IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Chapter 17A, The Code, 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, 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 Co-ordinator 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 section 17A.6, The Code. 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 co-ordinator and published in the Bulletin.

WAYNE A. FAUPEL, Code Editor
PHYLLIS BARRY, Deputy Code Editor
LAVERNE SWANSON, Administrative Code Assistant

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
24	Friday, May 6, 1983	May 25, 1983
25	Friday, May 20, 1983	June 8, 1983
26	Friday, June 3, 1983	June 22, 1983

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1982, to June 30, 1983	$91.00 plus $3.64 sales tax
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Third quarter	January 1, 1983, to June 30, 1983	$45.50 plus $1.82 sales tax
Fourth quarter	April 1, 1983, to June 30, 1983	$22.75 plus $0.91 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 - $602.00 plus $24.08 sales tax
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	Commission District Office 332 Higley Building Cedar Rapids, Iowa	June 3, 1983 2:00 p.m.
	Commission District Office Suite 620 Sycamore 501 Waterloo, Iowa	June 3, 1983 2:00 p.m.
	Commission District Office 427 Frances Bldg. Sioux City, Iowa	June 3, 1983 2:00 p.m.
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Department of Social Services Conference Room A 12 Scott Street Council Bluffs, Iowa	May 23, 1983 1:00 p.m.
City Council Chamber Restored Depot 116 West Adams Street Creston, Iowa	May 19, 1983 2:00 p.m.
Bicentennial Building Fifth Floor Conference Room 428 Western Avenue Davenport, Iowa	May 23, 1983 1:00 p.m.
Department of Social Services 1111 Paine Decorah, Iowa	May 25, 1983 1:00 p.m.
Auditorium Wallace State Office Building East 9th and Grand Des Moines, Iowa	May 24, 1983 1:30 p.m.
Town Clark Plaza Suite 410 - Third Floor Conference Room Nesler Centre Dubuque, Iowa	May 24, 1983 1:00 p.m.
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Ottumwa Public Library 129 North Court Ottumwa, Iowa	May 20, 1983 1:00 p.m.
Department of Social Services 808 Fifth Street Sioux City, Iowa	May 19, 1983 7:00 p.m.
Bethany Lutheran Church 15 West 14th Spencer, Iowa	May 18, 1983 7:00 p.m.
Black Hawk County Department of Social Services 2nd Floor Conference Room KWWL Building 500 East Fourth Street Waterloo, Iowa	May 24, 1983 10:00 a.m.

SOCIAL SERVICES DEPARTMENT[770] *(cont'd)*

ADC, resource income 41.6, 41.7 IAB 5/11/83 **ARC 3733** (See also **ARC 3632** and **ARC 3633** IAB 3/16/83)	Black Hawk County Department of Social Services Second Floor Conference Room KWWL Building 500 East Fourth Street Waterloo, Iowa	June 1, 1983 7:00 p.m.
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ARC 3745

BLIND, COMMISSION FOR[160]

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 601B.6(8), the Iowa Commission for the Blind hereby gives Notice of Intended Action to amend chapter 2, "Services," Iowa Administrative Code.

Amendments are proposed to rules on consideration of similar benefits which establish policy on payment of tuition for Commission clients enrolled in postsecondary education as part of their vocational training.

Any interested person may make written suggestions or comments on this proposed amendment prior to June 3, 1983. Written materials should be sent to the Director, Iowa Commission for the Blind, Fourth and Keosauqua Way, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the director at (800) 362-2587, (515) 283-2601, or at the Commission's offices at Fourth and Keosauqua Way in Des Moines. There will also be public hearings on Friday, June 3, 1983, at 2:00 p.m. in the assembly room on the first floor of the Commission building in Des Moines, and at the Commission's district offices: 332 Higley Building in Cedar Rapids; Suite 620, Sycamore 501 in Waterloo; and 427 Frances Building in Sioux City. Persons may present their views at these public hearings either orally or in writing. Persons who wish to make oral presentations at the public hearings should contact the assistant director-operations at least one day prior to the date of the public hearings.

The following amendment is proposed:

Rule 160—2.5(601B) is amended by adding the following new subrule:

2.5(4) Vocational training for rehabilitation clients.

a. To the extent of its available resources, the commission will provide or cause to be provided such vocational training for each vocational rehabilitation client as necessary in order to achieve optimum vocational success. The extent and type of training will be agreed upon as part of a client's individualized written rehabilitation plan and approved by the program manager-field operations.

b. Clients sponsored by the commission in postsecondary education shall apply for scholarships and tuition grants in accordance with federal vocational rehabilitation policy. At a minimum, clients will apply for PELL grants and any other grants or scholarships available from the institutions they plan to attend.

c. The commission will authorize, to the extent of available resources, payment of tuition for any post-secondary student sponsored equal to the maximum current tuition rate at the institutions operated by the Iowa Board of Regents or the state's area colleges. Exceptions to this policy will occur only in cases where educational or vocational necessity for waiver can be demonstrated and must be approved in advance by the program manager-field operations on the basis of specific training needs stipulated and agreed upon in the client's individualized written rehabilitation plan.

d. Books, tools, supplies, reader service, maintenance, and transportation costs included in a valid IWRP will be approved as needed to the extent of commission resources available.

This rule is intended to implement Iowa Code sections 601B.6(5) and 601B.7.

ARC 3760

BLIND, COMMISSION FOR[160]

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 601B.6(8), the Iowa Commission for the Blind hereby gives Notice of Intended Action to amend chapter 4, "Vending Facilities," Iowa Administrative Code.

Amendments are proposed to rules governing the Commission's vending facility program allowing for supervision of vending facility operators who commit gross violations of the program's rules so as to jeopardize continuation of the business or the health of patrons.

Any interested person may make written suggestions or comments on this proposed amendment prior to June 3, 1983. Written materials should be sent to the Director, Iowa Commission for the Blind, Fourth and Keosauqua Way, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the director at (800) 362-2587, (515) 283-2601, or at the Commission's offices at Fourth and Keosauqua Way in Des Moines. There will also be public hearings on Friday, June 3, 1983, at 2:00 p.m. in the assembly room on the first floor of the Commission building in Des Moines, and at the Commission's district offices: 332 Higley Building in Cedar Rapids; Suite 620, Sycamore 501 in Waterloo; and 427 Frances Building in Sioux City. Persons may present their views at these public hearings either orally or in writing. Persons who wish to make oral presentations at the public hearings should contact the assistant director-operations at least one day prior to the date of the public hearings.

The following amendment is proposed:

Rule 160—4.4(601B,601C), first paragraph following catchwords, shall be numbered as subrule 4.4(1) and a new subrule 4.4(2) added as follows:

BLIND, COMMISSION FOR[160] *(cont'd)*

4.4(2) When on the basis of a periodic survey the commission determines that the vendor is in violation of the commission's permit to operate the vending facility, it shall immediately notify the vendor, either in writing or orally followed immediately by written notice, of the violation. Time limits imposed herein shall in the latter case run from time of the oral notice. The vendor shall within two days of receipt of such notice either correct the violation or demonstrate to the commission that no violation has occurred.

If the vendor fails to correct the violation or otherwise respond within two days and the commission determines that the violation of the permit creates an imminent danger to the health of the facility's patrons or that the violation jeopardizes the commission's permit to operate the vending facility, it shall give notice by restricted certified mail to the vendor that it has made that determination and that his or her operating agreement has been summarily but temporarily suspended pending a full evidentiary hearing pursuant to IAC 160—subrule 4.12(2) to be held within seven days of receipt of notice of the suspension.

This rule is intended to implement Iowa Code sections 601B.6(8) and 601B.7.

ARC 3729

HEALTH DEPARTMENT[470]

BOARD OF PHYSICAL AND OCCUPATIONAL THERAPY 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 sections 147.76 and 148B.7, the Board of Physical and Occupational Therapy Examiners gives Notice of Intended Action to amend chapters 137 and 138 of the IAC.

The proposed rules provide an alternative method of reinstatement for physical therapists and require that both applicants for a license as a physical therapist and occupational therapist include on the application the name of the supervising licensee.

Any interested person may make written comments concerning the proposed rules not later than 4:30 p.m., June 1, 1983, addressed to Peter J. Fox, Hearing Officer, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code sections 147.76, 148A.3(4), 148B.7, and 258A.2"f".

ITEM 1. Rule 470—137.2(147) is amended by adding the following new subrule:

137.2(7) An applicant, who will be employed in the scope of physical therapy prior to his or her licensure, shall include on the application form the name of the licensed physical therapist who will be providing supervision of the applicant until the applicant is licensed. In the event that there is a change of the licensed physical therapist providing supervision, the applicant shall submit the name of the person providing supervision in writing to the board within seven days after the change in supervision takes place.

ITEM 2. Chapter 138 is amended by adding the following new rule:

470—138.11(258A) Alternative method of reinstatement. Individuals who at one time had an active license in Iowa as a physical therapist and have been given inactive status or have permitted the Iowa license to lapse may also be reinstated by interstate endorsement. All the requirements listed in rule 470—137.4(147) shall be met. The original license number of the individual shall be reissued.

ITEM 3. Rule 470—138.201(148B) is amended by adding the following new subrule:

138.201(5) An applicant, who will be employed in Iowa in the scope of occupational therapy prior to his or her licensure, shall include on the application form the name of the licensed occupational therapist who will be providing supervision of the applicant until the applicant is licensed. In the event that there is a change in the licensed occupational therapist providing supervision, the applicant shall submit the name of the person providing supervision in writing to the board within seven days after the change in supervision takes place.

ARC 3730

HEALTH DEPARTMENT[470]

BOARD OF PSYCHOLOGY 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 sections 147.36 and 147.76, the Board of Psychology Examiners gives Notice of Intended Action to amend chapter 140 of the IAC.

The proposed rule rescinds the current subjective provision and provides that a person may apply for re-examination for psychology no more than three times beginning July 1, 1983.

HEALTH DEPARTMENT[470] *(cont'd)*

Interested persons may make written comments concerning the proposed rule not later than 4:30 p.m., June 1, 1983, addressed to Peter J. Fox, Hearing Officer, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The rule is intended to implement Iowa Code section 147.36.

Subrule 140.8(8) is rescinded and the following adopted in lieu thereof:

140.8(8) Beginning September 1, 1983, persons determined by the board not to have performed satisfactorily may apply for re-examination no more than three times.

ARC 3731

HEALTH DEPARTMENT[470]

BOARD OF BARBER 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 sections 147.10, 147.76, and 147.80(14), the Board of Barber Examiners gives Notice of Intended Action to amend chapter 160 of the Iowa Administrative Code.

The proposed rule provides for a ten dollar penalty fee for failure to submit the renewal application and fee for a barber shop license within thirty-one days following the date due.

Any interested person may make written comments concerning the proposed rule not later than 4:30 p.m., June 1, 1983, addressed to Keith Rankin, Board Administrator, Board of Barber Examiners, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rule is intended to implement Iowa Code section 147.10.

Subrule 160.6(9) is amended to read as follows:

160.6(9) Renewal of a barber shop license is twenty-five dollars. *The penalty fee for failure to submit the renewal application and fee within thirty-one days following the date due is ten dollars, which shall be paid in addition to the renewal fee.*

ARC 3744

INSURANCE DEPARTMENT[510]

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 505.8 and 514.8, the Iowa Department of Insurance hereby gives Notice of Intended Action to adopt rule 34.6(514) relating to "Nonprofit Health Service Corporations."

The purpose of the noticed rule is to set standards for the Department's review of participating hospital contracts. Under Iowa Code section 514.8, contracts between nonprofit health service corporations and participating hospitals for hospital service are subject to the continuing approval of the Commissioner of Insurance. The general policy questions arising in conjunction with the review of provider contracts relate to containment of costs by participating hospitals. The rule specifies standards for review of provider contracts. These standards seek to encourage health care cost containment by encouraging hospital efficiency and limiting unnecessary utilization.

When the department adopts noticed chapter 34, IAB March 30, 1983, rule 34.3(514) will be omitted and the remaining rules renumbered.

Any interested party may file a written statement of position on the subjects covered by the proposed rules no later than June 7, 1983. Such written statement should be directed to the Commissioner of Insurance, Lucas State Office Building, Des Moines, Iowa 50319. Also, there will be a public hearing on May 31, 1983 at 10:00 a.m. in the office of the Insurance Department of Iowa, ground floor of the Lucas Building. Persons may present their views at the public hearing either orally or in writing. Persons wishing to make oral presentations at the public hearing should contact the Insurance Department (515) 281-5705 at least one day prior to the date of the public hearing. Oral presentations will be limited to ten minutes per person.

This rule is intended to implement Iowa Code chapter 514.

The following rule is proposed:

Amend Insurance (510) chapter 34 by adding a new rule as follows:

510—34.6(514) Participating hospital contracts.

34.6(1) The following standards shall be applied to all participating hospital contracts subject to approval under Iowa Code section 514.8 and shall be relied upon by the commissioner in deciding whether approval is granted:

a. Contracts shall be fair to the subscribers of the health service corporation.

b. Contracts shall be fair to the health service corporation.

c. Contracts shall be fair, reasonable, and in the public interest.

d. The subscribers' rights to service under participating hospital contracts shall be adequately specified and protected.

e. The contract shall not be unfairly discriminatory with respect to the provision of services to subscribers.

f. Contracts shall not be detrimental to the financial condition of the health service corporation.

g. The payment of consideration required of the health service corporation by the provisions of the contract shall not be excessive, inadequate or unfair.

34.6(2) The general contract format used by hospital service corporations with participating hospitals for hospital service shall be subject to the prior approval of the department. The individual contracts between hospital service corporations and individual participating hospitals are not subject to prior approval, nor to any informational filing requirement, so long as they substantially conform to the general contract format approved by the commissioner.

34.6(3) The reimbursement mechanism contained in the participating hospital contract shall contain the following:

a. Incentives for high productivity and disincentives that encourage efficiency in hospital operation and effectiveness in use;

b. Provisions for economic trends;

c. Adjustments for variations in capacity among large hospitals and small hospitals;

d. Control mechanisms on unnecessary utilization and inappropriate setting for care;

e. Payment levels to hospitals which are equitable and meet reasonable financial requirements;

f. An internal appeal mechanism for disputes relating to budget review.

NOTICE—INSURANCE

NOTICE OF WORKERS' COMPENSATION PROPOSED RATE FILING

Pursuant to Iowa Code section 515A.6(7)(a), notice is hereby given that the National Council on Compensation Insurance has made a rate filing which affects premium rates for workers' compensation insurance. The purpose of the filing is to revise rates for "F" classifications, namely, those classifications which contemplate exposure under the United States Longshoremen's and Harbor Workers' Act, and which carry an "F" designation in the pages of the rate manual. Details of the filing may be obtained from the Insurance Department of Iowa.

This rate filing has a proposed effective date of June 15, 1983. An affected workers' compensation policyholder or established organization with one or more workers' compensation policyholders among its members may request a hearing on this filing before the Commissioner. Such request must be filed within fifteen days of the date of publication of this notice and shall be made to the Insurance Department of Iowa; Lucas State Office Building, Ground Floor, Des Moines, Iowa 50319.

ARC 3749

LABOR, BUREAU OF[530]

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.

The Labor Commissioner, pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), hereby gives Notice of Intended Action to amend rules relating to inspections under the Occupational Safety and Health Act. The amendments relate to 1) the striking of subrule 3.2(2) and the addition of a new 3.2(2) that deals with when compulsory process may be sought in advance of an attempted inspection or investigation; 2) the amendment of subrule 3.2(3) which defines the meaning of compulsory process; 3) an amendment of subrule 3.5(2) which describes what is included in the term "employ other reasonable investigative techniques"; 4) the amending of 3.6(3) to allow a compliance safety and health officer to permit the accompaniment of a third party who is not an employee of the employer during an inspection under certain circumstances; 5) the insertion of a new 3.6(4) allowing a compliance safety and health officer the right to deny accompaniment to persons during an inspection; 6) the insertion of a new rule at 530—3.7(88) which deals with complaints by employees; 7) the insertion of a new rule at 530—3.9(88) which deals with imminent danger; and minor renumbering changes to reflect renumbering of rules.

A public hearing is not scheduled. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Requests for a hearing or the submission of written data or arguments to be considered in adoption may be submitted by interested persons and shall be received by June 7, 1983 by Walter H. Johnson, Deputy Labor Commissioner, 307 East Seventh Street, Des Moines, Iowa 50319.

ITEM 1. Amend 530—3.2(88) by striking subrule 3.2(2) and inserting in lieu thereof the following:

3.2(2) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the

LABOR, BUREAU OF[530] *(cont'd)*

judgment of the labor commissioner or his/her designee, circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employer's past practice either implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed, or

b. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

ITEM 2. Amend subrule 3.2(3) to read as follows:

3.2(3) For purposes of this rule, the term "compulsory process" shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. *Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this rule.*

ITEM 3. Amend subrule **3.5(2)** by inserting at the end thereof the words:

As used herein the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

ITEM 4. Amend 530—3.6(88) by striking 3.6(3) and inserting in lieu thereof the following:

3.6(3) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the compliance safety and health officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the compliance safety and health officer during the inspection.

ITEM 5. Amend 530—3.6(88) by adding the following new subrule:

3.6(4) Complaince safety and health officers are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection.

ITEM 6. Insert a new rule at 530—3.7(88) as follows and renumber rule 530—3.7(88) as 530—3.8(88).

530—3.7(88) Complaints by employees.

3.7(1) Any employee or representative of employees who believe that a violation of the Act exists in any workplace where the employee is employed may request an inspection of the workplace by giving notice of the alleged violation to the commissioner or his/her designee. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his/her agent by the commissioner's designee no later than at the time of inspection, except that, upon the request of the person giving such notice, his/her name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the bureau of labor.

3.7(2) If upon receipt of notification the commissioner or his/her designee determines that the complaint meets the requirements set forth in subrule 3.7(1), and that there are reasonable grounds to believe that the alleged violation exists, an inspection shall be made as soon as practicable, to determine if the alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

3.7(3) Prior to or during any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the compliance safety and health officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of subrule 3.7(1).

ITEM 7. Insert new rule at 530—3.9(88) as follows and renumber the present 530—3.8(88) through 530—3.13 as 530—3.10(88) through 530—3.15(88).

530—3.9(88) Imminent danger. Whenever and as soon as a compliance safety and health officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, the affected employees and employers shall be notified as provided in Iowa Code section 88.11(3). Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of the danger by the compliance safety and health officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

ITEM 8. Amend the newly numbered subrule **3.11(4)** by striking the words "3.9(1) and 3.9(2)" and inserting in lieu thereof the words "3.11(1) and 3.11(2)".

ITEM 9. Amend newly numbered subrule **3.13(2)** paragraph "e" by striking the words "3.11(3)'a'" and inserting in lieu thereof the words "3.13(3)'a'".

ITEM 10. Amend newly numbered subrule **3.13(3)** paragraph "a" by striking the words "3.11(2)'e'" and inserting in lieu thereof the words "3.13(2)'e'".

ITEM 11. Amend the newly numbered subrule **3.13(4)** by striking the words "3.11(3)'d'" and inserting in lieu thereof the words "3.13(3)'d'".

ARC 3750

LABOR, BUREAU OF[530]

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.

The Labor Commissioner, pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), hereby gives Notice of Intended Action to amend rules relating to reporting and recordkeeping under the Occupational Safety and Health Act. The amendments relate to an addition to the "Definitions" rule that deals with establishments classified in Standard Industrial Classification Codes (SIC) 52-89. A new rule is also added that exempts employers whose establishments are classified in SIC's 52-89 (excluding 52-54, 70, 75, 76, 79 and 80) from complying with all but two requirements of Chapter 4.

A public hearing is not scheduled. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Any request for a hearing or submission of written data or arguments to be considered in adoption by interested persons shall be received by June 7, 1983, by Walter H. Johnson, Deputy Labor Commissioner, 307 East Seventh Street, Des Moines, Iowa 50319.

ITEM 1. Amend rule 530—4.18(88) by inserting new subrule 4.18(8) as follows:

4.18(8) Establishments classified in Standard Industrial Classification Codes (SIC) 52-89.

a. Establishments whose primary activity constitutes retail trade, finance, insurance, real estate and services are classified in SIC's 52-89.

b. Actual trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: Automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

c. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

d. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: Personal and business services, in addition to legal, education, social, and cultural; and membership organizations.

e. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and service establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.

ITEM 2. Amend chapter 4 by adding the following new rule:

530—4.19(88) Establishments classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80). An employer whose establishment is classified in SIC's 52-89 (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishments, with any of the requirements of this part except the following:

1. Obligation to report under 530—4.8(88) concerning fatalities or multiple hospitalization accidents; and
2. Obligation to maintain a log of occupational injuries and illnesses under 530—4.14(88), upon being notified in writing by the bureau of labor that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

ARC 3751

LABOR, BUREAU OF[530]

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 91A.9(4), the Commissioner of Labor hereby gives Notice of Intended Action to adopt rules relating to the general administration of the wage collection division, 530—chapter 35 IAC. These rules are intended to clarify the intent of Iowa Code chapter 91A and designate procedures by which chapter 91A will be enforced by the Labor Commissioner.

A public hearing is not scheduled. Any interested person will be given the opportunity to make oral or written comments on the proposed rules. Written comments or a request for a hearing shall be directed to Walter H. Johnson, 307 East 7th, Des Moines, Iowa 50319, no later than June 7, 1983.

These rules are intended to implement Iowa Code chapter 91A.

The following new chapter is adopted:

CHAPTER 35
WAGE COLLECTION PAYMENT

530—35.1(91A) Definitions.

35.1(1) "Bureau" as used herein shall mean the Iowa bureau of labor.

LABOR, BUREAU OF[530] *(cont'd)*

35.1(2) "Claim for wages" as used herein shall mean the printed form available upon request from the bureau.

35.1(3) "Commissioner" as used herein shall mean the commissioner of labor or his designee.

35.1(4) "Enforceable claim" as used herein shall mean a claim for wages which merits judicial proceedings and one which is collectable.

530—35.2(91A) Filing a claim. A claim for wages shall be made by filing a completed claim for wages form with the bureau located at 307 E. 7th, Des Moines, Iowa 50319. The claim for wages form is available upon request. The request may be made by telephoning, writing, or personally visiting the bureau.

530—35.3(91A) Investigation.

35.3(1) Upon receipt by the bureau of a completed and signed claim for wages form from an aggrieved employee, the commissioner shall commence investigation of the claim for wages and the allegations therein. The commissioner's investigation is not to be construed as a contested case as defined in Iowa Code chapter 17A.

35.3(2) The commissioner shall advise the employer in writing of the allegations contained in the claim for wages and shall request a response from the employer within fourteen days' time from the date of the letter. This period may be extended by the commissioner for good cause.

35.3(3) If the employer fails to answer the commissioner's request for response within the fourteen-day period, as extended by the commissioner, the commissioner may determine the employee's claim to be enforceable.

35.3(4) If the employer answers the commissioner's request for response within the established time, the commissioner shall notify the aggrieved employee of the employer's response and afford that employee an opportunity to present additional information in support of the employee's claim for wages. The employee shall submit the requested additional information within fourteen days from the date of the letter. This period may be altered by the commissioner for good cause.

35.3(5) Upon receipt of the requested additional information from the employee, the commissioner may determine additional information is required from the employer.

35.3(6) Upon receipt of all requested information, the commissioner may determine the employee's claim for wages to be enforceable and the commissioner shall notify the employee of that determination. Due to the budgetary constraints placed upon the bureau and its desire to provide the largest number of employees with assistance in the pursuit of claimed wages, the commissioner may determine that a claim is unenforceable by the bureau if the claim is of a complex nature requiring extensive legal discovery, proceedings, and the claim is for a substantial amount of wages. The fact that a claim for wages is unenforceable for such a reason in no way precludes the employee from seeking the services of a private attorney. The employee may have his/her attorney's fees reimbursed should that employee prevail in court as provided by Iowa Code section 91A.8. Should the commissioner determine the claim is unenforceable by the bureau, the commissioner shall so notify the employee. The fact that the commissioner has determined a claim for wages is unenforceable in no way precludes the employee from pursuing the matter on his/her own, or from seeking the services of a private attorney. The employee may have his/her attorney's fees reimbursed should the employee prevail in court as provided by Iowa Code section 91A.8.

