



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

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

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

PHYLLIS BARRY, Deputy Code Editor  
LAVERNE SWANSON, Administrative Code Assistant  
DONNA WATERS, Administrative Code Assistant

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### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
17	Friday, January 24, 1986	February 12, 1986
18	Friday, February 7, 1986	February 26, 1986
19	Friday, February 21, 1986	March 12, 1986

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## SUBSCRIPTION INFORMATION

### Iowa Administrative Bulletin

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

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Iowa State Printing Division  
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## Schedule for Rulemaking 1986

FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 10	Jan. 29	Feb. 18	Mar. 5	Mar. 26	Apr. 30	July 28
Jan. 24	Feb. 12	Mar. 4	Mar. 19	Apr. 9	May 14	Aug. 11
Feb. 7	Feb. 26	Mar. 18	Apr. 2	Apr. 23	May 28	Aug. 25
Feb. 21	Mar. 12	Apr. 1	Apr. 16	May 7	June 11	Sep. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 21	June 25	Sep. 22
Mar. 21	Apr. 9	Apr. 29	May 14	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	July 16	Aug. 20	Nov. 17
May 16	June 4	June 24	July 9	July 30	Sep. 3	Dec. 1
May 30	June 18	July 8	July 23	Aug. 13	Sep. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 27	Oct. 1	Dec. 29
June 27	July 16	Aug. 5	Aug. 20	Sep. 10	Oct. 15	Jan. 12 '87
July 11	July 30	Aug. 19	Sep. 3	Sep. 24	Oct. 29	Jan. 26 '87
July 25	Aug. 13	Sep. 2	Sep. 17	Oct. 8	Nov. 12	Feb. 9 '87
Aug. 8	Aug. 27	Sep. 16	Oct. 1	Oct. 22	Nov. 26	Feb. 23 '87
Aug. 22	Sep. 10	Sep. 30	Oct. 15	Nov. 5	Dec. 10	Mar. 9 '87
Sep. 5	Sep. 24	Oct. 14	Oct. 29	Nov. 19	Dec. 24	Mar. 23 '87
Sep. 19	Oct. 8	Oct. 28	Nov. 12	Dec. 3	Jan. 7 '87	Apr. 6 '87
Oct. 3	Oct. 22	Nov. 11	Nov. 26	Dec. 17	Jan. 21 '87	Apr. 20 '87
Oct. 17	Nov. 5	Nov. 25	Dec. 10	Dec. 31	Feb. 4 '87	May 4 '87
Oct. 31	Nov. 19	Dec. 9	Dec. 24	Jan. 14 '87	Feb. 18 '87	May 18 '87
Nov. 14	Dec. 3	Dec. 23	Jan. 7 '87	Jan. 28 '87	Mar. 4 '87	June 1 '87
Nov. 28	Dec. 17	Jan. 6 '87	Jan. 21 '87	Feb. 11 '87	Mar. 18 '87	June 15 '87
Dec. 12	Dec. 31	Jan. 20 '87	Feb. 4 '87	Feb. 25 '87	Apr. 1 '87	June 29 '87
Dec. 26	Jan. 14 '87	Feb. 3 '87	Feb. 18 '87	Mar. 11 '87	Apr. 15 '87	July 13 '87

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

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

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

# NOTICE

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

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

The Administrative Rules Review Committee will hold its regular statutory meeting Tuesday, February 11, 1986, 8:00 a.m. in Committee Room 116, State Capitol. The following rules will be reviewed:

DIVISION I  
Rules under Notice and Filed Emergency Rules

Bulletin

**ATTORNEY GENERAL[120]**  
Regulation of agreements and practices, ch 15 **ARC 6285**, also filed emergency **ARC 6284** ..... 1/15/86

**BEER AND LIQUOR CONTROL DEPARTMENT[150]**  
Point-of-sale advertising, 13.3 **ARC 6277** ..... 1/15/86  
Volume discount on wine purchases, 14.8 **ARC 6276**, also filed emergency **ARC 6275** ..... 1/15/86

**COMMERCE COMMISSION[250]**  
Billing procedures for large volume gas customers, 19.3(7), 19.4(2)"a," 19.4(6), 19.4(11), 19.4(15) **ARC 6292** ..... 1/15/86

**CONSERVATION COMMISSION[290]**  
Park user fee, excluded areas, 51.3 **ARC 6301** ..... 1/29/86

**HEALTH DEPARTMENT[470]**  
Reports, ch 97 **ARC 6298** ..... 1/29/86  
Advanced emergency medical care, 132.13(8), filed emergency **ARC 6283** ..... 1/15/86  
Barber examiners, 152.105, 152.106 **ARC 6281** ..... 1/15/86  
Standards for certificate of need revenue, 203.11(3)"b" **ARC 6300** ..... 1/29/86

**HUMAN SERVICES DEPARTMENT[498]**  
Community supervised living arrangements, ch 36 **ARC 6303** ..... 1/29/86  
Medical assistance, conditions of eligibility, 75.5(4)"a" **ARC 6287** ..... 1/15/86  
Medical assistance, application and investigation, 76.1 to 76.4, 76.11 **ARC 6304** ..... 1/29/86  
Medical Assistance, 78.1(2)"a"(2), 78.1(2)"e," 78.1(11), 78.1(18), 78.1(19), 78.3, 78.3(18), 78.4(1)"b"(12), 78.4(1)"c"(2), 78.4(1)"d" (1) to (3), 78.4(1)"e"(1), 78.4(1)"f"(4), (6) and (7), 78.4(1)"g," 78.4(1)"h"(1), 78.6(2), 78.11(3), 78.14(6), 78.14(7)"f," 78.26(3), 78.28, 79.8(1), 79.8(6) to 79.8(10), 79.9 to 79.11 **ARC 6288** ..... 1/15/86

**INSURANCE DEPARTMENT[510]**  
Annuity mortality tables for use in determining reserve liabilities for annuities, ch 43, filed emergency **ARC 6286** ..... 1/15/86.

**IOWA FINANCE AUTHORITY[524]**  
Title guaranty division, ch 9 **ARC 6289** ..... 1/15/86

**IOWA LOTTERY AGENCY[526]**  
Licensing, operation, purchasing procedure, instant game, on-line game, 2.2, 3.7(2)"c," 3.19, 4.4, 4.9(3), 4.9(4), 4.19, 5.2(1), 8.3(3) to 8.3(5), 8.3(7), 8.6(1), 8.7(3), ch 9 **ARC 6295**, also filed emergency **ARC 6294** ..... 1/15/86

**MERIT EMPLOYMENT DEPARTMENT[570]**  
Definitions, state service, pay plan, recruitment, application and examination, eligible lists, certification and selection, 1.1, 2.1, 2.2, 4.5(1)"b"(4), 4.5(7)"b" and "c," 4.5(17)"a," "c," "d," and "e," chs 5, 6 and 7, 8.3, 8.5, 8.8, 10.1, 11.3(3)"a"(1) **ARC 6278** ..... 1/15/86

**PLANNING AND PROGRAMMING[630]**  
Community services block grant, ch 22 **ARC 6305** ..... 1/29/86

**PUBLIC INSTRUCTION DEPARTMENT[670]**  
Driver education, motorcycle education, 6.13 **ARC 6306** ..... 1/29/86

**REVENUE DEPARTMENT[730]**  
Withholding from lottery winnings, 46.1(1)"d" **ARC 6319** ..... 1/29/86

**WATER, AIR AND WASTE MANAGEMENT[900]**  
Controlling pollution, emission standards for contaminants, 22.3(1)"c" and "d," 23.1(4), 23.3(2)"b" **ARC 6280** ..... 1/15/86

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Deferred compensation program, ch 4 **ARC 6291** ..... 1/15/86

**EMPLOYMENT AGENCY LICENSING COMMISSION[350]**  
Reports, forms, 9.4, 10.1, 10.4 **ARC 6297** ..... 1/15/86

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Class "A" energy auditors, ch 6 **ARC 6307** ..... 1/29/86  
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 Mortuary science examiners, declaratory rulings, 147.6 ARC 6311 ..... 1/29/86  
 Mortuary science examiners, continuing education, disciplinary procedures, 147.107, 147.204 ARC 6312 ..... 1/29/86  
 Speech pathology and audiology, waiver for continuing education, 156.7 ARC 6313 ..... 1/29/86

**HUMAN SERVICES DEPARTMENT[498]**

State community mental health and mental retardation services fund, 32.2(1), 32.2(2)"a"(1), 32.2(3), 32.2(4), 32.3, 32.4 ARC 6302 ..... 1/29/86

**INSURANCE DEPARTMENT[510]**

Workers' compensation group self-insurance, 56.6(4) ARC 6299 ..... 1/29/86

**IOWA LOTTERY AGENCY[526]**

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 Private investigation and private security businesses, 2.3(8), 2.4(5)"d" ARC 6321 ..... 1/29/86  
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**REVENUE DEPARTMENT[730]**

Filing returns, payment of tax, penalty and interest, 12.1, 12.3, 12.13, 30.3, 30.4, 30.4(3), 30.4(4) ARC 6316 ..... 1/29/86  
 Taxation, sales or services rendered, furnished, or performed by a county or city, 18.39 ARC 6317 ..... 1/29/86  
 Sales and use tax, security and detective services, 26.69 ARC 6318 ..... 1/29/86  
 Property, omitted assessments, 71.25 ARC 6324 ..... 1/29/86

**WATER, AIR AND WASTE MANAGEMENT[900]**

Controlling pollution, 22.5(2)"a" and "b," 22.5(4)"g," "i" and "j" ARC 6279 ..... 1/15/86

## To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>ATTORNEY GENERAL[120]</b> Co-signer notice, 15.1 IAB 1/15/86 ARC 6285 (See ARC 6284)	Conference Room Second Floor Hoover State Office Bldg. Des Moines, Iowa	February 10, 1986 10:00 a.m.
<b>BEER AND LIQUOR CONTROL DEPARTMENT[150]</b> Point-of-sale advertising, 13.3 IAB 1/15/86 ARC 6277	Conference Room Central Offices 1918 S.E. Hulsizer Ave. Ankeny, Iowa	February 6, 1986 1:00 p.m.
Volume discount on wine purchases, 14.8 IAB 1/15/86 ARC 6276 (See ARC 6275)	Conference Room Central Offices 1918 S.E. Hulsizer Ave. Ankeny, Iowa	February 6, 1986 1:00 p.m.
<b>CONSERVATION COMMISSION[290]</b> Park user fee, 51.3 IAB 1/29/86 ARC 6301	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	February 19, 1986 10:00 a.m.
<b>HEALTH DEPARTMENT[470]</b> Rescind ch 97 "Reports" IAB 1/29/86 ARC 6298	Conference Room Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	February 18, 1986 1:00 p.m.
<b>HUMAN SERVICES DEPARTMENT[498]</b> Community supervised living arrangements, ch 36 IAB 1/29/86 ARC 6303	Conference Room B Level Hoover State Office Bldg. Des Moines, Iowa	February 19, 1986 1:00 p.m.
<b>IOWA FINANCE AUTHORITY[524]</b> Title guaranty division, ch 9 IAB 1/15/86 ARC 6289	Authority Offices 550 Liberty Bldg. 6th and Grand Des Moines, Iowa	February 4, 1986 10:30 a.m.
<b>IOWA LOTTERY AGENCY[526]</b> Amendments to Definitions, ch 2; Licensing, ch 3; Operation of the lottery, ch 4; Purchasing procedure, ch 5; Instant game general rules, ch 8; On-line game general rules, new ch 9 IAB 1/15/86 ARC 6295 (See ARC 6294)	Agency Office 2015 Grand Ave. Des Moines, Iowa	February 4, 1986 1:00 p.m.

**MERIT EMPLOYMENT DEPARTMENT[570]**

Amendments to Definitions, ch 1;  
 State services and its divisions, ch 2;  
 Pay plan, ch 4; Recruitment and  
 examination, ch 5; Eligible lists, ch 6;  
 Certification and selection, ch 7;  
 Appointments, ch 8; Promotion, transfer,  
 temporary assignment and voluntary  
 demotion, ch 10; Separations, disciplinary  
 actions and reduction in force, ch 11  
 IAB 1/15/86 ARC 6278

Conference Room  
 First Floor  
 South Half  
 Grimes State Office Bldg.  
 Des Moines, Iowa

February 27, 1986  
 9:20 a.m.

**PLANNING AND PROGRAMMING[630]**

Community services block  
 grant, ch 22  
 IAB 1/29/86 ARC 6305

Conference Room  
 Division of Local  
 Government Affairs  
 Office for Planning and  
 Programming  
 523 E. 12th Street  
 Des Moines, Iowa

February 21, 1986  
 10:00 a.m.

**TRANSPORTATION DEPARTMENT[820]**

Financial assistance, [09,B] ch 1;  
 Advance allocations of state transit  
 assistance funding, [09,B] ch 2;  
 Federal transit assistance,  
 [09,B] ch 3  
 IAB 1/1/86 ARC 6239

Department of  
 Transportation Complex  
 800 Lincoln Way  
 Ames, Iowa

February 18, 1986

**WATER, AIR AND WASTE MANAGEMENT[900]**

Air quality construction  
 permit requirements, 22.3,  
 23.1, 23.3  
 IAB 1/15/86 ARC 6280

Conference Room  
 Fifth Floor  
 Wallace State Office Bldg.  
 Des Moines, Iowa

February 4, 1986  
 10:00 a.m.

**ARC 6301**  
**CONSERVATION COMMISSION[290]**  
**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 107.24, the State Conservation Commission hereby gives Notice of Intended Action to amend the following rule, Chapter 51, "Park User Fee."

The rule being amended establishes the areas managed by the parks section of the Conservation Commission that are excluded by the permit requirement.

Any interested person may make written suggestions or comments on this rule prior to February 19, 1986. Such written materials should be directed to the Director, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319-0034. Persons who wish to convey their views orally may present those views in the Wallace State Office Building, Fourth Floor Conference Room, on February 19, 1986, at 10:00 a.m. At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rule.

This rule implements Iowa Code section 107.24 and 1985 Iowa Code Supplement section 111.85.

Rule 290—51.3(111) is amended by adding the following areas alphabetically to the list of areas to be excluded from requiring a park user fee permit:

Heytman's Landing, Allamakee County  
 Lansing Boat Access, Allamakee County  
 Marble Beach Access Parking Area, Dickinson County  
 North Marquette Access, Clayton County  
 Twin Lakes State Park, Calhoun County  
 Yellow River Access, Allamakee County

**ARC 6298**  
**HEALTH DEPARTMENT[470]**  
**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 135.11(15) and 144.3, the Iowa State Department of Health hereby rescinds Chapter 97, "Reports," Iowa Administrative Code.

This rule rescission eliminates the requirement on funeral directors and embalmers to report to the Department regarding deaths for which services were provided.

A public hearing on the Notice of Intended Action to rescind Chapter 97 will be held on February 18, 1986, at 1:00 p.m. in the Fourth Floor Conference Room, Lucas State Office Building, Des Moines, Iowa.

