards incorporated by reference are adopted under the Act.

ITEM 5. Strike the words "ADOPTION OF ESTABLISHED STANDARDS" between reserved rule 347—10.11 and rule 347—10.12(88).

ITEM 6. Rescind subrule 10.19(5) and reserve for future use.

ITEM 7. Amend chapter 10 by adding new subrules as follows:

10.19(6) Lead. Rule 1910.1025 of the federal rules as adopted by reference in 347—10.20(88) shall apply to the exposure of every employee to lead in every employment and place of employment covered by 347—10.12(88), in lieu of any different standard on exposure to lead which would otherwise be applicable by virtue of any rule adopted in 347—chapter 26.

10.19(7) Ethyleneoxide. Rule 1910.1047 of the federal rules as adopted by reference in 347—10.20(88) shall apply to the exposure of every employee to ethylene oxide in every employment and place of employment covered by 347—10.12(88), in lieu of any different standard on exposure to ethylene oxide which would otherwise be applicable by virtue of any rule adopted in 347—chapter 26.

ITEM 8. Amend rule 347—10.20(88) by striking at the end thereof the asterisked footnote.

These rules are intended to implement Iowa Code section 88.5.

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7582

LABOR SERVICES DIVISION[347]

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts an amendment to rule 347—26.1(88) relating to occupational safety and health rules for construction. The amendment clarifies the referenced law.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as **ARC 6983**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was held on October 20, 1986. No comments were received.

This rule shall become effective June 10, 1987, and is identical to the Notice of Intended Action published as **ARC 6983**.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules (chapter 26 title, 26.1) is being omitted. These rules are identical to those published under Notice as **ARC 6983**, IAB 9/24/86.

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

[For replacement pages for IAC, see IAC Supplement, 5/6/87.]

ARC 7583

LABOR SERVICES DIVISION[347]

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts an amendment to rule 347—26.1(88) relating to occupational safety and health rules for construction. The amendment relates to occupational exposure to asbestos, tremolite, anthophyllite, and actinolite and electrical standards for construction.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on October 22, 1986, as **ARC 7044**, and the rule was simultaneously emergency adopted as **ARC 7043**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was held on November 13, 1986. Comments supported adoption of the rules.

This rule shall become effective June 10, 1987, and the identical rule adopted under emergency rule-making procedures as **ARC 7043** is to be rescinded June 10, 1987.

Amend rule 347—26.1(88) by adding at the end the following:

51 Fed. Reg. 22733 (June 20, 1986)

51 Fed. Reg. 25318 (July 11, 1986).

This rule is intended to implement Iowa Code section 88.5.

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7585**LABOR SERVICES DIVISION[347]**

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts amendments to 347—Chapter 27, "Protective Clothing and Equipment Standards for Fire Fighters," Iowa Administrative Code. The amendments delete effective dates which have passed.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as **ARC 6984**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was held on October 20, 1986. No comments were received.

These amendments shall become effective June 10, 1987, and are identical to the Notice of Intended Action published as **ARC 6984**.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these subrules (27.10(1)"a," 27.10(2), 27.10(4)) is being omitted. These subrules are identical to those published under Notice as **ARC 6984**, Iowa Administrative Bulletin on September 24, 1986.

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

[For replacement pages for IAC, see IAC Supplement, 5/6/87.]

ARC 7584**LABOR SERVICES DIVISION[347]**

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts an amendment to rule 347—28.1(88) relating to occupational safety and health rules for agriculture. The amendment corrects the rule to reflect amendments previously adopted in the Federal Register notations listed in the rule.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as **ARC 6985**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was held on October 20, 1986. No comments were received.

This rule shall become effective June 10, 1987, and is identical to the Notice of Intended Action published as **ARC 6985**.

Amend rule 347—28.1(88) as follows:

347—28.1(88) Adoption by reference. Rules 1928.1, 1928.10, and 1928.21, 1928.51-1928.53 and 1928.57, as adopted by the United States Secretary of Labor, shall be rules for implementing Iowa Code chapter 88 of the Code. This rule adopts the federal Occupational Safety

and Health Standards for Agriculture, 29 C.F.R. 1928 as published at 40 Fed. Reg. 18253-18268 (April 25, 1975) and as amended at:

41 Fed. Reg. 10190 (March 9, 1976)
41 Fed. Reg. 11022 (March 16, 1976)
41 Fed. Reg. 22268 (June 2, 1976)
41 Fed. Reg. 46598 (October 22, 1976)
42 Fed. Reg. 37668 (July 22, 1977)
42 Fed. Reg. 38569 (July 29, 1977)
43 Fed. Reg. 27463 (June 23, 1978)
43 Fed. Reg. 28474 (June 30, 1978)
43 Fed. Reg. 35036 (August 8, 1978)
46 Fed. Reg. 32022 (June 19, 1981)

These federal rules shall apply and be interpreted to apply to the Iowa Occupational Safety and Health Act, Iowa Code chapter 88 and enforcement by the Iowa labor commissioner of labor.

This rule is intended to implement Iowa Code section 88.5.

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7586**LABOR SERVICES DIVISION[347]**

Pursuant to the authority of Iowa Code sections 88.5, 89B.8, and 17A.3(1), the Labor Commissioner adopts amendments to rules in 347—Chapters 110 and 130 relating to hazardous chemicals risks right to know. The rules relate to changes made in 1986 Iowa Acts, chapter 1135, concerning an exemption for pesticides, consumer products, and to correct an oversight made in not removing the requirements for a form in the original filing of the rules.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 1986, as **ARC 6986**.

A public hearing was held on October 20, 1986. One comment was received relative to Item 4 of the Notice and this rule reflects the suggested language. Additionally, referenced Iowa Code chapter 455D was changed to chapter 89B. The referenced chapter was moved in 1987 Iowa Code.

These rules shall become effective June 10, 1987. These rules are identical to the Notice of Intended Action as published as **ARC 6986** except for Code reference changes and Item 4 which was changed as a result of a comment received at the public hearing.