35.3(7) Upon a determination that a claim for wages is enforceable, the commissioner shall notify the employer of that determination in writing and afford the employer an opportunity to tender settlement within fourteen days of the writing prior to initiating judicial proceedings.

530—35.4(91A) Judicial proceedings. Upon filing a legal action, the commissioner shall be bound by the standard of conduct required by the code of professional responsibility for lawyers.

ARC 3739

MERIT EMPLOYMENT DEPARTMENT[570]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Merit Employment Department hereby gives Notice of Intended Action to amend chapter 11, "Separations, Disciplinary Actions and Reduction in Force", Iowa Administrative Code.

These rules provide for the administration of employee separations and disciplinary actions and the method for effecting an agency reduction in force. The reduction in force rule calls for a plan to be approved by the Merit Employment Commission and for reduction to be based on a retention point system with employee recall rights guaranteed for one year from date of layoff.

In the process of reviewing the rules, it was determined by the department that chapter 11 was in need of modification and updating in order to more clearly provide agencies with the proper direction needed for conducting a reduction in force. Other rules in the chapter were revised for clarification purposes.

Any interested person may make written suggestions or comments on these proposed rules no later than May 31, 1983, to the Division Manager, Technical Services Division, Iowa Merit Employment Department, Grimes State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Division Manager, Technical Services Division at (515) 281-6602 or at the above address. Also, there will be a public hearing on Thursday, June 9, 1983, at 9:00 a.m. in the Grimes Conference Room, North Half, on the first

MERIT EMPLOYMENT DEPARTMENT[570] *(cont'd)*

floor of the Grimes State Office 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 Division Manager of the Technical Services Division prior to the date of the public hearing in order to be scheduled.

These rules are intended to implement Iowa Code section 19A.9.

The following amendments are proposed.

Chapter 11 is rescinded and a new chapter adopted as follows:

CHAPTER 11
SEPARATIONS, DISCIPLINARY ACTIONS AND REDUCTION IN FORCE

570—11.1(19A) Separations.

11.1(1) Resignations/retirement. To resign or retire in good standing an employee must give the appointing authority at least fourteen calendar days' prior notice unless the appointing authority agrees to a shorter period. A written notice of resignation or retirement shall be given by the employee to the appointing authority, with a copy forwarded to the department by the appointing authority. An employee who fails to give this prior notice may, at the request of the appointing authority, be barred from future certification to that agency for a period of two years. Resignation or retirement shall not be subject to appeal under these rules unless it is alleged that it was submitted under duress.

Employees who are absent from duty for three consecutive work days without proper authorization from the appointing authority shall be considered to have abandoned their position and voluntarily resigned. The appointing authority shall notify the employee by mail of its acceptance of the resignation and a copy shall be sent to the director by the appointing authority. In these instances the appointing authority may consider requests for review of the resignation based upon exceptional circumstances.

11.1(2) Expiration of appointment. When an employee is separated upon the expiration of an appointment of limited duration, the appointing authority shall immediately report the separation to the department on forms prescribed by the director.

570—11.2(19A) Disciplinary actions. In addition to less severe progressive discipline measures, any employee is subject to suspension, pay reduction within the pay grade, demotion or discharge. Suspension, pay reduction within the pay grade, demotion or discharge of a permanent employee shall be based upon any of the following reasons: Inefficiency, insubordination, incompetence, failure to perform assigned duties, inadequacy in the performance of assigned duties, narcotics addiction, dishonesty, improper use of leave, unrehabilitated alcoholism, negligence, conduct which adversely affects the employee's performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct or any other just/good cause. Attainment of permanent status is not to be construed as a guarantee of the right to a position regardless of performance or conduct.

11.2(1) Suspension. An appointing authority may suspend an employee without pay for any length of time considered appropriate not to exceed thirty calendar days. A written notice of the reasons for the suspension and its duration shall be sent to the employee within three working days after the effective date of the action and a copy shall be sent to the director by the appointing authority at the same time.

11.2(2) Reduction within pay grade. An appointing authority may reduce the pay of an employee to a lower step/rate of pay within the pay grade assigned to the employee's class, for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the employee within three working days after the effective date of the action and a copy shall be sent to the director by the appointing authority at the same time.

11.2(3) Demotion. An appointing authority may demote an employee to a vacant position. In the absence of a vacant position, the appointing authority may effect the same disciplinary result by removing duties and responsibilities from the employee's position sufficient to cause it to be reallocated downward. A permanent employee must be eligible for appointment to the class to which the demotion is made when the class is not in the same class series. Demotion of employees who are not permanent shall be as set forth in rule 9.3(19A). A written statement of the reasons for the demotion shall be sent to the employee within three working days after the effective date of the action and a copy shall be sent to the director by the appointing authority at the same time.

11.2(4) Discharge. An appointing authority may discharge an employee. A written statement of reasons for the discharge shall be sent to permanent employees within three working days after the effective date of the action and a copy shall be sent to the director by the appointing authority at the same time.

11.2(5) An appeal of a suspension, reduction of pay within grade, demotion or discharge of a permanent employee shall be in accordance with chapter 12 of the rules.

570—11.3(19A) Reduction in force. An appointing authority may implement a reduction in force whenever necessary because of a shortage of funds or work, a material change in duties or organization, or other legitimate reasons. A reduction in force may reduce the number of permanent employees in a class or the number of hours worked by permanent employees in a class.

11.3(1) The following agency actions shall not constitute a reduction in force nor require application of these reduction in force rules:

a. An interruption of employment for less than twenty consecutive calendar days.

b. Interruptions in the employment of school term employees during recesses in the academic year or during the summer, or other seasonal interruptions that are a condition of employment.

c. A temporary reduction in the number of work hours in a work week not to occur in more than a total of twelve work weeks in a fiscal year, where selected permanent full-time employees are reduced to no less than thirty work hours per week or the work hours of selected permanent part-time employees are reduced by no more than twenty-five percent per week of their regular work week.

d. A temporary reduction in the number of work hours in a work week not to occur in more than twelve work weeks in a fiscal year of all employees by the same

percentage per week. The reduction may be by organizational unit as determined by the appointing authority and approved by the director, or agencywide.

e. The transfer of an employee within an agency.

11.3(2) The agency's reduction in force shall conform to the following provisions:

a. Reduction in force shall be by class.

b. The reduction in force unit may be by agency organizational unit or agencywide.

c. An agency shall not implement a reduction in force until it has terminated all nonpermanent employees in the same class in the reduction in force unit.

d. The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the commission for approval in advance of the effective date requested. The plan shall include the reasons for and the date of the reduction in force; the reduction in force unit(s) and the reasons for choosing a unit(s) if other than agencywide; the number of positions to be eliminated or reduced in hours by class; the cutoff date for crediting of retention points; and other information that may be requested by the department. If determined by the appointing authority to be applicable, the plan shall also include information on any exemptions for affirmative action purposes.

e. The appointing authority shall post the reduction in force plan, including the total retention points of each employee in the affected classes in the reduction in force unit, in conspicuous places throughout the agency and shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee's rights under these rules, and shall furnish each employee with a copy of his or her total retention point computation worksheet. These official notifications shall be made at least ten working days prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. The official notifications shall occur only after the agency's reduction in force plan has been approved by the commission.

f. The appointing authority shall notify the affected employee, in writing, of the options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days from the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

11.3(3) Retention points. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and performance computed to the nearest hundredth decimal place. A cutoff date shall be set by the appointing authority beyond which no points shall be credited. The date shall be no less than sixty nor more than ninety days prior to the effective date of the reduction in force. Length of service and performance evaluation points shall be calculated as follows:

a. Credit for length of service shall be given at the rate of one point for each month of probationary (including employment credited toward the probationary period) or permanent classified employment. More than fifteen days shall be considered one month. When computing length of service points, the appointing authority shall include all continuous state service from the original date of hire to the date of cutoff, less the following periods:

(1) Project, emergency, internship, intermittent, trainee, summer or other temporary types of appointments if not credited toward the probationary period;

(2) Suspensions without pay;

(3) Documented leaves of absence without pay in excess of thirty calendar days except for military leave and employer directed educational leave without pay;

(4) Exempt or statutory service unless Acts of the general assembly require otherwise;

(5) Periods in excess of thirty days when an employee is receiving workers' compensation not supplemented by other paid leave;

(6) Layoffs in excess of thirty calendar days; and

(7) Long-term disability periods in excess of thirty calendar days.

A former employee who was laid off or who applied for or received long-term disability payments, and subsequently returned to state employment after two years from the date of separation, shall not be eligible for prior service credit. A former employee who was laid off and who subsequently lost his or her recall rights through declination, or who was re-employed but subsequently terminated, is not eligible for prior service credit if later re-employed other than by recall during the same two-year period.

Length of service credit for all periods of part-time service in excess of thirty calendar days shall be calculated on a pro rata basis.

b. Performance evaluation credit commencing on July 1, 1969 until a date four years prior to the reduction in force cutoff date shall be calculated at the rate of two points for each month of a performance evaluation period rated as competent or above using a performance evaluation plan approved by the department. No points shall be given for any months where performance was evaluated as less than competent.

For the four-year period prior to the reduction in force cutoff date an employee shall receive three points for each month rated one or more levels above competent, two points for each month rated as competent and no points for any months rated as less than competent. When calculating performance evaluation points the following shall apply:

(1) A performance evaluation period rated as competent shall be an "overall sum of ratings" of at least 3.00 but less than 4.00;

(2) A performance evaluation period which is rated one or more levels above competent shall be an "overall sum or rating" equal to or greater than 4.00; and

(3) A performance evaluation period rated as less than competent shall be an "overall sum of ratings" less than 3.00.

All employees shall be evaluated for performance at least annually in accordance with rule 13.2(19A). If not evaluated, or if not evaluated in accordance with rule 13.2(19A), that period shall be calculated as though competent in accordance with rule 13.5(19A). Time spent on approved military leave or educational leave required by the appointing authority shall be counted as competent performance. Performance evaluation credit for all periods of part-time service in excess of thirty calendar days shall be calculated on a pro rata basis. Periods of state employment excluded from length of service credit shall also be excluded from performance evaluation

credit. More than fifteen days in a performance evaluation period shall be considered one month.

During the period between the cutoff date and the effective date of the reduction in force, only performance evaluations that were due during that period shall be used for crediting retention points prior to the cutoff date unless special performance evaluations are done on all employees affected by the layoff. Otherwise, the rating received on the last valid performance evaluation for the previous rating period shall be brought forward for the period not evaluated. If no valid performance evaluation exists for the previous rating period, both periods shall be counted as competent performance. In no instance shall performance evaluation points be credited beyond the cutoff date.

c. The total reduction in force retention points shall be the sum that results from adding together the total of the length of service points and the total of the performance evaluation points.

11.3(4) Order of reduction in force. Permanent employees in the approved reduction in force unit shall be placed on a list by class beginning with the employee having the highest total retention points in the class in the unit. Reduction in force shall be made from the list in inverse order regardless of full-time or part-time status. If two or more permanent employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

a. The employee with the highest total performance evaluation points; and then

b. By chance drawing conducted by the department.

Five percent, but not less than one person, of the employees in each class in the reduction in force unit may be requested for exemption by the agency for the purpose of affirmative action. Selection for exemption shall be in retention point order.

11.3(5) Transfer or demotion in lieu of layoff. A permanent employee in a class in which a reduction in force is to take place may, in lieu of layoff, elect demotion to lower classes sequentially in the same class series in the reduction in force unit in which the reduction in force is to be effected. In the absence of lower classes in the same class series or inability to demote to a lower class in the same class series, the employee may elect to demote or transfer in lieu of layoff to any class in which the employee had probationary or permanent status while continuously employed in the state service. Demotion or transfer in lieu of layoff may only be to a class within the reduction in force unit. The specific position assignment shall be at the appointing authority's discretion. Demotion or transfer in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of a permanent employee with more total retention points. If demotion or transfer occurs, the permanent employee with the least total retention points in that lower or lateral class shall be laid off with rights of demotion or transfer in lieu of layoff in accordance with this subrule. If a permanent employee's work hours are reduced under these rules, but the employee retains his or her class, the employee may not elect layoff nor have the right of demotion or transfer in lieu of layoff. Demotion or transfer in lieu of layoff by a permanent employee from a class covered by a collective bargaining agreement to a class not covered by a collective bargaining agreement, or vice versa, shall be made in accordance with the reduction in force provisions governing the class into which the employee moves.

Upon demotion or transfer in lieu of layoff, the employee shall retain the current rate of pay or be adjusted to the nearest step that is no less than that which was being paid prior to that action if the pay plan is different. If the employee's rate of pay, after adjustment if necessary, is lower than the entrance rate of pay for the class, the employee's rate of pay shall be increased to the entrance rate and a new merit increase eligibility date established. If the employee's current rate of pay is higher than the highest pay rate currently paid for the class to which the employee demotes or transfers, the rate of pay shall be set in accordance with subrule 4.5(7)"d".

11.3(6) Recall. A permanent employee who is laid off or elects demotion or transfer in lieu of layoff shall have recall rights within the reduction in force unit to the class fomerly held for one year from the date of the reduction in force, provided the person meets the current minimum qualifications for the class, before any other person may be promoted (including reallocation requiring competition), demoted, transferred or otherwise hired into a position in the reduction in force unit in that class by the appointing authority. A permanent employee whose hours are reduced under these rules but who maintains his or her current class shall have recall rights within the reduction in force unit to a position with full-time status in his or her current class for one year from the date of the reduction in force before any other person may be promoted (including reallocation requiring competition), demoted, transferred or otherwise hired into the reduction in force unit in a full-time position in that class by the appointing authority.

The names of permanent employees laid off, demoted or transferred in lieu of layoff, or reduced in work hours within class, under these rules, shall be merged onto recall lists by class and reduction in force unit as follows:

a. The name of a permanent employee and the employee's status shall be placed on the recall list for the class and reduction in force unit from which the employee was laid off, demoted or transferred in lieu of layoff, or reduced in hours in accordance with subrule 6.1(1). If more than one permanent employee in a class was affected, they shall be placed on the recall list and offered recall in the order of their total retention points with the highest first. It shall be the responsibility of the appointing authority to notify the department of the names of eligible employees and their total retention points in a manner prescribed by the director.

b. One failure to accept a permanent appointment to a position with the same status (full-time or part-time) held prior to the reduction in force shall negate any further rights of recall. One failure to accept a permanent appointment to a position with a different status than that held prior to the reduction in force shall negate any further rights of recall to positions with a different status. Recall rights to same status positions shall not be affected. A declination of a recall offer shall be documented in writing by the appointing authority with a copy to the director within five working days after the declination.

Employees covered by a collective bargaining agreement shall be governed by the terms of that contract for reduction in force purposes.

11.3(7) Reduction in force shall not be used to avoid or circumvent the provisions of Iowa Code chapter 19A, or these rules governing reallocations, disciplinary demo-

MERIT EMPLOYMENT DEPARTMENT[570] *(cont'd)*

tions or dismissals. Actions alleged to be in noncompliance with this rule may be appealed in accordance with chapter 12 of these rules.

ARC 3752

NURSING, BOARD OF[590]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 17A.3, 147.53, and 152.1, the Iowa Board of Nursing hereby gives Notice of Intended Action to adopt amendments to Chapter 7, "Advanced Registered Nurse Practitioners" appearing in the Iowa Administrative Code.

These rules generally define the education and areas of practice of the Certified School Nurse Practitioner.

Any interested person may make written suggestions or comments prior to May 31, 1983. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 East Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director at 515/281-3256 or in the office at 1223 East Court Avenue.

These rules implement Iowa Code sections 17A.3, 147.53, and 152.1.

The following amendments are proposed.

ITEM 1. Amend rule 7.1(152) by adding the following subrule:

7.1(10) Certified school nurse practitioner. The certified school nurse practitioner is an advanced registered nurse practitioner educated in the disciplines of nursing the school health who possesses evidence of certification by the American Nurses' Association, or a successor agency as approved by the board.

The certified school nurse practitioner is authorized by rule to practice advanced nursing assessment, intervention and management of the physical and psychosocial health status of students and their families along the wellness-illness continuum through collaboration on an interdisciplinary basis with health professionals and educators.

ITEM 2. Amend subrule **7.2(1)** by adding the following paragraph "e":

e. School nurse practitioner.

These rules implement Iowa Code sections 17A.3, 147.53, and 152.1.

ARC 3753

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 sections 155.19 and 204.301, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 1, "Licensure", Chapter 5, "Reciprocal Registration" and Chapter 8, "Controlled Substances." The proposed amendments were approved during the April 19, 1983, meeting of the Iowa Board of Pharmacy Examiners.

The proposed amendment to chapter 1 will raise the administration portion of the pharmacist license examination fee from sixty to one hundred dollars. The proposed amendment to chapter 5 will raise the pharmacist reciprocal license fee from one hundred to one hundred fifty dollars. The proposed amendment to chapter 8 will raise the controlled substance registration fee for physicians (M.D. and D.O.), dentists, podiatrists, veterinarians, optometrists, pharmacies and hospitals from fifteen to twenty-five dollars, while the fee for researchers, analytical laboratories, manufacturers and distributors and long-term care facilities will remain at fifteen dollars. These fee increases will help offset the rise in administrative costs.

Any interested person may submit data, views and arguments in writing on these proposed amendments on or before June 1, 1983, to Norman C. Johnson, Executive Secretary, Board of Pharmacy Examiners, 1209 E. Court, Executive Hills West, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code sections 155.19 and 204.301.

ITEM 1. Rule 620—1.2(147) is amended to read as follows:

620—1.2(147) Examination fee. The fee for examination shall consist of an administration fee and an examination material fee. The administration fee shall be ~~sixty~~ *one hundred* dollars and shall be payable to the Iowa board of pharmacy examiners. No refunds of the administration fee will be made for cancellations occurring later than thirty days prior to the examination date. The examination material fee shall be an amount determined by the National Association of Boards of Pharmacy (NABP). The examination material fee shall be payable to NABP in the form of a certified check, bank draft or money order. Refund of the examination material fee will be made for cancellations. The administration fee and the examination material fee must accompany the application.

This rule is intended to implement *Iowa Code* section 147.94; ~~The Code~~.

ITEM 2. Rule 620—5.6(147) is amended to read as follows:

620—5.6(147) Reciprocity fee. The fee for reciprocal registration is ~~one hundred~~ *one hundred fifty* dollars, which must accompany the application. The fee is returned if the application is denied.

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

This rule is intended to implement *Iowa Code* section 147.80~~, The Code~~.

ITEM 3. Rule 620—8.3(204) is amended.

Amend the first paragraph to read as follows:

620—8.3(204) Registration and reregistration fee. For each registration or reregistration to manufacture, distribute, dispense, conduct research or instructional activities with controlled substances listed in schedules I through V of chapter 204, ~~the registrant shall pay a fee of fifteen dollars.~~ *registrants who are physicians (D.M. and D.O.), dentists, podiatrists, veterinarians, optometrists, pharmacies and hospitals shall pay a fee of twenty-five dollars. Registrants who are researchers, analytical laboratories, manufacturers and distributors and long-term care facilities shall pay a fee of fifteen dollars.*

Subrule 8.3(2) is amended to read as follows:

8.3(2) Late application. Persons required to register or annually register under the provisions of chapter 204, division III, who file late application, shall pay ~~a fee of twenty dollars~~ *an additional five dollar late payment fee.*

Add the following at the end of rule 620—8.3(204):

This rule is intended to implement Iowa Code section 204.301.

ARC 3756

REGENTS, BOARD OF[720]

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 262.9(3), the State Board of Regents hereby gives Notice of Intended Action to amend Chapter 2, "Supplemental Specific Rules for Each Institution."

The proposed amendment will continue the suspension of the parietal rule through May 1985 at the University of Northern Iowa. The rules presently state that the parietal rule is suspended for freshman and sophomore students through May 1983. The rules were to be automatically reinstated unless the Board of Regents took action to extend the period of suspension.

Any interested person may submit written suggestions or comments on the proposed rule on or before June 1, 1983. Written materials should be directed to R. Wayne Richey, Executive Secretary, State Board of Regents, Lucas State Office Building, Des Moines, Iowa 50319. If a request is received for an opportunity to make an oral presentation as provided in Iowa Code section 17A.4(1)"b" by June 1, 1983, the presentation may be made at the above-named office on June 6, 1983, at 1:00 p.m.

This rule is intended to implement Iowa Code section 262.9(11).

The following amendment is proposed:

Subrule 2.36(5) is amended as follows:

2.36(5) Temporary suspension. This rule is suspended for freshman and sophomore students through May ~~1983~~ *1985*. The rule shall be automatically reinstated after May ~~1983~~ *1985* unless the board of regents takes action to extend the period of suspension.

ARC 3733

SOCIAL SERVICES DEPARTMENT[770]

AMENDED NOTICE OF INTENDED ACTION

The Notice of Intended Action published in the March 16, 1983 IAB as ARC 3633 under the authority of Iowa Code section 239.18 proposing amendments to rules relating to aid to dependent children (chapter 41) is amended by adding notice of oral presentations. The proposed rules will allow for the reduction of a recipient's ineligibility period by reducing countable earned and unearned income by allowing recipients receiving nonrecurring lump sum income to expend moneys for necessary expenses in life threatening circumstances.

Oral presentations may be made by appearing at the following meetings. Written testimony will also be accepted at that time.

Waterloo - June 1, 1983 @ 7:00 p.m.
Second Floor Conference Room
Black Hawk County Department of Social Services
KWWL Building
500 East Fourth Street
Waterloo, Iowa 50703

Spencer - June 1, 1983 @ 7:00 p.m.
Bethany Lutheran Church
15 West 14th
Spencer, Iowa 51301

Des Moines - June 2, 1983 @ 1:30 p.m.
Wallace State Office Building Auditorium
East 9th and Grand
Des Moines, Iowa 50319

ARC 3746

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice that on April 22, 1983, the Commission issued an order in Docket No. RMU-83-4, In Re: Amendment of Iowa State Commerce Commission Rule, Iowa Admin. Code 250—19.10(3)d, "Order Adopting And Implementing Rules On An Emergency Basis," and pursuant to the authority of Iowa Code sections 17A.4 and 17A.5, amended Iowa Administrative Code 250—subrule 19.10(3), paragraph "d". The former rule specified that the interest rate applied to Purchased Gas Adjustment (PGA) refunds should be the interest rate for twelve-month personal loans as set forth in Federal Reserve Statistical Release E.12(122). The Federal Reserve has discontinued publishing E.12(122) and has replaced it with Statistical Release G.19. This report contains the interest rate offered by banks for twenty-four-month consumer loans. Our agency rule should, therefore, be amended to correctly reflect the replacement of E.12(122) with Statistical Release G.19.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation in this rulemaking is unnecessary, since the rule merely incorporates the Federal Reserve's substitution of Statistical Release G.19 for the publication E.12(122) referred to in the rules.

In compliance with Iowa Code section 17A.5(2)"b"(1), the Commission finds that the normal effective date of the rule, thirty-five days after publication in the Iowa Administrative Bulletin, should be waived and the rules made effective upon filing with the Administrative Rules Coordinator. The rule works to the public's benefit by correctly reflecting the change in the Federal Reserve's reporting of consumer loan interest rates.

Amend subrule **19.10(3)**, paragraph "d" to read as follows:

d. The interest rate on refunds distributed under this subrule, compounded annually, shall be the quarterly interest rate at commercial banks for ~~twelve~~ *twenty-four*-month loans for personal expenditures (as set forth in the Federal Reserve Statistical Release ~~E.12(122)~~ *G.19*). This federal reserve quarterly rate shall be deemed to be effective for these purposes as of the first day of the month following the availability of the published data to the rate-regulated utility. For time periods less than a year, a weighted average of the published quarterly rates is applicable. Interest shall accrue from the date the rate-regulated utility receives the refund or billing from the supplier to the date the refund is distributed to customers.

Administrative costs of refund processing shall not be deducted from refund amounts.