Any person submitting written comments may do so on or before February 18, 1986, by addressing them to Mark W. Wheeler, Hearing Officer, Iowa State Department of Health, Fourth Floor, Lucas State Office Building, Des Moines, Iowa 50319.

This rule rescission is intended to implement Iowa Code chapter 144.

Rescind all of Chapter 97, "Reports," and reserve for future use.

**ARC 6300**  
**HEALTH DEPARTMENT[470]**  
**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 135.72, the State Department of Health hereby gives Notice of Intended Action to amend Chapter 203 of the Iowa Administrative Code entitled "Standards for Certificate of Need Review."

The Department of Health amends rule 203.11(135) entitled "Designated inpatient substance abuse treatment unit standards" by eliminating subrule 203.11(3), paragraph "b," and relettering the following paragraphs accordingly.

Any interested person, governmental agency or association may submit written comments on the proposed rule not later than 4:30 p.m. on February 20, 1986, to Susan Osmann, Office for Health Planning, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 135.72(1).

Rule 470—203.11(135) is amended as follows:

Subrule 203.11(3), paragraph "b," is rescinded and the following paragraphs are relettered accordingly.



**ARC 6303**  
**HUMAN SERVICES**  
**DEPARTMENT[498]**  
**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 225C.6, the Department of Human Services proposes to adopt Chapter 36, "Community Supervised Living Arrangements," Iowa Administrative Code.

The General Assembly in 1985 Iowa Code Supplement section 225C.19 directed the Department to adopt rules establishing minimum standards for the programming of community supervised apartment living arrangements and to annually approve all arrangements meeting the minimum standards.

The term apartment has been deleted from the title of the program. Under the program as developed the agency can either provide the residence as well as the services the consumer needs or can assist the consumer to secure and maintain the residence while providing the necessary services to the consumer.

Approved community supervised living arrangements may receive funding from the state community mental health and mental retardation services fund, federal and state social services block grant funds, and other appropriate funding sources, but approval is no guarantee of funding.

These rules establish standards for the governance, administration, services and living arrangements of community supervised living arrangement programs. The providers of the program will serve adults with mental illness, mental retardation, or developmental disabilities who are capable of living semi-independently in the community with some supervision.

The rules also provide for the assessment of the providers' compliance with the standards and for approval or denial of the program based on the assessment.

Representatives of provider and advocacy organizations have been directly involved in the development of these standards.

Consideration will be given to all written data, views or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before February 19, 1986.

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

Des Moines - February 19, 1986      1:00 p.m.  
 Hoover State Office Building  
 B Level Conference Room  
 Des Moines, Iowa 50319-0114

These rules are intended to implement Iowa Code section 225C.19.

**CHAPTER 36**  
**COMMUNITY SUPERVISED LIVING**  
**ARRANGEMENTS**

**PREAMBLE**

These rules set minimum standards for community supervised living arrangements. This is a program consisting of services for adults with mental illness, mental retardation, or developmental disabilities who need some assistance to enable them to live in the community but do not require the level of care and supervision provided in licensed residential care facilities. The rules allow for the flexible delivery of services and supervision necessary to meet the varied needs of these persons in a setting least restrictive to the persons being served. The intent of these rules is to allow the persons in the program to develop to their fullest potential by encouraging the availability of a normalized environment and needed services.

These rules also outline procedures for the approval of providers of this program. Providers are subject to approval under these rules in order to receive any public funding. Approval under these rules does not assure the receipt of funding. Providers must subsequently meet the requirements of the funding program to which they will be applying.

**498—36.1(225C) Definitions:**

"Academic services" are those activities provided to assist a person to acquire general information and skills which establish the basis for subsequent acquisition and application of information.

"Chief administrative officer" or a related title means the person with responsibility for the overall administration of the program.

"Community living skills training services" are those activities provided to assist a person to acquire and sustain the knowledge and skills essential to the person's independent functioning in the physical and social environment. These services may focus on the following areas:

1. Independent living skills - The skills necessary to sustain oneself in the physical environment and essential to the management of one's personal property and business.

2. Socialization skills - Those skills that include self-awareness and self-control, social responsiveness, group participation, social amenities, and interpersonal skills.

3. Communication skills - Those skills that include expressive and receptive skills in verbal and nonverbal language including reading and writing.

4. Leisure time and recreational skills - The skills necessary for a person to use leisure time in a manner which is satisfying and constructive to the person within the normal patterns of the community.

"Department" means the Iowa department of human services.

"Developmental disabilities" are those conditions resulting from a physical or mental impairment which occurs before the age of twenty-two and which substantially limit a person's ability to carry out major life activities and which are severe enough that services will probably be needed throughout the person's life. Persons with developmental disabilities experience more difficulty in reaching an independent level of existence because of the severity and early onset of the conditions.

"Diagnostic and evaluation services" are those activities designed to identify a person's current functioning

**HUMAN SERVICES DEPARTMENT[498] (cont'd)**

level and those factors which are barriers to maintaining the current level or achieving a higher level of functioning. These activities provide sufficient information in order to identify appropriate services and service settings necessary to assist the person to maintain the current level or achieve a higher level of functioning. These services may focus on the following:

1. Screening - The identification of the possible existence of conditions, situations, or problems which are barriers to a person's ability to function.

2. Diagnosis - The investigation and analysis of the cause or nature of a person's condition, situation, or problem.

3. Evaluation - The determination of the effects of a condition, situation, or problem on a person's level of functioning and the appropriate services and service settings to assist the person to maintain or achieve a higher level of functioning.

"Individual program plan" means a written goal-oriented plan of services developed for a consumer by the consumer's interdisciplinary team.

"Individual service plan" means a plan developed by a referral agency of the general type of program needed by a consumer which includes the identification of services and types of living arrangements appropriate to the person's level of functioning and needs.

"Interdisciplinary team" means the group of persons with varying skills, perspectives and knowledge, who cooperatively work to develop and evaluate the consumer's individual program plan. The interdisciplinary team consists of, at a minimum, the consumer, the consumer's guardian or legally designated other, if applicable, referral agency representative, the service co-ordinator, other appropriate staff members, and other providers of services. Other persons relevant to the consumer's needs may be included.

"Least restrictive environment" means the environment in which effective service intervention into the life of a person is least intrusive, least disruptive of the person's life, and that represents the least departure from normal patterns of living.

"Legal services" are those services designed to assist persons to exercise their legislatively enacted rights.

"Mental illness" is a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life. Mental disorders include the organic and functional psychoses, neuroses, personality disorders, alcoholism and drug dependence, behavioral disorders and other disorders as defined by the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM III).

"Mental retardation" refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the development period. Mental retardation is a lifelong condition which originates at birth or in early childhood and also varies by degree of dysfunction. The four commonly used mental retardation classifications of mild, moderate, severe and profound, are based on intelligence quotient scores, psychological testing and social adjustment.

"Normalization" means providing assistance to a person to obtain an existence as close to the norm as possible by making available to the person patterns and conditions of everyday life that are as close as possible to the norms and

patterns of mainstream society or that which is usual for a given region, community, or ethnic group.

"Self-administer medication" means the consumer retains the responsibility for taking the medication.

"Self-care training services" are those activities provided to assist a person to acquire and sustain the knowledge, habits and skills essential to the daily care of the person.

"Service co-ordination services" are those activities provided to assure that sufficient information has been obtained to identify appropriate services and service settings, to provide assistance to a person in obtaining appropriate services, to co-ordinate the delivery of services, and to provide monitoring to assure the continued appropriate provision of services. This service includes personal advocacy activities which assist the person to realize the rights to which the person is entitled and remove barriers to meeting the person's needs. (These services are also known as case management.)

"Service co-ordinator" is the person designated to provide service co-ordination services for a given consumer. (This person is also known as a case manager.)

"Support services" are those activities which provide personal care and assistance, and property maintenance in order to allow a person to live in the most appropriate setting.

"Transportation services" are those activities designed to assist a person to travel from one place to another to obtain services or carry out life's activities.

"Treatment services" consist of those services designed to assist a person to maintain or improve physical, emotional, and behavioral functioning or to prevent conditions that would present barriers to a person's functioning. These services may focus on the following:

1. Cognitive-behavioral treatment - Those activities designed to assist a person to identify issues affecting the person's ability to function and examine beliefs, emotions, attitudes, or behaviors so that the person can identify options and determine what actions to take in response to the physical, emotional and social environment.

2. Physical-physiological treatment - Those activities designed to prevent, halt, control, relieve, or reverse physiological symptoms or conditions which interfere with the functioning of the human body.

"Vocational training services" are those activities designed to familiarize a person with production requirements and to maintain or develop the person's ability to function in a work setting. This service may include activities which allow or promote the development of skills, attitudes, and personal attributes appropriate to the work setting.

**498—36.2(225C) Community supervised living arrangement.** A community supervised living arrangement is the provision of, or assistance to secure a residence, and supervision to one or more persons who have mental illness, mental retardation, or a developmental disability and are capable of living semi-independently in a community setting. The persons do not need the level of care and supervision provided in a licensed residential care facility.

**36.2(1)** Facilities providing group living arrangements in such a manner that the state department of health has determined that licensure under Iowa Code chapter 135C for health care facilities is not required, shall be considered incorporated within this definition and shall comply with rules of this chapter.

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

**36.2(2)** The type and number of hours of supervision provided to each consumer residing in a community supervised living arrangement shall be determined by the abilities and needs of the consumer. The consumer shall be informed of the type and schedule of supervision.

a. Supervision shall be provided which assures every consumer is receiving proper nutrition, adequate shelter, clothing, physical and emotional protection and medical care.

b. The provider shall ensure that twenty-four-hour assistance is available to each consumer in the event of an emergency.

c. The provider shall have written policies and procedures governing the methods of handling prescriptions and over-the-counter medications before admitting any consumer who is unable to self-administer medications. The policies and procedures shall minimally include the following:

(1) The process for identifying consumers who are unable to self-administer medication.

(2) A statement that the provider will meet all federal, state and local laws or regulations relating to the procurement, storage, dispensing, administration, and disposal of medications.

(3) A statement that prescribed medications shall be administered only in accordance with the instructions of the attending physician, dentist, podiatrist, or optometrist.

(4) Provision for the documentation of the administration of medication, to minimally include the type and amount of medication, the time and date, the route the medication was administered, and the signature of the person administering the medication.

(5) The process for administering PRN medication.

(6) The process for reporting errors in the administration of medication including early or late medication times.

(7) The process for identifying and the immediate reporting of suspected adverse reactions to medications.

(8) The requirement that all staff who deal with or administer medications are trained in the areas identified above.

**498—36.3(225C) Community supervised living arrangement program of services.** A community supervised living arrangement program of services is those services provided in accordance with the consumer's individual program plan, to assist consumers in achieving their highest potential in self-sufficiency and independence in the least restrictive environment. The provider may deliver needed services or use services available from other providers. If an ongoing service is delivered by another provider, an agreement shall be negotiated by both providers that services are provided in accordance with the standards of this chapter.

**36.3(1)** Service co-ordination and diagnostic and evaluation services shall be provided to each consumer. The provider shall ensure the following services are available to each consumer according to individual needs:

- a. Academic.
- b. Community living skills training.
- c. Legal.
- d. Self-care training.
- e. Support.
- f. Transportation.
- g. Treatment.
- h. Vocational training.

**36.3(2)** If needed services which are in accordance with the standards of this chapter are not available and accessible to the consumers, the provider shall document the actions which were taken to locate and access or deliver those services. The documentation shall include the identification of the type of consumers' needs which will not be met due to the lack of availability of services. The documentation shall be submitted to the department.

**498—36.4(225C) Governance.**

**36.4(1)** The provider shall be a provider in the public sector or established and operating as a legal entity in the private sector.

**36.4(2)** The provider's governing body, when applicable, shall provide oversight, guidance and policy direction for the operation of the provider's program. The roles and responsibilities of the governing body and the policies of the governing body shall be specified in writing.

**498—36.5(225C) Administration.**

**36.5(1)** The provider shall have a chief administrative officer who meets qualifications of education, experience, personal factors and skills as specified in written policy of the provider or governing body when applicable, and in accordance with any existing laws which may apply.

**36.5(2)** The provider shall have a written annual operating plan which reviews previous performance of the provider and establishes future program needs and services to be provided, and provides information on how the provider co-ordinates services with other relevant providers. The plan shall address the fiscal and personnel resources necessary to implement the program.

**36.5(3)** The provider shall have written policies and procedures for personnel administration which shall provide for the following:

a. Written job descriptions or agreements for all employees and consultants, which include duties and responsibilities; education, experience, or other requirements; and supervisory relationships.

b. Annual performance evaluation of all employees and consultants which is dated and signed by the employee or consultant and the supervisor.

c. Personnel records which are current, accurate, and complete and confidential to the extent allowed by law.

d. Roles, responsibilities, and limitations of student interns and volunteers.

e. An orientation program for all newly hired employees and consultants which includes an introduction to the provider's organizational structure, procedures and services, a discussion of the provider's personnel policies and procedures, and a discussion of the provider's safety plan.

f. An orientation program for new volunteers and student interns.

g. An ongoing continuing education or in-service program for all employees.

h. Equal opportunity and affirmative action employment practices.

i. Procedures to be used when disciplining an employee including documentation of actions, grievance procedures and establishment of final authority in the grievance procedure. Disciplinary procedures shall address discipline in the event of abuse of consumers by employees.

**36.5(4)** The provider shall have written policies and procedures for fiscal administration which shall address the following:

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

a. Preparation, maintenance and administration of an annual budget approved by the governing board, if applicable.

b. Utilization of an accounting system in accordance with sound accounting practices.

c. Establishment of rates for services.

d. Provision for an annual independent fiscal audit of the provider or for an annual detailed financial statement prepared by the provider or an independent fiscal agent that provides a review of receipts and disbursements, and a statement of fund balances.

e. Establishment of an insurance program which includes a statement of the provider's responsibility relative to professional liability insurance for employees and consultants.

**36.5(5)** The provider shall have written policies and procedures for the reporting of dependent adult abuse to the department. (See 498—chapter 176)

**36.5(6)** The provider shall have written policies and procedures for civil rights, concerning the exercise and protection of the consumer's human and civil rights, which shall be available to the consumer, guardian or legally designated other, if applicable, referral agencies, and the general public.

a. The consumer's rights shall include, but need not be limited to:

(1) Freedom from unlawful discrimination based on race, color, creed, citizenship, national origin, sex, age, religion, or disability.

(2) Freedom to communicate by letter, telephone, in person, or by other means, and to visit and to receive visitors.

(3) Freedom of choice to include the right to refuse services, movement, and self-determination in activities of daily living.

(4) Freedom to exercise one's rights as a citizen, including voting.

(5) The right to manage one's own finances and possessions:

(6) The right to practice one's own religion.

(7) The right to privacy.

(8) The right to be treated with respect and addressed in a manner which is appropriate to the consumer's chronological age.

(9) The right to appeal any provider or staff action.