ITEM 1. Amend subrule 110.1(2) by adding at the end thereof the following sentence: *These rules apply to any chemical which is known to be present in the workplace so that employees may be exposed under normal conditions of use or in a foreseeable emergency.*

ITEM 2. Amend subrule 110.1(3) to read as follows:
110.1(3) Exemption of employers — laboratories. These rules apply to any chemical which is known to be present in the workplace so that employees may be exposed under normal conditions of use or in a foreseeable emergency. These rules apply to laboratories only as follows:

LABOR SERVICES DIVISION[347] (cont'd)

ITEM 3. Amend subrule 110.1(5) to read as follows:

110.1(5) Exemption of employers — agricultural activities and pesticide applicators. Iowa Code section ~~455D.4 89B.4~~ provides an exemption for ~~agricultural activities including certain types of persons engaged in farming and pesticides as defined in Iowa Code section 206.2, subsection 1, when used, stored, or available for sale by pesticide applicators and dealers as defined in Iowa Code chapter 206.~~ Notwithstanding the exemptions for commercial applicators, certified applicators, certified private applicators, and certified commercial applicators in Iowa Code section ~~455D.489B.4~~, subsection 1, the Act shall apply to any employer who has a "misbranded" pesticide as defined in 7 U.S.C. 136(q). The Act shall also apply to any person who uses a hazardous chemical which is not a pesticide registered pursuant to 7 U.S.C. 136a(c) or exempted under 7 U.S.C. 136a(b).

ITEM 4. Amend subrule **110.1(7)**, paragraph "e," by adding a new paragraph "6" to read as follows:

6. Consumer products in the possession of employers except (i) those employers in SIC Codes 20 through 39 (Division D, Standard Industrial Classification Manual), or (ii) those employers who are chemical manufacturers, importers or distributors as defined in the federal occupational safety and health administration's hazard communication regulation 29 C.F.R. 1910.1200 as promulgated on November 25, 1983.

This rule is intended to implement Iowa Code subsections 89B.4(1) and 89B.8(5).

ITEM 5. Amend rule **347—110.2(88, ~~455D89B~~)** by adding in alphabetical sequence the following definition: "Consumer product" means any hazardous chemical, or component part thereof, produced or distributed for

1. Sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or

2. The personal use, consumption, or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.

For additional information, consult 15 U.S.C. section 2051 et seq., and 16 C.F.R. Parts 1101 - 1406.

This rule is intended to implement Iowa Code sections 89B.4 and 89B.8(5).

ITEM 6. Amend 347—130.6(~~455D~~) to read as follows:

347—130.6(~~455D89B~~) Requests for information. An interested person may request information from an employer. If the request is denied by the employer, the requesting party may then file an application for information with the division. The application will set forth the information being requested and that information was refused by the employer or that the employer denies access or that the employer alleged that no records were kept. The applicant shall state the interest in the information requested to be received. **The Request for Information Form is available from the bureau for filing a request for information and may be used by an interested person.**

[Filed 4/17/87, effective 6/10/87]
[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7588

PERSONNEL DEPARTMENT[581]

Pursuant to the authority of Iowa Code section 97B.15 and chapter 17A, the Iowa Department of Personnel adopts amendments to Chapter 21, "Iowa Public Employees' Retirement System," and Chapter 22, "Federal Social Security," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 11, 1987, as **ARC 7460**. The Iowa Department of Personnel adopted these rules at a public hearing on April 16, 1987.

Thomas E. Donahue, Director of Personnel as ex officio nonvoting member of IPERS Investment Board, changes address of IPERS office; amends covered wage maximum for periods of membership service; adds Des Moines Airport Fire Fighters as covered members; appoints the Department of Inspection and Appeals as hearing authority for appeals of decisions; changes formula benefits for monthly payment of allowances and replaces the five-year average covered wage with a three-year average covered wage.

No significant changes to the rules, except 21.5(1)"a"(30) was rewritten and Item 3 was added to rescind rules 370—10.8(97B) and 10.9(97C).

These rules will supersede 370—Chapter 8, and implement 1985 Iowa Acts, chapter 190 (Senate File 27), and 1986 Iowa Acts, chapter 1245, section 249 (Iowa Code section 97B.1).

These rules will become effective on June 10, 1987.

The following amendments are adopted.

EDITOR'S NOTE: Pursuant to the recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules — chapters 21 and 22, with the exception of amendments to 21.5(1)"a" and the rescission of rules 370—10.8(97B) and 10.9(97C)—is being omitted. These rules are identical to those published under Notice, IAB 3/11/87, as **ARC 7460**.

Subrule **21.5(1)**, paragraph "a," subparagraph (30), is amended as follows:

(30) **Intermittent Temporary** employees are excluded until the **intermittent** employee works for a period in excess of 1040 hours in a fiscal year that provided for **intermittent employment as defined by the state merit employment department.**

Rules **370—10.8(97B)** and **10.9(97C)** are rescinded.

[Filed 4/17/87, effective 6/10/87]

[Published 5/6/87]

[For replacement pages for IAC, see IAC Supplement, 5/6/87.]

ARC 7566

UTILITIES DIVISION[199]

Pursuant to the authority of Iowa Code sections 476.2 and 17A.4, the Iowa State Utilities Division (Board) of the Iowa Department of Commerce hereby gives notice that on April 10, 1987, the Utilities Board issued an order in Docket No. RMU-86-22, In Re: Confidential Records, "Order Adopting Rules."

UTILITIES DIVISION[199] (cont'd)

On November 11, 1986, the Utilities Board issued an order in this docket commencing a rule making to consider the adoption of amendments to Utilities Division subrules 19.2(5), paragraph "k," 20.2(5), paragraph "j," 20.13(1), paragraph "c," 20.13(1), paragraph "e," 22.2(6), paragraph "l," and 22.12(4), Iowa Administrative Code. The Notice of proposed rule making was published in the Iowa Administrative Bulletin on December 3, 1986, as ARC 7196. In order to allow for public comment on the proposed rules, a deadline of December 23, 1986, was set for filing written comments.

The Board adopted Utilities Division subrule 1.9(6), effective July 9, 1986, which established procedures applicable in all contexts for requesting confidential treatment of information filed with the Board. Therefore, the Board has found the portions of the above listed subrules which relate to requests for confidential treatment of information filed with the Board are unnecessary. Further, the above listed subrules, if not amended, may be confusing because more support for a request (an affidavit by a corporate officer with personal knowledge) is required under new subrule 1.9(6), than under the above listed subrules.

The rules strike the unnecessary and less stringent paragraphs.

One party filed written comments in this rule making. The comments were in support of the amendments.

The Board adopted the rules. The rules will become effective on June 10, 1987, pursuant to Iowa Code section 17A.5.

ITEM 1. Rescind the last paragraph of subrule 19.2(5)"k."

ITEM 2. Rescind the last paragraph of subrule 20.2(5)"j."

ITEM 3. Rescind the last paragraph of subrule 20.13(1)"c."

ITEM 4. Rescind the last paragraph of subrule 20.13(1)"e."

ITEM 5. Rescind the last paragraph of subrule 22.2(6)"l."

ITEM 6. Rescind subrule 22.12(4).