[Filed emergency 4/22/83, effective 4/22/83]
[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3727

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice, pursuant to Iowa Code section 17A.4 that on April 13, 1983, the Commission issued an order in Docket No. RMU-82-21, In Re: Participation in Pilot Projects, "Order Adopting Rules," amending Iowa Administrative Code 250—chapters 19 and 20.

Notice of Intended Action was published in the January 19, 1983, Iowa Administrative Bulletin as ARC 3509.

The Commission has adopted Proposal I language for both chapters 19 and 20 amendments to ensure adequate notice will be given for all pilot projects. The finally adopted rules contain minor language changes from the rules published in the Notice of Intended Action which have no substantive effect on the rules.

The amendments to Iowa Administrative Code 250—chapters 19 and 20 are intended to implement Iowa Code section 476.1.

These rule amendments will become effective June 15, 1983, pursuant to Iowa Code section 17A.5.

ITEM 1. Amend subrule **19.9(4)** by adding the following new paragraphs:

Pilot projects approved by the commission may include as participants all or part of any existing customer class or classes. Customers may volunteer to participate in pilot projects, and may participate if the commission determines that voluntary participation is not inconsistent with the purposes of the project.

If necessary to ensure the validity or success of a pilot project, and if approved by the commission, the pilot project may be made mandatory for all or part of any existing customer class or classes. In these cases, the participants shall be selected on a reasonable and nondiscriminatory basis, from all or part of those customers. Where participation in a pilot project is mandatory, participants shall be given notice as required in Iowa Code section 476.6, shall be provided with an opportunity to contest the reasonableness of the proposed energy conservation strategy or load management technique, or the propriety of the selection process, and shall be allowed to request an exemption from participation based on individual hardship.

ITEM 2. Amend subrule **20.10(9)** by adding the following new paragraphs:

Pilot projects approved by the commission may include as participants all or part of any existing customer class or classes. Customers may volunteer to participate in pilot projects, and may participate if the commission determines that voluntary participation is not inconsistent with the purposes of the project.

If necessary to ensure the validity or success of a pilot project, and if approved by the commission, the pilot project may be made mandatory for all or part of any existing customer class or classes. In these cases, the participants shall be selected, on a reasonable and nondiscriminatory basis, from all or part of those customers. Where participation in a pilot project is mandatory, participants shall be given notice as required in Iowa Code section 476.6, shall be provided with an opportunity to contest the reasonableness of the proposed energy conservation strategy or load management technique, or the propriety of the selection process, and shall be allowed to request an exemption from participation based on individual hardship.

[Filed 4/15/83, effective 6/15/83]
[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3740

FAIR BOARD[430]

Pursuant to the authority of Iowa Code section 173.14(8) and 17A, the Iowa State Fair Board adopts a rule to 430—chapter 7 of the Iowa Administrative Code.

The rule is to add a penalty to late payment of rental agreements.

The rule adopted is the second item of Notice of Intended Action, 7.2(1)"d", published Februray 16, 1983 in Iowa Administrative Bulletin, Volume V, Number 17 as ARC 3546.

Item 1 was not adopted.

The suggestion of the Administrative Rules Committee is practically the same as the original rule.

The Iowa State Fair Board adopted the above rule at their regular meeting on April 20, 1983. This rule will become effective June 15, 1983.

Add subrule **7.2(1)** "d" as follows:

d. A one and one-half percent per month penalty charge on unpaid bills will commence thirty days after original billing. (This amounts to an annual percentage rate of 18 percent.)

[Filed 4/22/83, effective 6/15/83]
[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3741

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code section 135D.16, the Iowa State Department of Health hereby adopts a new chapter 71 "Licensing of Mobile Home Parks", Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, Volume V, Number 15, January 19, 1983 as ARC 3517.

These rules were adopted in their present form by the Iowa State Board of Health on March 11, 1983.

Changes from the notice go to clarification, explanation and public comments received:

71.3(15) Public roadway defined.

71.7(1) Seasonal or recreational parks substituted for nonresidential and allowed in flood plain area.

71.10(3) Pipes and fittings used in constructing water system distribution.

71.11(3) New installation pipes and fittings requirement.

71.12 Gas and fuel system hazards.

These rules are intended to implement Iowa Code section 135D.16.

These rules are to be effective on June 17, 1983.

Rescind chapter 71 and insert the following:

CHAPTER 71
LICENSING OF MOBILE HOME PARKS

470—71.1(135D) Applicability. Except as otherwise specifically provided, these rules apply to any person, firm or corporation, who establishes, maintains, conducts or operates a mobile home park within the state.

470—71.2(135D) Scope. These rules stipulate procedures and requirements relating to health and safety conditions within mobile home parks, including the following areas:

71.2(1) Construction and expansion, plan review, and issuance of construction permits;

71.2(2) Operation, inspection, and annual licensing.

470—71.3(135D) Definitions.

71.3(1) "Abandoned or junked vehicle" means any vehicle that lacks current registration plates and is inoperable.

71.3(2) "Accessory building" means any structure which is appurtenant to a mobile home such as a utility shed, carport, garage, community building, elevated deck, roofed patio or roofed porch.

71.3(3) "Community building" means a structure housing toilet, bathing, laundry or other facilities for a mobile home park.

71.3(4) "Delegated authority" means local health officer, other city officer or board of health, designated by the department to inspect and regulate mobile home parks in accordance with Iowa Code section 135D.20.

71.3(5) "Department" means the state department of health.

71.3(6) "Dependent mobile home space" means a mobile home space which does not have both individual sewer connection and water connections, but may have either an individual sewer connection or water connection.

71.3(7) "Engineering plans" means plans certified by an engineer registered in accordance with the requirements of Iowa Code chapter 114, Professional Engineers and Land Surveyors.

71.3(8) "Flood plain" means any area of a community or locality which the federal insurance administration has delineated as falling, wholly, or partly within flood hazard boundaries and zones, or any other areas determined by responsible state or federal agencies to be subject to periodic flooding.

71.3(9) "Independent mobile home space" means a mobile home space which has both individual water and sewer connections.

71.3(10) "Mobile home" means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons, but shall also include any vehicle with motive power not registered as a motor vehicle in Iowa.

71.3(11) "Mobile home park" means any site, lot, field, or tract of land upon which two or more occupied mobile homes are harbored, either free of charge or for revenue purposes, and shall include any building, structure, tent, vehicle, or enclosure used or intended for use as part of the equipment of such a mobile home park.

The term "mobile home park" shall not be construed to include mobile homes, buildings, or tents, or other structures temporarily maintained by an individual educational institution, or company on their own premises and used exclusively to house their own labor or students.

71.3(12) "Mobile home space" is a plot of ground within a mobile home park designated for the accommodation of one mobile home.

71.3(13) "New installations" means mobile home parks or additions thereto, which are proposed for construction after the effective date of these rules.

71.3(14) "Nonpublic water supply" means a system for the provision of water for human consumption which has less than fifteen service connections and serves less than twenty-five people or has less than fifteen service connections and serves more than twenty-five people for less than sixty days a year.

71.3(15) "Public roadway" means a road or street owned and maintained by a federal, state, or local government agency.

71.3(16) "Public water supply" means a system for the provision of piped water for human consumption, which has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year. Such a system would include the collection (including wells), treatment, storage, or distribution facilities.

71.3(17) "Recreational mobile home park" either means a seasonal mobile home park or other mobile home park in which the length of stay is limited to not more than fourteen consecutive days.

71.3(18) "Refuse" means any solid waste including garbage, rubbish, trash, debris or nonfunctioning equipment such as junked vehicles.

71.3(19) "Residential mobile home park" means a mobile home park designed, established and maintained for year-round residency by mobile homes.

71.3(20) "Seasonal mobile home park" means a mobile home park designed, established and maintained for residency by mobile homes only during the time period from May 1 to October 1.

71.3(21) "Sewage disposal system" means all equipment and devices necessary for proper conduction, collection, storage, treatment, and disposal of sewage from a mobile home park.

a. Public systems serve 1,500 or more gallons per day or serve eight or more mobile home spaces, and

b. Nonpublic systems serve less than 1,500 gallons per day or serve less than eight mobile home spaces.

71.3(22) "Wilderness area" means a tract of land which features a primitive setting and is not located within a city or industrial area.

470—71.4(135D) Construction permit.

71.4(1) A permit issued by the Iowa state department of health is required prior to constructing all new instal-

lations or reconstructing existing facilities and shall be obtained by submission of the form "Application for a Permit to Construct, Reconstruct, or Remodel and First Annual License for a Mobile Home or Recreational Park", and other information required under 71.4(2), 71.4(3) and 71.4(4).

71.4(2) Engineering plans and specifications for proposed new construction of, or alterations to, the water supply system, sewage system, community building, drainage and swimming pools are required, and are to be attached to the application for a permit. In addition a complete description of the park layout, roadways and refuse disposal must be included with the application.

71.4(3) Engineering plans and specifications for public sewage treatment systems and public water supplies must be submitted to the department of environmental quality for review and approval.

71.4(4) Plans and specifications for "nonpublic" sewer systems and "nonpublic" water supplies and for any waste water collection systems and the water distribution systems within a mobile home park must be submitted to the department for review and approval.

71.4(5) An approved construction permit shall become invalid if construction is not initiated within two years and completed within six years after construction is initiated.

a. Notification of completion of construction must be made to the department or delegated authority within thirty days after completion.

b. Any proposed changes to the engineering plans and specifications after a permit has been issued must be approved by the department before the work is initiated.

71.4(6) In cases where the department or a delegated authority notifies the prospective licensee that construction inspections shall be conducted, no new or reconstructed water or sewage disposal system may be so constructed or obscured so as to prevent or inhibit a thorough inspection.

470—71.5(135D) Annual license.

71.5(1) Each mobile home park within the state is required to have a current annual license to operate.

71.5(2) The first annual license application is to be made on the form "Application for a Permit to Construct, Reconstruct, or Remodel and First Annual License for a Mobile Home Park". Each subsequent annual license application is to be made on the form "Application for a Renewal of License to Operate a Mobile Home Park".

71.5(3) Each application for an annual license must be accompanied by an appropriate fee as prescribed under Iowa Code sections 135D.5 and 135D.15.

71.5(4) Each annual license renewal application for a residential mobile home park must be submitted to the department on or before the first of October prior to the licensing year. Each annual license renewal application for a seasonal mobile home park must be submitted to the department on or before April 1 of the licensing year.

71.5(5) Each application for a construction permit or an annual license renewal for a park located within a municipality shall be submitted to the local board of health who shall then forward it to the department.

a. A member of the local board of health or delegated authority and city clerk shall sign the forwarded application in those cases where they can confirm that applicable local codes are being complied with. A member of the county board of health or delegated authority shall sign the application if the park is located in any area outside a city.

b. It is the applicant's responsibility to obtain all required signatures.

71.5(6) The issuance of a license or permit by the department does not relieve the applicant from securing all applicable permits in municipalities having such codes or from responsibility for complying with all local, state, or federal codes applicable thereto.

470—71.6(135D) Supervision/management.

71.6(1) Each mobile home park is required to have personnel who are responsible for managing the park. These individuals must be identified to the department by the park owner in writing and authorized to arrange for emergency repairs and services and for taking other actions as may be necessary to comply with state and local requirements.

71.6(2) Any person, firm, or corporation licensed to establish, maintain, conduct or operate a mobile home park is required to notify the department in writing within seven days after selling, transferring, or otherwise disposing of their interest in or control of the mobile home park. This notice shall include the name and address of the person, firm, or corporation obtaining ownership or control of the park.

71.6(3) A permanent register of all tenants of the mobile home park must be maintained.

a. This register is to be made available on the premises on request and open to the inspection of a representative of the department, delegated authority or local board of health, at any reasonable time.

b. This register shall contain a record of the number of mobile home units harbored, the owners' names, and year and make of units.

c. Monthly reports listing arrivals and departures must be made to the county treasurer.

71.6(4) The mobile home park license is to be posted in the park office or in an otherwise conspicuous location.

71.6(5) The licensee is responsible for supervision of the park and to implement the provisions of Iowa Code chapter 562B, Landlord and Tenant Act, for the removal of any person from the park who willfully or maliciously creates an unsanitary condition or does not adhere strictly to these rules.

The mobile home park is to provide sanitation, health and safety rules and instructions to all campers as needed to protect the residents of the park.

470—71.7(135D) Park site.

71.7(1) Residential mobile home park sites shall be well drained and not located in a flood plain. Seasonal or recreational mobile home parks are not prohibited from being located in a flood plain provided that the park owner notifies tenants of potential flood hazards.

71.7(2) All sites shall be free from topographical or geological hazards.

71.7(3) Sites may not be located in or adjacent to swamps, marshes, or other breeding places of insects, rats, and mice.

71.7(4) Whenever practicable, storm drainage should be provided in such a manner so as not to endanger any water supply or surface watercourse.

470—71.8(135D) Roadways.

71.8(1) Roadways shall be maintained in a safe, unobstructed condition at all times.

a. Roadways in new installations must be at least twenty-four-feet wide if no parking is permitted and so posted.

b. Twenty-six-feet wide if parking is only permitted on one side and so posted.

c. Thirty-one-feet wide with parking on both sides.

71.8(2) Mobile home parks constructed prior to June 17, 1980, and those located in wilderness areas are required to have roads of sufficient width to permit passage of emergency vehicles in lieu of the stipulations of 71.8(1) "a", "b" and "c".

470—71.9(135D) Spacing.

71.9(1) The number of mobile homes permitted in the park shall shall not exceed the number of spaces which can be serviced by the sanitary facilities in the park, and for which a license was issued.

71.9(2) Each mobile home space is to be clearly numbered. Each mobile home shall:

a. Abut to a roadway; and

b. Have clear, unobstructed access to a public roadway.

71.9(3) Existing mobile home spaces, which are located in parks that have been in continuous operation since prior to September 1, 1956, shall be at least eight feet larger than the mobile home in both the lateral and longitudinal directions. New mobile home spaces added to these parks shall meet the mobile home spacing criteria of 71.9(4).

71.9(4) Mobile home parks constructed and operated after September 1, 1956, including new installations, shall conform to the following mobile home spacing criteria:

A mobile home is not to be located closer than:

a. 15 feet from the side of another mobile home.

b. 10 feet from the end of another mobile home.

c. 10 feet from an accessory shed or building (except that an accessory shed or building may abut the owner's mobile home) and shall be located or constructed in such a manner as to not preclude egress from any doorway of the mobile home.

d. 10 feet from a public roadway.

e. 5 feet from boundary of the mobile home park.

470—71.10(135D) Water supply.

71.10(1) A continuous supply of safe potable water under at least twenty pounds pressure, P.S.I. (pounds per square inch), shall be provided for each mobile home park.

a. Where a municipal water supply having adequate capacity is available abutting the property, such water supply is to be used.

b. In mobile home parks where a municipal supply is not available, a private system shall be designed, constructed, and maintained in accordance with 470—chapter 45 for nonpublic systems (after February 28, 1981) and with 400—chapter 22 for public systems.

c. Engineering plans and specifications for new construction or reconstruction or alterations shall be submitted as specified in 71.4(2).

d. Design and operation of public water supply systems are to be consistent with the water supply standards of the Iowa department of environmental quality. All other water systems are to conform with standards of the department.

71.10(2) All sources of potential contamination shall be situated at a reasonably safe distance from drinking water wells.

a. Minimum distances between all wells and named sources of pollutions shall be as outlined in Table I for wells constructed after June 1, 1980, and in Table VI (71.22(1)) for wells constructed before June 1, 1980.

b. Separation distances from other sources of contamination not identified on Tables I or VI will be determined by the department or delegated authority.

TABLE I

MINIMUM LATERAL DISTANCES FROM NONPUBLIC DRINKING WATER WELLS*

Sources of Contamination	Minimum Lateral Distance
Solid waste disposal site	200 feet
Lagoons or waste treatment facilities	400 feet
Cesspools (receiving raw sewage) (not approvable)	150 feet
Preparation or storage area for spray materials, commercial fertilizers or chemicals	150 feet
Drainage or improperly abandoned wells	100 feet
Soil absorption field, pit privy or similar disposal unit	100 feet
Confined feeding operations	200 feet
Septic tank, concrete vault privy, sewer of tightly joined tile or equivalent material, sewer-connected foundation drain, or sewer, under pressure	50 feet
Ditches, streams or lakes	25 feet
Sewer of cast iron with leaded or mechanical joints, independent clear water drains, or cisterns	10 feet
Well pumphouse floor drain draining to ground surface	5 feet

* NOTE: For public water supplies, Iowa department of environmental quality requirements shall be complied with.

71.10(3) In new installations, pipes and fittings used in constructing water system distribution mains, laterals and water risers shall be:

a. Composed of materials meeting the requirements of the state plumbing code 470—chapter 25,

b. Marked to indicate the approval by the National Sanitation Foundation Testing Laboratory (NSF), and

c. Installed and bedded in accordance with the manufacturer's instructions and specifications.

71.10(4) In new installations, the water distribution lines shall be separated horizontally from sanitary sewers by at least ten feet of undisturbed or compacted earth, except as specified below.

a. When water and sewer lines cross, the water line shall be at least twelve inches above the top of the sewer line throughout a distance of ten feet horizontally, and no joints are to be made in the water line within this distance of ten feet.

b. Water and sewer lines may be laid in the same trench providing:

(1) The bottom of the water line is laid at all points at least twelve inches above the top of the sewer line at its highest point;

(2) The water line is laid on a solid shelf excavated at one side of the common trench or on a solidly tamped backfill;

(3) The joints in the water line are kept at a minimum;

(4) The sewer is constructed of cast iron with leaded or mechanical joints or approved plastic, and shown to be watertight by test. In cases where cast iron or plastic is not suitable sewer material, other durable and corrosion-resistant material may be used provided it meets state plumbing code requirements.

71.10(5) The size of water distribution mains will be as specified in Table II in new installations and as speci-

fied in Table VII (71.22(2))for those constructed prior to the effective date of these rules.

TABLE II

MINIMUM PIPE SIZE (INCHES)	MINIMUM SIZE OF WATER PIPE RESIDENTIAL MOBILE HOME SPACES SERVED	RECREATIONAL MOBILE HOME SPACES SERVED
1	2 - 5	2 - 10
1 1/4	6 - 11	11 - 20
1 1/2	12 - 14	21 - 28
2	15 - 50	29 - 100
2 1/2	51 - 100	101 - 200
3	101 - 150	201 - 300
4	151 - 300	301 - 600

71.10(6) In installations constructed after June 1, 1980, the minimum size water pipe from the park mains to each mobile home space will be three-fourths inch, (one-half inch for installations prior to June 1, 1980) and the space water risers will be separated from the sewer risers by more than five feet.

71.10(7) Fire protection requirements for water supply will be as required by the state or local authority having specific jurisdiction for the protection.

71.10(8) It is required that each mobile home space water riser and connection:

a. Terminate at least four inches above established grade,

b. Be provided with a control valve,

c. Be capped or otherwise protected when not in use,

d. Be provided with a watertight connection for attachment to the mobile home water line,

e. Be protected against freezing if the park is operated throughout the year, and

f. A curb stop valve shall be installed preceding each individual space water riser outlet in all residential mobile home parks.

71.10(9) The water supply system shall be so installed as to eliminate all potential sources of contamination.

a. Prior to installation, water pipes should not be stored where they will come in contact with sewage or other contamination.

b. During installation, disturbed soil is to be compacted, and the grade is to be sloped away from water risers.

c. Means shall be provided to prevent backflow of contaminated water from appliances, fixtures, drains, and sewers.

d. No water system may be connected to a nonpotable or questionable water supply.

e. Backflow preventers shall be placed on all freezeless hydrants or faucets supplying potable water to mobile home spaces. Control valves of the "stop and waste" type are prohibited for installation after June 1, 1980. Requirements for "stop and waste" valves installed before June 1, 1980 are described in 71.22(3).

f. All hydrants serving sanitary dump stations shall be equipped with a backflow prevention device and posted as nonpotable water.

g. Suction water lines are to be protected from all sources of contamination.

h. All water systems shall be disinfected after installation and prior to use.

71.10(10) Water sample analysis.

a. The water supplied to mobile home sites is to be demonstrated to be of satisfactory quality by means of sampling and laboratory analysis prior to initial use or after any repairs are made to the system.

b. The potability of water from each system is to be periodically shown to be of satisfactory quality by means of an annual inspection and laboratory analysis of water samples.

c. All residents shall be notified of a water supply found to be unsafe due to bacterial, chemical or other contamination. In cases where the water supply has been determined to contain more than 45 mg/l of nitrate the residents shall be advised that the water may not be used for infant feeding. This is to be accomplished by the park owner or operator in writing to all tenants and through conspicuous placarding and posting throughout the park.

71.10(11) Disinfection and treatment equipment, if employed, shall be approved by the department or the Iowa department of environmental quality.

470—71.11(135D) Sewage system.

71.11(1) An adequate facility is to be provided and maintained for the collection and treatment of sewage from all mobile homes, community buildings, and other facilities. Cesspools are prohibited for all mobile home park sewage systems constructed, reconstructed or altered after September 1, 1956.

a. Disposal of sewage and other water-carried wastes shall be into a public sewer system where a public sewer system is available and abutting the property.

b. Where a public sewer is not available, a sewage disposal system designed, constructed and maintained according to the Iowa department of environmental quality requirements for public sewage systems or according to the requirements of the department for nonpublic systems (470—Chapter 12) shall be provided.

c. The connection between the mobile home drain and park sewer is to be made with a leak-proof connector of durable, corrosion-resistant material attached at the inlet and outlet end with a water and gas-tight joint.

d. Each sewer outlet shall be tightly capped when not in use.

e. No discharge of sewage or any other type of waste water from any mobile home or building shall be permitted onto the ground surface.

f. Means shall be provided to prevent sewage odors from escaping out of any sewer connection or outlet.

g. Cleanouts shall be provided at each second change in direction or at intervals of one hundred feet. Manholes may be substituted in lieu of cleanouts.

71.11(2) In new installations, each space sewer lateral is to be connected to the park sewer main in the following manner:

a. Through the use of an approved "Y" fitting,

b. It shall connect below the frost line, and

c. It shall extend vertically to not less than three nor more than six inches above established grade.

d. Individual risers cannot be less than three inches in diameter.

71.11(3) In new installations, the pipes and fittings used in constructing sewer mains, laterals, sewer risers, long-sweep quarter bends, and the connecting lengths of lateral to each space shall be:

a. Composed of materials meeting the requirements of the state plumbing code (470—Chapter 25).

b. Installed and bedded in accordance with the manufacturer's specifications.

71.11(4) The minimum size and slope of sewer installations constructed after September 1, 1956, exclusive of laterals serving individual mobile home spaces, will be

determined in accordance with Table III. For sewer installations constructed before September 1, 1956, these criteria are stipulated in Table VIII (71.22(4)).

TABLE III

MINIMUM SIZE AND SLOPE OF SEWER

Sewer Diameter (Inches)	Mobile Homes Connected (Number)		Slope per 100 feet (Inches)
	Residential	Recreational	
4	7 - 15	2 - 30	15
6	16 - 60	31 - 120	8
8	61 -100	121 - 200	5

71.11(5) Minimum sanitary facilities for dependent recreational vehicle spaces shall be provided as outlined in Table IV in all cases where no community building is to be constructed.

TABLE IV

MINIMUM FACILITIES FOR DEPENDENT SPACES

No. of Dependent Parking Spaces	Toilets	
	Men	Women
1 - 15	1	1
16 - 30	1	2
31 - 45	2	2
46 - 60	2	3
61 - 100	4	4

For parking areas having more than one hundred recreational vehicle spaces one additional toilet will be provided for each sex per each additional fifty recreational vehicles.

a. Urinals may be substituted for not more than one-third of the water closet fixtures for men.

b. In the case of mobile home parks located in wilderness areas one toilet per one hundred persons may be permitted if the park use is restricted to self-contained mobile homes with sanitary facilities.

470—71.12(135D) Gas and fuel systems. The gas and fuel systems shall be installed and operated so as not to create a hazard. Obvious hazards, such as unsecured gas bottles and unprotected gas meters, are to be eliminated.

470—71.13(135D) Electrical system. The electrical system shall be installed and operated so as not to create a hazard.