(10) The right to have all consumer records kept confidential and released only as provided by law or similar rules or regulations.

(11) The right to enter into contracts.

b. All rights are limited only to the extent determined by a court of law or that the consumer, when exercising these rights, unduly infringes upon the rights of others.

**36.5(7)** The provider shall have written policies and procedures that provide for the establishment of an agreement between the consumer and the provider outlining the consumer's responsibilities in abiding by the rules and expectations of the community supervised living arrangement. The policies and procedures shall also define the responsibilities of the provider and provide for a written contract between the provider and the consumer or guardian or legally designated other which specifies the services to be provided to the consumer by the provider, the cost of those services, the fee to be charged to the consumer, and the source(s) of payment.

**36.5(8)** The provider shall have written policies and procedures that provide that all consumers or their

guardians or legally designated others, if applicable, are informed of their right to appeal the provider's policies, procedures or any staff action and that written appeal procedures are established.

**36.5(9)** The provider shall have written policies and procedures for maintaining complete consumer records and for ensuring the confidentiality of the records. The policies and procedures shall at a minimum provide that:

a. The consumer record shall be kept in a location which assures the confidentiality of the information contained therein.

b. No information personally identifying the consumer will be released or disclosed without the written consent of the consumer or guardian or legally designated other.

(1) The consumer has the right to refuse to give the release of information.

(2) Services will not be contingent upon the consumer's decision concerning authorization of release of information.

(3) A release of information form shall be used which specifies to whom the information shall be released, what is to be released, the reason for the information being released and how the information is to be used, and the period of time for which the release is in effect.

(4) Exceptions to these policies will be permitted only for disclosures required by law, bona fide medical and psychological emergencies, and provider approval, certification or licensure purposes.

c. Authorized staff having access to records shall be trained in and aware of the need to maintain confidentiality and abide by confidentiality requirements.

d. The service co-ordinator pursuant to subrule 36.6(4) shall be responsible for ensuring that information contained in the record is complete, current, and accurate. The consumer record shall minimally contain:

(1) Consumer identifying information.

(2) Name, address and telephone number of the next of kin or guardian or legally designated other.

(3) Name, address and telephone number of the person to be notified in case of emergency.

(4) Name, address and telephone number of physician and hospital of choice.

(5) Source(s) of income.

(6) Legal status.

(7) Results of diagnoses and evaluations.

(8) Individual program plan, progress reports and related entries.

(9) Social history.

(10) Medical information to include drug and food allergies and current prescribed and nonprescribed medications being taken by the consumer.

(11) Other personal identifying information which would be helpful in the case of a search for a consumer or other emergency, (i.e., distinguishing physical or behavioral characteristics, patterns, habits, preferences, places frequented, etc.)

**36.5(10)** The provider shall have written policies and procedures to include periodic review and evaluation of services and service provision, including the annual development of the operating plan incorporating the results of the evaluation. The evaluation shall include, but is not limited to, an evaluation of the following:

a. Type and number of services provided.

b. Staffing patterns.

c. Measures of consumer outcome.

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

**498—36.6(225C) Program and services.**

**36.6(1)** Each provider of a community supervised living arrangement program shall have a sufficient number of qualified staff available to carry out all aspects of the program. The number and qualifications of staff shall be consistent with the consumers' needs and reflected in the provider's operating plan and personnel policies and procedures.

**36.6(2)** Each provider of a community supervised living arrangement program shall have written policies and procedures for preadmission and admission which shall be available to referral sources and the general public. The policies and procedures shall address each of the following:

a. The requirement that only persons eighteen years of age or older or legally emancipated juveniles shall be admitted.

b. The requirement that only persons shall be admitted who need the level and type of supervision and services which can be provided in a community supervised living arrangement program.

c. The prerequisite consumer skills for admission.

d. Other admission criteria (i.e., age, type and degree of disability).

e. Nondiscriminatory admissions without regard to race, color, creed, national origin, sex, or religion.

f. A description of services.

g. Cost rates for services and service-related activities and arrangements available to the consumer for payment.

h. The requirement that each consumer shall have a current medical and dental examination, completed by or under the supervision of a physician or dentist, within six months prior to admission, which includes a re-examination date or schedule.

i. The requirement that each consumer shall have a current evaluation of skills and needs pursuant to subrule 36.6(3) and an individual program plan developed pursuant to subrule 36.6(6).

j. Waiting lists and selection priorities.

k. Referral of those not appropriate for admission.

l. Receipt of individual service plan from the referring agency when applicable.

**36.6(3)** Diagnostic and evaluation services shall be provided to each consumer. An annual evaluation of each consumer shall be completed no later than twelve months from the date of the last available evaluation. The evaluation shall be completed by an interdisciplinary team composed of representatives from such professions, disciplines, or service areas as are relevant to the particular evaluation. The evaluation shall be of sufficient detail to identify the consumer's current level of functioning and need for services in the following areas: Self-care training, treatment, vocational, academic, and community living skills to include the consumer's need for services to develop the skills necessary to obtain and maintain living arrangements and to learn the rights and responsibilities of community living.

a. If an evaluation is available from the referral source, the evaluation results shall be secured by the provider prior to the admission of the consumer. The evaluation shall meet the requirements of subrule 36.6(3).

b. If an evaluation is not available from the referral source, or if the available evaluation does not contain all the required information, the provider shall ensure the consumer is evaluated to the extent necessary to determine if the consumer meets the criteria for admission. For those admitted, the remainder of the evaluation shall be

completed prior to the development of an individual program plan pursuant to subrule 36.6(6).

c. Additional diagnostic and evaluation services determined by the interdisciplinary team to be needed shall be delivered or arranged by the provider.

**36.6(4)** Service co-ordination services shall be provided to each consumer.

a. Service co-ordination services shall be provided by a service co-ordinator designated for each consumer. The provider shall specify in written policies and procedures the qualifications required of the service co-ordinator.

(1) Minimal qualifications shall include a high school diploma or the equivalent and four years of post high school experience in the delivery, planning, co-ordination, or administration of human services.

(2) The policies and procedures may allow for the substitution of education above the high school level in the social or behavioral sciences with each year of education substituting for one year of experience.

b. The service co-ordinator shall be responsible for the co-ordination of services to the consumer to include co-ordination of the following:

(1) Social history development pursuant to subrule 36.6(5).

(2) Individual program planning pursuant to subrule 36.6(6) and ensure availability, implementation, and co-ordination of services delivered by other providers.

(3) Transfer or discharge as required pursuant to subrule 36.6(7).

(4) Any other activities needed to provide service co-ordination services as defined.

**36.6(5)** A social history shall be completed for each consumer.

a. The service co-ordinator shall secure or compile a social history on each consumer within thirty days of the consumer's admission.

b. If the social history was secured from another provider, the information contained therein shall be reviewed within thirty days of the consumer's admission. The date of the review, signature of the staff reviewing the history and summary of significant changes to the information shall be entered in the consumer's record.

c. Incorporated within the individual program plan process shall be an annual review of the information contained within the social history.

(1) Significant changes to the information shall be noted and documented in an addendum to the social history, dated, and signed by the person writing the addendum.

(2) The co-ordination of all reviews shall be the responsibility of the service co-ordinator.

d. The social history shall minimally contain:

(1) Legal status of the consumer.

(2) A description of previous living arrangements.

(3) A description of previous services received and a summary of current service involvements.

(4) A summary of significant medical conditions, including, but not limited to, illnesses, hospitalizations, past and current drug therapies and special diets.

(5) Substance abuse history.

(6) Work history.

(7) Educational history.

(8) Relationship with family, significant others, and other support systems.

(9) Cultural and ethnic background and religious affiliation.

(10) Hobbies and leisure time activities.

**HUMAN SERVICES DEPARTMENT[498] (cont'd)**

**36.6(6)** An individual program plan (IPP) for each consumer shall be developed by an interdisciplinary team. The IPP shall be based on the individual service plan of the referring agency, if available, the information contained in the social history, the need for services identified in the evaluation, and any other pertinent information. Additional consideration shall be given to the need for legal, support, or transportation services. Services to the consumer shall be provided in the least restrictive environment and shall incorporate the principle of normalization.

a. The service co-ordinator shall be responsible for coordinating the development, implementation and review of the IPP.

b. The IPP shall be developed within thirty days following the consumer's admission to the program and no less than annually thereafter.

(1) The IPP shall be in writing, dated, signed by the interdisciplinary team members and maintained in the consumer's record.

(2) Written notice of the IPP development shall be sent to all persons included in the interdisciplinary team two weeks in advance of the scheduled meeting.

c. The IPP shall include the following:

(1) Goals which are general statements of expected accomplishments to be achieved in meeting identified needs.

(2) Objectives which are specific, measurable statements of outcomes or accomplishments which are necessary for progress toward the goal.

(3) The specific service(s) to be provided to achieve the objectives, the person(s) or agency(ies) responsible for providing the service(s), and the date of initiation and anticipated duration of service(s).

d. The IPP shall state the evaluation procedure for determining if objectives are achieved which shall include the incorporation of a continuous process for review and revision.

(1) There shall be a review of the IPP by the service co-ordinator, other staff and the consumer at least semi-annually.

(2) The review shall contain: A written report of the consumer's progress toward objectives; the need for continued services and any recommendation concerning alternative services or living arrangements; any recommended change in guardianship status, if applicable.

(3) The written report of the review shall reflect those involved in the review, and the date of the review, and shall be maintained in the consumer's record.

e. There shall be procedures for recording the activities of each service provider toward assisting the consumer in achieving the objectives in the IPP and the consumer's response. The procedures shall include a mechanism for co-ordination of all service providers.

(1) An entry into the consumer's record shall be made by staff whenever possible at the time of service provision but no later than seven days from service provision.

(2) The entry shall be dated and signed by the person providing service.

(3) When the service includes ongoing activities which occur more than once a week, a summarized entry may be made weekly by staff in the consumer's record.

(4) The entry shall be written in terms of behavioral observations and specific activities. Entries that involve subjective interpretations of a consumer's behavior or progress shall be clearly identified as such and shall be

supplemented with the behavioral observations which were the basis of the interpretation.

(5) The service co-ordinator shall obtain quarterly verbal or written progress reports from other service providers and this information shall be entered in the consumer's record.

**36.6(7)** Each provider shall have written policies and procedures regarding transfer of a consumer to another program or discharge from the community supervised living arrangement program.

a. The policies and procedures shall provide for assurances that any transfer or discharge is in the best interest of the consumer and that the consumer's needs will be met by the transfer or discharge in the least restrictive manner as defined by the consumer's needs.

b. The policies and procedures shall ensure that discharge planning is incorporated within the individual program plan development and review process.

c. The policies and procedures shall incorporate a mechanism providing for continuity of program and services to the consumer upon transfer or discharge.

**498—36.7(225C) Living arrangements.**

**36.7(1)** For programs providing the residence as part of the community supervised living arrangement program, the residence shall meet all applicable health, fire, safety, sanitation and zoning codes.

a. Each residence shall be clean, well maintained, safe, free from obvious hazards, provide proper heating, cooling and ventilation and be of sufficient size and design to accommodate the needs of the consumer in conformance with the consumer's individual program plan.

b. Each residence shall provide for all the functions characteristic of a normal home including, but not limited to, meal preparation, sleeping, bathing, mail and access to telephone.

c. The layout of the rooms shall permit ready access to common areas while guarding the privacy of bedroom and bathroom areas.

d. For residences constructed after the implementation of these rules:

(1) The residence shall be located in an area in the community that allows for consumer access to community services and resources or public transportation.

(2) The residence shall not be constructed in a design or location in the community that readily identifies its occupants as different from any other citizen or that isolates, stigmatizes or devalues the occupants within the community in any way.

e. For residences constructed prior to the implementation of these rules, subrule 36.7(1), paragraph "d," shall apply only to the extent that the location or construction of the residence does not pose a threat or risk to the health, safety, or welfare of the occupants or unduly interfere with the occupants' programmatic needs.

If the residence does not allow the consumer access to community services and resources or public transportation, transportation services in compliance with Iowa Code chapter 601J shall be provided.

**36.7(2)** For community supervised living arrangement programs which do not provide the residence, the program shall provide assistance to the consumer to obtain a residence which is comparable with the requirements of subrule 36.7(1).

**36.7(3) Safety plan.**

a. The provider shall have written policies and procedures to establish a safety plan for each living arrange-

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

ment provided which identifies potential hazards and reduces or eliminates the hazards, and defines the tasks and responsibilities of staff and consumers in the event of an emergency situation. The plan shall be reviewed with the consumer at least quarterly.

b. Where the living arrangement is not provided, the provider shall have written policies and procedures for the development by staff and the consumer of a plan to be followed in the event of an emergency. The plan shall also identify potential hazards and actions to reduce or eliminate the hazards. The plan shall be reviewed with the consumer at least quarterly.

**498—36.8(225C) Application for approval and renewal of approval.** The provider shall submit an application to the department for consideration for approval or renewal of approval using Form 470-2070, Application for Approval of a Community Supervised Living Arrangement Program. The department shall supply this form to the provider upon request. The application shall be submitted whether the provider wants to be considered for approval or renewal of approval based on the department's assessment of the provider's compliance with the standards set forth in this chapter or based on deemed status granted pursuant to rule 498—36.12(225C).

**36.8(1)** The provider shall apply no less than ninety days prior to the date the provider desires an approval decision. A provider who decides to withdraw an application shall immediately notify the department. A previously approved provider who decides not to apply for renewal of approval shall notify the department of that decision.

**36.8(2)** The department may determine that a review of approval is necessary prior to the annual review. The department may at any time review an approved program if there has been consumer or public complaints or for other significant reasons. The review may include a site visit.

**498—36.9(225C) Assessment of compliance with standards.** Assessment of compliance with the standards set forth in this chapter shall be made by review of material submitted by the provider to the department or by a site visit conducted by department staff.

**36.9(1)** Upon receipt of an application submitted pursuant to rule 498—36.8(225C), the department shall inform the provider, in writing, of the information to be submitted to the department. The information shall be received by the department no less than sixty days but no more than ninety days prior to the date the provider desires an approval decision. The information shall include, at a minimum:

- a. The provider's operating plan.
- b. A completed Self-Survey Form, Form 470-2068.
- c. A narrative which sets forth a plan of corrective action with timeframes for implementation for each standard that the provider indicates on the self-survey form is out of compliance.
- d. A statement dated and signed by the chief administrative officer and president or chairperson of the governing body, if applicable, that all information submitted to the department is accurate and complete.

**36.9(2)** The department may request the provider to supply subsequent reports on implementation of a corrective action plan submitted pursuant to subrule 36.9(1), paragraph "c."

**36.9(3)** The department may conduct a site visit to verify all or part of the information submitted pursuant to subrule 36.9(1) or 36.9(2). A site visit may be conducted at the discretion of the department. The department will furnish the provider with notice appropriate to the reason for the visit. This does not preclude unannounced site visits.