[Filed 4/17/87, effective 6/10/87]

[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

ARC 7567

UTILITIES DIVISION[199]

Pursuant to the authority of Iowa Code sections 476.2, 476.8, and 17A.4 the Iowa State Utilities Board (Board) hereby gives notice that April 10, 1987, the Board issued an order in Docket No. RMU-86-23, In Re: Telephone Customer Trouble Reports, "Order Adopting Rules."

On December 9, 1986, the Utilities Board issued an order in this docket commencing a rule making to consider the adoption of an amendment to 199—subrule 22.6(1)"h." The proposed rule making was published in the Iowa Administrative Bulletin on December 31, 1986, as ARC 7274. In order to allow for public comment on the proposed rules, a deadline of January 20, 1987, was set for written comments.

The Board has determined that under current conditions, ten customer trouble reports per hundred lines per month as provided in subrule 22.16(1)"h" is an inadequate minimum service objective. The proposed rules change the service standard to seven and one-half customer trouble reports per hundred lines per month. No written comments were received in this rule making.

The Board adopted the proposed rules which will become effective June 10, 1987, pursuant to Iowa Code section 17A.5.

Iowa Administrative Code 199—subrule 22.6(1), paragraph "h," is amended to read as follows:

h. It shall be the minimum objective to so maintain the service that the average rate of customer trouble reports in an exchange is no greater than *seven and a half* ~~ten~~ per one hundred central office access lines per month.

[Filed 4/17/87, effective 6/10/87]


[Published 5/6/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/6/87.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

| AGENCY | RULE | EFFECTIVE DATE DELAYED |
|--------------------------------|---|--|
| Human Services Department[441] | 175.8(4)“a.”(7), (9), and (10); 175.8(5); 175.9; 175.15 [IAB 3/25/87, ARC 7467] | Seventy days from effective date of May 1, 1987. |
| Nursing Board[590] | Chapter 2 [IAB 3/11/87, ARC 7409] | Seventy days from effective date of April 15, 1987. |



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER #30

- WHEREAS,** With the passage of the Federal Emergency Planning and Community Right-to-Know Act of 1986 the Governor of each state shall appoint a State Emergency Response Commission; and
- WHEREAS,** Said federal law requires affirmative state action by April 17, 1987, making this executive order the only expedient procedure reasonably available to assure timely implementation; and
- WHEREAS,** Said federal law authorizes the Governor to designate as the State Emergency Response Commission one or more existing emergency response organizations that are state-sponsored or appointed; and
- WHEREAS,** Said federal law directs that to the extent practicable those appointed to the State Emergency Response Commission have technical expertise in the emergency response field; and
- WHEREAS,** Said federal law requires that each state take actions necessary to assure, to the extent practical, the obligations of the State under the Act are met;
- NOW THEREFORE,** I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by the Constitution and laws of the State of Iowa, hereby create and establish the State Emergency Response Commission of Iowa. Administrative support to the Commission shall be performed by the Secretariat who shall report to the chairperson of the Commission. The Commission shall consist of a representative from the Office of the Governor, a representative from the Iowa Department of Natural Resources, the Iowa Department of Employment Services, the Iowa Department of Public Defense, the Iowa Department of Public Safety, the Iowa Department of Justice, the Iowa Department of Public Health, the Iowa Department of Transportation, the Fire Extension Service of Iowa State University, and two members from private industry, all appointed by the Governor.

Further, I direct that the representative from the Department of Public Defense shall serve as the chairperson of this Commission and shall provide assistance with the local emergency planning in accordance with the Emergency Planning and Community Right-to-Know Act of 1986 and Chapter 29C, Code of Iowa.


Further, I direct the Iowa Department of Natural Resources to maintain jurisdiction over chemical releases as outlined by law.

Further, I direct the Department of Management to work with the appropriate departments to identify and obtain necessary resources available to be utilized by the Department of Public Defense, Department of Natural Resources, and the Commission to implement this Act.

Further, I direct the State Emergency Response Commission to provide to the Governor by November 15, 1987 recommendations for potential and necessary statutory changes, budget proposals, and avenues for generation of revenue, in order to implement the Emergency Planning and Community Right-to-Know Act of 1986.

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 15th Day of April in the year of our Lord one thousand nine hundred eighty-seven.


GOVERNOR


Attest: Secretary of State



SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

February/March 1987

ELECTIONS

School Districts. Ch. 275: §§ 275.12, 275.18, 275.23A; Ch. 278: § 278.1. Section 275.23A does not authorize additional boundary adjustments of school director districts after adjustment following the federal decennial census. Additional boundary changes must be made through submission to the voters pursuant to the appropriate statutory process. (Pottorff to Ritsema, State Senator, 2-25-87) #87-2-1(L)

CONSTITUTIONAL LAW

Cities: Pension Funds. Art. VIII, § 3, Const. of Iowa; Iowa Code ch. 411; §§ 97B.7, 411.2, 411.7, 452.10, 453.16 (1987). It is constitutionally permissible for police and fire fighter retirement systems created under Iowa Code ch. 411 to invest in stock issued by private corporations. Such retirement systems are authorized by statute to invest in corporate stock, including mutual fund stock, where such an investment would be considered prudent under the criteria established in § 97B.7. However, where ch. 411 retirement system funds are pooled with other funds with more restricted investment authority, investment of the pooled funds is limited to the more restrictive standard. (Kirlin to Goodwin, State Senator, 3-19-87) #87-3-3

COUNTIES AND COUNTY OFFICERS

Board Of Supervisors; Reimbursement For Mileage Expenses. Iowa Code §§ 79.9, 331.215(2), 331.324(1)(b) (1985). County supervisors may be reimbursed for mileage expenses incurred in traveling between home and the courthouse if those trips are made to conduct official county business. (Weeg to Scieszinski, Monroe County Attorney, and Schroeder, Keokuk County Attorney, 3-16-87) #87-3-2

INSURANCE

School Districts; Power To Contract Indebtedness To Fund School District Self-insured Health Plan. 1986 Iowa Acts, ch. 1211, § 11; Iowa Code Supp. § 509A.14 (1985). A school district is authorized to contract indebtedness or issue bonds to fund a self-insured health plan for its employees. (Haskins to Walters, Director, Department of General Services, 3-25-87) #87-3-6(L)

MENTAL HEALTH

Community Supervised Apartment Living Arrangements. Iowa Code §§ 135.6(1), 225C.19, 225C.19(1), 252.16(3) (1987); 441 Iowa Admin. Code ch. 36, §§ 36.2, 36.3(1), 36.7(1), 36.7(2). Approved community supervised apartment living arrangement (CSALA) providers are institutions within the meaning of § 252.16(3). Persons living in residences provided by the CSALA providers are residents of an institution and precluded from acquiring or changing legal settlement. To the extent that the services provided by CSALA providers are essential for persons to operate in a residential setting, the services constitute support by an institution. Such persons are precluded from acquiring or changing legal settlement. (McCown to Norman, Commissioner, Department of Human Services, 3-24-87) #87-3-5(L)