71.13(1) Obvious hazards, such as poor connections, exposed or unprotected wiring, are to be eliminated.

71.13(2) Except for mobile home parks located in wilderness areas, lighting shall be provided for all streets, walkways, buildings, and other facilities subject to nighttime use.

a. Illumination is to be provided in accordance with local requirements; or

b. Where no local requirements exist, an average illumination level of 0.1 foot-candle shall be maintained on all streets; and

c. Potentially hazardous locations such as street intersections and steps or ramps are to be individually illuminated with a minimum level of 0.3 foot-candle.

470—71.14(135D) Community buildings.

71.14(1) Community buildings are not required, but if one is provided and there are dependent spaces in a mobile home park, a minimum number of water closets and lavatories as outlined in Table V is required.

TABLE V

SANITARY FACILITY REQUIREMENTS FOR COMMUNITY BUILDINGS

Number of Dependent Spaces	MEN		WOMEN	
	Water Closet	Lavatory	Water Closet	Lavatory
1 - 15	1	1	1	1
16 - 30	2	2	2	2
31 - 45	3	3	3	3
46 - 60	4	4	4	4
61 - 75	5	5	5	5
76 - 90	6	6	6	6
91 - 105	7	7	7	7
106 - 120	8	8	8	8
121 - 135	9	9	9	9
136 - 150	10	10	10	10
151 - 165	11	11	11	11
166 - 180	12	12	12	12
181 - 195	13	13	13	13
196 - 210	14	14	14	14
211 - 225	15	15	15	15

Parks having more than two hundred twenty-five dependent spaces shall be required to provide one additional water closet and lavatory or shower for each sex for each additional fifteen dependent spaces. Urinals may be substituted for not more than one-third of the water closet fixtures for men.

71.14(2) Each community building shall be located, constructed and operated in a safe and sanitary manner.

71.14(3) Community buildings shall meet the requirements of the state plumbing code, 470—Title III, Chapter 25, and criteria established in Iowa Code chapters 103A and 104A, which includes accessibility to physically handicapped and new energy requirements.

71.14(4) The interior of each community building, including all fixtures and equipment therein, shall be properly installed and maintained in good repair in a sanitary condition at all times.

a. All plumbing fixtures are to be clean and maintained in a sanitary manner.

b. Suitable covered receptacles are to be provided for the disposal of all wastepaper and similar material. This material shall not be permitted to accumulate outside the containers.

c. All floors are to be swept and scrubbed at intervals sufficient to maintain a clean and sanitary condition.

d. Insect and rodent harborages within the community building are prohibited.

e. All combustion fired appliances shall be properly vented to the outside.

f. Provision of common drinking cups, soaps, and towels in the community building is prohibited.

g. A general illumination level of at least five foot-candles is to be maintained.

h. A continuous supply of hot and cold running water under at least twenty pounds pressure P.S.I. (pounds per square inch) shall be available in the community building.

71.14(5) All openings to community buildings shall be effectively protected against the entrance of insects and rodents. All doors, windows, and other openings are to be protected with tight-fitting screens, not less than sixteen-mesh to the inch, which is free of breaks.

71.14(6) Each room housing a toilet or laundry facility shall be provided with at least one window or vent to the outside atmosphere.

a. If a window is provided, it shall have a total area of ten percent of the room's floor area and be openable to at least forty-five percent of its area.

b. If mechanical ventilation is provided, it shall be capable of making at least two air changes per hour.

c. Each water closet shall be in a separate compartment, with all partitions constructed of washable materials, and all partition supports extending to the floor constructed of impervious materials.

71.14(7) Laundry facilities provided shall be separated by full partitions or walls from the toilet rooms.

71.14(8) Shower facilities are to be provided with separate compartments for showering and dressing areas.

a. The floor of the shower shall be waterproof and slope towards the drain.

b. A curbing shall be provided, separating the shower and dressing compartments.

c. Mats, grids, and walkways made of wood, cloth, or other absorbent materials are prohibited for use in bath sections of community buildings.

470—71.15(135D) Swimming pools.

71.15(1) Any swimming pools, wading pools or bathhouses used in connection with pools shall be constructed and operated in a safe and sanitary manner.

71.15(2) The design and operation of swimming pools is to be according to the department's criteria entitled "The Policies Governing Design, Construction, Maintenance and Operation of Swimming Pools", 470—Chapter 15.

71.15(3) In new installations, engineering plans and specifications, shall be submitted to the department as specified in rule 71.4(135D).

470—71.16(135D) Refuse disposal.

71.16(1) The proper storage, collection and disposal of refuse is the responsibility of the park owner or operator. Refuse disposal and the control of the growth of grass, bushes and noxious plants shall be accomplished in a manner to avoid creation of health hazards such as a rodent harborage, insect breeding areas or public health nuisance conditions.

71.16(2) The park owner is responsible to assure that sufficient containers are available to provide storage space for all garbage produced between collections. All garbage and refuse shall be stored in fly-tight, watertight and rodent-proof containers having tight-fitting lids. Each container shall be maintained in good condition at all times. A plastic bag is not acceptable as a container and may only be used as a liner in a durable and otherwise satisfactory container.

a. Garbage shall be collected from the containers at least once a week.

b. It is to be transported to an approved disposal site in a covered vehicle.

c. Incineration may be utilized for disposal of refuse, providing the method complies with the rules relating to air pollution control promulgated by the department of environmental quality.

71.16(3) The park premises shall be kept free of any refuse, plant overgrowth, or noxious weeds at all times.

71.16(4) Abandoned or junked vehicles may not be stored or accumulated within a park.

470—71.17(135D) Safety requirements.

71.17(1) Application of pesticides shall comply with current rules and guidelines of the Iowa department of agriculture.

a. Pesticides shall be stored in a safe location, not accessible to children.

b. Storage of pesticides in well houses or frost pits is prohibited.

71.17(2) Recreational fires shall be supervised and only be permitted in designated safe areas. Open burning is otherwise prohibited within the boundary of a park unless it is conducted in an approved incinerator.

71.17(3) Storage of flammable material and fuel or fuel containers is not allowed beneath the mobile homes. Flammable material such as hay or straw may not be used for skirting or insulation of mobile homes.

71.17(4) Any garbage dumpsters utilized are required to be of the "child-safe" type and shall be so designated by the manufacturer.

470—71.18(135D) Miscellaneous rules.

71.18(1) The park's rules shall prohibit residents from permitting their pet animals to run at large and to create any health or safety hazard within a mobile home park.

71.18(2) In new installations, when skirting is provided around a mobile home, an access panel is to be provided for inspection and maintenance of service connection. In existing installations, the park owner shall assure accessibility through any skirting as requested by the inspecting officer.

470—71.19(135D) Variances.

71.19(1) Variances to these rules may be granted by the department provided sufficient information is afforded to substantiate the need and propriety for the action.

71.19(2) Requests for variances are to be in writing and filed with the delegated authority or local health department prior to being forwarded to the department.

71.19(3) The granting or denial of a variance shall take into consideration, but not be limited to the following criteria:

a. Substantially equal protection of health and safety shall be afforded by a means other than that prescribed in the particular rule, or

b. The degree of violation of the rule is sufficiently small so as not to pose a significant risk of injury to any individual and the remedies necessary to alleviate this minor violation would incur substantial and unreasonable expense on the part of the person seeking a variance.

71.19(4) All variances shall be issued in writing by the department including the reasoning for denial or granting of the requested variance.

71.19(5) All variances shall be forwarded to the delegated authority for delivery to the requester.

71.19(6) Copies of all the decisions shall be filed in the department.

470—71.20(135D) Enforcement. Upon determination by the agency or delegated authority that Iowa Code chapter 135D or the rules adopted pursuant to the Iowa Code have been violated, the agency or delegated authority shall take the following steps:

71.20(1) Send a letter of notification to the noncompliant facility as soon as possible after violations are noted which includes the following information:

a. Cites each section of the Iowa Code or rules violated.

b. Specifies the manner in which the owner or operator failed to comply.

c. Specifies the steps required for correcting the violation.

d. Requests a timely and comprehensive corrective action plan, including a time schedule for completion of the plan.

71.20(2) Stipulate a firm time schedule of thirty to sixty days within which a corrective action plan needs to be submitted and approve the time schedule for its completion if the plan is adequate.

71.20(3) In cases where the mobile home park fails to comply with the conditions of the notice letter send a second regulatory letter, advising appropriate persons that unless action is taken within five days, the case shall be turned over to the county attorney for court action.

71.20(4) In cases where voluntary action by the mobile home park is not forthcoming and court action is the only available avenue, such action shall be taken in accordance with Iowa Code section 135D.17 including civil action to remove or abate the violation in addition to penalty under Iowa Code section 135D.18.

470—71.21(135D) Penalties.

71.21(1) It is unlawful for any person, firm or corporation to establish, maintain, conduct or operate a mobile home park in this state without first obtaining an annual license for that purpose from the department in accordance with Iowa Code chapter 135D.

71.21(2) Any license granted under the authority of Iowa Code chapter 135D is subject to revocation or suspension by a court of proper authority and jurisdiction in any case where Iowa Code chapter 135D or these rules continue to be violated after due and proper notice has been given in accordance with 71.20(135D).

71.21(3) Any person violating any provision of Iowa Code chapter 135D or these rules shall be guilty of a simple misdemeanor.

470—71.22(135D) Existing parks. The following provisions apply to parks (and additions thereto) which were constructed prior to the effective date of these rules.

71.22(1) Minimum distance between wells and sources of pollution. For parks or additions to parks established between September 1, 1956, and June 1, 1980, the minimum distances are as follows:

TABLE VI

MINIMUM DISTANCE BETWEEN WELLS AND SOURCES OF POLLUTION

SOURCE OF POLLUTION	DISTANCE IN FEET
Cesspool	100
Filter bed, soil absorption field, seepage (leaching) pit, earth pit privy, or similar disposal unit	75
Sewer of tightly jointed tile or its equivalent, septic tank, sewer connected foundation drain, impervious concrete vault privy, or barnyard	50
Cast iron sewer with leaded or mechanical joints, independent clear water drain or cistern	10
Cast iron sewer with leaded joints and encased in 6 inches of concrete	5
Pumphouse floor drain of cast iron pipe with leaded joints and draining to ground surface	2

71.22(2) Size of water pipe. For parks or spaces constructed on or after September 1, 1956, and before June 1, 1980, the minimum water line sizes are specified in Table VII.

TABLE VII

SIZE OF WATER PIPE

PIPE SIZE (INCHES)	MOBILE HOMES SERVED
1	2 - 10
1 - 1/4	11 - 20
1 - 1/2	21 - 35
2	36 - 50
2 - 1/2	51 - 100
3	101 - 150
4	151 - 300

71.22(3) Stop and waste control valves.

a. For mobile home spaces constructed before September 1, 1956, stop and waste control valves are permitted without restriction.

b. For mobile home spaces constructed on or after September 1, 1956, and before June 1, 1980, stop and waste control valves are permitted, provided that a horizontal distance of ten feet from any part of the sewer system is maintained or if an approved system of watertight piping from the weep holes of the valve is installed to drain to a lower, protected level.

71.22(4) Minimum size and slope of sewer.

a. There are no minimum specifications for sewer mains installed in mobile home parks before September 1, 1956.

b. Sewer mains installed in mobile home parks on or after September 1, 1956, and before June 1, 1980, shall meet the requirements of Table VIII.

TABLE VIII

MINIMUM SIZE AND SLOPE OF SEWER

SEWER DIAMETER (INCHES)	MOBILE HOMES CONNECTED (NUMBER)	SLOPE PER 100 FEET (INCHES)
4	2 - 50	15
6	51 - 100	8
8	101 - 400	5

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ARC 3728

HEALTH DEPARTMENT[470]

BOARD OF PHYSICAL AND OCCUPATIONAL THERAPY EXAMINERS

Pursuant to the authority of Iowa Code sections 147.76, 258A.2 and 258A.3, the Board of Physical and Occupational Therapy Examiners adopts amendments to chapter 138, relating to continuing education and disciplinary procedures. The Board adopted these amendments April 15, 1983.

Notice of Intended Action regarding the rules was published in the IAB November 24, 1982, as ARC 3379.

The rules provide as grounds for disciplinary action failure to report disciplinary action taken by another state, territory, or country; clarify procedure for licensure; reduce supervision time required for an occupational therapy assistant; clarify that time spent by an occupational therapist in evaluating a patient shall not be considered time spent in supervision.

The rules are the same as published under Notice of Intended Action.

The rules are intended to implement Iowa Code sections 148B.7, 258A.2 and 258A.3.

The rules shall become effective July 1, 1983.

ITEM 1. Subrule 138.112(5) is rescinded and the following adopted in lieu thereof:

138.112(5) Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the Iowa board of physical and occupational therapy examiners revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.

ITEM 2. Subrule 138.112(10) is amended to read as follows:

138.112(10) Submission of a false report of continuing education ~~or failure to submit the annual report of continuing education~~.

ITEM 3. Subrule 138.206(4) is amended to read as follows:

138.206(4) An applicant for a license as an occupational therapist ~~moving into the state~~ after December 30, 1981, who has not been licensed in another state but who has successfully completed the registration examination of the Professional Examination Service or Psychological Corporation for occupational therapy, shall show proof of practice for at least one of the past five years and provide evidence of having completed fifteen hours of continuing education relating to the practice of occupational therapy within the year previous to the application date may be licensed by waiver. Individuals who do not meet these requirements will be licensed by examination provided by the board. This does not apply to individuals who have graduated from an accredited occupational therapy program within the last twelve months prior to the application date.

ITEM 4. Subrule 138.209(2) is rescinded and the following adopted in lieu thereof:

138.209(2) Supervision is defined as a minimum of four hours a month of on-site and in-sight supervision for each occupational therapy assistant by an occupational therapist. The four hours of supervision shall include a minimum of two contacts on a one-to-one basis between the occupational therapist and the occupational therapy assistant.

ITEM 5. Subrule **138.209(3)** paragraph "a" is amended to read as follows:

a. The evaluation of each patient by the occupational therapist prior to treatment by the occupational therapy assistant. *The time spent in evaluating the patient by the occupational therapist shall not be considered time spent in supervision of the occupational therapy assistant.*

ITEM 6. Subrule 138.212(5) is rescinded and the following adopted in lieu thereof:

138.212(5) Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the Iowa board of physical and occupational therapy examiners revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.

ITEM 7. Subrule 138.212(11) is amended to read as follows:

138.212(11) Submission of a false report of continuing education or failure to submit the ~~annual~~ report on continuing education.

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[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3759

HOUSING FINANCE AUTHORITY[495]

Pursuant to the authority of Iowa Code section 220.5(15), the Iowa Housing Finance Authority adopted, at a meeting of the board held February 17, 1983, rule 4.5(220) "Public Hearing and Approval."

Notice of Intended Action was published in IAB, December 22, 1982, as ARC 3460. The rule had also been emergency adopted and implemented in IAB as ARC 3459 [December 22, 1982].

This rule will replace the emergency adopted and implemented rule. This rule 4.5(220) spells out the means which the agency will use to schedule and conduct hearings prior to the issuance of a revenue bond, if such hearings are required by federal law, and provides for the approval by an elected statewide official of each bond.

Changes from such notice are as follows:

4.5(1)

4.5(2)

The substance of significant changes are: A clarification that this rule applies only where required by federal

law; that the notice may, but need not, be published in the county where the project is located; that if a local hearing is required, the authority may, but need not, cancel the hearing already scheduled for Des Moines; and that the agency may contract with another state agency to provide a hearing officer to hold hearings required by this rule.

These rules are intended to implement Iowa Code chapter 220.

These rules will become effective on June 16, 1983.

ITEM 1. Rule 495—4.5(220) as emergency adopted and implemented, is repealed.

ITEM 2. The following new rule 495—4.5(220) is adopted.

495—4.5(220) Public hearing and approval. In all cases where a public hearing, and the approval of an elected state official is required under the United States Internal Revenue Code of 1954, as amended, and the regulations promulgated pursuant thereto, before the issuance of a tax-exempt bond by the authority, the following procedures apply.

4.5(1) Public hearing. After January 1, 1983, the authority will not issue a bond for a specific project unless, prior to issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code of 1954 and the regulations promulgated thereunder. The hearing shall be preceded by a notice thereof published at least fourteen days prior to the date of the hearing in a newspaper of general circulation in the county where the project is located. The notice shall include but not be limited to the date, time and place of the hearing, the name of the project sponsor, and a general description of the project.

The hearing shall be held at the authority's offices in Des Moines, or other location stated in the notice, unless at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing may be canceled, and notice of a hearing in the local area shall be published in the time and manner stated above. The local hearing shall be held at the date, time and place specified in the new notice, which time and place shall be reasonably convenient to persons affected by the project.

The public hearing may be held by a staff member or board member of the authority or a hearing officer of another state agency working under an agreement with the authority.

4.5(2) Approval of elected official. After January 1, 1983, the authority will not issue a bond for a specific project unless, prior to issuance, the governor or another elected official of the state designated by the governor, shall approve the issuance of the bond. Following the public hearing opportunity referred to in subrule 4.5(1), the authority shall prepare and send to the governor's office, or the office of the elected official of the state designated by the governor, a statement describing each bond or series of bonds which it proposes to issue, along with a summary of the public comments received with respect thereto, if any.

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ARC 3747

LABOR, BUREAU OF[530]

The Labor Commissioner, pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), hereby adopts amendments to rules relating to occupational safety and health rules for general industry. The amendments relate to respirator fit testing for lead exposure, benzene exposure, cotton dust exposure, noise exposure, electrical standards corrections, lead exposure amendments, hearing conservation amendments, latch-open devices for dispensing flammable and combustible liquids, exposure to coal tar pitch volatiles, and educational scientific diving.

A public hearing was held on April 6, 1983. Comments were received on the adoption of the noise exposure standard as it relates to hearing conservation programs. The agency will enforce this rule to the extent enforcement would not impose requirements more stringent than required by 48 Fed. Reg. 9776 (March 8, 1983). This rule was noticed in the March 16, 1983, I.A.B. as ARC 3634.

This rule shall become effective on June 15, 1983.

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the rule of the Iowa Bureau of Labor appearing at **530—10.20(88)** is amended by adding at the end thereof the words:

46 Fed. Reg. 32022 (June 19, 1981)
46 Fed. Reg. 40185 (August 7, 1981)
46 Fed. Reg. 42632 (August 21, 1981)
46 Fed. Reg. 45333 (September 11, 1981)
46 Fed. Reg. 60775 (December 11, 1981)
47 Fed. Reg. 39161 (September 7, 1982)
47 Fed. Reg. 51117 (November 12, 1982)
47 Fed. Reg. 53365 (November 26, 1982)
48 Fed. Reg. 2768 (January 21, 1983)

This rule is intended to implement Iowa Code section 88.5.

[Filed 4/22/83, effective 6/15/83]
[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3748

LABOR, BUREAU OF[530]

The Labor Commissioner, pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), hereby adopts an amendment to rules relating to occupational safety and health rules for agriculture. The amendment relates to cotton dust in cotton gins.

A public hearing was held on April 6, 1983. No comments were received regarding this amendment. This adopted rule is identical to the noticed rule.

LABOR, BUREAU OF[530] *(cont'd)*

Notice of Intended Action was published in IAB March 16, 1983 as ARC 3635.

This rule shall become effective on June 15, 1983.

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the rule of the Iowa Bureau of Labor appearing at **530—28.1(88)** is amended by adding at the end thereof the words:

46 Fed. Reg. 32022 (June 19, 1981)

This rule is intended to implement Iowa Code section 88.5.

[Filed 4/22/83, effective 6/15/83]
[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3742

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION[610]

Pursuant to the authority of Iowa Code section 88.10, the Occupational Safety and Health Review Commission adopts amendments to Chapter 1, "Procedure for Hearings Before Review Commission," Iowa Administrative Code.

A hearing on the Notice of Intended Action was scheduled for April 8, 1983, however, no one appeared to make an oral presentation. There were also no written comments or suggestions submitted. The Review Commission adopted the rule in final form on April 14, 1983.

Notice of Intended Action was published as ARC 3574 on March 2, 1983.

The rule recommending the form of pleadings is being amended to encourage the use of letter size paper. The rule concerning emergency proceedings is being amended to require an application for such a proceeding to include certain specified information. The rule adopting the standards of conduct required in Iowa courts is being amended to grant the review commission appropriate powers to enforce the standards. Finally, there are a number of minor changes in the rules which are meant to correct errors and clear up ambiguities.

The adopted rule is identical to the version published in the Notice of Intended Action except that a citation of implemented authority has been added after rules 610—1.101(88) and 610—1.102(88).

These rules are intended to implement Iowa Code chapters 88 and 17A.

The adopted rules will become effective on June 15, 1983.

ITEM 1. Subrule 1.1(14) is amended to read as follows:

1.1(14) "Proceeding" means any proceeding before the review commission ~~or a hearing officer~~.

ITEM 2. Subrule 1.7(4) is amended to read as follows:

1.7(4) Proof of service *on other parties and intervenors* shall be accomplished by a written statement ~~of the same~~ which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

ITEM 3. Strike all of subrule 1.7(15) and insert in lieu thereof the following:

1.7(15) When settlement agreements are filed with the review commission they shall be posted for ten days at or near the place where the citation is required to be posted.

ITEM 4. Rule 610—1.7(88) is amended by adding the following new subrule 1.7(16):

1.7(16) If any party or intervenor fails to comply with the notice requirements of these rules, the review commission may issue appropriate orders.

ITEM 5. The line immediately following rule **610—1.12(88)** is amended to read as follows:

This rule is intended to implement *Iowa Code* section ~~88.10~~ *17A.3*; ~~The Code~~.

ITEM 6. The line immediately following subrule **1.20(2)** is amended to read as follows:

This rule is intended to implement *Iowa Code* section ~~88.10~~ *88.8(3)*; ~~The Code~~.

ITEM 7. Subrule 1.30(2) is amended to read as follows:

1.30(2) It is recommended that pleadings and other documents (other than exhibits) be typewritten, double spaced, on ~~legal~~ *standard* size paper (approximately 8½ inches by ~~14~~ *11* inches), have adequate margins and be *securely* fastened ~~at the upper left corner~~.

ITEM 8. Subrule 1.31(4) is amended to read as follows:

1.31(4) The ~~initial~~ *first* page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the ~~title~~ *caption*, the docket number, if known, assigned ~~by the review commission~~ *to the case*.

ITEM 9. Subrule **1.34(8)**, paragraph "b", is amended to read as follows:

b. The review commission shall docket and process such petition as an ~~expedited~~ *emergency* proceeding under 1.101(3).

ITEM 10. The line immediately following rule **610—1.37(88)** is amended to read as follows:

This rule is intended to implement *Iowa Code* section ~~88.10~~ *17A.9*; ~~The Code~~.

ITEM 11. Rule 610—1.38(88) is amended to read as follows:

610—1.38(88) Statement of position. *In lieu of participating at the hearing any party or intervenor may file,* ~~At~~ *at* any time prior to the commencement of the hearing, ~~any party or intervenor may file~~ a statement of position with respect to any issues to be heard.

ITEM 12. Subrule 1.55(2) first sentence is amended to read as follows:

1.55(2) Any person served with a subpoena shall, ~~within five days after the date of service of the subpoena~~ *at any time prior to the hearing,* move in writing to revoke or modify the subpoena if that person does not intend to comply.

ITEM 13. Subrule 1.62(1) is amended to read as follows:

1.62(1) Subject to the provisions of ~~1.62(3)~~ *1.62(2)*, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served

with a copy of the decision of the review commission or to appeal the decision.

ITEM 14. Subrule 1.65(2) is amended to read as follows:

1.65(2) The review commission's ~~electronic~~ recording *or transcript* of the hearing shall be available to any interested person for examination at ~~all~~ reasonable times without cost. Upon receipt of a copy of a petition filed in a district court of Iowa praying that an order of the review commission be modified or set aside pursuant to *Iowa Code* section 88.9 or 104.10(2), ~~The Code,~~ the review commission shall~~, at the expense of the requesting party,~~ either

a. Have the electronic recording transcribed, certify the ~~transcription~~ *transcript*, and file it with the court, if no court reporter recorded the hearing, or

b. Contract with the court reporter to transcribe the reporter's notes; in which case the reporter shall certify the ~~transcription~~ *transcript*, and deliver the ~~transcription~~ *transcript* to the review commission for filing with the court.