**498—36.10(225C) Notification.** Within sixty days of receipt of the information submitted by the provider pursuant to subrule 36.9(1) the department shall review the material and communicate one of the following decisions in writing to the provider:

**36.10(1)** Information submitted by the provider indicates that the provider is in compliance with the standards and the program is approved.

**36.10(2)** Information submitted by the provider indicates that there are instances of noncompliance with the standards, but the provider has submitted a plan of corrective action with timeframes for implementation which is acceptable to the department and the program is approved.

**36.10(3)** Information submitted by the provider indicates that there are instances of noncompliance. The provider has not submitted a plan of corrective action with timeframes for implementation which is acceptable to the department and the program is not approved.

**498—36.11(225C) Period of approval.** Provider approval shall become effective on the date the department grants approval and shall terminate one year from that date unless extended or revoked by the department.

**36.11(1)** The department may grant an extension to the period of approval for the following reasons:

a. There has been a delay in the department's development of an approval decision which is beyond the control of the provider or the department.

b. The provider has requested an extension to permit the provider to prepare and obtain department approval of a corrective action plan.

The length of the extension shall be established by the department on a case-by-case basis.

**36.11(2)** The department may, at any time, revoke the provider's approval for any of the following reasons:

a. Findings of a site visit indicate that there are instances of noncompliance with the standards which were not identified on the self-survey form or that the provider has failed to implement the corrective action plan submitted pursuant to subrule 36.9(1).

b. The provider has failed to provide information requested pursuant to subrule 36.9(2).

c. The provider refuses to allow the department to conduct a site visit pursuant to subrule 36.8(2) or 36.9(3).

**498—36.12(225C) Deemed status.** The department may grant deemed status on a case-by-case basis to providers who have been accredited by a nationally recognized accrediting agency or accredited or approved by a state agency in instances where the agency's standards are comparable to the standards in this chapter.

**36.12(1)** The provider seeking approval through deemed status shall submit the following to the department:

a. A copy of the findings of the review and evaluation by the accrediting or state agency.

b. Application for approval as described in rule 498—36.8(225C).

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

**36.12(2)** If the accrediting or state agency did not review and evaluate the provider for the provision of all components of the community supervised living arrangement program, the department shall assess the provider's compliance with the relevant standards not specifically evaluated by the other agency.

**498—36.13(225C) Adverse action.**

**36.13(1)** Notice of adverse action and the right to appeal the actions (denial or effective date of the approval decision, and revocation) shall be given to applicants and approved providers in accordance with 498—chapter 7.

**36.13(2)** An applicant or approved provider affected by an adverse action may request a hearing by means of a written request directed to the division of mental health, mental retardation and developmental disabilities of the department within thirty days after the date the official notice was mailed containing the nature of the adverse action.

**ARC 6304****HUMAN SERVICES  
DEPARTMENT[498]****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 in Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 76, "Application and Investigation," appearing in the Iowa Administrative Code.

Current manual procedure requires Department staff to complete an automatic redetermination prior to canceling a person from an ADC-related Medicaid coverage group to determine if the person is eligible under another ADC-related coverage group. This redetermination is required by federal regulations and state law.

It was initially believed that putting the requirement for automatic redetermination in the Employees' Manual would be sufficient. However, as part of the settlement of one of the issues in a recent lawsuit the Department agreed to formalize this procedure through the rule making process—this amendment does that.

These amendments also list exceptions to the thirty-day application processing standard, correct references to the Department and remove discriminatory language.

Consideration will be given to all written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before February 19, 1986.

These rules are intended to implement Iowa Code section 249A.4.

ITEM 1. Amend rule 498—76.1(249A) as follows:

**498—76.1(249A) Place of filing.** Application should be filed in the county department of ~~social welfare~~ *human services* in the county where the applicant resides. However, if medical care is required by the applicant while visiting in another county, application may be made in that county. The latter county will complete the forms used in the application process and forward them to the county of residence which will complete the determination of eligibility. Those persons eligible for supplemental security income and those who would be eligible when living outside a medical institution shall make application at the social security district office.

ITEM 2. Amend rule 498—76.2(249A) as follows:

**498—76.2(249A) Method of filing.** Application may be made by the person ~~himself~~, or by someone acting responsibly in ~~his~~ *the person's* behalf. A person filing an application in behalf of the applicant should be a relative, friend or other person interested in the applicant's welfare and familiar with ~~his~~ *the applicant's* affairs.

ITEM 3. Amend rule 498—76.3(249A) as follows:

**498—76.3(249A) Investigation.** Applications will be investigated by the county department of ~~social welfare~~ *human services* and a decision rendered regarding eligibility within thirty days of the date of application: *unless one or more of the following conditions exist:*

**76.3(1)** *The application is being processed for eligibility as defined in rule 498—86.4(249A).*

**76.3(2)** *A companion application on the client's behalf for supplemental security income benefits is pending.*

**76.3(3)** *The application is pending due to completion of the requirement in subrule 75.1(7).*

**76.3(4)** *The application is pending due to nonreceipt of information which is beyond the control of the client or department.*

**76.3(5)** *The application is pending due to the disability determination process performed through the department.*

ITEM 4. Amend rule 498—76.4(249A) as follows:

**498—76.4(249A) Notification of decision.** The applicant will be notified in writing of the decision of the county department of ~~social welfare~~ *human services* regarding ~~his~~ *the applicant's* eligibility for medical assistance. If ~~he~~ *the applicant* has been determined to be ineligible an explanation of the reason will be provided.

ITEM 5. Amend 498—chapter 76 by adding the following new rule:

**498—76.11(249A) Automatic redetermination.** Whenever an ADC-related Medicaid recipient no longer meets the eligibility requirements of the current coverage group, an automatic redetermination of eligibility for other ADC-related coverage groups shall be made. Medical assistance shall continue pending the outcome of the redetermination. When the redetermination is completed, the person shall be notified of the decision in writing.



**ARC 6305**  
**PLANNING AND**  
**PROGRAMMING[630]**  
**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 Iowa Code section 7A.3, the Office for Planning and Programming hereby gives Notice of Intended Action to rescind the existing Chapter 22 and adopt new language in lieu thereof. Chapter 22, "Community Services Block Grant," of the Iowa Administrative Code relates to the program established by P.L. 97-35 which makes available to the state of Iowa funds to provide a range of antipoverty services to communities.

The Office for Planning and Programming has amended and renumbered for the purpose of deleting references to outdated grantee application forms and clarifying administrative policies concerning equipment purchases, miscellaneous expenditures, prior year fund use, and work program and budget amendments. These proposed rules also make changes to conform with new federal requirements affecting audits, designation of community action agencies and suspension or termination of grantee funding.

Any interested persons may make written suggestions or comments on these proposed rules to the Division of Local Government Affairs, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319 on or before February 20, 1986. A public hearing will be held on February 21, 1986, at 10:00 a.m. in the Division of Local Government Affairs Conference Room. Any person wishing to be placed on the agenda should notify the Office for Planning and Programming of their name, organization (if applicable) and the area of their intended comment at the above address, or phone 515/281-3924 by the close of business February 20, 1986.

These rules are intended to implement Iowa Code sections 7A.21 to 7A.28 and Public Law 97-35.

Rescind 630—chapter 22 and insert the following in lieu thereof:

**CHAPTER 22**  
**COMMUNITY SERVICES BLOCK GRANT**

**630—22.1(7A) Purpose.**

**22.1(1)** The community services block grant program as established by Title VI, Subtitle B, Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, makes available to the state of Iowa funds to be used:

a. To provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem;

b. To provide activities designed to assist low-income participants including the elderly poor:

- (1) To secure and retain meaningful employment;
- (2) To attain an adequate education;
- (3) To make better use of available income;
- (4) To obtain and maintain adequate housing and a suitable living environment;

(5) To obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including the need for health services, nutritious food, housing, and employment-related assistance;

(6) To remove obstacles and solve problems which block the achievement of self-sufficiency;

(7) To achieve greater participation in the affairs of the community; and

(8) To make more effective use of other programs related to the purposes of this program;

c. To provide on an emergency basis for the provision of supplies and services, nutritious foodstuffs, and related services, as may be necessary to counteract conditions of starvation and malnutrition among the poor;

d. To co-ordinate and establish linkages between governmental and other social services programs to assure the effective delivery of services to low-income individuals; and

e. To encourage the use of entities in the private sector of the community in efforts to ameliorate poverty in the community.

**22.1(2) Reserved.**

**630—22.2(7A) Definitions.** For the purpose of these rules, unless otherwise defined, the following shall govern:

"CAA" means community action agency.

"Community action agency, community action program or eligible entity" shall 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.

"CSBG" shall mean the community services block grant program.

"OPP" means the office for planning and programming.

"Poverty line" means the official poverty line established by the director of the federal Office of Management and Budget. The secretary of the Department of Health and Human Services revises the poverty line annually and this poverty line multiplied by one hundred twenty-five percent shall be used as a criteria of eligibility in the community services block grant program.

"Program year" refers to the year beginning October 1 and ending the succeeding September 30. The program year is numbered for that year in which it ends. Funding may extend beyond the program year in which it is awarded.

"Suspension" means temporary withdrawal of the eligible entity's authority to obligate funds pending corrective action by the eligible entity.

"Termination" means permanent withdrawal of the eligible entity's authority to obligate funds before that authority would otherwise expire. If an eligible entity's authority to obligate funds is terminated, no funds may be obligated by the eligible entity after the effective date of the termination. It may also mean the voluntary relinquishment of this authority by the eligible entity.

**630—22.3(7A) Apportionment distribution.**

**22.3(1)** Iowa apportionment. There is appropriated to OPP from the fund created by Iowa Code section 8.41, subsection 1, funds to implement the community services block grant as described under Public Law 97-35, Title VI, Subtitle B. The agency shall expend the funds appropriated as provided in the federal law, making the funds available in conformance with these rules.

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

**22.3(2) Distribution to eligible entities.** An amount no less than ninety-five percent of the funds received according to subrule 22.3(1) shall be distributed to eligible entities in accordance with 1985 Iowa Acts, chapter 268. The director of the office for planning and programming shall allocate not less than ninety percent of the amount of the block grant to eligible entities based upon the size of the poverty-level population in the area represented by the community action areas compared to the size of the poverty-level population in the state.

**22.3(3) Poverty-level population.** The state shall use 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.** OPP shall reserve for its administrative expenses of the program no more than five percent of the state's apportioned amount described in subrule 22.3(1).

**22.3(5) Local share.** There shall be no local share required under this program.

**630—22.4(7A) Eligibility requirements.** The eligibility requirements for participation in the community services block grant program are as follows:

**22.4(1) Organization.** The organization must meet the definition of an eligible entity as defined in rule 22.2(7A).

**22.4(2) Accounting system.** Any private agency must obtain an accounting system certification in accordance with Iowa Code section 7A.8, if the total amount of grants and contracts received by the organization from the state during the program year will exceed one hundred fifty thousand dollars.

**22.4(3) Board composition.** In the case of a community action agency or nonprofit private organization, each board will be constituted so as to assure that:

a. One-third of the members of the board are elected public officials, currently holding office, or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointive public officials may be counted in meeting such one-third requirement;

b. At least one-third of the members are persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served; and

c. One-third shall be persons who are members or representatives of business, 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 subrule 22.4(3), paragraphs "a" and "b."

**22.4(4) Public agency advisory boards or delegate agencies.** Notwithstanding subrule 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.

**630—22.5(7A) Application submission.** All eligible entities shall utilize the community services block grant "combined application and work program" as provided by OPP for the purpose of making application. The allocation of funds to eligible applicants is on a noncompetitive basis.

**22.5(1) Timing.** Eligible entities shall be informed in writing of the due date for application and the amount of their allocation in accordance with subrule 22.3(2).

**22.5(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 OPP 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 for Planning and Programming, Division of Local Government Affairs, 523 E. 12th Street, Des Moines, Iowa 50319, or by calling 515/281-3951.

**22.5(3) Nondiscrimination provisions.** Applicants must assure in their applications that no person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this program. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

**630—22.6(7A) Review and approval of applications.**

**22.6(1) Compliance review.** All activities proposed for funding shall be reviewed by community services block grant program personnel for:

a. Compliance with the specific purposes outlined in rule 22.1(7A);

b. Inclusion of assurances that the applicant will conduct the program in compliance with all applicable laws;

c. Inclusion and proper completion of all forms and instructions included in the application package; and

d. Compliance with subrule 22.4(2) relative to obtaining an accounting system certification.

**22.6(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.

## PLANNING AND PROGRAMMING{630} (cont'd)

**630—22.7(7A) Payments.**

**22.7(1) Method of payment.** Any entity receiving a grant under the community services block grant program shall submit a monthly requisition packet consisting of the following forms:

a. Monthly advance request and expenditure report containing a breakdown of the monthly expenditures of the entity in carrying out the activities funded through the grant;

b. State of Iowa claimant's certification for reimbursement of funds.

The office for planning and programming may refuse reimbursement of funds for good reason such as evidence of fraud, lack of management controls, or noncompliance with grant conditions. Refusal shall be appropriately documented, and the grantee shall be informed of the reason for the refusal and remedial actions they may take.

**22.7(2) Receipt of federal funds.** All payments shall be subject to the receipt of federal grant funds by OPP. The termination, reduction or delay of federal grant funds to the OPP shall, at their option, be reflected in a corresponding modification to grants already made.

**22.7(3) Equipment purchases.** Equipment purchases must be approved in writing by the governing board for any piece of equipment involving over three hundred dollars of CSBG funds. Additionally, prior state approval of the purchases must be requested by the chairperson and approved by the office for planning and programming.

**22.7(4) Miscellaneous expenses.** Any miscellaneous expenditures involving over three hundred dollars per purchase of CSBG funds must be itemized by expense and amount on the monthly CSBG expenditure report.

**22.7(5) Prior year fund use.** All CSBG funds from prior fiscal years must be expended prior to using current fiscal year funds.

**630—22.8(7A) Amendments.** Following are requirements applying to grant amendments.

**22.8(1) Budget.** Any expenditure of funds on a cost category which will exceed that cost category budgeted amount by more than ten percent must be approved by an amendment to the grant. The total amount of the budget shall not be exceeded and any amounts above the budget total shall not be reimbursable by OPP unless an amendment has been granted to increase the total. All requests for budget amendments must be approved in writing by the governing board and requested by the chairperson. Budget amendments requested that will have an impact on the approved CSBG work program must be accompanied by a corresponding work program amendment request.

**22.8(2) Work program.** Any change in scope or emphasis among projects funded in the grant must be reflected through a work program amendment. All requests for work program amendments must be approved in writing by the governing board and requested by the chairperson. Work program amendment requests shall provide the reason(s) for the proposed change in adequate detail to facilitate review by the office for planning and programming. A reduction in scope shall be evaluated by OPP to determine what reduction in funds, if any, will be required.

**22.8(3) Recapture of funds.** If at any time during the program year it becomes apparent that the amount allocated to any entity is not being utilized at a rate sufficient to expend their available program funds, the

agency may require that the entity amend their grant to release the excess funds. The funds may then be distributed by OPP to those entities demonstrating the need and ability to appropriately expend the funds, or may be set aside for reappropriation by the general assembly.