OPEN MEETINGS

Public Records; Advisory Committees. Iowa Code § 21.2(1)(a); § 22.1. For a committee appointed by the Governor to be a governing body expressly created by executive order and thus subject to the open meetings law, the body would have to possess more than advisory authority. A committee appointed by the Governor in his official capacity to make recommendations on an issue concerning state government would be a "committee of the state" and subject to the public records law. Committee materials would be public records if they meet the standards set forth in 1982 Op.Att'yGen. 215 -- i.e., they are comprehensible writings developed or maintained by a public body or official as a convenient, appropriate, or customary method by which the body or official discharges a public duty. (Osenbaugh to Hammond, State Representative, 3-27-87) #87-3-7(L)

SUBSTANCE ABUSE

Costs. Iowa Code §§ 125.43; 125.44; 230.15 (1987). Costs of substance abuse commitments are not included in costs of care, maintenance and treatment. (McGuire to Ritchie, Buena Vista County Attorney, 3-19-87) #87-3-4(L)

TAXATION

School Districts: Schoolhouse Tax Fund. Iowa Code §§ 76.3, 278.1, 297.36, 444.2 (1985). A school district which has issued obligations in anticipation of schoolhouse tax receipts may, at the time of issuance, certify the annual levy of an amount which is within the tax limit approved by the voters when computed on the adjusted taxable valuation of the school district for the fiscal year preceding the year in which obligations are issued, and the county auditor must annually levy that amount until the obligations are satisfied, regardless of changes in school district property values in future years. (Kirlin to Cavanaugh, Director, Department of Management, 3-12-87) #87-3-1

STATUTES CONSTRUED1985 CODE

76.3
 79.9
 Ch. 275
 275.12
 275.18
 275.23A
 Ch. 278
 278.1
 278.1
 297.36
 331.215(2)
 331.324(1)(b)
 444.2
 509A.14

OPINION

87-3-1
 87-3-2
 87-2-1(L)
 87-2-1(L)
 87-2-1(L)
 87-2-1(L)
 87-2-1(L)
 87-2-1(L)
 87-3-1
 87-3-1
 87-3-2
 87-3-2
 87-3-1
 87-3-6(L)

1987 CODE

21.2(1)(a)
 22.1
 97B.7
 125.43
 125.44
 135.6(1)
 225C.19
 225C.19(1)
 230.15
 252.16(3)
 ch. 411
 411.2
 411.7
 452.10
 453.16

OPINION

87-3-7(L)
 87-3-7(L)
 87-3-3
 87-3-4(L)
 87-3-4(L)
 87-3-5(L)
 87-3-5(L)
 87-3-5(L)
 87-3-4(L)
 87-3-5(L)
 87-3-3
 87-3-3
 87-3-3
 87-3-3
 87-3-3

1986 Iowa Acts

ch. 1211, § 11

OPINION

87-3-6(L)

IOWA CONSTITUTION

Art. VIII, § 3

OPINION

87-3-3

IOWA ADMINISTRATIVE CODE

Ch. 36, §§ 36.2, 36.3(1)
 36.7(1), 36.7(2)

OPINION

87-3-5(L)

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED - April 15, 1987

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. 85-663. STATE v. ROTH.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Cedar County, James E. Kelley, Judge. Decision of court of appeals vacated; judgment of district court affirmed. Considered by Reynoldson, C.J., and Larson, Schultz, Carter, and Wolle, JJ. Opinion by Reynoldson, C.J. (16 pages \$6.40)

A jury found defendant John Frank Roth guilty of first-degree murder and district court entered the appropriate judgment. Defendant appealed, asserting the court erred in not allowing him to cross-examine his wife and his son, both State witnesses, concerning her twenty-year-old murder conviction. Further review was granted of the court of appeals decision reversing the conviction and remanding for new trial. OPINION HOLDS: I. Trial court did not abuse its discretion in excluding evidence of the 1965 murder conviction. II. Assuming relevance and questionable probative value, the 1965 conviction was subject to exclusion under Iowa Rule of Evidence 403 when offered for impeachment purposes. III. Trial court committed no abuse of discretion in excluding the evidence with respect to cross-examination of defendant's son. IV. Defendant was given a fair opportunity to present his defense and was not denied a fair trial.

No. 85-1814. IN RE MARRIAGE OF FAIRALL.

Appeal from the Iowa District Court for Marshall County, Louie F. Beisser, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and McGiverin, Larson, Lavorato, and Neuman, JJ. Opinion by Reynoldson, C.J. (8 pages \$3.20)

Respondent appeals with permission from an interlocutory order overruling his motion to dismiss a petition to vacate a dissolution decree. OPINION HOLDS: Under Iowa Rules of Civil Procedure 252 and 253 the petition to vacate must be both filed and served within one year after rendition of the challenged decree.

No. 86-782. STATE v. McALPIN.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Taylor County; Ray Hanrahan, Judge. Affirmed. Considered by McGiverin, P.J., and Larson, Carter, Wolle, and Lavorato, JJ. Per curiam. (4 pages \$1.60)

Defendant appeals from the sentence imposed following his conviction for lascivious acts with a child in violation of Iowa Code § 709.8 (1985). OPINION HOLDS: I. We conclude that the sentencing court had jurisdiction to recall defendant for an additional hearing and final disposition even though it had orally pronounced judgment and sentence earlier. A sentencing court retains jurisdiction until a final judgment is entered. II. We disagree with defendant's contention that he was denied the right of allocution required by Iowa Rule of Criminal Procedure 22(3)(d). Both he and his counsel were given the opportunity to point out mitigating factors and reasons for withholding judgment. II. The trial court did not abuse its sentencing discretion in considering the emotional harm done to the child victim as documented in the record. IV. We find here no abuse of the sentencing court's discretion where the record reveals that it considered several factors in reaching its sentencing decision.

No. 85-1358. ELLWOOD v. MID STATES COMMODITIES, INC.