ITEM 15. Rule 610—1.100(88) is amended by adding the following new subrule 1.100(4):

1.100(4) Settlement agreements shall be filed with the commission to permit final disposition of the contested case.

ITEM 16. The line immediately following rule **610—1.100(88)** is amended to read as follows:

This rule is intended to implement *Iowa Code* sections 88.10 *and 88.8(3)*~~, The Code~~.

ITEM 17. Rule 610—1.101(88) is amended to read as follows:

610—1.101(88) ~~Expedited~~ *Emergency* proceeding.

1.101(1) Upon *the* application of any party or intervenor, or upon its own motion, *and for good cause shown,* the review commission may order an ~~expedited~~ *emergency* ~~meeting~~ *proceeding. The party or intervenor shall include in its motion the hazards to which employees are exposed, the probable injuries which could occur from such exposure, and the number of employees exposed to each hazard.*

1.101(2) When such proceeding is ordered, the executive secretary shall notify all parties and intervenors.

1.101(3) The review commission in an ~~expedited~~ *emergency* proceeding shall make necessary ~~rulings~~ *orders* with respect to time for filing of pleadings and ~~with respect to all other matters, without reference to time set forth in these rules~~ *other documents* and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

This rule is intended to implement Iowa Code section 88.10.

ITEM 18. Rule 610—1.102(88) is amended to read as follows:

610—1.102(88) Standards of conduct. All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the state of Iowa. *The review commission may take appropriate action to enforce the standards of conduct including, but not limited to, excluding persons from the hearing.*

This rule is intended to implement Iowa Code section 88.10(6).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3754

PLANNING AND PROGRAMMING[630]

The Office for Planning and Programming, pursuant to the authority of Iowa Code section 7A.3(8), rescinds Chapter 11, Federal Funds Clearinghouse, Iowa Administrative Code and adopts these rules in lieu thereof.

The President signed Executive Order 12372 on July 14, 1982 (47 Federal Register 30959, July 16, 1982). This order allows states, in consultation with local governments, to develop their own process or refine existing processes for state and local elected officials to review and co-ordinate proposed federal financial assistance and direct federal development. Formerly, this process was referred to as the "A-95 Process", (OMB Circular A-95). The Office for Planning and Programming is the A-95 clearinghouse at the state level and the areawide planning organizations perform the A-95 clearinghouse functions at the local level. This Presidential order abolishes the old A-95 process, effective April 30, 1983, and gives the state increased discretion in establishing a review system that best serves the needs of the public.

The purpose of these rules is to revise the existing federal financial and direct development review procedures that currently exist under the present chapter 11, Iowa Administrative Code. The new system is basically an extension of the old system and is designed to provide a mechanism whereby the governor, legislature, state agencies and local units of government are notified of any application for federal funds and are also notified of federal direct development decisions such as U.S. Corps of Engineers proposals, federal office building construction, federal land acquisition and other federal decisions that impact Iowa. The state and local federal funds clearinghouses are, under the adopted rules, given the opportunity to comment on these projects and the federal agency involved is required by federal law to consider the comments. The new system shall be referred to as the Iowa Intergovernmental Review.

It is significant to note that these rules are similar to those found in the present chapter 11. The adopted rules streamline the present system and provide the state and local clearinghouses with more flexibility and discretion

PLANNING AND PROGRAMMING[630] *(cont'd)*

in conducting reviews. The adopted rules continue to provide for a system of review that will prevent duplication of effort and inefficient use of federal funds received by the state and local units of government in Iowa. These rules are intended to implement Iowa Code sections 7A.3(8), 7A.4, 7A.5 and 7A.6, which form the basis for review of federal activities.

Through questionnaires sent to each areawide planning organization in the state, the Office for Planning and Programming solicited the comments of local governments relative to a proposed intergovernmental review system. In addition, nine public hearings were held throughout the state at which comments on the form of the proposed system were received. The major comments received and the manner in which these comments are addressed in these rules follow.

Many of the responses indicated that all state and federal projects should be subject to state and areawide clearinghouse review. This suggestion was not incorporated into these rules for several reasons. First, almost all "state" grants to local governments and private entities originate from a federal funding source. Thus the initial grant to the state is reviewed by the state clearinghouse and all subgrants are reviewed by the areawide clearinghouses. Secondly, because reviews are required where federal funds are involved it is duplicative and costly to perform a second review when the funds are administered at the state level. One of the main purposes of these rules is to streamline the process and avoid needless paperwork. Third, most state agencies that conduct state funded projects have adequate mechanisms in place to inform local governments and the public of the project's impact. Notable examples are the advance notice and opportunity for public comments that accompany major Iowa DOT projects and state conservation commission projects.

The comments were unanimous in support of a system similar to the present A-95 system. The major reasons given for support of such a system are two-fold. First, such a system allows local governments an opportunity to receive information about federal projects and programs. This informational aspect is important to co-ordination of projects and is also important in that it makes local government aware of prospective funding sources and future projects. Secondly, the respondents unanimously stated that the opportunity for review and comment on federal funding proposals is very important. The main concern expressed was the feeling that without a strong Intergovernmental Review System federal agencies would not pay attention to local government needs. The new system attempts to remedy this by requiring federal funding agencies to explain in writing why a project was funded despite adverse comments.

The projects subject to review and the types of projects not to be reviewed were developed based on the survey responses and upon state clearinghouse past experience. Several comments indicated there should be increased emphasis on review of federally funded social programs. We believe the list of projects adequately addresses this concern as the vast majority of social programs are included.

Two respondents felt that local units of government should be allowed to submit comments along with the clearinghouse when a project affects the local government. These rules allow for and encourage local comments.

Several comments indicated that only substantive written findings be submitted. The rules encourage use of only substantive written findings and discourage irrelevant and immaterial comments.

Two comments were received indicating there is lack of funding support for "mandatory" reviews. These rules clearly state that the system is designed to provide only the opportunity to review projects. No clearinghouse or local government is required to perform any review. The rules provide for alternatives when review is not completed by a clearinghouse. Requiring payment of fees as a means of support for reviews is unacceptable because it is not in keeping with the purposes of the review system.

One response indicated the state should perform all reviews. Another response said the state should do no reviews. The state clearinghouse must review certain state applications and plans pursuant to Iowa Code chapter 7A. In addition the state has an overriding interest in performing a limited number of reviews. It would be counter to the Iowa "home rule" philosophy for the state to review all projects.

One comment stated that all liquor license applications should be reviewed by the clearinghouse. We note that state law requires applicants for liquor licenses to seek prior approval from local law enforcement officials, therefore clearinghouse review is unnecessary.

Notice of Intended Action was published in the March 16, 1983, IAB as ARC 3629. A final public hearing was held in Des Moines on April 6, 1983, to solicit comments and suggestions on the proposed rules contained in the Notice of Intended Action. Public hearing comments again included a suggestion that all state programs be reviewed. For the reasons mentioned above the state clearinghouse has declined to require review of all state programs. One comment stated that the review period should be expanded from thirty to forty-five days. A forty-five-day review was not incorporated for two reasons. First, federal regulations call for a thirty-day review period. Second, subrule 11.6(3) allows for a sixty-day review period in situations where more time is essential. A final comment suggested that projects of Board of Regents institutions should not be exempt from review. Iowa Code section 7A.6 provides for the exemption and these rules are and must remain in accord with section 7A.6.

One change from the proposed rule can be found in subrule 11.6(6). The rule has been rewritten to provide that all official comments be submitted to the federal agencies by the state clearinghouse. This change was made to comply with recent federal Office of Management and Budget regulations.

At the suggestion of the Administrative Rules Review Committee the following changes have also been made:

Subrule 11.3(1) was changed to require an annual revision of Appendix A to reflect changes in federal programs.

Rule 11.9(7A) was rewritten for clarification purposes.

The Office for Planning and Programming adopted the rules on April 20, 1983. The rules will become effective on June 15, 1983.

These rules are intended to implement Iowa Code section 7A.3, and 47 Federal Register 30959.

CHAPTER 11
IOWA INTERGOVERNMENTAL REVIEW SYSTEM

630—11.1(7A) Purpose. These rules are intended to implement Iowa Code sections 7A.3(8), 7A.4, 7A.5 and

7A.6 and designed to establish an intergovernmental review system to be followed by federal agencies pursuant to federal Executive Order 12372 and by federal grant applicants. The intergovernmental review system shall be referred to as the Iowa Intergovernmental Review System. The purpose of the intergovernmental review system is to allow state and local government co-ordination and review of proposed federal financial assistance and federal direct development in order to avoid duplication and conflicts.

It is contemplated the intergovernmental review process will proceed along a well defined process as laid out in these rules. This general summary is expanded upon by the other rules herein. Below is a generalized summary of the process that shall be followed by the state and areawide clearinghouses with respect to review of applications for federal funds.

Step 1: A potential applicant for federal funds is informed by the federal agency that it must notify both state and regional clearinghouses about the project for which it intends to apply for assistance.

Step 2: Applicant notifies clearinghouses; including a summary description of the project.

Step 3: The state clearinghouse notifies state agencies which may be affected by the proposed project; regional and metropolitan clearinghouses do the same for local government agencies. Clearinghouses may also waive the right to review a project.

Step 4: State and local agencies notify clearinghouses of interest, if any, in conferring with applicant about the project.

Step 5: Clearinghouses notify applicant of their interest or the interest of state and local agencies in holding a conference to explore the project in greater detail. This must be done within thirty days of Step 2. If there is no interest on the part of the clearinghouses or state and local agencies in holding a conference, the applicant's obligations under the system are satisfied at this stage. Applicant then proceeds in accord with Step 10.

Step 6: A conference is held between the applicant and the appropriate agencies to explore the project in greater detail and identify and resolve possible conflicts.

Step 7: If conflicts are not resolved, the clearinghouses must notify the applicant that they will have comments that will accompany the application submitted in Step 8.

Step 8: Applicant submits application (or adequate project description) to clearinghouses, which have thirty days for comment.

Step 9: The clearinghouse submits their comments, as well as those of state and local agencies, to the federal grantor agency, and to applicant within the thirty-day period, prescribed in Step 8.

Step 10: Applicant submits application to federal agency, with all clearinghouse comments also attached. If there are no comments, applicant submits a statement that requirement for review and comment has been followed.

Step 11: Federal agency considers application and comments and informs clearinghouse of actions taken.

Similar processes are incorporated into these rules for review of federal direct development proposals and state plans required by federal agencies.

630—11.2(7A) Definitions.

11.2(1) "Areawide clearinghouse" is any entity which has been designated as an areawide clearinghouse by the director.

11.2(2) "Clearinghouse" refers to both the state and areawide clearinghouses.

11.2(3) "Governing authority" is the council, commission or executive with authority to make rules concerning a clearinghouse's activities.

11.2(4) "Local agency" means any department, office, commission or board of a county or city government or any entity exclusive of state agencies, making application for federal financial assistance.

11.2(5) "Project" includes federally assisted projects and programs, direct federal development, federally controlled programs within the state, environmental assessments and environmental impact statements required by law to be developed in consultation with state or local environmental agencies, and state plans required by federal agencies.

11.2(6) "State agency" includes any departments, boards, commissions, or agencies of state government except legislative and judicial departments and agencies.

11.2(7) "State clearinghouse" is the clearinghouse within the office for planning and programming established for the purpose of administering the intergovernmental review system.

11.2(8) "Intergovernmental review system" is defined as the system consisting of areawide clearinghouses and the state clearinghouse.

11.2(9) "Director" means the director of the office for planning and programming.

11.2(10) "Federal financial assistance" means any federal grant, loan or loan guarantee.

11.2(11) "Iowa intergovernmental review system" means the clearinghouses operating under these rules.

11.2(12) "Official comments" means written comments of any clearinghouse which are supported by reasoned conclusions and properly executed.

11.2(13) "Single point contact" means the state clearinghouse.

630—11.3(7A) Activities of the state clearinghouse. The state clearinghouse shall administer the intergovernmental review system at the state level to facilitate reviews of project proposal within the state. The areas subject to state clearinghouse review are:

1. Applications for federal grants-in-aid, loans or loan guarantees from state agencies subject to the requirements of Iowa Code section 7A.4 that require state agencies to file copies of grant applications with OPP.
2. State plans or proposed use statements as referred to in Iowa Code section 7A.4 to meet federal requirements for grants-in-aid, loans or loan guarantees to be administered by the state.
3. Draft and final environmental impact statements or environmental assessments required by federal law to be developed in co-operation with state environmental agencies.
4. Direct federal development.

11.3(1) Appendix A to this chapter 11 of the IAC lists projects and programs that require clearinghouse review. Appendix A shall be reviewed and updated annually. The most recent Appendix A is on file for public inspection at Office for Planning and Programming, 523 E. 12th, Des Moines, Iowa, and is incorporated by this reference as Appendix A to these rules.

11.3(2) Programs not considered appropriate for state or areawide review are programs of the following types:

a. Direct financial assistance to individuals or families for housing, welfare, health care services, education,

training, economic improvement, and other direct assistance for individual and family enhancement.

b. Incentive payments or insurance for private sector activities not involving real property development or land use and development.

c. Agricultural crop supports or payments.

d. Assistance to organizations and institutions for the provision of education or training not designed to meet the needs of specific individual states or localities.

e. Research, not involving capital construction, which is national in scope or is not designed to meet the needs or to address problems of a particular state, area, or locality (except in the case of demonstration or pilot research programs where projects may have an impact on the community or area in which they are being conducted).

f. Assistance to educational, medical, or similar service institutions or agenices for internal staff development or management improvement purposes.

g. Assistance to educational institutions for activities that are part of a school's regular academic program and are not related to local programs of health, welfare, employment, or other social services.

h. Assistance for construction involving only routine maintenance, repair, or minor construction which does not change the use or the scale or intensity of use of the structure or facility.

11.3(3) The state clearinghouse will consider federal agency requests for exemption of certain classes of projects or activities under programs otherwise subject to state or areawide review which:

a. Meet any of the above characteristics of programs inappropriate for coverage;

b. Are of small scale or size or are highly localized as to impact; or

c. Display other characteristics which might make review impractical.

11.3(4) The state clearinghouse may enter into a written memorandum of understanding with federal or state agencies concerning the scope of review of projects where special conditions exist.

11.3(5) The state clearinghouse may periodically distribute a list of all projects received for review. Distribution may be to state agencies and areawide clearinghouses. As appropriate the state clearinghouse may invite state agency or areawide clearinghouse comments on specific projects.

630—11.4(7A) Areawide clearinghouses. The state clearinghouse, at its discretion, may allow any properly designated areawide clearinghouse to review the following activities on behalf of local units of government and other affected entities located within the designated jurisdiction of the areawide clearinghouse:

1. Applications for federal grants-in-aid, loans or loan guarantees originated by local government or private agencies within its designated jurisdictions;

2. Draft and final environmental impact statements or environmental assessments directly affecting local units of government within its designated jurisdiction;

3. Notifications of direct federal development or controlled projects within the areawide clearinghouses' designated jurisdictions;

4. As explained in subrule 11.3(1) the most recent Appendix A contains a listing of all items referred to in rule 11.4(7A), paragraphs "1" to "3".

11.4(1) An areawide clearinghouse may enter into written memoranda of understanding with federal, state or local agencies concerning the scope of reviews of projects where special conditions exist.

11.4(2) Every thirty days each areawide clearinghouse shall send to the state clearinghouse a list of projects received and a list of projects reviewed and action taken (waiver, full review, conference, etc.) within the previous thirty-day period.

630—11.5(7A,28E, 473A) Designation. Upon receipt of written request for designation and receipt of a resolution of the governing body assenting to perform intergovernmental reviews in accord with these rules the director may officially designate any areawide planning commission, council of governments, or metropolitan planning agency as an areawide clearinghouse.

In the event that any planning commission, council of governments or similar organization fails to request designation as an areawide clearinghouse then the director may, upon receipt of a proper written request and governing body resolution, designate another entity as the local clearinghouse, or if the director finds it appropriate, the director may direct the state clearinghouse to perform the review of items set out in rules 11.4(7A), paragraphs "1" to "4" and 11.8(7A).

11.5(1) No clearinghouse shall charge applicants fees for the clearinghouse's review. Applicants are under no obligation to pay a fee for a review. The only obligation of the applicant is to give the clearinghouse the opportunity to review the application. No clearinghouse is required to carry out any review. If the clearinghouse does not take advantage of the review opportunity within the allotted time, the applicant is free to submit the application to the federal agency along with proof of submission to the clearinghouse for review in the manner described in subrule 11.6(9).

11.5(2) If the director determines that any clearinghouse is performing reviews in an unreasonable, arbitrary, or capricious manner, or is abusing its discretion, or is acting in excess of its authority, or in violation of these rules, or is acting upon unlawful procedure then the director may suspend or revoke the clearinghouse's designation and give notice of any suspension or revocation to all parties affected.

630—11.6(7A) Review procedures - federal financial assistance. General procedures for both state and areawide clearinghouses. An entity (state or local) applying for federal financial assistance shall notify the appropriate clearinghouse at the earliest possible date but not later than thirty days before filing with the federal grantor agency by submitting two copies of the following items to the clearinghouse.

1. A completed Clearinghouse Form 13 or federal Standard Form 424 and a brief narrative describing the project and explaining the need for it. A letter containing the information requested on Clearinghouse Form 13 (CH-13) or federal Standard Form 424 (SF424) may be substituted. Clearinghouse Form 13 is available from the state clearinghouse.

2. A map locating construction projects where pertinent.

3. Reference to an environmental impact statement or environmental assessment shall accompany the notification of intent to apply for federal assistance when such statement or assessment is required by the federal grantor agency or state statute or rule.

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4. At any time during the review period upon request of the clearinghouse, the applicant shall submit a copy of the full application to the requesting clearinghouse.

11.6(1) An applicant for federal assistance shall attach to the application a copy of the clearinghouse's written clearance and any comments and forward the same together with the grant application to the federal grantor agency.

11.6(2) A federal grantor agency receiving an application subject to the Iowa intergovernmental review system which does not contain evidence that opportunity for review has been given shall not process the application and shall inform the applicant of the review requirement.

11.6(3) The period permitted the state and areawide clearinghouses for processing reviews shall be thirty days. Except that if an objection to the proposed project arises, or if there is a need to review the full application, the clearinghouse may extend the review period for an additional thirty days in order to resolve the problem.

11.6(4) The review period begins on the date the applicant mails by first class mail or personally delivers to the clearinghouse a completed form CH-13 or SF424 or its equivalent. The clearinghouse review and comments or waiver of review shall be deposited for first class delivery at a U.S. Post Office depository or personally delivered to applicant by the last day of the review period. The applicant shall include the official comments or waiver with the application to be submitted to the federal agency.

11.6(5) If, in the course of review, an issue is detected that can be resolved without the necessity of submitting negative clearinghouse comments then a conference shall be held within ten days in order to resolve the issue. The conference shall be presided over by the director or his designee. Notice of the time, place and purpose of the conference shall be given to all affected parties.

11.6(6) All clearinghouse comments are official comments if in writing and supported by reasoned conclusions. Official comments shall be confined to matters relevant to the impact of the project. Areawide clearinghouse official comments shall be signed by the chairperson of the organization designated as the areawide clearinghouse. Official comments of the state clearinghouse shall be transmitted under signature of the director or his designee. The governing body of any local unit of government affected by a clearinghouse review may submit its own comments relative to the project to the federal agency. Prior to the end of the period of review the clearinghouse shall send the applicant that submitted the project for review notice that the review has been completed or waived and any official comments shall be included with said notice. Areawide clearinghouses shall transmit all official comments to the state clearinghouse at the same time said coments are transmitted to the applicant. The state clearinghouse shall act as the state single point contact and will transmit all official state and areawide comments to the appropriate federal agency.

11.6(7) If a project is required to be reviewed by both an areawide clearinghouse and the state clearinghouse it may be submitted to both clearinghouses simultaneously.

11.6(8) If any federal agency proceeds with a project after a clearinghouse has submitted negative official comments relative to that project then the federal agency shall present to the clearinghouse that made the negative comments an explanation which contains the basis for the decision allowing the project to proceed. Said explanation shall be given to the clearinghouse at least ten days prior to the federal agency's decision to proceed with a project.

11.6(9) Applicants are only required to present clearinghouses an opportunity to review a project. In the event a clearinghouse fails to perform a review within the review period of subrule 11.6(3), the applicant may submit to the federal agency proof of submission of form CH-13 or SF424 or its equivalent. Proof of submission shall be the signed and attested assurance of the applicant stating a completed CH-13 or SF424 or its equivalent was submitted to the clearinghouse in the manner prescribed by rule 11.6(7A).

630—11.7(7A) Housing programs. For housing programs of the Department of Housing and Urban Development (HUD), and the Farmers Home Administration of the Department of Agriculture (USDA/FHA) the following procedures will be followed, except as provided in subrule 11.7(4):

11.7(1) The appropriate HUD or USDA/FHA office will transmit to the areawide clearinghouses a copy of the initial application for project approval.

11.7(2) Clearinghouses shall have thirty days from receipt to review the applications, and to forward to the HUD or USDA/FHA office any comments which they may have, including observations concerning the consistency of the proposed project with the provision of housing opportunities for all segments of the community and identification of major environmental concerns, including impact on energy resource supply and demand. Processing of applications in the HUD or USDA/FHA office may proceed concurrently with the clearinghouse review.

11.7(3) This procedure shall include only applications specified in Appendix A.

11.7(4) As an alternative to the above procedure, the developer may submit his application directly to the appropriate clearinghouses prior to submitting it to the federal agency. In such cases, the application, when submitted to the federal agency, will be accompanied by the comments or waiver of the clearinghouses.

630—11.8(7A) Direct development. Prior to the commencement of the federal direct development activities described in Appendix A, Part IV, federal agencies shall notify the appropriate clearinghouse by submitting to the clearinghouse a completed form CH-13a or its equivalent in accord with the process set out in rule 11.6(7A).

630—11.9(7A) Board of regents. Review of grant applications developed by institutions under the jurisdiction of the state board of regents seeking federal funds from sources listed in Appendix A, Parts I, II and III shall be exempt from the provisions of Iowa Code sections 7A.4 and 7A.5 and rule 11.6(7A) insofar as grant-in-aid applications are concerned, and said institutions shall be required to submit to the state clearinghouse only a copy of the grant application's cover page and budget sheet or form CH-13 or SF424 or its equivalent at the time of submission to the federal agency.

630—11.10(7A) Internal process. An areawide clearinghouse may develop its own internal review process within the scope of these rules and may waive its rights of review.

630—11.11(7A, 68A) Information. The state clearinghouse will maintain liaison with the local metropoli-

tan and areawide clearinghouses in Iowa, provide them with information received from the federal government, and co-operate as needed when matters of mutual interest are being reviewed. The review material and notifications of grant-in-aid notices are public information and will be made available to agencies or persons upon request by contacting the Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319, telephone (515)281-3970.

These rules are intended to implement Iowa Code sections 7A.3(8), 7A.4, 7A.5 and 7A.6.

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ARC 3755

PLANNING AND PROGRAMMING[630]

Pursuant to the authority of Iowa Code chapter 7A, the Office for Planning and Programming hereby adopts the following amendments to 630—Chapter 22, "Community Services Block Grant Program," Iowa Administrative Code.

These amendments are intended to implement two bills which passed last session by the Iowa General Assembly. The 1982 Iowa Acts, chapters 1241 and 1262, respectively, provide: For the continuation of human service programs delivered by community action agencies; and to appropriate federal funds made available from the community services block grant.

These rules are identical to those published as Notice of Intended Action November 10, 1982 in IAB as ARC 3343 and a public hearing on these rules was held on December 1, 1982 at 10:00 a.m. in the Office for Planning and Programming conference room, to solicit comments and suggestions on the proposed rules contained in the Notice of Intended Action.

These amended rules will implement Iowa Code section 7A.3, and 1982 Iowa Acts, chapters 1241 and 1262.