**22.8(4) Other requests.** Requests for amendments other than those addressed in this rule, shall be considered on a case-by-case basis in conformance with applicable state and federal laws.

**630—22.9(7A) Ineligible items.** Ineligible activities or costs are as follows:

**22.9(1) Political activity.** Any political activity defined in Chapter 15, Title 5, United States Code, ("Political Activity by Certain State and Local Employees"). Any nonprofit private organization receiving assistance under this program which has responsibility for planning, developing, and co-ordinating community antipoverty programs shall be deemed to be a state or local agency. For purposes of clauses (1) and (2) of section 1502(a) of such title, any such organization receiving assistance under this program shall be deemed to be a state or local agency.

**22.9(2) Voter assistance.** Any activities to provide voters and prospective voters with transportation to the polls or provide similar assistance in connection with an election or any voter registration activity.

**22.9(3) Land and buildings.** The purchase or improvement of land, or the purchase, construction, or improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility. Exceptions to this shall only be provided through the waiver procedure described in section 680, subsection (b), Public Law 97-35.

**630—22.10(7A) Audits and records.** Each recipient shall be responsible for the maintenance of appropriate accounting records necessary for the protection of program funds and shall arrange and pay for an annual audit of each grant made under this program, to be submitted within ninety days of the end of the recipient's fiscal year. Audits shall be performed in accordance with generally accepted auditing standards including the standards published by the general accounting office, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions." The audit report shall conform to the audit format established for community action agencies by the state auditor. Audit procedures shall conform to OMB Circular A-128, "Audits of State and Local Governments." In addition, the office for planning and programming may request more frequent audits or examinations of financial records of the recipient in order to ensure adequate financial controls are in place and operating.

**630—22.11(7A) Dedeignation.** In the event that a political subdivision desires to terminate affiliation with a community action agency currently serving it, the following procedure shall be used:

**22.11(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.

**22.11(2)** The political subdivision shall hold a public hearing for review and comment on the proposed change.

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

**22.11(3)** At the next regular meeting of the board or council after the public hearing, a final vote on the resolution shall be taken.

**22.11(4)** If the board or council votes in favor of terminating affiliation with the community action agency, OPP shall be provided a written notice within ten days including the following information:

a. Official notification of the vote to terminate the affiliation.

b. A summary of the public comment received by the political subdivision in regard to the proposed termination and affiliation with other CAAs.

c. The political subdivision's recommendation for affiliation with another CAA.

**22.11(5)** In accordance with Public Law 97-35, Title VI, Subtitle B, and rule 630—22.12(7A), the director of the office for planning and programming shall accept, reject or modify the proposed termination and recommendation for affiliation with another CAA.

**630—22.12(7A) Establishing new designation.**

**22.12(1)** In any geographic area of the state not served by a CAA due to dedesignation, the director of the office for planning and programming may decide to serve such an area by:

a. Requesting an existing eligible entity which is located and provides services in an area contiguous to the unserved area to serve the unserved area;

b. If no existing CAA is located and provides services in an area contiguous to the unserved area, requesting the CAA located closest to the area to be served or an existing CAA serving an area within reasonable proximity of the unserved area to provide services in the unserved area; or

c. Where no existing CAA requested to serve the unserved area decides to do so, designating any organization which has a board meeting the requirement of rule 22.4(7A), or any political subdivision of the state to serve the unserved area.

The designation of an organization which has a board meeting the requirements of rule 22.4(7A) or a political subdivision of the state to serve the unserved area shall qualify such organization as an eligible entity under Public Law 97-35, Subtitle B.

**22.12(2)** OPP shall conduct a minimum of one public hearing in the affected geographic area to solicit public input concerning the proposed designation. Factors to be considered in reaching a designation decision shall include determination of the most efficient service delivery mechanism, transition time, local views and issues, types of services to be provided, funds available, potential disruption of service to the eligible population, and other relevant data. Utmost consideration shall be given to the views and wishes of local elected officials and citizens in the unserved area in making a new designation. If necessary, OPP shall alter the amount of CSBG funding to be received by affected CAAs as a result of the new designation.

**630—22.13(7A) Suspension of CSBG funding.**

**22.13(1)** Suspension in general. The director of the office for planning and programming may suspend CSBG funds to an eligible entity if monitoring, evaluation or audits reveal significant noncompliance with established state or federal policies, contract requirements, OPP directives, fiscal procedures, program performance targets or other willful or negligent failure on the part of the eligible entity to perform its responsibilities. Action to suspend funding will only be taken after less drastic

remedies have been tried unless OPP determines that immediate action is necessary due to the seriousness of the violation or is necessary to protect CSBG funds or property. Serious violations would include, but would not necessarily be limited to, evidence of fraud, embezzlement or gross mismanagement.

**22.13(2)** Written notification of suspension. OPP shall provide a written "notification of suspension" by certified mail to the chairperson of the governing board of the eligible entity to effectuate the process of suspension. The "notification of suspension" shall specify the reason(s) for the suspension and the effective date of the suspension. In all but extreme cases, eligible entities will be given a reasonable period of time (but in no case more than sixty days) to make necessary improvements, whereupon funding may resume. In extreme cases, when the director of OPP has determined termination of CSBG funding is appropriate in accordance with rule 22.14(7A), the "notification of suspension" shall be accompanied by a "notification of intent to terminate" as described in rule 22.14(7A).

**630—22.14(7A) Termination of CSBG funding.**

**22.14(1)** Termination in general. The director of the office for planning and programming may terminate CSBG funds to an eligible entity after suspension of CSBG funding in any of the following instances:

a. The director determines that the governing board of the eligible entity cannot or will not take the necessary action to bring the eligible entity into compliance within the time allowed by OPP.

b. The director determines that the nature or extent of noncompliance is extreme and warrants immediate termination of CSBG funding.

c. The eligible entity is no longer officially recognized as a community action agency by OPP as a result of dedesignation procedures described in rule 22.11(7A).

**22.14(2)** Written notification of intent to terminate. The office for planning and programming shall provide a written "notification of intent to terminate" by certified mail to the chairperson of the governing board of the eligible entity to effectuate the termination of CSBG funding. The "notification of intent to terminate" shall include:

a. The reason(s) for the termination;

b. A notice of a hearing to be held to consider the intended termination including:

(1) A statement of the date, time, place, nature, and manner of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) Reference to the particular sections of the statutes, rules or regulations involved;

(4) A short, plain statement of the matters asserted. If the state is unable to recite the matters in detail at the time the notice is given, the notice may be limited to a statement of the issues involved;

(5) A statement informing all parties of their opportunity at a hearing:

1. To request rescheduling of the hearing for good cause;

2. To be represented by an attorney or other representative of their choice;

3. To introduce into the record documentary evidence and bring witnesses to the hearing;

4. To have records or documents relevant to the issues produced by their custodian when such records or docu-

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

ments are kept by or for the state, contractor or its subcontractor in the ordinary course of business and where prior reasonable notice has been given to the presiding officer;

5. To question any witnesses or parties; and

6. A final written decision provided by the director of OPP within thirty days of the hearing.

**22.14(3)** Prehearing subpoena and discovery rights and procedures. The presiding officer shall, upon request, issue subpoenas in accordance with the provisions of Iowa Code section 17A.13.

**22.14(4)** Conduct of hearing.

a. The hearing shall be held within thirty days of the date of the "notification of intent to terminate."

b. The hearing may be conducted in whole or in part by telephone. When it is impractical for the state to conduct an in-person hearing, unless either party objects, a telephone hearing may be scheduled.

c. After the presiding officer has called the hearing to order, the parties may be given an opportunity to present opening statements; thereafter the parties shall present their evidence in such sequence as determined by the presiding officer.

d. When a witness is introduced to provide testimony or evidence in a contested case hearing, the witness shall, prior to testifying, be identified by name and address and shall take an oath or affirmation administered by the presiding officer.

e. The rules of evidence and the contents of the record shall be as allowed under Iowa Code sections 17A.12(7) and 17A.14.

**22.14(5)** Decision. The decision shall conform to the following requirements:

a. The presiding officer shall within twenty days following the hearing provide the director of the office for planning and programming with a proposed decision.

b. The director of OPP shall within thirty days following the hearing issue a final decision on behalf of the state.

c. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record, and, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

**22.14(6)** Review by the secretary of health and human services. In accordance with Public Law 97-35, the secretary of the U.S. Department of Health and Human Services shall be requested by the state to review any termination of funding to a community action agency, or migrant and seasonal farmworker organization. As stated in Public Law 97-35, the review shall be conducted promptly and shall be based upon the record. No decision shall become effective until a finding by the secretary of health and human services confirming the state's finding of cause for termination.

These rules are intended to implement Iowa Code sections 7A.21 to 7A.28 and Public Law 97-35.

## ARC 6306

PUBLIC INSTRUCTION  
DEPARTMENT[670]

## NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 321.189, the Iowa Department of Public Instruction gives Notice of Intended Action to amend Chapter 6, "Driver Education," Iowa Administrative Code.

The Acts of the 68th General Assembly, 1980 Regular Session, [ch 1094, §19, amending Iowa Code §321.189] provided in part that a person under the age of eighteen applying for a motor vehicle license valid for the operation of a motorcycle shall be required to successfully complete a motorcycle education course approved and established by the Department of Public Instruction.

The present rules of the department have served appropriately to date. The need for modification is due to a revised curriculum and newly produced audio-visual and other instructional materials by the Motorcycle Safety Foundation that should serve to improve the course content as well as reduce the length of the course by twenty percent that would have both time and cost benefits.

The proposed rule changes would enable course content to be other than that specified in the current rules. Additionally it would authorize the Department of Public Instruction to determine course content that would eliminate the need for rule modification pertaining to content or instructional materials in the future.

Any interested person may make written suggestions prior to February 21, 1986. Such written materials should be directed to the Director, School Transportation and Safety Education Division, Iowa Department of Public Instruction, Grimes State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Director, School Transportation and Safety Education Division at 515/281-5811 or in the division office on the second floor of the Grimes State Office Building by February 21, 1986.

The following amendments are proposed.

Rule 670—6.13(257) is amended to read as follows:

**670—6.13(257) Motorcycle education.**

**6.13(1)** Course content. Every approved motorcycle rider education course will include the content contained in the Motorcycle Rider Course (1977) which was developed by the Motorcycle Safety Foundation and based on the instructional objectives derived from the Motorcycle Task Analysis (1974) conducted by the National Highway Traffic Safety Administration of the U.S. Department of Transportation, or as determined by the department of public instruction.

**6.13(2)** Course approval. An approved course shall be twenty clock hours in duration and comprised of eight clock hours of classroom instruction and twelve clock hours of motorcycle operation in an off street area or twenty-two clock hours in duration comprised of eight clock hours of classroom instruction, ten clock hours of

PUBLIC INSTRUCTION DEPARTMENT[670] (cont'd)

motorcycle operation in an off street area and four clock hours of motorcycle operation on the street. determined by the department of public instruction.

a. Application forms are provided by the department of public instruction and approval must be received from the department prior to the beginning of a course.

b. A waiver provision may be utilized provided that enrollees of such course can satisfactorily pass the Range Skill Test contained in session 9 as programmed in the Motorcycle Rider Course Instructor's Guide (1979). In such cases, attendance of sessions 1 and 3 through 9 may be waived.

6.13(3) Evaluation. Each student shall be evaluated to determine successful completion of the course according to knowledge and skill tests contained in the Motorcycle Rider Course Instructor's Guide (1979) or as approved by the department of public instruction.

6.13(4) Teacher qualifications. Teachers of an approved motorcycle rider education course shall possess a valid Iowa driver's license endorsed for motorcycle operation and have successfully completed a motorcycle instructor's course approved by the department of public instruction.

This rule is intended to implement Acts of the Sixty-eighth General Assembly, 1980 Regular Session, Chapter 1094 Iowa Code section 321.189.

The Department has determined that this proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than February 18, 1986, to the Policy Section, Technical Services Division, Iowa Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on this proposed amendment on or before February 28, 1986. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact Clair R. Cramer, Policy Section, Technical Services Division, Iowa Department of Revenue, at 515/281-4250 or at Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by February 21, 1986.

The following amendments are proposed.

Amend subrule 46.1(1), paragraph "d," to read as follows:

d. Withholding from lottery winnings. Every person, including employees and agents of the Iowa lottery agency making any payment of "winnings subject to withholding" (defined in subparagraph (1) below) shall must deduct and withhold a tax in an amount equal to five percent of the winnings. The tax shall must be deducted and withheld upon payment of the winnings to a payee by the person or payer making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under internal revenue regulation §31.3402(q)-1, paragraph "e," with the information required by that paragraph. Payers of winners subject to withholding shall must file a return on Form W-2G with the internal revenue service, the department of revenue and with the payee of the lottery winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form shall must include the information described in regulation §31.3402(q)-1, paragraph "f." Other informational returns shall must be filed with the department of revenue whenever the Iowa lottery agency has data which shows that the aggregate winnings paid to an individual in the calendar year are \$1,000 or more.

(1) Lottery winnings subject to withholding. Lottery winnings subject to withholding means any payment where the proceeds from a wager are \$600 or more exceed \$500. The rules for determining the amount of proceeds from a wager under regulation §31.3402(q)-1, paragraph "c," shall will apply when determining whether the proceeds from Iowa lottery winnings are great enough so that withholding is required.

ARC 6319

REVENUE DEPARTMENT[730]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 46, "Withholding," Iowa Administrative Code.

The Revenue Department has been notified that a new lottery game is to be implemented in early 1986. In this game, retail establishments will be making direct payments of large prizes without requiring identification information from winning bettors. The rule is revised so that the lottery agency may comply with the rule after the new game is implemented. The rule is also revised to clarify more specifically when tax is to be withheld from lottery winnings.

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

## NOTICE - USURY

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

April 1, 1984 - April 30, 1984	13.75%
May 1, 1984 - May 31, 1984	14.25%
June 1, 1984 - June 30, 1984	14.75%
July 1, 1984 - July 31, 1984	15.50%
August 1, 1984 - August 31, 1984	15.50%
September 1, 1984 - September 30, 1984	15.25%
October 1, 1984 - October 31, 1984	14.75%
November 1, 1984 - November 30, 1984	14.50%
December 1, 1984 - December 31, 1984	14.25%
January 1, 1985 - January 31, 1985	13.50%
February 1, 1985 - February 28, 1985	13.50%
March 1, 1985 - March 31, 1985	13.50%
April 1, 1985 - April 30, 1985	13.50%
May 1, 1985 - May 31, 1985	13.75%
June 1, 1985 - June 30, 1985	13.50%
July 1, 1985 - July 31, 1985	12.75%
August 1, 1985 - August 31, 1985	12.25%
September 1, 1985 - September 30, 1985	12.25%
October 1, 1985 - October 31, 1985	12.25%
November 1, 1985 - November 30, 1985	12.25%
December 1, 1985 - December 31, 1985	12.25%
January 1, 1986 - January 31, 1986	11.75%
February 1, 1986 - February 28, 1986	11.25%

**ARC 6307****ENERGY POLICY COUNCIL[380]**

Pursuant to the authority of Iowa Code sections 93.7(10) and 17A.3, the Iowa Energy Policy Council rescinds Chapter 6, Class "A" Energy Auditors, Iowa Administrative Code.