Appeal from the Iowa District Court for Webster County, R.K. Richardson, Judge. Affirmed in part, reversed in part and remanded. Considered by Reynoldson, C.J., and McGiverin, Larson, Lavorato, and Neuman, JJ. Opinion by McGiverin, J. (25 pages \$10.00)

On appeal from the judgment in a tort action plaintiff challenges the district court's conclusion that he had ratified certain of the unauthorized commodity futures trading transactions which gave rise to the litigation. One defendant, a brokerage firm, cross-appeals from that portion of the judgment denying it recovery upon its counterclaim for an account deficit. OPINION HOLDS: I. The trial court did not abuse its discretion by permitting amendment of the answer to assert ratification as an affirmative defense. II. The evidence was sufficient to establish ratification as a complete defense. III. The evidence of damages resulting from a forgery of checks was insufficient to support the award that was made. IV. The equitable doctrine of clean hands should not have been applied in a law action to bar defendant's recovery upon its counterclaim when the doctrine was not raised in pleadings or at trial.

No. 86-353. STATE v. RISDAL.

Appeal from the Iowa District Court for Story County, M.D. Seiser, Judge. Affirmed. Considered by Reynoldson, C.J., and Larson, Schultz, Carter, and Wolle, JJ. Opinion by Wolle, J. (10 pages \$4.00)

Defendant appeals from his convictions and sentences for second-degree and third-degree sexual abuse. He alleges that his trial counsel rendered ineffective assistance. OPINION HOLDS: I. Defendant asserts on appeal that his trial counsel was ineffective for failing to make the pretrial showing required by Iowa Rule of Evidence 412(c), a prerequisite for inquiring into the alleged victims' prior sexual experience at trial. From our review of the entire record, we conclude that the proffered evidence would not

have been admissible under any provision within rule 412, and therefore defendant was not prejudiced by his counsel's failure to make an offer of proof. We are also convinced that the jury's verdict would probably not have been different even if the prior sexual activity had been disclosed. II. Defendant further alleges that his trial counsel was ineffective when he elicited unfavorable testimony during cross-examination of a social worker and then failed to have it stricken from the record. We believe counsel's strategy in cross-examining the witness was well within the range of reasonable professional competence.

No. 86-541. TAYLOR ENTERPRISES, INC., v. CLARINDA PRODUCTION CREDIT ASSOCIATION.

Appeal from the Iowa District Court for Page County, Leo F. Connolly, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and McGiverin, Larson, Lavorato, and Neuman, JJ. Opinion by McGiverin, J. (8 pages \$3.20)

Defendants appeal with permission from an interlocutory order determining that federal intermediate credit banks and production credit associations can be held liable for punitive damages in a suit against such entities in state court. OPINION HOLDS: In the absence of express statutory authority punitive damages cannot be awarded in an action against a production credit association or federal intermediate credit bank.

No. 86-389. DWYER v. CLERK OF THE DISTRICT COURT FOR SCOTT COUNTY.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge. Reversed and remanded. Considered en banc. Opinion by McGiverin, J. Dissent by Reynoldson, C.J. (19 pages \$7.60)

The plaintiff was required by a 1983 dissolution decree to pay child support to his former wife. As required by Iowa Code section 598.22 (1983), the decree directed the plaintiff to make these payments through the office of the district court clerk. However, the plaintiff made payments directly to his former wife, bypassing the clerk of court. In December 1985 the plaintiff filed with the clerk of court a sworn affidavit by his former wife acknowledging receipt of child support payments. However, the clerk refused to enter the satisfaction affidavit on the judgment docket. The clerk based this refusal on Iowa Code section 598.22, which requires child support payments to be made to the clerk of court, and on a 1985 amendment to that section which specifies that payments to any other person do not satisfy the underlying support obligation. 1985 Iowa Acts. ch. 178, § 8 (codified as amended at Iowa Code § 598.22 (Supp. 1985)). The plaintiff then sought a writ of mandamus to compel the clerk of court to enter the satisfaction affidavit on the judgment docket. The district court denied

mandamus relief, and the plaintiff has appealed. OPINION HOLDS: Section 598.22, as amended, does not relieve the clerk of the duty to file and note satisfactions. Section 598.22 merely puts in question the validity or legal effect of a satisfaction of child support judgment document executed by a recipient former spouse who accepts payments outside the clerk's office. The clerk of the district court had a duty to file the affidavit of satisfaction and enter a memorandum thereof on the judgment docket as required by Iowa Code sections 624.20 and 624.37. We need not consider the plaintiff's constitutional challenges to section 598.22. DISSENT ASSERTS: I would deny the writ of mandamus on the ground there is a reasonable controversy whether the clerk was required to note the "satisfaction" of the judgment against this plaintiff. Were I to reach the merits, I would hold the clerk had no such obligation with respect to any written "satisfaction" relating to required child support payments falling due after July 1, 1985, the effective date of the 1985 amendments to Iowa Code section 598.22.

No. 86-886. IN THE INTEREST OF H.G., a Child.

Appeal from the Iowa District Court for Marion County, Thomas W. Mott, Judge. Affirmed. Considered by Harris, P.J., and Schultz, Carter, Wolle, and Lavorato, JJ. Per curiam. (9 pages \$3.60)

A juvenile challenges the sufficiency of the evidence to support an adjudication of delinquency. OPINION HOLDS: From our de novo review of the record, we conclude there is no reasonable doubt that H.G. aided and abetted her brother in the murder of their father.

Nos. 84-1432 and 84-2001. STECKELBERG v. RANDOLPH.

Appeal from the Iowa District Court for Guthrie County, Jack D. Levin, Judge. Affirmed. Considered by Harris, P.J., and Schultz, Carter, Wolle, and Lavorato, JJ. Opinion by Harris, J. (17 pages \$6.80)

Plaintiffs, a debt-stricken farm couple, contracted with defendant Randolph for the transfer to him of their farm, farm operation, and related assets. Under the plan Randolph was to assume control over the property, take charge of the operation, and infuse it with his own capital, all with the goal of successfully conducting the farm and operation through desperate economic times. It was agreed that when the goal was reached and the debts repaid the farm would be reconveyed to the Steckelbergs. Sometime after the arrangement was in place the Steckelbergs brought this suit. Equitable and legal theories were separated for trial but have been again consolidated on this appeal. On the equity claim the trial court held that the deed of the farm amounted to an equitable mortgage. On a jury trial of the legal issues arising from fraud, the trial court directed a verdict, dismissing the claims at the close of all evidence, but set that ruling aside on a posttrial motion and ordered