The Office for Planning and Programming adopted these rules on April 22, 1983. The rules will become effective on June 15, 1983.

ITEM 1. Subrule 22.2(1) is rescinded and the following inserted in lieu thereof:

22.2(1) The terms "eligible entity," "community action agency," or "community action program" mean any organization which was officially recognized as a community action agency or a community action program under the provisions of Public Law 97-35, Subtitle B, Section 673(1) and Iowa Code section 7A.21.

ITEM 2. Subrules 22.3(1), 22.3(2), 22.3(3) and 22.3(4) are rescinded and the following inserted in lieu thereof:

22.3(1) Iowa apportionment. There are appropriated to the office for planning and programming from the fund created by Iowa Code section 8.41, subsection 1, funds to implement the community services block grant as described under P.L. 97-35, Title VI, Subtitle B. The office for planning and programming shall expend the funds appropriated as provided in the federal law, making the funds available in conformance with these rules.

22.3(2) Distribution to eligible entities. An amount not less than ninety-five percent of the funds received according to 22.3(1) shall be distributed to eligible entities following the formula described in 22.5(7A). In accordance with 1982 Iowa Acts, chapter 1262, section 1, recipient agencies shall receive from the community services block grant annually an amount based upon the size of the poverty-level population in the area represented by the community action agency compared to the size of the poverty-level population in the state.

22.3(3) Poverty-level population. The state shall use, for fiscal year 1983 and subsequent fiscal years the most recent decennial census statistics available to determine the poverty-level population in each community action area. The state may revise the allocation formula as new census figures become available.

22.3(4) State administrative fees. The office for planning and programming shall reserve for its administrative expenses of the program no more than five percent of the state's apportioned amount described in 22.3(1).

ITEM 3. Rule 630—22.4(7A), is amended by striking "for program year 1982". Subrules **22.4(3)**, paragraph "c", and **22.4(4)** are rescinded and the following inserted in lieu thereof:

c. One-third shall be persons who are members or representatives of businesses, industry, labor, religious, welfare, and educational organizations, or other major interest groups. The term of such person shall be not more than three years. Such person shall not serve more than two consecutive terms and shall be elected by a majority of the board members serving pursuant to 22.4(3) paragraphs "a" and "b".

22.4(4) Public agency advisory boards or delegate agencies. Notwithstanding 22.4(3), a public agency which is acting as a community action agency shall establish an advisory board or may contract with a delegate agency to assist the governing board. The advisory board or delegate agency board shall be composed of the same type of membership as a board of directors under 22.4(3). The advisory board or delegate agency board shall comply with the duties required for the board of directors for community action agencies as provided in Iowa Code section 7A.23. However, the public agency acting as the community action agency shall determine annual program budget requests.

22.4(5) Ineligible recipients. Individuals, political parties and for-profit organizations, partnerships and corporations are ineligible for direct assistance from the state under this program.

ITEM 4. Rule 630—22.5(7A) is rescinded and the following inserted in lieu thereof:

630—22.5(7A) Distribution to eligible applicants. The funds described in 22.3(2) shall be distributed to eligible entities in a manner which shall place all recipients on the same program year. The director shall distribute funds from the state's annual allocation at a funding level based

upon the size of the poverty-level population in the area represented by the community action agency compared to the size of the poverty-level population in the state.

ITEM 5. Rule 630—22.6(7A), subrules 22.6(1), and 22.6(2) are rescinded and the following inserted in lieu thereof:

630—22.6(7A) Application submission. All eligible entities shall utilize the community services block grant "Request for Funding Application" as provided by the office for planning and programming. The allocation of funds to eligible applicants is on a noncompetitive basis. Applicants shall be provided with forms at the time they apply.

22.6(1) Timing. Eligible entities shall be informed in writing of the due date for application and the amount of their allocation in accordance with rule 22.6(7A).

22.6(2) Application. Application instructions shall be provided along with the application package which shall be sent to all eligible entities. Project activity proposals will be reviewed and evaluated by the office for planning and programming to ensure that they meet the objectives of the community services block grant program. Further clarification of application requirements and format may be obtained by writing the Office of Planning and Programming, Division of Local Government Affairs, 523 E. 12th Street, Des Moines, Iowa 50319, or by calling 515/281-3951.

ITEM 6. Subrule **22.6(3)** is rescinded and reserved for future use.

ITEM 7. Subrule 22.7(2) is rescinded and the following inserted in lieu thereof:

22.7(2) Performance. Approval of applications is dependent on the satisfactory performance of the applicant in the past funding year(s). The minimum standards include: Timely and adequate expenditure report submission, program report submission, prudent management of funds, conformance with state and federal law relative to the restrictions in the use of funds, and adequate recordkeeping. Additionally, available records, audits and determinations from the Office of Community Services — Department of Health and Human Services, Office of Management and Budget, Iowa Energy Policy Council, Iowa State Department of Health and other relevant state and federal agencies shall be utilized to the extent possible. Unresolved audit questions and past due audits shall be a basis for conditional approval or disapproval of an application.

ITEM 8. Amend 630—22.7(7A) by adding the following new subrule:

22.7(3) Allocation of funds to entities. The allocation of community services block grant funds to eligible entities is on a noncompetitive basis, as specified in 1982 Iowa Acts, chapter 1262, division I, section 1, community services appropriations.

ITEM 9. Rule 630—22.10(7A) is rescinded and the following inserted in lieu thereof:

630—22.10(7A) Project periods. For all eligible entities, defined in subrule 22.2(1), the project period shall commence on October 1. Funding shall be made in accordance with the method of distribution set forth under 22.5(7A).

ITEM 10. Chapter 22 is amended by adding the following new rules:

630—22.13(7A) Change of designation. In the event that a political subdivision desires to terminate affiliation with the agency (CAA) currently serving it, the following procedure shall be used:

22.13(1) The board of supervisors or the city council as the case may be will vote to consider:

a. Withdrawal from the service area of the CAA.

b. Revocation of their original designation (if applicable) of the CAA for that area.

c. A proposal to affiliate with another CAA.

22.13(2) The political subdivision shall hold a public hearing for review and comment on the proposed change.

22.13(3) At the next regular meeting of the board or council after the public hearing, a final vote on the resolution shall be taken.

22.13(4) If the board or council votes in favor of terminating affiliation with the community the office for planning and programming shall be notified in writing within ten days.

22.13(5) In accordance with P.L. 97—35, Title VI, Subtitle B, and 1982 Iowa Acts, chapter 1241, the director of the office for planning and programming shall accept, reject or modify the proposed termination and if necessary alter the amount of CSBG funding to be received by the affected CAA.

630—22.14(7A) Establishing new designation. In order to redesignate a new community action agency for the political subdivision, the board or council shall vote to approve one of the following options in accordance with the provisions of Iowa Code section 7A.22.

1. Create a new community action agency which meets the criteria set forth in Iowa Code section 7A.22.

2. Consolidation with another CAA which currently serves an area contiguous to the political subdivision. If the political subdivision votes for consolidation, a request for approval shall be submitted to the adjacent CAA board.

3. Become a community action agency of record in accordance with Iowa Code section 7A.22, subsection 2.

22.14(1) A public hearing shall be held by the board or council on the proposed redesignation of community action agency to serve the area.

22.14(2) At the next regular meeting after the public hearing, a final vote on the resolution for the redesignation of a community action agency shall be taken.

22.14(3) The director of the office for planning and programming shall accept, reject or modify the proposed redesignation and if necessary alter the amount of CSBG funding to be received by the affected CAA. Criteria used in reaching a decision will include: Determination of the most efficient service delivery mechanism, transition time, local views and issues, types of services to be provided, funds available, disruption of service to the eligible population, and other relevant data.

These rules are intended to implement Iowa Code section 7A.3; 1982 Iowa Acts, chapters 1241 and 1262; and Public Law 97—35.

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[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3743

PUBLIC SAFETY DEPARTMENT[680]

Pursuant to the authority of Iowa Code section 321.4, the Iowa Department of Public Safety adopts amendments to Chapter 6, "Motor Vehicle Impoundment", Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume V, Number 19, March 16, 1983, as ARC 3627.

Changes from such notice are as follows:

6.2(5) First sentence added a colon after arrest, and moved the word "if" to the beginning of 6.2(5)"a".

6.4(2)"d" Added an explanation of why inventories are completed.

This rule will become effective on June 15, 1983.

This rule is intended to implement Iowa Code chapter 321.

ITEM 1. The title of Chapter 6, Motor Vehicle Impoundment shall be amended as follows: ~~Motor~~ Vehicle Impoundment.

ITEM 2. 680—6.1(17A, 321) shall be amended as follows:

680—6.1(17A, 321) ~~Motor~~ *V*vehicle impoundment. The patrol division and other peace officer members of the department may impound any vehicle determined to be "abandoned" as defined in *Iowa Code* section 321.89*(1)*"b" ~~of the Iowa Code~~, provided that:

1. The officer shall first attempt to determine the owner through department of transportation records and request communications division advise an owner found thereby that the ~~motor~~ vehicle must be moved within a reasonable time or it will be impounded, and

2. Either the owner cannot be found or the owner fails to remove the vehicle within a reasonable time.

ITEM 3. 680—6.2(17A, 321) shall be amended as follows:

680—6.2(17A, 321) ~~Motor~~ *V*vehicles which may be impounded immediately:

6.2(1) Vehicles which an officer has reason to believe are wrongfully possessed by the person then having control of such vehicles ~~and~~ *or* on which the vehicle identification number or the identification numbers of any component part have been altered or defaced, or on which an attempt to alter or deface has been made.

6.2(2) Vehicles which are involved in an accident when immediate impoundment is necessary:

a. To preserve evidence which will be used in an administrative or judicial proceeding; or

b. To protect the vehicle from theft or further damage when ~~the owner cannot be found~~ *the legal custodian is unavailable or incapable to* ~~or~~ give consent to such impoundment; or

c. To prevent further accidents when the vehicle is so situated as to appear to constitute a hazard to traffic.

6.2(3) Vehicles which an officer has reason to believe are being used to transport contraband.

6.2(4) Vehicles involved in a person's death when the medical examiner or a peace officer determines:

a. That seizure is necessary to secure evidence needed in the investigation of the cause and manner of death, and

b. That circumstances indicate the car may be removed or tampered with before written authorization for its impoundment can be obtained.

c. That the vehicle is situated on a public highway in such a manner that it may constitute a hazard to traffic.

6.2(5) Vehicles under the control of a person at the time of his or her arrest~~, if~~:

~~a. The person arrested is the owner of the vehicle and gives his or her consent to the impoundment; or~~

~~b.~~ *a. If* ~~T~~the arrested person's vehicle reasonably appears to a peace officer to constitute a traffic hazard if it remains where it is situated at the time of arrest and the arrested person is unwilling or unable to have it moved; or

~~c. Some other provision of rule 680—6.2(17A, 321) would authorize its immediate impoundment.~~

b. To preserve evidence which will be used in an administrative or judicial proceeding; or

c. To protect the vehicle from theft or further damage when the legal custodian is unavailable or incapable to give consent to such impoundment.

6.2(6) Vehicles positioned upon a public highway in such a location as to indicate that they constitute a hazard to traffic.

ITEM 4. 680—6.3(17A, 321) shall be amended as follows:

680—6.3(17A, 321) Vehicles which need not be impounded immediately.

~~6.3(1) A vehicle under the control of a person arrested does not have to be towed if the foregoing conditions involving prisoner's property do not make towing necessary. With the consent of the person in control of the vehicle, an officer may park and secure the vehicle temporarily.~~

6.3~~(2)~~*(1)* If a ~~motor~~ vehicle is unattended, an officer shall tag it with Form 680—6.3. A record is kept by the officer at the district to which the officer is assigned. After the period of time prescribed in *Iowa Code* section 321.89 ~~of the Code~~, the unattended vehicle shall be declared an abandoned vehicle.

6.3~~(3)~~*(2)* If the vehicle is thought to be abandoned, the officer shall attempt to determine the owner through department of transportation records, and request that *the* ~~patrol~~ communications *division* advise the owner that the ~~motor~~ vehicle must be moved within a reasonable time or it will be impounded. If the owner cannot be contacted, or if the owner does not remove the vehicle, the vehicle may be impounded.

ITEM 5. 680—6.4(17A, 321) shall be amended as follows:

680—6.4(17A, 321) ~~Towing~~ *Impoundment* procedure. If the vehicle is to be towed, the officer must:

6.4(1) Request that a tow truck be dispatched to remove the vehicle.

6.4(2) Complete the vehicle tow-in and recovery report which requires but is not limited to the following information:

a. Reason for towing.

b. The license number and description of the vehicle, including its condition at the time of impoundment.

c. Vehicle identification number and registration information, when readily accessible.

~~d. If the car is unlocked, an inventory of accessible, removable personal property, including a notation of any parts of the vehicle which appear to be missing. If the car is locked, an inventory of only visible personal property and missing parts until proper authority is obtained by entering the vehicle.~~

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d. An inventory of all property in the vehicle and a notation of any parts of the vehicle which appear to be missing or damaged. The inventory is a record which is intended for use in insuring the safe return of the lawful possessor's property and for the resolution of questions which may later arise regarding the condition or contents of the vehicle.

ITEM 6. Subrule 6.5(1) first paragraph shall be amended as follows:

6.5(1) The district officer in charge of abandoned vehicles shall notify, within ~~ten~~ *twenty* days of impoundment, by certified mail, the last known registered owner of the vehicle and all lienholders of record, addressed to their last known address of record, that the abandoned vehicle has been impounded. Such notice shall state:

ITEM 7. Subrule 6.5(4) shall be amended as follows:

6.5(4) The registered owner and any lienholders of record have twenty-one days in which to reclaim the vehicle after ~~receipt of publication~~ *mailing or date of publication* of notice as prescribed in subrules 6.5(1) and 6.5(2), except where written objection to impoundment has been made in accordance with subrule 6.5(3), in which case the twenty-one-day period shall begin when notice of the district officer's response to the objection is ~~received~~ *mailed*. An additional fourteen days will be allowed if the owner or any lienholder submits a written request for an extension of the twenty-one-day reclamation period.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3758

REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby adopts amendments to Chapter 14, "Computation of Tax", Chapter 15, "Determination of a Sale and Sale Price", Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage", Chapter 19, "Sales and Use Tax on Construction Activities", Chapter 26, "Sales and Use Tax on Services", and Chapter 34, "Vehicles Subject to Registration", Iowa Administrative Code. These rules were also submitted as Emergency Adopted and Implemented, and were published in the Iowa Administrative Bulletin on March 2, 1983, as ARC 3580.

Amended Notice of Intended Action was published in IAB, Volume V, Number 19, on March 16, 1983, as ARC 3616.

The amended notice was filed to make additional amendments to the department's sales and use tax rules which were published under notice on March 2, 1983, as ARC 3581. Specific items amended were rules 19.2(422, 423) and 34.5(423).

Rule 19.2(422,423) was amended by adding a new paragraph to the rule. If a general contractor executes a contract prior to March 1, 1983, and then sublets work to a subcontractor, the amendment provides that the subcontractor is also entitled to a refund of the additional one percent sales tax on materials incorporated into real estate in performance of the contract with the general contractor. Previously, the Department restricted refunds to contracts executed prior to March 1, 1983 and did not consider the contractor-subcontractor relationship. The statutory language would allow refunds to subcontractors. The amendment is consistent with the administration of the sales tax when the rate changed in 1967.

Rule 19.2(422, 423) was further amended at the second example. The example is amended to clarify that subcontractors can be eligible for a refund of the additional one percent sales tax on materials purchased by the subcontractor in performance of a contract with a general contractor.

A new third example is also added to rule 19.2(422, 423) to clarify that refunds to a governmental body are limited to the three percent tax rate if the construction contract was entered into prior to March 1, 1983. The Department has received several inquiries as to the effect of the sales tax rate increase on these contracts.

New Item 9 is added as the Department overlooked the reference to the three percent tax rate contained in subrule 34.5(8).

All amendments contained herein are made to implement 1983 Iowa Acts, Senate File 184.

The rule amendments in Chapters 14, 15, 18 and 26 provide for the sales and use tax rate increase from three percent to four percent, provide a bracket system for computing the sales or use tax at four percent, and correct examples using a sales tax rate of three percent. The rule amendments also list special transition rules to determine whether sales, use and service tax is payable at the three percent or four percent rate. The rule amendment to Chapter 19 allows construction contractors to apply to the department for a refund of the additional one percent sales or use tax paid on goods, wares or merchandise incorporated into real estate in the fulfillment of a written contract fully executed prior to March 1, 1983, and provides the method and information needed to secure a refund.

These rules are identical to those published under Amended Notice of Intended Action. The amendments will become effective June 15, 1983, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code sections 421.14, 422.43, 422.47 and 423.2, as amended by 1983 Iowa Acts, Senate File 184.

The following rules are adopted.

ITEM 1. Amend rule 730—14.1(422) to read as follows:

730—14.1(422) Tax not to be included in price. When a retailer pricemarks an article for retail sale and displays or advertises the same to the public with such pricemark, the price so marked or advertised shall include only the sale price of such article unless it is stated on the pricemark that the price includes tax.

For taxable transactions prior to March 1, 1983

EXAMPLE: The advertised or marked price is $1.00. When sale is made, the purchaser pays or agrees to pay

REVENUE DEPARTMENT[730] *(cont'd)*

$1.03, which represents the purchase price plus tax, which when added becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

"This dress-$10.00 plus tax", or "This dress-$10.00 plus 30 cents tax", or "This dress-$10.30 including tax".

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public, that the price "includes tax", the retailer will be allowed to determine gross receipts by dividing the total of such receipts which included tax by one hundred three percent.

For periods after February 28, 1983

EXAMPLE: The advertised or marked price is $1.00. When sale is made, the purchaser pays or agrees to pay $1.04 which represents the purchase price plus tax, which when added becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

"This dress-$10.00 plus tax", or "This dress-$10.00 plus 40 cents tax", or "This dress-$10.40 including tax".

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public, that the price "includes tax", the retailer will be allowed to determine gross receipts by dividing the total of such receipts which included tax by one hundred four percent.

However, where an invoice is sent to the purchaser as a part of the sale, such invoice must either show the tax separate from the purchase price or it must be stated on each invoice that tax is included in the purchase price. If the invoices state "tax included" the seller may determine gross receipts by the one hundred three percent *or one hundred four percent* method described above. It shall be the responsibility of the retailer who uses or has used the one hundred three percent *or one hundred four percent* method for reporting to provide proof that it has complied with the method of advertising or displaying the sale price, as described above.

This rule is intended to implement Iowa Code chapters 422 and 423, as amended by 1983 Iowa Acts, Senate File 184.

ITEM 2. Amend rule **14.2(422,~~423~~)** the second and third unnumbered paragraphs to read as follows:

Pursuant to the foregoing provisions, the department has adopted the following bracket system for the application of tax

~~SALES TAX SCHEDULE~~

~~$0.00 - $0.14 = $0.00~~
~~0.15 - 0.44 = 0.01~~
~~0.45 - 0.74 = 0.02~~
~~0.75 - 1.14 = 0.03~~
~~1.15 - 1.44 = 0.04~~
~~1.45 - 1.74 = 0.05~~
~~1.75 - 2.14 = 0.06~~
~~2.15 - 2.44 = 0.07~~
~~2.45 - 2.74 = 0.08~~
~~2.75 - 3.14 = 0.09~~
~~3.15 - 3.44 = 0.10~~
~~3.45 - 3.74 = 0.11~~
~~3.75 - 4.14 = 0.12~~
~~4.15 - 4.44 = 0.13~~
~~4.45 - 4.74 = 0.14~~
~~4.75 - 5.14 = 0.15~~
~~5.15 - 5.44 = 0.16~~
~~5.45 - 5.74 = 0.17~~

TAX SCHEDULE

$0.00 - $0.12 = $0.00
0.13 - 0.37 = 0.01
0.38 - 0.62 = 0.02
0.63 - 0.87 = 0.03
0.88 - 1.12 = 0.04
1.13 - 1.37 = 0.05
1.38 - 1.62 = 0.06
1.63 - 1.87 = 0.07
1.88 - 2.12 = 0.08
2.13 - 2.37 = 0.09
2.38 - 2.62 = 0.10
2.63 - 2.87 = 0.11
2.88 - 3.12 = 0.12
3.13 - 3.37 = 0.13
3.38 - 3.62 = 0.14
3.63 - 3.87 = 0.15
3.88 - 4.12 = 0.16
4.13 - 4.37 = 0.17
4.38 - 4.62 = 0.18
4.63 - 4.87 = 0.19
4.88 - 5.12 = 0.20
5.13 - 5.37 = 0.21
5.38 - 5.62 = 0.22
5.63 - 5.87 = 0.23

For sales larger than $5.~~74~~ *87* tax shall be computed at straight ~~three~~ *four* percent; one-half cent or more shall be treated as one cent.

When practicable, the department shall co-operate with retailers in applying the tax schedule; but in no event shall the same be administered in any manner that will result in the collection of substantially more than ~~three~~ *four* percent of the amount on which tax shall be computed.

This rule is intended to implement Iowa Code chapters 422 and 423, as amended by 1983 Iowa Acts, Senate File 184.

ITEM 3. Amend 730—chapter 14 of the rules by adding the following new rule at 14.3 now marked "Rescinded."

730—14.3(422,423) Taxation of transactions due to rate change. The following transition provisions shall apply in determining whether or not the transaction is subject to the three percent or four percent sales, services, or use tax rate.

1. The four percent sales tax rate applies to sales of tangible personal property where the sales contract is entered into on or after March 1, 1983. Jones v. Gordy, 169 Md. 173, 180 Atl. 272 (1935).

EXAMPLE: A enters into a sales contract with B to purchase a tractor from B. This contract (offer and acceptance) is made on February 28, 1983. The tractor is delivered to A on March 3, 1983 and A pays B on March 10, 1983. Since the contract was entered into prior to March 1, 1983, the sales tax in this example is at the three percent rate.

EXAMPLE: A desires to purchase a computer from B. On February 28, 1983, A orders the computer from B and the parties agree that the contract of sale is made when B makes delivery of the computer to A. B delivers the computer on March 10, 1983. In this example, the sales tax is at the rate of four percent because the sales contract was

not made until March 10, 1983, when B made delivery. Prior to that time, there was no binding sales contract.

EXAMPLE: On December 23, 1982, A enters into an installment sale contract with B to purchase a television set. The contract allows A to make monthly payments for 36 months. Since sales tax is due at the time of a conditional sale agreement, under these circumstances the tax is payable at the three percent rate of the sales price. The installment payments made on and after March 1, 1983, do not accrue any further tax. In this example, if A had made a credit card purchase prior to March 1, 1983, tax would accrue at the rate of three percent at the time of sale.

2. The four percent use tax rate applies to the use of tangible personal property in this state where the first taxable use occurs on or after March 1, 1983.

EXAMPLE: On January 24, 1983, A and B enter into a sales contract outside of Iowa for the purchase by A from B of a machine. The machine is not delivered to A until March 16, 1983. The delivery to A constitutes a use by A in Iowa for the first time of the machine. Under these circumstances, the machine is subject to the four percent rate since the tax rate in effect at the time of use (March 16, 1983) governs where property is purchased outside of Iowa. See City of Ames v. State Tax Commission, 246 Iowa 1016, 71 N.W.2d 15 (1955).

3. The four percent services tax rate applies to the rendering, furnishing, or performing of services where the service contract is entered into on or after March 1, 1983.

EXAMPLE: On February 1, 1983, A enters into a service contract with B to provide test laboratory services. The services are performed by B on March 4, 1983 and the results of such services are forwarded to A on March 8, 1983. Under these circumstances, the test laboratory services are subject to services tax at the three percent rate because the service contract was made on February 1, 1983, which is prior to March 1, 1983.

EXAMPLE: On February 1, 1983, B offers to perform test laboratory services for A. A and B agree that the offer is not accepted until B actually performs the test laboratory services. The services are performed on March 4, 1983 and the results forwarded to A on March 8, 1983. Under these circumstances, the test laboratory services are subject to tax at the four percent rate because the contract was not made until the services were performed on March 4, 1983.