This rule was adopted by the Energy Policy Council on January 8, 1986. There were no comments from the public. The proposed rule was published on November 6, 1985, as **ARC 6083**. There are no changes from the proposed rule and the adopted rule will become effective on March 5, 1986.

This chapter sets forth procedures and curriculum for Class "A" energy auditor training. Such training is no longer available through the Council and this chapter is no longer in use.

This amendment is intended to implement Iowa Code chapter 93.

Rescind **Chapter 6**, Class "A" Energy Auditors.

[Filed 1/10/86, effective 3/5/86]

[Published 1/29/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/29/86.

**ARC 6308****ENERGY POLICY COUNCIL[380]**

Pursuant to the authority of Iowa Code sections 93.7(10) and 17A.3, the Iowa Energy Policy Council amends Chapter 7, "Energy Measures and Energy Audits Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions," and Chapter 8, "Technical Assistance and Energy Conservation: Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions," Iowa Administrative Code.

These rules were adopted by the Energy Policy Council on January 8, 1986. One person presented oral and written comments which were considered by the Council. The comments were in regard to the selection of technical analysts and were opposed on the basis that competition is restricted and technical analysis quality can be obtained in other ways. It was suggested that poor quality reports should not be accepted and that workshops be conducted to define our expectations of quality. However, reports are accepted and paid for by the grantee prior to being sent to the Council for review and reimbursement. Workshops are held each grant cycle but attendance is voluntary.

The proposed rules were published on November 6, 1985, as **ARC 6084**. Subrule 8.2(2) is changed to add punctuation for clarity. Subrule 8.3(2) is changed to add the effective date of federal regulations. Rule 8.8(93) is changed to delete the number of technical analysts to be selected.

The adopted rules will become effective on March 5, 1986.

Chapter 7 is amended because energy audit workshops are no longer being conducted, energy management technicians are qualified energy auditors, and funds for energy audits are exhausted.

Chapter 8 is amended to include: A requirement that grant applications are completed with the assistance of Council staff; applications which are withdrawn two months after the application deadline will be penalized by five points on the next application; and technical analysis quality is added to the ranking criteria for applications.

These rules are intended to implement Iowa Code chapter 93.

The following amendments are adopted:

ITEM 1. Rule **380—7.1(93)**, paragraphs numbered "2" and "3," are amended as follows:

2. Identifying energy conservation measures, including ~~solar energy or~~ renewable resource measures.

3. Implementation, in the case of schools and hospitals, of selected energy conservation measures, including ~~solar energy or~~ renewable resource measures.

Subrule **7.1(2)**, paragraph numbered "3" under definition of "Energy audit" is amended as follows:

"Energy audit" means a survey of a building or complex that is conducted in accordance with the requirements of this subpart which:

3. Indicates the need, if any, for the acquisition and installation of energy conservation measures, including ~~solar energy and other~~ renewable resource measures.

ITEM 2. Rule **380—7.2(93)** is amended as follows:

**380—7.2(93) Identification of eligible institutions.** In identifying eligible institutions, ~~and distributing the preliminary energy audits~~ the council will seek assistance from statewide affected eligible institutions. The school organizations include the state department of public instruction, the Iowa Association of School Administrators, the Iowa Association of School Boards, the Iowa Catholic Conference, the Iowa Association of Non-public School Administrators, the Iowa Association of Private Colleges and Universities, and the state board of regents. Hospitals are represented by the following organizations: The Iowa department of health, the Iowa Health Care Association, the Iowa Association of Homes for the Aging, the Iowa Hospital Association and the state department of human services. Local governments are represented by the League of Iowa Municipalities and the Iowa State Association of Counties.

ITEM 3. Rule **380—7.3(93)** is amended as follows:

**380—7.3(93) Preliminary energy audits.** Preliminary energy audits will be conducted by mailing ~~questionnaires forms~~ to all eligible institutions in Iowa which request them.

ITEM 4. Rule **380—7.4(93)**, introductory paragraph, is amended as follows:

**380—7.4(93) Energy audits.** Energy audits will be performed ~~on some institutions for which preliminary energy audits were returned, if the owner or operators agree to the cost-sharing requirements of 7.8(1): on all buildings as a basis of eligibility for subsequent grants.~~

ITEM 5. Rule **380—7.5(93)** is amended as follows:

Subrule **7.5(1)** is rescinded.

Subrule **7.5(2)** is rescinded.

Subrule **7.5(3)**, paragraph "a," is amended as follows:

a. All Iowa registered architects, ~~and Iowa registered engineers, who are Class A energy auditors, and associate Class A energy auditors (see 6.1(3)) and council approved energy management technicians~~ are qualified as energy auditors for this program.



## ENERGY POLICY COUNCIL[380] (cont'd)

ITEM 6. Rule 380—7.6(93) is rescinded.

ITEM 7. Subrule 7.7(2), paragraph "a," is amended as follows:

a. The auditor meets the applicable qualifications as set forth in 7.5(93) (3).

ITEM 8. Rule 380—7.8(93) is rescinded.

Implementation is amended as follows:

Rules 7.1(93) to 7.87(93) are intended to implement Iowa Code section 93.7, as specified by 10 C.F.R. 455.90, April 30, 1985.

ITEM 9. Subrule 8.1(1), paragraph "b," is amended as follows:

b. What constitutes an energy conservation measure that may receive financial assistance under this part and sets forth the eligibility criteria for schools and hospitals to receive grants for energy conservation measures, including solar and other renewable resource measures.

ITEM 10. Rule 380—8.2(93) and subrule 8.2(1) catchwords are amended as follows:

**380—8.2(93) Eligibility. Technical assistance program.**

**8.2(1) Financial assistance. Eligibility.** To be eligible to receive financial assistance for a technical assistance program, an applicant must:

Subrule 8.2(2), paragraph "a," is amended as follows:

a. A technical assistance program shall be conducted by a qualified technical assistance analyst, who shall consider all possible energy conservation measures for a building, including solar or other renewable resource measures. A technical assistance program shall include a detailed engineering analysis to identify the estimated costs of, and the energy and cost savings likely to be realized from, implementing each identified energy conservation maintenance and operating procedure. A technical assistance program shall also identify the estimated cost of, and the energy and cost savings likely to be realized from, acquiring and installing each energy conservation measure, including solar and other renewable resource measures, that indicate a significant potential for saving energy based upon the technical assistance analyst's initial consideration.

Subrule 8.2(2), paragraph "b," subparagraphs (3) to (5), are amended as follows:

(3) An evaluation of the building's potential for solar renewable resource conversion, particularly for including water heating systems;

(4) A listing of any known local zoning ordinances and building codes which may restrict the installation of solar renewable resource systems;

(5) A description and analysis of all recommendations, if any, for acquisition and installation of energy conservation measures, including solar and other renewable resource measures, setting forth: A description of each recommended energy conservation measure; an estimate of the cost of design, acquisition and installation of each energy conservation measure; an estimate of the useful life of each energy conservation measure; an estimate of increases or decreases in maintenance and operating costs that would result from each energy conservation measure, if any; and an estimate of the salvage value or disposal cost of each energy conservation measure at the end of its useful life, if any; and an estimate of the annual energy and energy cost savings (using current energy prices) expected from the acquisition and installation of each energy conservation measure. In calculating the

potential energy cost savings of each recommended energy conservation measure, including solar or other renewable resource measure, technical assistance analysts shall:

a Assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized, shall

e Calculate the total energy and energy cost savings, by fuel type, expected to result from the acquisition and installation of all recommended energy conservation measures, taking into account the interaction among the various measures, and shall

e Calculate that portion of the total energy and energy cost savings, as determined above, attributable to each individual energy conservation measure;

ITEM 11. Rule 380—8.3(93) catchwords are amended as follows:

**380—8.3(93) Energy conservation measures for schools and hospitals. program.**

Subrule 8.3(1) and paragraph "f" are amended as follows:

**8.3(1) Eligibility.** To be eligible to receive financial assistance for an energy conservation measure, including solar or other renewable resource measures, an applicant must:

f. Demonstrate that the simple payback period of each energy conservation measure for which financial assistance is requested is not less than one two years nor greater than fifteen ten years, and the estimated useful life of the measure is not greater than its simple payback period.

Subrule 8.3(2) is amended as follows:

**8.3(2) Contents of an energy conservation measure program.** The contents of an energy conservation measure program are at 10 C.F.R. 455.52, April 30, 1985, which describe measures to reduce energy consumption or measures to allow the use of solar or other alternative energy resources.

ITEM 12. Rule 380—8.4(93), introductory paragraph, is amended as follows:

**380—8.4(93) Grant application submittals.** All applications for grants must be completed with assistance of energy policy council staff.

Subrule 8.4(1), paragraph "a," subparagraphs (4) and (5), are amended as follows:

(4) A project budget, by building, which stipulates the intended use of all federal and nonfederal funds, and identifies the sources and amounts of nonfederal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments," which are directly related to the project and do not include funds derived from revenue sharing or other federal sources), to be used to meet the cost-sharing requirements described in these rules;

(5) A brief description, by building, of the proposed technical assistance program.

Subrule 8.4(1), paragraph "b," is amended as follows:

b. Applications for financial assistance for technical assistance programs shall include a signed statement provide that the applicant:

Subrule 8.4(2), paragraph "a" and subparagraphs (4) and (7) are amended as follows:

a. Applications from schools or hospitals for financial assistance for energy conservation measures, including

## ENERGY POLICY COUNCIL[380] (cont'd)

solar and other renewable resource measures, shall include:

(4) A project budget, by building, which stipulates the intended use of all federal and nonfederal funds, and identifies the sources and amounts of nonfederal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A-102, "Uniform Requirements for Grants-in-Aid to State and Local Governments," which are directly related to the project and do not include funds derived from revenue sharing or other federal sources), to be used to meet the cost-sharing requirements described in these rules;

(7) A technical assistance report, completed since the most recent construction, reconfiguration or utilization change to the building which significantly modified energy use, for each building;

Subrule 8.4(2), paragraph "b" and subparagraph (4) are amended as follows:

b. Applications for financial assistance for energy conservation measures, including solar and other renewable resource measures, shall include a signed statement provide that the applicant:

(4) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with an energy conservation measure, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualified to perform the duties of a technical assistance analyst in accordance with these rules:

ITEM 13. Rule 380—8.5(93) is amended as follows:

Subrules 8.5(1) and 8.5(2) are amended as follows:

8.5(1) *Records.* Each school, hospital, unit of local government, public care institution and co-ordinating agency which receives a grant for a technical assistance program, or energy conservation measure, including solar and other renewable resource measures, program shall keep all the records required by 10 C.F.R. 455.4, April 30, 1985. These records will be retained for a minimum of three years after completion of the program for which a grant was awarded.

8.5(2) *Semiannual reports.* By the end of January and July of each year, each grantee shall until the grantee's program has been concluded, submit a report to the council which shall detail and discuss:

a. Milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial actions; if any, planned; and

b. Financial status reports completed in accordance with the documents listed in 10 C.F.R. 455.63, April 30, 1985. Financial Two copies of the financial status and progress reports must be submitted simultaneously to both the council, and the department of energy, EPC (1 copy); DOE (2 copies).

Subrule 8.5(3), introductory paragraph, and paragraphs numbered "4" and "5" are amended as follows:

8.5(3) *Final reports.* Within ninety days of concluding a technical assistance program or installation of funded energy conservation measures program, including solar and other renewable resource measures, the grantee shall submit a two copies of the final report to the council and a summary thereof to the department of energy which shall detail and discuss, as applicable.

4. For a completed technical assistance program: The technical assistance report, and a recommended plan to implement energy conservation maintenance and operating procedures, and plans to acquire and install energy conservation measures, including solar and other renewable resource measures:

5. For completed energy conservation measures including solar and other renewable resource measures: A listing and description of energy conservation measures acquired and installed, a final projected simple payback period; computed in accordance with 10 C.F.R. 455.42, April 30, 1985, for each building specifying and utilizing the actual costs for each measure and all the measures taken as a whole, and a statement that the completed modifications (material, equipment and installation) conform to the report on the technical assistance program report and the approved grant application. Final reports may be submitted in lieu of semiannual reports if the semiannual report becomes due within ninety days of concluding the energy conservation measure grant.

Subrule 8.5(4) is rescinded.

Subrule 8.5(5) is amended as follows:

8.5(5)(4) *Annual energy use reports.* Grantees shall submit annual reports to the council covering each year of the three-year period following installation of an energy conservation measure or measures, or for the life of the program, whichever is shorter. Such annual Annual reports shall identify each building and shall provide data on the actual energy use of that building for the most current twelve-month period ending June 30. Energy use shall be presented on a monthly or quarterly, as well as an annual basis, consistent with the energy billing cycle for the building. Annual reports shall be submitted within sixty days of the close of each twelve-month period.

Subrule 8.5(6) is rescinded.

ITEM 14. Rule 380—8.6(93) is amended as follows:

Subrule 8.6(1), paragraphs "a" and "b" are amended as follows:

a. If an application received by the council is found to be in compliance with the provisions of this chapter, and other laws and regulations, then such application applicant will be eligible for financial assistance.

b. The federal rules require that the council forward each application for a school or hospital to the appropriate state school facilities agency or state hospital facilities agency for review and certification that the schools and hospitals applications are consistent with state programs in these areas (455.70(b)). The council proposes to have the state department of public instruction and the state department of health be the reviewing agencies for this program.

Subrule 8.6(2) beginning with paragraph "b" is amended as follows:

b. When steam is an energy source generated outside the applicant's building or complex, the applicant may request that the EPC consider, for ranking purposes, the fuels used to generate the steam prorated by the energy entering the building. Requests will be approved only if the steam provider is willing and able to provide information on fuels used, this information accompanies the request and the EPC staff can verify this information.

c. In cases of a tie in the ranking of two or more institutions, those who have not used federal funds under Institutional Conservation Program (ICP) before will get first priority. If the tie is still unbroken, priority will be given when energy conservation measures have been implemented without federal funds.

d. All applications will be subject to verification. Utility data or energy planning documents may be requested of applicants, for example.

e. 8.6(3) *Technical assistance ranking criteria.* For technical assistance, the following factors are considered in ranking:

## ENERGY POLICY COUNCIL[380] (cont'd)

(1) a. An energy use index, according to the formula:

$$(EUI/10) \times 4 \text{ points,}$$

where EUI is yearly energy requirements of the building in BTU's/ft<sup>2</sup> • degree-day • yr. When EUI is greater than 50, the value used for EUI will be 50. When EUI is less than 10, the value used for EUI will be 10.