a new trial. OPINION HOLDS: I. The trial court correctly found that the deed of the farm from the Steckelbergs to Randolph amounted only to an equitable mortgage. Randolph's contention the deed was an absolute conveyance of title, not merely the giving of a security interest, lacks merit. The Steckelbergs were in desperate financial straits when they became obligated to Randolph. As a result they conveyed their farm to him, executing a contract which provided for reconveyance of the farm when the obligation was repaid. At all material times the Steckelbergs remained on the farm. In consideration of their conveyance of their farm, Randolph offered no more than to help them in settling and compromising outstanding debts. Any money he invested was to be repaid. The Steckelbergs entered the transaction at Randolph's urging and suggestion, without the assistance of independent legal advice or counsel. Although there was no antecedent debt between the parties prior to the transaction, it is clear the agreement itself contemplated future advances by Randolph, which created a debtor-creditor relationship. Finally, the contract itself clearly described an intent to create a mortgage and not to pass title to the farm. II. The trial court quieted title to the farm in the Steckelbergs, nullifying the lease and real estate contracts between Randolph and a third-party purchaser. Having correctly found an equitable mortgage the trial court enjoyed broad discretion in fashioning an appropriate remedy. There was no abuse in the holding. III. Randolph also challenges the trial court holding which set the Steckelbergs' indebtedness to him at \$380,000. We reject the challenge and reach the same findings as the trial court with regard to the balance due on the equitable mortgage. IV. There remains only Randolph's challenge to the trial court's grant of a new trial in the law action. When a court erroneously directs a verdict, it may properly grant a new trial. There was no abuse in the ruling.

NO. 87-04. STATE v. BESSENECKER.

Appeal from the Iowa District Court for Polk County, Richard D. Strickler, Judge. Reversed and remanded. Considered en banc. Opinion by Schultz, J. Dissent by Wolle, J. (16 pages \$6.40)

A defendant charged with second-degree theft in violation of Iowa Code sections 714.1(1) and 714.2(2) was granted discretionary review of district court order permitting prosecution to use confidential criminal history data of prospective jurors during jury selection. OPINION HOLDS: I. Defendant has standing to contest the county attorney's use of criminal history data during jury selection because any criminal defendant has an important personal stake in selecting a fair jury, and thus in obtaining relevant information about the jurors and seeking to be on an equal footing with the prosecution in that regard. II. A. We interpret Iowa Code section 692.2(3)(a), which restricts the dissemination of the rap sheet of an individual to instances in which "[t]he data is for official purposes in connection with prescribed duties" as

precluding the county attorney from obtaining the rap sheets of all prospective jurors. The statute would permit the county attorney to obtain a rap sheet on an individual pursuant to a court order only when there is a reasonable basis for believing that the rap sheet may contain information that is pertinent to the individual's selection as a juror and that is unlikely to be disclosed through voir dire or through juror questionnaires. B. The defendants should have equal access to jurors' rap sheets obtained by the county attorney because considerations of fairness and judicial control over the jury selection process require this result. The county attorney in this case is ordered to destroy all such material previously acquired and all notes made therefrom. On remand the trial court should inquire into the knowledge the prosecutor may have with regard to individuals on a particular panel in deciding whether or not the panel must be replaced. DISSENT ASSERTS: I dissent from division II.A. in which the majority narrowly restricts use of criminal history data to "special cases" of individual prospective jurors. I would affirm, believing the district court correctly denied defendant's motion to strike the jury pool and properly refused to prohibit the State from using criminal history data in jury selection. I would not reach defendant's constitutional arguments.

NO. 86-544. FIRST SECURITY BANK OF BROOKFIELD v. McCLAIN.
Appeal from the Iowa District Court for Dickinson County, Murray S. Underwood, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Lavorato, and Neuman, JJ. Opinion by Larson, J. (5 pages \$2.00)

Minnie McClain executed a written guaranty note in favor of First Security Bank guaranteeing the indebtedness of her son and daughter-in-law up to \$50,000. They then borrowed sums of \$50,000 and \$70,424 from First Security. In 1985, the bank brought an action in Missouri against all three McClains on the \$50,000 loan. While the Missouri suit was still pending, the bank obtained an \$80,833.89 judgment against the son and daughter-in-law in Dickinson County, Iowa, and satisfied \$30,833.89 of this amount through a forced sale of land. First Security then commenced the present action against Minnie McClain for the \$50,000 balance. The district court awarded First Security a summary judgment, and Minnie McClain has appealed. OPINION HOLDS: I. We conclude that First Security did not make a binding election of remedies by bringing the Missouri action since the remedies pursued were consistent where McClain was subject to only one judgment of \$50,000 on her guaranty. II. We also believe that summary judgment was proper in this case because the broad language of McClain's guaranty note clearly covered the second loan.

NO. 84-985. KLOOSTER v. NORTH IOWA STATE BANK.
Appeal from the Iowa District Court for Wright County, Newt Draheim, Judge. Affirmed in part, reversed in part, and remanded. Considered by Reynoldson, C.J., and Larson, Schultz, Carter, and Wolle, JJ. Opinion by Carter, J. (21 pages \$8.40)

Defendant bank and its surety appeal from judgment for actual and punitive damages in favor of plaintiff farmers in an action arising out of the bank's attachment and sale of hogs securing debts owed by plaintiffs. OPINION HOLDS: I. Plaintiffs have demonstrated that they are the real parties in interest with respect to various portions of the damage claims which were allowed. II. On appeals from a final judgment following trial, determinations of the existence or nonexistence of genuine issues of material facts upon affidavits, depositions, and pleadings for purposes of adjudicating motions under Iowa Rule of Civil Procedure 238 should be superseded by the court's rulings on motions for directed verdict at the close of all the evidence. III. The bank's motion for directed verdict made at the close of all the evidence should have been granted with respect to claims based on wrongful attachment, tortious interference with business operations, and alleged violation of civil rights under 42 U.S.C. section 1983. IV. There was no instructional error or error in the admission of evidence which would require setting aside the jury's verdict for plaintiffs on their claim that the sale of the hogs was not conducted in a reasonably commercial manner. V. The evidence was sufficient to support an award of punitive damages.

NO. 86-440. BLINDER, ROBINSON & CO., INC. v. GOETTSCH.

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge. Affirmed. Considered by Harris, P.J., and Schultz, Carter, Wolle, and Lavorato, JJ. Opinion by Carter, J. (6 pages \$2.40)

The superintendent of securities has sought to censure, suspend, or revoke the licenses of the petitioners as securities brokers and salesmen for alleged willful violations of the Iowa Uniform Securities Act. Petitioners urged as a defense that certain of the transactions involved were exempt from the proscriptions of that act under the provisions of Iowa Code section 502.203(1) (1985), exempting any "isolated nonissuer transaction." In addition to relying on the exemption as a defense, petitioners challenged the constitutionality of the regulatory scheme which is being applied against them on the ground that the vagueness of section 502.203(1) makes it impossible to determine which transactions are covered by the proscriptive features of the act and which are not. Petitioners appealed from the judicial review decision upholding the constitutionality of the statute. OPINION HOLDS: Iowa Code section 502.203(1) is not unconstitutionally vague on its face.