EXAMPLE: On February 26, 1983, A contacts B, a plumber, to perform some plumbing services in A's home. B replies that the services can not be performed until March 2, 1983. On March 2, 1983, the plumbing services are performed by B who then presents a bill to A. Under these circumstances, the service contract was not made until B performed the plumbing services on March 2, 1983. Therefore, service tax is payable at the four percent rate.

EXAMPLE: On February 7, 1983, A enters into a service contract with B to repair A's automobile. The contract provides that A may make installment payments for 12 months. B completes repairs on the automobile on March 7, 1983. Since sales tax is due at the time of the installment service agreement, under these circumstances the tax is three percent of the contract price. Installment payments made on and after March 1, 1983, do not accrue any further tax. This situation is different from a service contract entered into prior to March 1, 1983 which requires periodic payments for continuous services, as set forth under transition provision No. 6.

EXAMPLE: A, a civic center, contracts with B, an orchestra, to perform on March 10, 1983. The contract is made on January 26, 1983. A sells tickets of admission for B's March 10, 1983 concert. The tickets are sold in the month of February and from March 1 to and including March 9, 1983. Under these circumstances, all ticket sales in February 1983 are subject to tax at the three percent rate and all ticket sales in March 1983 are subject to tax at the four percent rate. In this example, the contract between A and B is not a taxable service contract. The taxable service contracts are the sales of admission tickets between A and the purchasers of the tickets. The date when the taxable service contracts are made controls whether the tax rate is three percent or four percent.

4. If a service contract is made in this state, the four percent use tax rate applies when the service contract is entered into on or after March 1, 1983.

See examples under transition provision No. 3 for application of services use tax where service contract is made in this state.

5. If the product or result of a taxable service contract which is consummated outside of this state is first used in this state on or after March 1, 1983, the four percent use tax rate applies.

EXAMPLE: On February 14, 1983, A and B enter into a machine repair contract outside of Iowa for repair of A's machine outside of this state. On February 28, 1983, the machine is delivered to B who makes the repair and returns the machine to A in Iowa on March 1, 1983. Under these circumstances, the product or result of the taxable machine repair service is first used by A on March 1, 1983. Therefore, the four percent tax rate applies.

6. If a service contract is entered into prior to March 1, 1983 and the contract requires periodic payments, payments made or due on or after March 1, 1983 under the contract are subject to the four percent sales, services, or use tax rate. Broadacre Dairies v. Evans, 193 Tenn. 441 246 S.W.2d 78 (1952).

EXAMPLE: A and B enter into an agreement for lease of equipment on April 1, 1981. The lease is for a term of five years and requires monthly payments. A is the lessee and B is the lessor. For all rental payments made on or after March 1, 1983, the tax rate is four percent.

EXAMPLE: On May 1, 1980, A joined a private club and pays membership fees for the privilege of participating in athletic sports provided club members. A is required to make periodic payments every three months, such payments to be made in January, April, July, and October of each year. Under these circumstances, A's April 1, 1983 payment and periodic payments made thereafter are subject to tax at the four percent rate.

7. Gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, and communication service are subject to the sales, services, and use tax at the four percent rate when the date of billing the customer falls on or after March 1, 1983.

EXAMPLE: A is the customer of the B water utility. A receives a bill from the B water company on March 1, 1983, but the billing date on the bill states that it is February 28, 1983, for the months of January 1983, December 1982, and November 1982. Under these circumstances, the billing date is February 28, 1983, and the sales tax should be billed at the rate of three percent.

EXAMPLE: A is the customer of the B electric utility company. A receives a bill from the B company on March 2, 1983. There is no billing date set forth on the bill. The bill was mailed by the B company to A on February 28, 1983. Under these circumstances, the billing date is Feb-

ruary 28, 1983, and the sales tax should be billed at the rate of three percent. Had B listed a billing date in its books and records as a receivable different than the mailing date, i.e., February 26, 1983, this latter date (February 26, 1983) would be considered the billing date.

EXAMPLE: A is the customer of the B rural electric cooperative (REA). A is responsible for reading its meter and remitting the proper amount for electricity and sales tax to B. B, in its tariff filed with the Interstate Commerce Commission (ICC), has set forth the first date of each month as the last day for its customers to read their meters. B does not send a bill to A. Under these circumstances of customer self-billing where no bill is sent by B to A, the first date of each month is the billing date and where that date falls on March 1, 1983, and the first date of each month thereafter, the sales tax should be paid at the rate of four percent.

If the date set forth in the tariff had been the last day of the month, then a self-billing attributable to February 28, 1983, would require payment of sales tax at the three percent rate.

EXAMPLE: A is the customer of B telephone company. A receives a bill from B company on March 3, 1983, covering intrastate long distance telephone calls in February 1983, and local service in March 1983. The billing date on the face of the bill is February 28, 1983. Under these circumstances, all telephone services, local and intrastate long distance, should be billed sales tax at the rate of three percent.

If, in this example, the billing date on the bill had been March 1, 1983, the sales tax should be billed at the rate of four percent for all telephone services, local and intrastate long distance.

8. The four percent use tax rate applies to motor vehicles subject to registration when the purchaser of the vehicle does not exercise an Iowa use of the vehicle prior to March 1, 1983.

EXAMPLE: A purchases a motor vehicle from B and takes possession of the vehicle in Iowa on February 28, 1983. On March 1, 1983, A attends the office of the county treasurer, applies for registration of the vehicle, and tenders the amount of Iowa use tax. Under these circumstances, because A "used" the vehicle prior to March 1, 1983, the use tax rate is three percent.

EXAMPLE: A and B motor vehicle dealer enter into a binding contract for A to purchase from B a motor vehicle on February 26, 1983. The vehicle cannot be delivered to A until March 3, 1983, and A applies to the county treasurer for registration of the vehicle on March 4, 1983. Under these circumstances, A first used the vehicle in Iowa on March 3, 1983 (the date when the vehicle was delivered to A) and Iowa use tax is imposed at the four percent rate.

This rule is intended to implement *Iowa Code* chapters 422 and 423 ~~of the Code~~, *as amended by 1983 Iowa Acts, Senate File 184.*

ITEM 4. Amend subrule 15.19(3) to read as follows:

15.19(3) All the provisions of subrule 15.19(2) apply to the trade-in of vehicles subject to registration when the trade involves retailers of vehicles.

When vehicles subject to registration are traded between persons neither of which is a retailer of vehicles subject to registration, the conditions set forth in 15.19(2) "a" and "b" need not be met. The purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the amount of the vehicle subject to registration traded.

EXAMPLE: John Doe has an automobile with a value of $2,000.00. John and his neighbor Bill Jones who has an automobile valued at $3,500.00 decide to trade automobiles. John pays Bill $1,500.00 cash. Vehicles subject to registration are subject to use tax which is payable to the County Treasurer at the time of registration. In this example John would owe use tax on $1,500.00~~, or $45.00 use tax,~~ since this is the amount John paid Bill and tax is only due on the cash difference. Bill would not owe any use tax on the vehicle acquired through the trade.

EXAMPLE: Joe has a Ford automobile with a value of $5,000.00. Joe and his friend Jim who has a Chevrolet automobile also valued at $5,000.00 decide to trade automobiles. Joe and Jim make an even trade, automobile for automobile with no money changing hands. In this example there is no tax due on either automobile because there is no exchange of money.

ITEM 5. Amend rule 730—16.1(422) to read as follows:

730—16.1(422) Tax imposed. The Iowa Retail Sales Tax is imposed *for periods prior to March 1, 1983* at the rate of three percent *and for periods after February 28, 1983 at the rate of four percent* of the gross receipts from the sale at retail of tangible personal property and certain enumerated services. *However, see rule 14.3(422, 423) for transition provisions to determine whether the three percent or four percent rate applies.*

The remaining rules under this chapter deal with certain specific attributes of the Iowa Retail Sales Tax, but such rules are by no means exclusive in explaining what are taxable sales and are not exclusive in explaining which transactions constitute taxable sales. There are other transactions which constitute taxable sales under the law and which are not specifically dealt with in these rules.

This rule is intended to implement *Iowa Code* sections ~~422.42 and~~ 422.43, ~~the Code~~ *as amended by 1983 Iowa Acts, Senate File 184.*

ITEM 6. Amend subrule **18.31(2)** the last four unnumbered paragraphs to read as follows:

Therefore, as long as body shops separately itemize on their invoices to their customers the amounts for labor, parts, and for "materials", body shops should collect sales tax on the labor and the parts, but not on the "materials" as enumerated in this rule.

EXAMPLE: A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, solder and polishes. In its invoice to the customer, the labor is separately listed at $300, the part (fender) is separately listed at $300, and the category of "materials" is separately listed for a lump sum of $100, for a total billing of $700. The Iowa sales tax ~~which~~ *computed by* the body shop should *be on $600* ~~charge its customer is $18 (3% x $600)~~ which is the ~~tax~~ *amount* attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for "gross taxable services" as defined in *Iowa Code* section 422.42(16), ~~The Code~~ which is taxable in *Iowa Code* section 422.43~~, The Code~~.

In this example, if the "materials" were not separately listed on the invoice, but had been included in either or

both of the labor or part charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shops to its supplier at time of purchase. ~~Thus, if the labor charge was listed at $400 instead of $300, sales tax of $12 (3% x $400) would have to be collected by the body shop on such labor charge. The tax on parts would equal $9 (3% of $300) for a total tax of $21.00 ($9 + $12) which would be charged to the customer.~~

This rule is intended to implement *Iowa Code* sections 422.42(3), 422.43 and 423.2, ~~The Code~~ *as amended by 1983 Iowa Acts, Senate File 184.*

ITEM 7. Amend rule **730—19.2(422,423)** by adding the following at the end of the existing rule.

Effective March 1, 1983, the sales and use tax rate increased from three percent to four percent.

Construction contractors may make application to the department for a refund of the additional one percent sales or use tax paid on goods, wares or merchandise incorporated into an improvement to real estate in the fulfillment of a written contract fully executed prior to March 1, 1983.

Where a written construction contract is fully executed prior to March 1, 1983, and the general contractor sublets work to other contractors under a written agreement signed on or after March 1, 1983, the respective subcontractors may make application for a refund of the additional one percent sales or use tax paid on goods, wares or merchandise incorporated into real estate in the performance of their subcontracts with the general contractor.

The claim for refund is to be filed on forms provided by the department within one year of the date the tax was paid, and shall contain the following information.

Documentation that a written contract existed prior to March 1, 1983.

Copies of invoices or other information required by the department showing that the four percent sales or use tax has been paid to a retailer or directly to the department.

Any other information required by the department to support the claim for refund.

The refund shall not apply to equipment transferred in fulfillment of a mixed construction contract. (See rules 19.9(422,423) and 19.10(422,423).

EXAMPLE: A and B enter into a written contract on December 10, 1982, whereby B is to build a manufacturing plant for A and also to furnish the plant equipment for a lump sum fee. B, as the contractor, is the consumer of the building materials incorporated into the manufacturing plant. B is the retailer of the equipment which is sold to A. Under these circumstances, B should pay tax at the rate of four percent on purchase of building materials purchased on and after March 1, 1983. B would then be eligible to claim a refund on the additional one percent tax attributed to such building material purchases because the written contract was executed prior to March 1, 1983. The sale of the equipment from B to A is subject to three percent sales tax if the December 10, 1982, contract was executed in Iowa and constitutes the sale of the equipment. See transition provision No. 1 under rule 14.3(422,423).

If the sale of the equipment from B to A occurred outside of Iowa, and the equipment is delivered to the plant, installed, and is first used by A on or after March 1, 1983, the Iowa use tax applies at the rate of four percent. See transition provision No. 2 under rule 14.3(422, 423). If such equipment, purchased outside of Iowa, is so delivered, installed, and first used by A prior to March 1, 1983, Iowa use tax is imposed at the rate of three percent.

EXAMPLE: A and B enter into a written construction contract on January 12, 1983, whereby B, the general contractor is to build an office building for A. On March 4, 1983, B enters into a written subcontract with C, a subcontractor, to install a cement foundation. Under these circumstances B, because B's contract was executed prior to March 1, 1983, is eligible to claim a refund of the additional one percent tax attributable to building materials purchased by B on or after March 1, 1983. C is also eligible to claim such refund upon such purchases because B's written construction contract was executed before March 1, 1983.

EXAMPLE: A and B enter into a written construction contract on February 10, 1983. A, the sponsor is a governmental body and B is the general contractor. B is the consumer of the building materials incorporated into the construction project. A is entitled to a refund of the sales or use tax paid by the contractor on building materials incorporated into the construction project. Under these circumstances, B should pay tax at the rate of four percent on purchases of building materials purchased on and after March 1, 1983. B would then be eligible to claim a refund on the additional one percent attributed to building materials purchased because the written contract was executed prior to March 1, 1983. A would be eligible to apply for a refund of only the three percent sales or use tax paid since the written contract was executed prior to March 1, 1983 and only three percent tax was included in the contract between A and B.

ITEM 8. Amend rule 730—26.1(422) to read as follows:

730—26.1(422) Definition. The phrase "persons engaged in the business of" as used herein shall mean persons who offer the named service to the public or to others for a consideration whether such person offers the service continuously, part-time, seasonally or for short periods. The Iowa sales tax law imposes *for periods prior to March 1, 1983* a tax of three percent, *and for periods after February 28, 1983 at the rate of four percent* upon the gross receipts from the rendering, furnishing or performing at retail of certain enumerated services, hereinafter described in more detail in this chapter.

ITEM 9. Amend subrule **34.5(8)** the first unnumbered paragraph to read as follows:

Should a "use" as defined in *Iowa Code* section 423.1(1), ~~of the Code of Iowa~~ occur in Iowa, subsequent to the leasing to a lessee outside the flow of interstate transportation or interstate commerce, use tax would be owing. The tax, if found to be due, shall be computed ~~at the rate of three percent of~~ *on* the purchase price.

[Filed 4/22/83, effective 6/15/83]
[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3757

REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code section 421.14 the Iowa Department of Revenue hereby adopts amendments to chapter 75, "Determination of Value and Tax for Freight-line and Equipment Car Companies," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume V, Number 19, on March 16, 1983, as ARC 3617.

These rules are adopted in order to implement Iowa Code chapter 435.

The existing chapter 75 rules, "Determination of Value and Tax for Freight-line and Equipment Car Companies," are rescinded and new chapter 75 rules, "Determination of Tax for Freight-line and Equipment Car Companies", are adopted.

These rules are identical to those published under Notice of Intended Action. The rules will become effective June 15, 1983, after filing with the rules coordinator and publication in the Iowa Administrative Code.

These rules are intended to implement Iowa Code chapter 435.

The following rules are adopted.

Chapter 75 rules are rescinded and inserted in lieu thereof, the following new chapter 75.

CHAPTER 75
DETERMINATION OF TAX FOR FREIGHT-LINE AND EQUIPMENT CAR COMPANIES

730—75.1(435) Filing of return. The annual return for the freight-line and equipment car tax, as required by Iowa Code section 435.3, shall be made on the form provided by the director of revenue.

The responsibility of obtaining the form and timely filing the form is with the car company. Additional information filed by taxpayer, but not required by the director, shall be on separate schedules and will be considered part of the annual return.

The annual return shall be filed with the department of revenue, property tax division, on or before the first Monday in June of each year and shall be examined and if the return is deemed insufficient or if the return fails to fully set out the matters required to be reported, the taxpayer shall be required to make such other and further information available as required by the return or the rules of this chapter.

This rule is intended to implement Iowa Code section 435.3.

730—75.2(435) Penalty and interest. For tax periods after December 31 1981, see subrule 44.3(3) for computation.

This rule is intended to implement Iowa Code chapter 435.

730—75.3(435) Definition of loaded miles/loaded mileage. The term "loaded mile" or "loaded mileage" shall mean the actual distance via the route of movement from a station to another station, as recorded by the moving carrier, based on freight mileage tables of the moving carrier, legally on file with the Interstate Commerce Commission (ICC) or the state railroad commission when a car is not empty. The loaded miles reported by the moving carrier shall include mileage of cars carrying loaded or empty containers under revenue or nonrevenue billing and without regard to the method of compensation or lease arrangements.

This rule is intended to implement Iowa Code chapter 435.

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ARC 3735

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 906.3 rules of the Department of Social Services appearing in the IAC relating to the supervision of interstate compact parolees and probationers (Chapter 27) are hereby amended. The Council on Social Services adopted these rules April 14, 1983.

Notice of Intended Action regarding this rule was published in the IAB February 16, 1983, as ARC 3548. These rules contain procedures to be followed when compact clients violate conditions of supervision and bring the rule into compliance with the Interstate Compact Association Manual.

Subrule 27.4(2) was reworded.

This rule is intended to implement Iowa Code section 247.40. This rule shall become effective July 1, 1983.

Subrules 27.4(2) and 27.4(4) are amended to read as follows:

27.4(2) The state of Iowa shall exercise the same care and treatment *and supervision standards* that ~~is~~ *are* given to Iowa cases ~~to~~ *and shall* notify the sending state promptly about any violations, antisocial behavior that may occur or the placement of any legal hold against the individual.

27.4(4) The receiving state shall promptly upon parole violation notify the sending state. ~~Prior to making a recommendation for revocation of parole or probation, the compact administrator or deputy shall conduct a preliminary parole or probation revocation hearing to determine if there is probable cause for revocation of parole or probation.~~ *In the case of serious violations the board of parole liaison officer, who is an attorney, will conduct a probable cause hearing for the compact administrator according to the board of parole procedures 615—7.5(908).*

[Filed 4/21/83, effective 7/1/83]

[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3726

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 239.18, rules of the Department of Social Services appearing in the IAC relating to aid to dependent children (Chapter 41) are hereby amended. The Council on Social Services adopted this rule April 14, 1983.

Notice of Intended Action regarding this rule was published in the IAB October 27, 1982, as ARC 3322. This rule will exclude families from receiving aid to dependent children when deprivation is based on a parent being in uniformed service.

This rule is identical to that published under notice.

This rule is intended to implement Iowa Code section 239.1. This rule shall become effective July 1, 1983.

Subrule **41.1(5)**, paragraph "a" is amended to read as follows:

a. A child shall be considered as deprived of parental support or care when the parent is out of the home in which the child lives under the following conditions. When these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously; *except that a parent whose absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States is not considered absent from the home. "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration, or Public Health Service of the United States.* A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

[Filed 4/15/83, effective 7/1/83]
[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3734

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 239.18 rules of the Department of Social Services appearing in the IAC relating to granting assistance (chapter 41) and unemployed parent (chapter 42) are hereby amended. The Council on Social Services adopted these rules April 14, 1983.

Notice of Intended Action regarding the rules was published in the IAB February 16, 1983, as ARC 3536. These rules specify that hours of work for self-employed individuals are determined by gross income, not net profit.

These rules are identical to those published under notice.

These rules are intended to implement Iowa Code section 239.18. These rules shall become effective July 1 1983.

ITEM 1. Subrule **41.4(1)**, paragraph "g" is amended to read as follows:

g. A person who is employed in nonsubsidized employment for one hundred twenty-nine hours or more per month. *For self-employed persons, hours shall be determined by dividing the average total monthly income from self-employment by the federal minimum wage, before any deductions for business expenses.*

ITEM 2. Subrule **42.1(1)**, paragraph "c" is amended to read as follows:

c. When self-employed, the hours of employment shall be determined on the basis of the total monthly income from self-employment, *before any deductions for business expenses,* divided by the federal minimum wage.

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ARC 3736

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 239.18 rules of the Department of Social Services appearing in the IAC relating to aid to dependent children unemployed parent (chapter 42) are hereby amended. The Council of Social Services adopted this rule April 14, 1983.

Notice of Intended Action regarding this rule was published in the IAB March 2, 1983 as ARC 3597. This clarifies a current rule and specifies that co-operation with Job Service counseling is considered part of an active search for employment. This rule also provides a form to document that job search requirements have been met.

42.4(4)"a" (1)(2)(3)(4) were reworded.

This rule is intended to implement Iowa Code section 239.2. This rule will be effective July 1, 1983.

Subrule 42.4(4) is rescinded and the following inserted in lieu thereof:

42.4(4) Active search for employment or training. While the application is pending and after assistance has been approved, the qualifying parent shall comply with the following active search requirements.

a. The qualifying parent shall actively search for employment or training for employment.

SOCIAL SERVICES DEPARTMENT[770] *(cont'd)*

(1) The qualifying parent who is out of work due to failure to make an active and earnest search for work as described in IAC 370—4.22(1)"c" which results or would result in disqualification for job insurance benefits shall not be considered unemployed.

(2) The qualifying parent shall document the search for employment using form PA—2142—5, Job Search, upon request. Failure to do so will result in cancellation.

(3) The qualifying parent who participates in an approved training program satisfies the search requirement during any period of active attendance.

(4) The qualifying parent must meet all of the conditions in this paragraph during any month in which an ADC case is suspended.

b. The parent shall not, without good cause: End, limit, or reduce hours of employment; refuse job search assistance or counseling when a counselor is assigned from job service; refuse a bona fide offer of employment or training for employment. Failure to follow up on a referral which could result in a bona fide offer of employment or training shall be considered the same as a refusal.

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[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3732

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 234.6(7) rules of the Department of Social Services appearing in the IAC relating to the food stamp program (Chapter 65) are hereby amended.

Iowa requested a waiver pursuant to the Omnibus Budget Reconciliation Act of 1981 of the obligation to enforce inconsistent provisions of Federal Law between the Food Stamp and AFDC programs certification periods. The waiver was approved by USDA and the department may now use consistent certification periods in the administration of these programs.

This rule change allows the food stamp certification period and the annual redetermination for public assistance to be effective in the same month when households receive both food stamps and public assistance.

The Department of Social Services finds that notice and public participation is impracticable and contrary to the public interest. The rule eliminates conflicting requirements between the food stamp and public assistance program and eliminates client confusion with certification periods and reduces the potential for staff errors. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The Council on Social Services adopted this rule April 14, 1983.

This rule is intended to implement Iowa Code section 234.12.

The effective date of this rule is July 1, 1983.

770—65.13(234) is amended to read as follows:

770—65.13(234) Joint processing.

65.13(1) *SSI/food stamps.* The department will handle joint processing of supplemental security income and food stamp applications by having the social security administration complete and forward food stamp applications.

65.13(2) *Public assistance/food stamps. In joint processing of public assistance and food stamps the certification periods for public assistance households will be assigned to expire at the end of the month in which the public assistance redetermination is due to be processed.*

[Filed without notice 4/21/83, effective 7/1/83]
[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3737

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 234.6 rules of the Department of Social Services appearing in the IAC relating to general provisions (Chapter 130) are hereby amended. The Council on Social Services adopted this rule April 14, 1983.

Notice of Intended Action regarding this rule was published in the IAB March 2, 1983 as ARC 3598. This rule adds state supplementary assistance to the list of income sources that can be documented annually rather than every six months as required in the current rule.

The word supplemental was changed to supplementary in the phrase state supplementary assistance.

This rule is intended to implement Iowa Code section 234.4. This rule will become effective July 1, 1983.

Subrule 130.2(5) is amended as follows:

130.2(5) Eligibility shall be redetermined in the same manner as an application at least every six months except that for individuals whose family's gross monthly income is derived exclusively from social security benefits, ~~or~~ supplemental security income *or state supplemental assistance*, or a combination thereof, redetermination shall be made at least every twelve months.

[Filed 4/21/83, effective 7/1/83]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

ARC 3738

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 234.6 rules of the Department of Social Services appearing in the IAC relating to general provisions (Chapter 130) are hereby amended. The Council of Social Services adopted these rules April 14, 1983.

Notice of Intended Action regarding this rule was published IAB February 16, 1983 as ARC 3560. These rules eliminate client notification when time limited services expire and also cover time limited service clients with the direction that workers shall endeavor to make clients aware of pending changes.

These rules are identical to those published under notice. These rules are intended to implement Iowa Code section 234.6. These rules shall become effective July 1, 1983.