(2) b. A yearly energy cost index, according to the formula:

$$ECI \times 4 \text{ points,}$$

where ECI is the yearly energy cost in \$/yr • ft<sup>2</sup>. When ECI is greater than 5, the value used for ECI will be 5. When ECI is less than 1, the value used for ECI will be 1.

(3) c. The primary type of fuel used for heating, according to the formula:

Oil	20 points
Gas	15 points
Electricity	15 points
LPG	15 points
Other	10 points

(4) d. Ten points will be awarded if the operating authority of the building has designated a staff member to evaluate and monitor energy conservation.

(5) e. Ten points will be awarded if the operating authority has formally adopted a plan for energy use evaluation and change.

(6) f. Ten points will be awarded if the operating authority has adopted or changed operational or maintenance procedures to conserve energy.

g. Applications withdrawn after two months following the application deadline will be penalized 5 points for the next cycle. Exception will be granted if there has been a change in the institution's intention to close or dispose of the building, a catastrophe or natural accident occurs, or other unforeseen or uncontrollable events occur.

All applications will be subject to verification. Utility data or energy planning documents may be requested of applicants, for example:

e. 8.6(4) Energy conservation measure ranking criteria. For energy conservation measures, the following factors are considered in ranking:

(1) a. The average simple payback period (ASPP) of all energy conservation measures for the building, according to the formula:

$$(1612 - ASPP) \times 23 \text{ points,}$$

where ASPP is the total estimated cost of all energy conservation measures divided by the total annual estimated energy cost savings.

For renewable and coal conversions, estimated energy cost savings will be based on the fuel replaced.

(2) b. The type of energy source to which conversion is proposed, according to the formulas:

$$(SI + 20)/4 \text{ for solar and renewable resources,}$$

$$(SI + 20)/8 \text{ for coal,}$$

where SI is the percentage of total annual energy costs that will be saved by conversion. The upper limit for SI is ninety-six percent.

(3) c. The annual energy savings, according to the formula:

$$QSI \times 4 \text{ points,}$$

where QSI is the annual estimated savings (in BTU's from all ECMs combined) divided by annual energy consumption and then percentage of annual energy requirements (in BTUs) estimated to be saved from all ECMs

combined, multiplied by 10. When the annual estimated savings divided by annual energy consumption percentage is greater than or equal to 0.5 50 percent, the value used for QSI will be 0.5 50 percent. The point range for this factor is then 0-20.

(4) d. The type of energy saved, according to the sum of the formulas:

Oil	R x 20 points
Gas	R x 15 points
LPG	R x 15 points
Electricity	R x 15 points
Other	R x 10 points

where R is the ratio of the net energy savings of that type of the gross energy savings for the building.

e. Technical assistance quality will be measured for a maximum of 5 points using the following criteria:

(1) All forms are complete and correct (technical assistance report, building energy use worksheet) = 1.6 points.

(2) A minimum of 12 operation and maintenance procedures are addressed/discussed = 1.7 points.

(3) A minimum of 8 energy conservation measures are listed = 1.7 points.

The point range is 0 to 5 points.

f. If an application is withdrawn within two months of the application deadline, that building will be penalized 5 points on each application for the next cycle. Exception will be granted if there has been a change in the institution's intention to close or dispose of the building, a catastrophe or natural accident occurs, or other unforeseen or uncontrollable events occur.

Subrules 8.6(3) and 8.6(4) are amended by renumbering to 8.6(5) and 8.6(6), respectively.

Subrule 8.6(5), introductory paragraph, is amended as follows:

8.6(5)(7) State recommendations. The council is required to will recommend to the department of energy the amount of grant moneys which the council feels an applicant for technical assistance or energy conservation measures should receive.

ITEM 15. Rule 380—8.7(93), introductory paragraph, is amended as follows:

380—8.7(93) Grant awards. The grant awards from the U. S. Department of Energy for technical assistance or energy conservation programs shall be only up to fifty percent of their cost, except in the case of severe hardship, as outlined in 8.6(4) (6). The school, hospital, unit of local government, or public care facility must provide the remaining fifty percent from either nonfederal local funds or in-kind contributions, as defined in subrule 7.1(2) of the council rules.

ITEM 16. Rule 380—8.8(93) is amended by adding the following:

3. As of January 1986, the council will select a number of technical analysts to serve all institutional grantees. The selection will occur annually. Selection of qualified analysts will be based on criteria including past performance, qualifications, availability and cost.

Rules 8.1(93) to 8.8(93) are intended to implement Iowa Code section 93.7, as specified by 10 C.F.R. 455.90, April 30, 1985.

[Filed 1/10/86, effective 3/5/86]

[Published 1/29/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/29/86.

**ARC 6314****HEALTH DEPARTMENT[470]**

Pursuant to the authority of Iowa Code sections 135B.2 and 135C.23(2), the Iowa State Department of Health hereby adopts amendments to 470—Chapters 51, 57, 58, 59, 63 and 64 regarding hospitals and health care facilities, Iowa Administrative Code. These amendments require hospital and health facility personnel, as well as facility residents to have physical examinations upon employment or entry to a hospital or facility.

The amendments were published as Notice of Intended Action in Iowa Administrative Bulletin, November 6, 1985, as **ARC 6105**.

A public hearing was held December 2, 1985, and no interested person(s) appeared to provide oral presentation(s). No written comments were received by the December 6, 1985 deadline.

A cost impact statement was submitted to the Administrative Rules Review Committee December 6, 1985.

The amendments are identical to those published under Notice of Intended Action.

The Iowa Board of Health adopted these rules at its regularly scheduled meeting of January 8, 1986. These rules will become effective on March 5, 1986.

**ITEM 1.** Amend subrules **51.4(3)“e”** and **51.4(3)“f”** to read as follows:

e. Applications for employment as a registered nurse shall be submitted, in writing, to the person responsible for nursing personnel, and each application shall contain accurate information as to the education, training experience, *and* personal background of each applicant. ~~A complete physical examination, including indicated x-ray and laboratory examinations, shall be required at the time of employment and at regular intervals thereafter.~~

f. All nonprofessional workers performing patient-care service shall be under the supervision of a registered nurse. Their duties shall be defined and they shall be instructed in all duties assigned to them. ~~At the time of employment, a complete physical examination, including x-rays of the chest and laboratory examinations, shall be required and at regular intervals thereafter.~~

And insert the following as **51.4(3)“k”**:

k. Health examinations for all personnel shall be required at the commencement of employment and thereafter at least every four years. The examination shall include, at a minimum, the health and tuberculosis status of the employee. Consideration shall be given to requiring health examinations at shorter intervals for those employees working in high risk areas.

**ITEM 2.** Rescind subrules **57.11(3)**, **58.10(3)**, **59.12(3)**, and **63.9(3)** and insert in lieu thereof the following:

Health examinations for all personnel shall be required at the commencement of employment and thereafter at least every four years. The examination shall include at a minimum, the health and tuberculosis status of the employee. (III)

**ITEM 3.** Rescind subrules **57.11(5)**, **58.10(5)**, **59.12(5)**, and **63.9(5)** and insert in lieu thereof the following as **57.11(5)**, **58.10(5)**, **59.12(5)** and **63.9(5)**:

No person with any of the following conditions shall be allowed to provide services in the facility: Boils, infected wounds, rashes, open sores, acute respiratory infections, influenza and influenza type disorders, and intestinal infections. Return to duty by personnel, who have had any

of the above conditions and are under physician's orders, shall be with a physician's written approval. (III)

**ITEM 4.** Rescind catchwords, “Medical services,” in rules **57.15(135C)** and **63.15(135C)** and insert the new catchwords, “Physical examinations.” Add the following paragraphs to subrules **57.15(2)** and **63.15(2)**:

a. Each resident admitted to a residential care facility shall have had a physical examination prior to admission. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be a part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be a part of the resident's record. (III)

b. The record of the admission physical examination and medical history shall portray the current medical status of the resident and shall include the resident's name, sex, age, medical history, tuberculosis status (which shall be re-evaluated every three years), physical examination, diagnosis, statement of chief complaints, and results of any diagnostic procedures. (III)

**ITEM 5.** Rescind the language in subrules **58.15(2)“c”** and **59.19(2)“c”** and insert in lieu thereof the following:

c. Physical examination: The record of the admission physical examination and medical history shall portray the current medical status of the resident and shall include the resident's name, sex, age, medical history, tuberculosis status (which shall be re-evaluated every three years), physical examination, diagnosis, statement of chief complaints, estimation of restoration potential and results of any diagnostic procedures. The report of the physical examination shall be signed by the physician. (III)

**ITEM 6.** Add to rule 64.13(135C) the following new subrules:

**64.13(15)** Health examinations for all personnel shall be required at the commencement of employment and thereafter at least every four years. The examination shall include at a minimum, the health and tuberculosis status of the employee. (III)

**64.13(16)** No person with any of the following conditions shall be allowed to provide services in the facility: Boils, infected wounds, rashes, open sores, acute respiratory infections, influenza and influenza type disorders, and intestinal infections. Return to duty by personnel, who have had any of the above conditions and are under physician's orders, shall be with a physician's written approval. (III)

[Filed 1/10/86, effective 3/5/86]

[Published 1/29/86]

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**ARC 6310****HEALTH DEPARTMENT[470]****BOARD OF PHYSICAL AND  
OCCUPATIONAL THERAPY EXAMINERS**

Pursuant to the authority of Iowa Code sections 147.10 and 147.76, the Board of Physical and Occupational Therapy Examiners hereby adopts amendments to Chapters 137 and 138 of the Iowa Administrative Code.

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

The rules were adopted at a regular Board meeting January 10, 1986.

Notice of Intended Action was published in Iowa Administrative Bulletin September 25, 1985, as ARC 5975.

The rules clarify the renewal period for physical therapists, occupational therapists, and occupational therapy assistants.

The rules are identical to the Notice of Intended Action. The rules are intended to implement Iowa Code section 147.10.

The rules shall become effective March 6, 1986.

ITEM 1. Subrule 137.5(1) is amended to read as follows:

**137.5(1)** *The biennial license renewal period shall extend from July 1 of each odd-numbered year until June 30 of the next odd-numbered year.* Failure to renew license within thirty days after the expiration date creates a penalty fee for failure to renew as provided in rule 470—137.6(147) in addition to the license fee. Failure to renew within sixty days causes the license to lapse.

ITEM 2. Subrule 138.2(7) is amended to read as follows:

**138.2(7)** Beginning January 1, 1981, the continuing education compliance period shall be each biennium beginning January 1 of the odd-numbered year to December 31 of the next even-numbered year. The first biennial continuing education period will extend from January 1, 1981, to December 31, 1982. During the continuing education compliance period, attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirement for the subsequent biennial license renewal period beginning July 1. *The biennial license renewal period shall extend from July 1 of each odd-numbered year until June 30 of the next odd-numbered year.*

ITEM 3. Subrule 138.210(2) is amended to read as follows:

**138.210(2)** Compliance with the continuing education requirement is a prerequisite for license renewal in each subsequent two-year period. *The biennial license renewal period shall extend from July 1 of each odd-numbered year until June 30 of the next odd-numbered year.*

[Filed 1/10/86, effective 3/6/86]

[Published 1/29/86]

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## ARC 6309

### HEALTH DEPARTMENT[470]

#### BOARD OF PHYSICAL AND OCCUPATIONAL THERAPY EXAMINERS

Pursuant to the authority of Iowa Code section 17A.9, the Board of Physical and Occupational Therapy Examiners hereby adopts amendments to Chapters 137 and 138 of the Iowa Administrative Code. The rules were adopted at a regular Board meeting January 10, 1986.

Notice of Intended Action was published in Iowa Administrative Bulletin August 14, 1985, as ARC 5795.

The rules provide a procedure for declaratory rulings.

The rules are identical to the Notice of Intended Action.

The rules are intended to implement Iowa Code section 17A.9.

The rules shall become effective March 6, 1986.

ITEM 1. Chapter 137 is amended by adding the following new rule:

#### 470—137.7(17A) Declaratory rulings.

**137.7(1)** Upon petition filed by any individual, partnership, corporation, association, governmental subdivision, private or public organization or state agency, the board may issue a declaratory ruling as to the applicability of statutes and rules, policy statements, decisions and orders under its jurisdiction.

**137.7(2)** A petition for a declaratory ruling shall be typewritten or printed and at the top of the first page shall appear in capitals the words: PETITION FOR DECLARATORY RULING BEFORE THE BOARD OF PHYSICAL AND OCCUPATIONAL THERAPY EXAMINERS.

**137.7(3)** The petition shall include the name and official title, if any, address and phone number of each petitioner. If the request is at the behest of any entity mentioned in subrule 137.7(1), it shall name the entity.

**137.7(4)** The body of the petition shall contain:

- a. A detailed statement of facts upon which petitioner requests the board to issue its declaratory ruling.
- b. The statute, rule, policy statement, decision or order for which a ruling is sought.
- c. The exact words, passages, sentences or paragraphs which are the subject of inquiry.
- d. The specific questions presented for declaratory ruling.
- e. A consecutive numbering of each multiple issue presented for declaratory ruling.
- f. A brief may be attached thereto.

**137.7(5)** The petition shall be filed either by serving it personally to the director, professional licensure, or by mailing it to the Director, Professional Licensure, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

**137.7(6)** The director shall acknowledge receipt of petitions or return petitions not in substantial conformity with the above rules.

**137.7(7)** The board may decline to issue a declaratory ruling for the following reasons:

- a. A lack of jurisdiction.
- b. A lack of clarity of the issue and facts presented.
- c. The issue or issues presented are pending resolution by a court of Iowa or by the attorney general.
- d. The issue or issues presented have been resolved by a change in circumstances or by other means.
- e. The issue or issues are under investigation for purposes of formal adjudication.
- f. The petition does not comply with the requirements imposed by subrules 137.7(1) to 137.7(5).
- g. Where a ruling would necessarily determine the legal rights of other parties not represented in the proceeding.

**137.7(8)** In the event the board declines to make a ruling, the director shall notify the petitioners of this fact and the reasons for the refusal.

**137.7(9)** When the petition is in proper form and has not been declined, the board shall issue a ruling disposing of the petition within a reasonable time after its filing.

**137.7(10)** Rulings shall be mailed to petitioners and to other parties at the discretion of the director. Rulings shall be indexed and available for public inspection.

**137.7(11)** A declaratory ruling by the board shall have a binding effect upon subsequent board decisions and orders which pertain to the party requesting the

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

ruling and in which the factual situation and applicable law are indistinguishable from that presented in the petition for declaratory ruling. To all other parties and in factual situations which are distinguishable from that presented in the petition, a declaratory ruling shall serve merely as precedent.

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

**470—138.208(17A) Declaratory rulings.** A petitioner for a declaratory ruling shall comply with the provisions of rule 470—137.7(17A).

[Filed 1/10/86, effective 3/6/86]  
[Published 1/29/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/29/86.