NO. 86-591. STATE v. GANSZ.

Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Jr., Judge. Affirmed. Considered by Harris, P.J., and Schultz, Carter, Wolle, and Lavorato, JJ. Opinion by Carter, J. (6 pages \$2.40)

Defendant appeals from his perjury conviction, contending that he was denied his statutory right to a speedy

retrial by the State's failure to retry him within ninety days of the date that procedendo issued after this court reversed his earlier conviction for the same charge. OPINION HOLDS: We find no merit in the State's contention that unless a prior dismissal of a case is based upon failure to accord the defendant's statutory speedy trial right, it is without prejudice to a subsequent prosecution. We believe that regardless of the avowed purpose of the prior dismissal, if it could be demonstrated that the dismissal was without adequate cause and that it impacted unfavorably upon a defendant's speedy trial rights, the resulting delay in prosecution will warrant a dismissal on speedy trial grounds. Unfortunately for the defendant, we hold that his clear acquiescence in the trial date selected by the district court precludes him from contending that it was in contravention of his speedy trial rights. We have considered all issues presented and find no basis for reversing defendant's conviction.

No. 86-131. GREIF v. K-MART CORP.

Appeal from the Iowa District Court for Des Moines County, R. David Fahey, Judge. On review from the Iowa Court of Appeals. Decision of court of appeals vacated and judgment of district court affirmed. Considered en banc. Opinion by Harris, J. Dissent by Carter, J.

(14 pages \$5.60)

The trial court determined that plaintiff's tort action had been dismissed by operation of Iowa Rule of Civil Procedure 215.1 and refused to reinstate it. Further review was granted of the court of appeals decision reversing the trial court. OPINION HOLDS: I. The case was dismissed by operation of law when trial was not held by the date specified in an order of continuance even though a trial date was later scheduled by the court administrator. The parties have the responsibility to see that assigned cases subject to dismissal under rule 215.1 which are not reached for trial are rescheduled or continued within the time allowed under the rule. The case did not qualify for reinstatement when no timely application was filed. DISSENT ASSERTS: When a court enters an order continuing a case under the rule on the condition that the case be tried on a date which the court selects and docket congestion prevents trial on the date scheduled, it should be the court's responsibility to take the next step in the assignment process.

NO. 86-423. DONNELLY v. BOARD OF TRUSTEES OF FIRE RETIREMENT SYSTEM.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Affirmed. Considered by Harris, P.J., and Schultz, Carter, Wolle, and Lavorato, JJ. Opinion by Schultz, J.

(8 pages \$3.20)

Plaintiff firefighters retired in December of 1984. Their union had negotiated a pay raise for firefighters, which took effect in October of 1984. In 1985 plaintiffs

petitioned for an increase in their monthly pension benefits, pursuant to Iowa Code section 411.6(12)(a) (1985). The board of trustees of the city's Fire Retirement System refused to grant pension increases. The firefighters challenged the board's action by seeking a writ of certiorari. The district court held that the board had acted illegally in denying the pension increase. The board has appealed. OPINION HOLDS: I. The trial court's decision was based upon interpretation of the statute, not upon findings of fact, and so the substantial evidence test is inapplicable. II. The retirees are entitled to an adjustment of their pensions pursuant to section 411.6 (12)(a) when the pay raise that triggered an adjustment of their pensions occurred after the last preceding adjustment was made but before the employees' retirement. The disputed phrase, "the month in which the last preceding adjustment was made," given its plain reading, is not ambiguous. Following the statutory language precisely does not lead to an unfair "doubling" of benefits. The board acted illegally in failing to apply the statute according to its express terms.

NO. 85-1617. GREENE v. FRIEND OF THE COURT, POLK COUNTY, IOWA.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. Affirmed. Considered by Reynoldson, C.J., and Larson, Schultz, Carter, and Wolle, JJ. Opinion by Carter, J. (12 pages \$4.80)

The plaintiff, James Leo Greene, was jailed for contempt of court following his failure to satisfy a child support judgment. This court later held that Greene had been denied due process because he had been jailed without a hearing permitting him to explain why he had failed to satisfy the conditions of previous court orders. Greene v. District Court, 342 N.W.2d 818 (Iowa 1983). Greene then filed the present civil rights action under 42 U.S.C. section 1983 against Polk County, Iowa, the Iowa Department of Human Services, and the office of the Friend of the Court for Polk County, Iowa. Greene alleged that the defendants had violated his civil rights by causing him to be jailed without due process. The district court granted the defendants a summary judgment, and Greene has appealed. OPINION HOLDS: I. The district court erred by holding that the defendants, governmental bodies, are entitled to share in the immunity from suit enjoyed by staff attorneys employed by the defendants. The district court therefore employed an improper ground for granting summary judgment to the defendants. However, we next proceed to consider whether the summary judgment may be upheld on alternative grounds. II. One of the defendants, the Iowa Department of Human Services, is protected from this lawsuit by sovereign immunity because the Iowa Tort Claims Act, Iowa Code chapter 25A, has not waived the State's sovereign immunity as to the type of claim presented here. Therefore, summary judgment in favor of this defendant was proper on this ground. III. Summary judgment in favor of the other defendants was also proper on an alternative ground. Under 42 U.S.C. section

1983, Greene could recover against the county or the office of the friend of the court only if he proved that his imprisonment had been caused by the defendants carrying out an official governmental policy or custom. The factual setting of this case would not permit a recovery under section 1983 on a theory of unconstitutional policy-making by a government agency.

NO. 85-1902. PROGAR v. HARLE.

Appeal from the Iowa District Court for Dubuque County, James C. Bauch, Judge. Reversed and remanded. Considered en banc. Per curiam. (2 pages \$.80)

A dram shop operator was granted an interlocutory appeal from a ruling denying a motion for summary judgment. OPINION HOLDS: This appeal presents the same issues that we addressed in Fuhrman v. Total Petroleum, Inc., 398 N.W.2d 807 (Iowa 1987). We stand by our pronouncements in Fuhrman.

NO. 86-74. IN RE ESTATE OF SIMPSON.

Appeal from the Iowa District Court for Monona County, Phillip S. Dandos, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Lavorato, and Neuman, JJ. Opinion by Neuman, J. (10 pages \$4.00)

A bank appeals from a district court probate ruling on the disposition of the proceeds from a sale of personal property belonging to decedent's estate. OPINION HOLDS: The sole issue in this appeal is whether the district court correctly established the priority of claims by applying the "relatedness" rule of Freese Leasing v. Union Trust & Savings Bank, 253 N.W.2d 921 (Iowa 1977), to limit the effects of a future advances clause in a security agreement under article nine of the Iowa Uniform Commercial Code. (In Freese Leasing, we limited the effects of future advances clauses in real estate mortgages to loans related to the original agreement.) We conclude that the Freese Leasing rule does apply, and we therefore affirm.