ITEM 1. Subrule 130.5(4) is amended to read as follows:

130.5(4) Notification. In all cases of adverse service actions notification shall be mailed at least ten calendar days before the date the denial, termination, or reduction would become effective. This rule is in compliance with federal regulation 45 CFR 205.10(a). During such time the client may respond by appealing the decision or, when such action is based on nonpayment of fees, by making payment. When the client does not respond, the denial, termination or reduction shall take place at the end of the ten-day period. Notification is not required when services are changed from one plan year to the next *or when the time period indicated for a service in the social services block grant pre-expenditure report has expired.*

ITEM 2. Subrule 130.5(5) is amended to read as follows:

130.5(5) Pending changes. Workers shall endeavor to make clients aware of pending changes in services to be provided by ~~Title XX~~ *social services block grant* from one program year to the next, particularly for those services that will no longer be available. *This requirement also applies to time-limited services.*

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[Published 5/11/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/11/83.

SUMMARY OF DECISION - THE SUPREME COURT OF IOWA
FILED - March 28, 1983

NOTE: Copies of this opinion may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

NO. 83-241. HEAD V. COLLOTON.
Appeal from the Iowa District Court for Johnson County, L. Vern Robinson, Judge. Reversed. Considered en banc. Opinion by McCormick, J. (14 pages $5.60)

This appeal presents a question concerning the right of access of a member of the general public to a hospital's record of the identity of a potential bone marrow donor. The trial court held that a hospital's record of the tissue typing of a potential donor is not exempt from disclosure under section 68A.7(2) of the Iowa Code (1983), the public records statute, and ordered defendants to send her a letter notifying her of plaintiff's need and asking her if she would consider being a donor to plaintiff. We granted interlocutory review of the court's order. OPINION HOLDS: The only hospital records made confidential by Iowa Code section 68A.7(2) are those "of the condition, diagnosis, care, or treatment of a patient or former patient, including outpatient"; the physician-patient privilege under Iowa Code section 622.10 is not coextensive with the confidentiality requirement of section 68A.7(2); a potential donor is a patient and should have the privacy rights of a patient; the provision in the first paragraph of section 68A.7 that provides for confidentiality "unless otherwise ordered by a court" does not give a court discretion to breach confidentiality otherwise required under the statute; the power of a court is limited to ordering disclosure of otherwise confidential records only when a statute or rule outside of chapter 68A gives a party a specific right of access superior to that of the public generally; the remedy the trial court fashioned was not authorized by the statute since if public access is available at all under chapter 68A, it is a right of general public access.

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - April 20, 1983

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. 67991. STATE v. WILT.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, District Associate Judge. Affirmed in part, reversed in part, and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, Larson, Schultz, and Carter, JJ. Opinion by Reynoldson, C.J. (14 pages $5.60)

Upon the State's application we granted discretionary review to examine trial court's ruling, in prosecution of defendant for gambling and betting in violation of Iowa Code section 725.7, that the lawful gambling exceptions of Iowa Code chapter 99B are elements of the offense upon which the prosecution bears the burden of disproof. OPINION HOLDS: I. Despite defendants' failure to properly challenge sufficiency of the information pursuant to Iowa Rule of Criminal Procedure 10(6) since their challenge was not preceded by a bill of particulars, this issue is "capable of determination without the trial of the general issue[s]," and may be raised by application for adjudication of law points; trial court properly addressed the issue which is not moot. II. The exceptions of chapter 99B for lawful gambling are affirmative defenses of the section 725.7 gambling offense rather than elements of the crime. III. The State bears the burden of persuasion of chapter 99B exceptions once defendants raise them by meeting their burden of "producing sufficient evidence that the defense applies"; we affirm the trial court's placement of the ultimate burden of persuasion on the State as to the chapter 99B exceptions; we reverse, however, so much of trial court's decision that is contrary to our finding the chapter 99B exceptions are affirmative defenses upon which defendants bear the burden of going forward with the evidence.

No. 68190. ALLIED GAS & CHEMICAL CO. v. FEDERATED MUTUAL INSURANCE CO.

Appeal from Iowa District Court for Mahaska County; James D. Jenkins, Judge. Affirmed. Considered by Reynoldson, C.J., Uhlenhopp, Harris, and Carter, JJ., and LeGrand, Senior Judge. Opinion by Uhlenhopp, J. (9 pages $3.60)

This is an interlocutory appeal by defendant insurer from trial court's denial of motion for extension of time to answer request for admissions. OPINION HOLDS: I. We have adopted the federal two-prong standard for determining the cirumstances under which withdrawal or amendment of admissions is permissible; it also applies to motions to file an untimely response to a request for admissions, Iowa R. Civ. P. 127; the district court did consider and apply the two-prong standard. II. An admission is not improper because it relates to an ultimate fact or to an issue that is dispositive of the case. III. Prejudice may be found where a party is suddenly required to prove matters previously admitted; thus, the trial court did not abuse its discretion by holding that withdrawal of the admissions would prejudice plaintiff's action on the merits. IV. Courts may refuse leave to withdraw or amend admissions based on inadvertance or excusable neglect on the part of counsel. V. We reject plaintiff's proposal that its motion for extension of time be granted with the reservation that plaintiff can apply for reimbursement of its expenses.

No. 67913. STATE v. DEAN.

Appeal from the Iowa District Court for Woodbury County, Charles R. Wolle, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by Reynoldson, C.J. (8 pages $3.20)

Defendant appeals from conviction and subsequent sentence for the crime of robbery in the second degree, a violation of Iowa Code sections 711.1 and 711.3. OPINION HOLDS: I. Due diligence in a good faith effort to produce a witness for trial to meet the exception of the sixth amendment confrontation right for use the prior testimony of witness where he is unavailable for trial requires more than what was done in this case, the issuance of a subpoena and the return of it not found; the trial court erred in admitting the deposition of the unavailable witness. II. There is no indication that, by declining trial court's offer to grant him a continuance to attempt to obtain the presence of the witness, defendant evinced a waiver of his right to confront the witness. III. The error in admitting the deposition of the witness was not harmless beyond a reasonable doubt.

No. 66167. GRAY v. BOWERS.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Cerro Gordo County, Ray E. Clough, Judge. Decision of the court of appeals vacated; judgment of the trial court affirmed. Considered en banc. Opinion by LeGrand, Senior Judge. (5 pages $2.00)

The trial court held that defendants-buyers were not bound by a promissory note and real estate mortgage held by plaintiff-seller. On plaintiff's appeal, the court of appeals reversed. We granted defendants' application for further review. OPINION HOLDS: Plaintiff's forfeiture of the two real estate contracts precludes his recovery on the related note and mortgage on other real estate; the note and mortgage were additional consideration for one of the forfeited contracts; the termination of a contract extinguishes any right to recover the unpaid purchase price; we are reluctant to permit circumvention of this result by means of contract clauses which reserve to the seller a right to receive additional payment after forfeiture.

No. 68099. SAYDEL EDUCATION ASSOCIATION v. PUBLIC EMPLOYMENT RELATIONS BOARD.

Appeal from the Iowa District Court for Polk County, Richard D. Morr, Judge. Affirmed. Considered by Harris, P.J., and McCormick, McGiverin, Larson and Schultz, JJ. Opinion by Larson, J. Special concurrence by McCormick, J. (13 pages $5.20)

Petitioner appeals from the district court decision on judicial review affirming respondent agency's ruling regarding mandatory subjects of bargaining under Iowa Code section 20.9. OPINION HOLDS: The school district's proposal that skill, ability, and experience, as well as seniority, must be considered in connection with transfer or staff reductions falls within the mandatory subjects of bargaining under the Public Employee Relations Act, Iowa Code chapter 20; the inclusion of allegedly improper facts in a petition for declaratory ruling before respondent agency could have had no effect upon the district court's decision. SPECIAL CONCURRENCE ASSERTS: I would hold that "transfer procedures" and "procedures for staff reductions" independently and necessarily include the duty to bargain over criteria to be used in determining who is to be transferred or terminated.

No. 67777. THOMPSON v. STEPHENSON.

Appeal from the Iowa District Court for Webster County, James C. Smith, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by Larson, J. (6 pages $2.40)

Defendant State appeals from partial summary judgment for plaintiff, in which the State's liability for plaintiff's injuries in an automobile accident was held to be established by issue preclusion, and summary judgment for defendant Stephenson on her cross-claim for indemnity from the State. OPINION HOLDS: An earlier suit between the executor of Stephenson's estate and the State was settled; the order approving the settlement stated: "[T]he ruling and judgment of the court . . . shall be vacated . . ."; because the court retained jurisdiction pending disposition of the post-trial motion, the court's vacation of the judgment did not require a reassertion of jurisdiction of the person or subject matter under rules 252 and 253; if the underlying findings as well as the judgment were nullified, they could have no preclusive effect; also, there would be little, if any, saving of judicial resources if we were to apply issue preclusion here; we conclude the district court erred in applying the doctrine of issue preclusion.

No. 67822. SIMBRO v. DeLONG's SPORTSWEAR.
Appeal from the Iowa District Court for Poweshiek County, Dick R. Schlegel, Judge. Reversed and Remanded. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by Schultz, J. Concurrence by McCormick, J. (11 pages $4.40)

The employer appeals from a decision on judicial review awarding an employee workers' compensation benefits. OPINION HOLDS: Workers' compensation benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit with the degree of impairment to be computed on the basis of a functional, rather than an industrial, disability. CONCURRENCE ASSERTS: This case illustrates again the vast disparity in workers' compensation benefits and injustice which can result from a determination that an injury has sufficient conceptual neatness to fit the schedule and thus be compensable without regard to actual industrial disability.

No. 68654. WELP v. IOWA DEPARTMENT OF REVENUE.
Appeal from the Iowa District Court for Marshall County, Milton D. Seiser, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by Schultz, J. (10 pages $4.00)

Respondent appeals from district court's decision on judicial review reversing respondent's decision to disallow petitioner's amendment to probate inventory. OPINION HOLDS: Iowa Code section 450.39, which provides that an appraisal is not required for estate property listed on a probate inventory or report unless the department of revenue files a written request for such an appraisal within sixty days after the inventory or report is filed, does not prevent a personal representative from amending an inventory to reflect the true market value of an asset that had been incorrectly valued; the language of this section does not indicate a clear intent to establish a sixty day time limitation upon amending the inventory.

No. 67472. IOWA SUPPLY CO. v. KELLEY.
Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge. Appeal Dismissed. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Per Curiam. (3 pages $1.20)

Defendant appeals from summary judgment for plaintiff in this action for the purchase price of two furnaces. After judgment was entered, plaintiff wrote defendant that it would proceed with its punitive damage claim against defendant, which the district court had reserved, if defendant did not pay the judgment. Defendant paid and plaintiff filed a satisfaction of judgment and dismissed the punitive damage claim. OPINION HOLDS: The record before us discloses defendant voluntarily contracted for a discharge and dismissal but now seeks to avoid part of the bargain; we hold he has waived his right to appeal; we overrule defendant's motion for "summary disposition" in his favor and dismiss this appeal.

NO. 68273. DRINNIN V. HEARTLAND AREA EDUCATION AGENCY.
Appeal from the Iowa District Court for Polk County, Harry S. Perkins, Judge. Affirmed. Considered by Uhlenhopp, P.J., and Harris, McGiverin, and Carter, JJ., and LeGrand, Senior Judge. Opinion by Harris, J. (5 pages $2.00)

Plaintiff teacher appeals from an adverse ruling in a declaratory judgment action to determine whether a public school teacher must use sick leave for those absences from work which are paid by workers' compensation. OPINION HOLDS: Under Iowa Code section 279.40 (1979) (sick leave), one day of a public school teacher's accumulated sick leave may be deemed expended for each day of absence for medically related disability even though workers' compensation benefits are paid for part of the teacher's absences.

NOS. 67648, 68578, 68583, 68584. MATHISON V. YOUNG.
Certiorari to the Iowa District Court for Story County, Gordon S. Young, District Associate Judge. Writs sustained and cases remanded. Considered en banc. Opinion by McCormick, J. Dissent by Harris, J. (11 pages $4.40)

The plaintiff attorney was appointed by the juvenile court to represent indigent parents or children in four juvenile proceedings. She challenges, by certiorari, the juvenile court's awards of attorney's fees. OPINION HOLDS: The juvenile court applied an incorrect standard in determining the statutorily mandated "reasonable compensation" for juvenile appointments; we hold that standard of reasonable compensation for juvenile appointments under Iowa Code section 232.141(1)(d) is the same as the standard of reasonable compensation for criminal appointments under Iowa Code section 815.7 as delineated in Hulse v. Wifvat, 306 N.W.2d 707 (Iowa 1981); in the present case the juvenile court violated this standard by discounting its fee awards to reflect an attorney's duty to represent the poor; however, the juvenile court acted within the correct standard when it considered certainty of payment; we do not intimate what fees should be awarded upon remand. DISSENT ASSERTS: I believe a juvenile court should be permitted to consider a lawyer's obligation to assist the poor when fixing "reasonable compensation."

NO. 67574. RUSH V. RAY.
Appeal from the Iowa District Court for Polk County, Louis A. Lavorato, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, McGiverin, and Carter, JJ., and LeGrand, Senior Judge. Opinion by Harris, J. (7 pages $2.80)

Plaintiff appeals from dismissal of declaratory judgment action on grounds of mootness. The case concerned the propriety of the governor's use of the item veto power to veto legislative provisions prohibiting transfer of appropriated funds between departments of state government. OPINION HOLDS: The question should have been considered under the public interest exception to the mootness doctrine.

NO. 67586. BRITTON V. HANSON.
Appeal from The Iowa District Court for Woodbury County, D. M. Pendleton, Judge. Reversed and remanded with directions. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McCormick, and Carter, JJ. Per Curiam. (4 pages $1.60)

The city civil service commission appeals from the district court decision overturning its administrative determination reclassifying certain municipal civil service positions. OPINION HOLDS: The filing of a motion for reconsideration did not extend the time for filing notice of appeal from the final decision of the city civil service commission and the appeal to district court was therefore untimely.

NO. 66316. LOCKSLEY V. ANESTHESIOLOGISTS OF CEDAR RAPIDS, P.C.
Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge. Affirmed. Considered by Harris, P.J., and McCormick, McGiverin, and Larson, JJ., and LeGrand, Senior Judge. Opinion by Harris, J. (17 pages $6.80)

Plaintiff, a neurosurgeon, appeals from adverse judgment in suit against hospitals and anesthesiologists asserting their boycott prevented him from practicing his profession. OPINION HOLDS: I. There was no abuse of discretion in denying the motion for change of venue on local prejudice and publicity grounds. II. The defendants raised the affirmative defense of justification, which was an appropriate defense in these circumstances; evidence regarding plaintiff's competence was admissible on this issue. III. The trial court's refusal to submit a proposed instruction that plaintiff was competent as a matter of law was proper, as plaintiff's competence was a matter of considerable dispute notwithstanding the determination of the hospital board. IV. The trial court properly instructed the jury on ways it should consider plaintiff's claim that the hospitals had a duty to provide anesthesia services. V. Given the conflicting claims of the parties, we find no conspiracy was established as a matter of law; plaintiff was not entitled to a directed verdict on his breach of contract claim; this was not the type of "exceptional case" where negligence or proximate cause exist as a matter of law; as to the claim of interference with a contractual relationship, the anesthesiologists raised the defense of justification; such a defense is best left for a jury to evaluate. VI. That the jury spent only three hours in deliberation does not qualify as a basis for a new trial; there was substantial evidence to support the jury's determination, and we find no reason to interfere with the discretion of the trial court in overruling the motion for new trial.

NO. 68308. CUNNINGHAM V. KARTRIDG PAK CO.
Appeal from the Iowa District Court for Woodbury County, D. M. Pendleton, Judge. Affirmed. Considered by Uhlenhopp, P.J., and Harris, McGiverin and Carter, JJ., and LeGrand, Senior Judge. Opinion by McGiverin, J.
(12 pages $4.80)

Plaintiff appeals summary judgment for defendant, claiming he has a right to sue as an individual for damages to him resulting from unsatisfactory operation of a meat processing machine leased from defendant by a corporation in which plaintiff was principal stockholder. OPINION HOLDS: I. The plaintiff did not establish that he had suffered an injury separate and distinct from the injury suffered by the corporation or by other shareholders. II. The plaintiff did not establish that the defendant owed him a special duty distinct from whatever duty was owed to the corporation. III. The plaintiff cannot rely on products liability law to avoid the general rule that an individual stockholder cannot sue for damages to a corporation.

No. 68460. MUNFORD V. BOARD OF EDUCATION.
Appeal from the Iowa District Court for Van Buren County, Dick R. Schlegel, Judge. Affirmed. Considered by Harris, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Per Curiam. (2 pages $ .80)

Plaintiff appeals the district court decision affirming termination of her teaching contract. OPINION HOLDS: Plaintiff's persistent failure to have lesson plans available for substitute teachers, coupled with the breach of this duty after the principal's warning, constituted just cause for terminating her teaching contract.

NO. 68682. SKOOG V. FREDELL.
Appeal from the Iowa District Court for Montgomery County, J. C. Irvin, Judge. Affirmed. Considered by Uhlenhopp, P.J., and Harris, McGiverin, and Carter, JJ., and LeGrand, Senior Judge. Opinion by Harris, J.
(6 pages $2.40)

The plaintiff appeals from the trial court's declaratory judgment that a grantor who deeded property to his granddaughter for life with remainder to "the heirs of her body" manifested an intent not to have the adopted daughter of his granddaughter take the remainder interest. OPINION HOLDS: The grantor here, in deeding the farm to the heirs of the body of his granddaughter, manifested a wish to distinguish between natural and adopted children; the trial court did not err in determining that an adopted child, notwithstanding our holding in Elliot v. Hiddleson, 303 N.W.2d 140, 144-45 (Iowa 1981), is not an heir of the body of the adopting parent.

NO. 68284. INTERNORTH, INC. V. IOWA STATE BOARD OF TAX REVIEW.
Appeal from the Iowa District Court for Polk County, J. P. Denato, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McCormick, Schultz, and Carter, JJ. Opinion by McCormick, J.

(12 pages $4.80)

Petitioners, Internorth, Inc. (Northern) and Northern Propane Gas Company (Propane) appeal from district court decision affirming assessment of additional corporate income taxes. OPINION HOLDS: I. A. Northern, which operates an interstate gas pipeline system involving the purchase, transportation, and sale of gas, derives income from the sale of tangible personal property rather than transportation; the agency correctly interpreted Iowa Code section 422.33(1)(b) as requiring for the imposition of Iowa corporate income tax on Northern's interstate business the apportionment of its Iowa income under the statute's single sales provision applicable to the sale of tangible personal property. B. Assuming the doctrine of estoppel is available to Northern when income taxes are involved, we find no proof of acquiescence by the department in use of the traffic units formula for apportionment which could rise to a representation upon which Northern could or did rely; Northern's burden to establish all of the elements of estoppel was not met here. C. There is no merit to Northern's attack on the constitutionality of the sales apportionment method under the due process clause of the fourteenth amendment and the Commerce Clause of the United States Constitution. D. By failing to produce evidence from which the amount of its net income reasonably attributable to its Iowa activities could be determined, Northern did not provide a basis for the director to find that the income apportioned to Iowa by the sales factor formula was not "reasonably attributable" to Northern's Iowa activities for use of the traffic units formula pursuant to Iowa Code section 422.33(2); there was no abuse of discretion in the director's refusal to permit the traffic units formula to be used. II. The department correctly disallowed the plaintiffs' deductions for federal taxes on their separate state returns as if they had also filed separate federal returns and limited the deductions to the appropriate portion of federal income tax actually shown on the consolidated federal return.

NO. 68040. LAWS V. GRIEP.
Appeal from the Iowa District Court for Clinton County, C. H. Pelton, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by McCormick, J. (5 pages $2.00)

Plaintiff Shadrick appeals from dismissal of her claim for loss of consortium arising from injury to the man with whom she was living. OPINION HOLDS: An injury to one unrelated cohabitant in a "stable and significant relationship" does not give the other cohabitant a cause of action for loss of consortium.

NO. 68106. KELLY V. IOWA VALLEY MUTUAL INSURANCE ASSOCIATION.
Appeal from the Iowa District Court for Hardin County, Russell J. Hill, Judge. Affirmed. Considered by Uhlenhopp, P.J., and Harris, McGiverin, and Carter, JJ., and LeGrand, Senior Judge. Opinion by McGiverin, J.

(9 pages $3.60)

Defendant insurer appeals from judgment for plaintiff insured for fire damage to house. Plaintiff was leasing the house with an exclusive option to buy when it burned. OPINION HOLDS: I. Iowa tenants have long been regarded as having an insurable interest; plaintiff had an insurable interest in the leased property with or without exercising his option to purchase. II. A lessee with an option to purchase who exercises his option after the loss occurs has an insurable interest for the full amount of the loss to the extent of the policy coverage.

NO. 67753. STATE V. MUNZ.
On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Dubuque County, T. H. Nelson, Judge. Decision of court of appeals vacated; sentence vacated; remanded with directions. Considered by Uhlenhopp, P.J., and Harris, McGiverin, and Carter, JJ., and LeGrand, Senior Judge. Per Curiam.

(5 pages $2.00)

Defendant was granted further review of a court of appeals decision affirming an indeterminate five-year sentence for OMVUI, 3rd offense. This sentence was imposed upon resentencing after a probation violation report was filed and the determinate five-year sentence previously imposed and suspended after reconsideration was vacated as being illegal. OPINION HOLDS: I. We agree with the court of appeals that North Carolina v. Pearce, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969), is distinguishable under the factual and procedural record here. II. We conclude that the order setting aside the reconsidered sentence was premature and must itself be set aside; this case is remanded to district court for hearing to determine whether the failure to make the prior reconsidered sentence indeterminate was a clerical error; if so, the reconsidered sentence should be corrected accordingly nunc pro tunc, and the probation revocation application should be set for hearing; if there was no clerical error, the reconsidered sentence would be illegal and should be corrected after rehearing; the stated reason for the latest sentence (defendant's "prior record") is insufficient to allow this court to determine whether an unproven and unadmitted charge was improperly considered in imposing this sentence.

No. 66387. MARTIN v. JU-LI CORP.
Appeal from Linn District Court, L. Vern Robinson, Judge. Reversed. Considered en banc. Opinion by Uhlenhopp, J. Dissent by Harris, J. (14 pages $5.60)

Plaintiff appeals from ruling sustaining a special appearance. The trial court held Iowa cannot claim jurisdiction over Illinois residents who were directors, officers and shareholders of Ju-Li Corporation, which was based in Iowa. OPINION HOLDS: I. In special appearance proceedings, allegations in a petition which go to the merits of a claim are taken as true; other allegations may be contradicted by affidavits, testimony and other evidence. II. As to the individual defendants other than C.G. Patel, we hold that at least the minimum contacts existed with Iowa which are essential to subject them to the jurisdiction of Iowa courts, and that this is so whether or not those individuals ever actually set foot in Iowa; the corporate shield doctrine is subject to an exception when the individuals' activities are not for the corporation but rather in opposition to its interests; we do not decide the commission--omission issue at this time because both counts allege positive misconduct by defendants. III. If the trustee can prove at trial the allegations that defendant C.G. Patel fraudulently undercapitalized Ju-Li, Iowa courts will have jurisdiction of C.G. Patel; in addition, the same allegations which render C.G. Patel amenable to Iowa courts render C. Patel Corporation subject to Iowa jurisdiction, if proved. DISSENT ASSERTS: I do not find the jurisdiction issue and the merits to be so intertwined as to demand that defendants appear and defend on the merits.

No. 67903. BANNON v. PFIFFNER.
Appeal from Iowa District Court for Buchanan County, T.H. Nelson, Judge. On review from Iowa Court of Appeals. Decision of Court of Appeals Vacated; Judgment of District Court Affirmed. Considered by Uhlenhopp, P.J., Harris, McGiverin, and Carter, JJ., and LeGrand, Senior Judge. Opinion by Uhlenhopp, J. (13 pages $5.20)

Plaintiff appeals from judgment for defendant in wrongful death action arising from an automobile collision. OPINION HOLDS: The evidence permitted the jury to find that the defendant's decedent was confronted with a sudden emergency not of her own making, that she exercised due care in responding to the emergency, and that her departure from her own lane of traffic was therefore excused under the "sudden emergency" doctrine; the court of appeals erred in holding defendant's decedent was negligent as a matter of law.

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