NO. 85-1826. ANTHON-OTO COMMUNITY SCHOOL DISTRICT v. PUBLIC EMPLOYMENT RELATIONS BOARD.

Appeal from the Iowa District Court for Woodbury County, Edwin L. Mitchell, Judge. Affirmed. Considered by Harris, P.J., and McGiverin, Wolle, Lavorato, and Neuman, JJ. Opinion by Neuman, J. (12 pages \$4.80)

This appeal by the school district challenges a district court judicial review decision upholding an employee bargaining unit determination by PERB which amended the existing bargaining unit of professional employees to include fourteen nonprofessionals. OPINION HOLDS: I. The agency clearly addressed all of the factors detailed in section 20.13(2) giving appropriate weight to those it deemed most relevant under the circumstances. PERB found that the

unique "one-room schoolhouse" character of the school district led to a sufficient community of interest among the professional and nonprofessional employees. There is substantial evidence supporting the conclusion drawn by the agency. II. We find that PERB's determination of the appropriate bargaining unit for the school district was reached in a manner consistent with the reasoned balancing of factors displayed in its prior, similar cases, specifically Mid-Prairie Community School District, 85 PERB 2395 and Dickinson County Memorial Hospital, 85 PERB 2759. We conclude that the discretion PERB exercised was neither arbitrary nor capricious.

NO. 86-514. TELECONNECT COMPANY v. IOWA STATE COMMERCE COMMISSION.

Appeal from the Iowa District Court for Linn County, August F. Honsell, Judge. Reversed. Considered en banc. Opinion by Lavorato, J. (22 pages \$8.80)

In this judicial review proceeding, the Iowa State Commerce Commission and two intervenors, AT&T Communications and Northwestern Bell Telephone Company, appeal from the district court's ruling which invalidated the commission's rules relating to access charges to be paid by Teleconnect Company and other long-distance telephone companies for the local connections and services necessary to make a long-distance call. OPINION HOLDS: I. This judicial review proceeding arises out of an exercise of the commission's rule-making powers granted under Iowa Code sections 17A.3, 17A.4, and 476.2. An agency rule is not unreasonable, arbitrary, or capricious if a rational agency could believe that the rule is related to achieving a legitimate purpose within the agency's authority and that the means chosen are not so disproportionate to the proper ends sought as to be unconscionable. II. The commission and the intervenors assert two major justifications for the rules: (1) the desirability of cost-based pricing rather than value-based pricing, and (2) the unique universal service obligation imposed on AT&T. We conclude both justifications demonstrate a rational relationship between the rules and their purpose. III. Because the record amply demonstrates a rational relationship between the access charge rules and their purpose, we hold that the commission's action in promulgating the rules was not unreasonable, arbitrary, or capricious. The district court erred in concluding otherwise.

NO. 87-144. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSOCIATION v. JOHNSON.

On review of the report of the grievance commission. License Suspended. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Neuman, JJ. Opinion by Schultz, J. (5 pages \$2.00)

This attorney disciplinary proceeding arises from charges of misconduct brought against Walter E. Johnson based on his representation of the fiduciaries in two separate estates and his failure to respond to any inquiry

by the Committee on Professional Ethics and Conduct.
OPINION HOLDS: A convincing preponderance of the evidence supports the commission's finding that respondent was negligent and dilatory in the handling of the two estates. His failure to respond to the committee's inquiry is a separate act of misconduct. We agree with the commission's recommendation that respondent's license to practice law in Iowa should be suspended indefinitely with no possibility of reinstatement for six months from the date of the filing of this opinion.

No. 86-455. SLADEK v. G & M MIDWEST FLOOR CLEANING, INC.
Appeal from the Iowa District Court for Johnson County, Larry J. Conmey, Judge. Affirmed. Considered by Harris, P.J., and Schultz, Carter, Wolle, and Lavorato, JJ. Opinion by Wolle, J. (11 pages \$4.40)

Plaintiff appeals from the denial of her motion to reinstate a tort action dismissed for failure to prosecute. The motion to reinstate was filed within six months of the date the case had been dismissed pursuant to the terms of an earlier order of reinstatement. OPINION HOLDS: I. The district court has authority under the last paragraph of Iowa Rule of Civil Procedure 215.1 to reinstate a case that has been dismissed for lack of prosecution, both when the dismissal resulted directly from a rule 215.1 notice sent by the clerk of court and when the dismissal was a self-fulfilling provision in an order that had earlier continued or reinstated the case. II. Plaintiff failed to establish that she was entitled to either mandatory or discretionary reinstatement.

NO. 86-994. GRIMES v. AXTELL FORD LINCOLN-MERCURY.
Certified questions of law from United States Court of Appeals, Donald R. Ross, P.J., and Richard S. Arnold, Circuit Judges, and William C. Hanson, District Judge (sitting by designation). Certified questions answered. Considered by Harris, P.J., and Schultz, Carter, Wolle, and Lavorato, JJ. Opinion by Lavorato, J. (13 pages \$5.20)

The United States Court of Appeals for the Eighth Circuit has certified to the Iowa Supreme Court certain questions concerning the application of the doctrine of strict liability in tort to sellers of used goods. OPINION HOLDS: We will not extend the doctrine of strict liability to a dealer in used goods for latent defects not arising from design or manufacture, which were caused while the goods were in the possession of a previous owner. We do not foreclose the possibility of our applying the doctrine of strict liability to sellers of used goods under other circumstances.

IOWA ADMINISTRATIVE BULLETIN

Iowa State Printing Division
Grimes State Office Building
Des Moines, Iowa 50319

| |
|---|
| Bulk Rate U.S. Postage PAID Des Moines, Iowa Permit No. 1195 |
|---|

1848

SUPREME COURT

IAB 5/6/87

NO. 86-546. STATE v. DESHAW.

Appeal from the Iowa District Court for Linn County, John F. Siebenmann, District Associate Judge. Reversed and remanded. Considered by Harris, P.J., and Schultz, Carter, Wolle, and Lavorato, JJ. Opinion by Schultz, J.

(6 pages \$2.40)

Defendant appeals from his conviction for operating a motor vehicle while under the influence of alcohol (second offense). OPINION HOLDS: We conclude that the showing of the positive presence of some alcohol in a preliminary screening test conducted pursuant to Iowa Code section 321B.3 (1985) is a "result" of the testing which may not be used as evidence in court. The admission of this evidence at trial was not harmless error. We need not reach defendant's challenge to the scope of certain redirect examination on this appeal.