**ARC 6311****HEALTH DEPARTMENT[470]****BOARD OF MORTUARY SCIENCE EXAMINERS**

Pursuant to the authority of Iowa Code section 17A.9, the Board of Mortuary Science Examiners hereby adopts an amendment to Chapter 147, "Board of Mortuary Science Examiners," of the Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin July 17, 1985, as **ARC 5683**. The rule was adopted at a regular Board meeting January 8, 1986.

The rule provides a procedure for declaratory rulings. The rule is identical to that published under Notice of Intended Action.

The rule is intended to implement Iowa Code section 17A.9.

The rule shall become effective March 6, 1986.

Chapter 147 is amended by adding the following new rule:

**470—147.6(17A) Declaratory rulings.**

**147.6(1)** Upon petition filed by any individual, partnership, corporation, association, governmental subdivision, private or public organization or state agency, the board may issue a declaratory ruling as to the applicability of statutes and rules, policy statements, decisions and orders under its jurisdiction.

**147.6(2)** A petition for a declaratory ruling shall be typewritten or printed and at the top of the first page shall appear in capitals the words: PETITION FOR DECLARATORY RULING BEFORE THE IOWA BOARD OF MORTUARY SCIENCE EXAMINERS.

**147.6(3)** The petition shall include the name and official title, if any, address and phone number of each petitioner. If the request is at the behest of any entity mentioned in subrule 147.6(1) it shall name the entity.

**147.6(4)** The body of the petition shall contain:

- A detailed statement of facts upon which petitioner requests the board to issue its declaratory ruling.
- The statute, rule, policy statement, decision or order for which a ruling is sought.
- The exact words, passages, sentences or paragraphs which are the subject of inquiry.
- The specific questions presented for declaratory ruling.

e. A consecutive numbering of each multiple issue presented for declaratory ruling.

f. A brief may be attached thereto.

**147.6(5)** The petition shall be filed either by serving it personally to the director, professional licensure, or by mailing it to the Director, Professional Licensure, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

**147.6(6)** The director shall acknowledge receipt of petitions or return petitions not in substantial conformity with the above rules.

**147.6(7)** The board may decline to issue a declaratory ruling for the following reasons:

- A lack of jurisdiction.
- A lack of clarity of the issue and facts presented.
- The issue or issues presented are pending resolution by a court of Iowa or by the attorney general.
- The issue or issues presented have been resolved by a change in circumstances or by other means.
- The issue or issues are under investigation for purposes of formal adjudication.
- The petition does not comply with the requirements imposed by subrules 147.6(1) to 147.6(5).
- Where a ruling would necessarily determine the legal rights of other parties not represented in the proceeding.

**147.6(8)** In the event the board declines to make a ruling, the director shall notify the petitioners of this fact and the reasons for the refusal.

**147.6(9)** When the petition is in proper form and has not been declined, the board shall issue a ruling disposing of the petition within a reasonable time after its filing.

**147.6(10)** Rulings shall be mailed to petitioners and to other parties at the discretion of the director. Rulings shall be indexed and available for public inspection.

**147.6(11)** A declaratory ruling by the board shall have a binding effect upon subsequent board decisions and orders which pertain to the party requesting the ruling and in which the factual situation and applicable law are indistinguishable from that presented in the petition for declaratory ruling. To all other parties and in factual situations which are distinguishable from that presented in the petition, a declaratory ruling shall serve merely as precedent.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/29/86.

**ARC 6312****HEALTH DEPARTMENT[470]****BOARD OF MORTUARY SCIENCE EXAMINERS**

Pursuant to the authority of Iowa Code sections 17A.10 and 258A.2, the Iowa Board of Mortuary Science Examiners hereby adopts amendments to Chapter 147, "Board of Mortuary Science Examiners," of the Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin July 17, 1985, as **ARC 5684**. The rules were adopted at a regular Board meeting January 8, 1986.

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

The rules provide a procedure for settlement of disciplinary actions and permit an appropriately licensed health care professional to sign a waiver for continuing education.

The rules are identical to those published under Notice of Intended Action.

The rules are intended to implement Iowa Code sections 17A.10 and 258A.2.

The rules shall become effective March 6, 1986.

ITEM 1. Rule 470—147.107(258A) is rescinded and the following adopted in lieu thereof:

**470—147.107(258A) Disability or illness.** The board may, in individual cases involving disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application is made on forms provided by the board and signed by the licensee and an appropriately licensed health care professional, and the waiver is acceptable to the board. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

ITEM 2. Rule 470—147.204(258A) is rescinded and the following adopted in lieu thereof:

**470—147.204(258A) Alternative procedure and settlement.**

**147.204(1)** A disciplinary hearing before the licensing board is an alternative to the procedure in Iowa Code sections 147.58 to 147.71.

**147.204(2)** Informal stipulation or settlement negotiations may be initiated by either party to the controversy either prior to or during a contested case proceeding. However, neither party is obligated to utilize this informal procedure to settle the controversy pursuant to such informal procedures. The investigating board member charged with the responsibility of handling disciplinary and enforcement matters shall have the authority to negotiate an informal settlement. If the investigating board member believes it to be in the best interest of the board and the public to informally settle the controversy, the investigating board member shall recommend the terms of stipulation or settlement to the board. If the board approves the terms, the investigating board member shall effectuate the settlement. The terms of the stipulation or settlement shall be in writing for entering and filing by the board.

[Filed 1/10/86, effective 3/6/86]  
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## ARC 6313

## HEALTH DEPARTMENT[470]

BOARD OF SPEECH PATHOLOGY AND  
AUDIOLOGY EXAMINERS

Pursuant to the authority of Iowa Code section 258A.2, the Iowa Board of Speech Pathology and Audiology Examiners hereby adopts an amendment to Chapter 156 of the Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin July 17, 1985 as ARC 5695. The rule was adopted at a regular Board meeting January 10, 1986.

The rule permits an appropriately licensed health care professional to sign a waiver for continuing education.

The rule is identical to that published under Notice of Intended Action.

The rule is intended to implement Iowa Code section 258A.2.

The rule shall become effective March 6, 1986.

Rule 156.7(258A) is rescinded and the following adopted in lieu thereof:

**470—156.7(258A) Disability or illness.** The board may, in individual cases involving disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and an appropriately licensed health care professional, and the waiver is acceptable to the board. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

[Filed 1/10/86, effective 3/6/86]  
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## ARC 6302

HUMAN SERVICES  
DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services hereby adopts amendments to Chapter 32, "State Community Mental Health and Mental Retardation Services Fund," appearing in the Iowa Administrative Code.

The Mental Health and Mental Retardation Commission adopted these rules on January 8, 1986. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on December 4, 1985, as ARC 6185.

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

Under current rules, anyone wishing to apply for a grant from the mental health and mental retardation special allocation fund must complete a letter of intent and a grant proposal. This amendment clarifies and updates the requirements in content for the letter of intent and proposal and specifies which factors will be considered during the grant approval process. A requirement is added which stipulates that grant proposals which do not contain the information specified in the application package will be disapproved.

Applicants for general allocation funds are required to expend a portion of the money received from the fund to contract with a community mental health center for services. Applicants may request a waiver from this requirement if they determine that a contractual arrangement with a community mental health center is undesirable or unworkable and they can demonstrate services will be offered by another provider. This amendment clarifies that the provider must be accredited by the Mental Health and Mental Retardation Commission as a mental health services provider pursuant to 498—Chapter 35.

Forms which must be used by the public to apply for both general and special allocation funds are identified.

This amendment also changes the current appeal process for decisions on applications for the general and special allocation funds and requests for a waiver from the usual appeal procedure to a direct appeal to the Commissioner of the Department. Such an expedited appeal process is typical of that in the award or denial of many other government contracts and it gives the bidding process some integrity in quickly adjusting complaints regarding fixed amounts of money.

The title of Form 470—1461 in subrule 32.3(1), paragraph "c," was changed.

These rules are intended to implement Iowa Code section 225C.11.

These rules shall become effective April 1, 1986.

ITEM 1. Amend rule 498—32.2(225C) as follows:

Amend the first paragraph of subrule 32.2(1) as follows:

**32.2(1) Application.** The application shall consist of the county's annual plan for the provision of comprehensive mental health and mental retardation services. The plan shall be submitted on a form prepared by the director and approved by the commission Form 470-0890, *County Application for General Allocation Funds*, and shall include the following information:

Amend subrule 32.2(2), paragraph "a," subparagraph (1) as follows:

(1) The application was received by ~~September~~ *October* 15<sup>th</sup> of the year preceding the fiscal year for which funds are requested.

Amend subrule 32.2(3) as follows:

**32.2(3) Notification.** The director shall notify the applicant in writing of the decision on the application by November 1<sup>st</sup> 15 of the year in which the application is received.

Amend the first paragraph of subrule 32.2(4) as follows:

**32.2(4) Waiver request.** Applicants which have not established or affiliated with a community mental health center under Iowa Code chapter 230A are required to expend a portion of the money received from the general allocation portion of the services fund to contract with a community mental health center for services. When an applicant determines that a contractual arrangement is undesirable or unworkable, it may request a waiver from the commission. The waiver request and justification

shall be submitted with the application for general allocation funds on Form 470-0887, *Waiver Questionnaire*. The commission may grant a waiver request when the plan successfully demonstrates that mental health service(s) will be offered by a provider that is accredited or licensed when accreditation and licensure standards are applicable by the commission as a mental health service provider pursuant to 498—Chapter 35 and that one or more of the following applies:

ITEM 2. Rescind rule 498—32.3(225C) and insert the following in lieu thereof:

**498—32.3(225C) Special allocation distribution.** For any year in which the legislature appropriates funds, the commission shall, consistent with the state plan, award grants from the special allocation funds for projects that will establish one or more comprehensive services not currently provided in the area or expand an existing comprehensive service. Applications for capital expenditures or capital renovations are not eligible for funding.

**32.3(1) Application.**

a. Grant cycle. The director will announce through public notice the opening of an application period. Applicants for grants shall submit first a letter of intent and then a grant proposal by the deadlines specified in the announcement.

b. Letter of intent. Letters of intent should be no longer than three typed pages and must:

- (1) Identify the applicant.
- (2) State the need, problem, or issue the project would address.
- (3) Identify the service(s) to be provided.
- (4) Identify the objectives to be accomplished.
- (5) Estimate the project budget.

Only letters of intent received by the deadline specified in the public notice will be considered. Applicants will be given a written acknowledgment of the letter of intent which includes comments on the project outlined in the letter.

c. Grant proposal. Applicants shall submit the proposal to the director on Form 470-1461, *Mental Health, Mental Retardation and Developmental Disabilities Application Package*. If a proposal does not contain the information specified in the application package or if it is late it will be disapproved. Proposals shall contain the following information:

- (1) General agency information.
- (2) Specific project information.
- (3) A summary of the project.
- (4) An introductory section outlining agency background information.
- (5) A problem statement outlining the need or problem to be addressed.
- (6) Project goals and objectives.
- (7) Project methodology.
- (8) An evaluation plan.
- (9) A plan for future project funding.
- (10) A line item budget.
- (11) Assurances.
- (12) Letters of support. County designees must have a letter of authorization from the county board(s) of supervisors and a letter of endorsement from the county mental health and mental retardation co-ordinating board.

**32.3(2) Project review.**

a. All proposals meeting the minimum criteria above will be evaluated by members of the division and a committee of the commission who shall make recommenda-



## HUMAN SERVICES DEPARTMENT[498] (cont'd)

tions of approval or disapproval to the full commission. The commission may use an advisory committee to assist with project review. The review criteria is contained in the application package, Form 470-1461. The commission shall award the grants.

b. The following factors will be considered in selecting proposals.

(1) The demonstrated experience and expertise of the applicant.

(2) The demonstrated and justified need for services.

(3) The relationship of the project purpose, goal(s), and objectives with the identified need.

(4) The measurability of objectives.

(5) The adequacy of project design and methodology.

(6) The process and instruments for project evaluation.

(7) The efforts to secure future funding.

(8) The appropriateness of the project budget in relation to the project methodology.

**32.3(3) Notification.** Notification of acceptance or denial of the proposal will be sent to each applicant.

**32.3(4) Contracts.** The funds for approved projects will be awarded through a contract entered into by the director and the applicant. The contract may cover a period not to exceed twenty-four months.

**32.3(5) Records.** Recipients shall keep statistical and financial records of services provided and any other records as required by the director and specified in the contract.

**32.3(6) Evaluation.** The division shall monitor the program while in progress and shall evaluate the project at the end of the contract period.

ITEM 3. Amend rule 498—32.4(225C) as follows:

**498—32.4(225C) Appeals.** Applicants which are dissatisfied with the director's decision on an application for general allocation funds, the commission's decision on an application for special allocation funds, or the commission's decision on a request for a waiver may file an appeal with the department of human services according to rules established in 498—chapter 7 commissioner. *The letter of appeal must be submitted within ten working days of the date of the notice of decision and must include a request for the commissioner to review the decision and the reasons for dissatisfaction. Within ten working days of the receipt of the appeal the commissioner will review both the appeal request and evidence provided by the director and will issue a final decision.*

[Filed 1/9/86, effective 4/1/86]

[Published 1/29/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/29/86.

## ARC 6299

### INSURANCE DEPARTMENT[510]

Pursuant to the authority of Iowa Code section 505.8, the Insurance Department of Iowa adopts an amendment to Chapter 56, "Workers' Compensation Group Self-Insurance," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin July 31, 1985, as ARC 5782.

This rule is identical to that published as Notice of Intended Action.

This rule will be effective on March 5, 1986.

Subrule 56.6(4) is amended to read as follows:

**56.6(4)** Each association shall have its members audited at least annually by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll and rates. For small accounts, members may be audited by use of a mailed questionnaire. A report of the audit shall be filed with the commissioner in a form acceptable to the commissioner.

An association or any member thereof may request a hearing on any objections to the classifications. If the commissioner determines that as a result of an improper classification a member's premium contribution is insufficient, the commissioner shall order the association to assess that member an amount equal to the deficiency. If the commissioner determines that as a result of an improper classification a member's premium is excessive, the commissioner shall order the association to refund to the member the excess collected. The audit shall be at the expense of the association.

[Filed 1/8/86, effective 3/5/86]

[Published 1/29/86]

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## ARC 6315

### PUBLIC INSTRUCTION DEPARTMENT[670]

Pursuant to the authority of Iowa Code section 442.44 the Iowa Department of Public Instruction hereby rescinds Chapter 59, Mathematics, Science and Foreign Language Supplementary Payments, Iowa Administrative Code and insert in lieu thereof a new Chapter 59, "Foreign Language Supplementary Payments," approved by State Board of Public Instruction, January 10, 1986.

These adopted rules provide the provisions for determining the number of pupils enrolled in foreign language courses qualifying for incentive payments to the school district.

Notice of Intended Action was published in Iowa Administrative Bulletin November 20, 1985, as ARC 6132.

These rules are identical to those published as Notice of Intended Action.

These rules will become effective on March 6, 1986.

These rules implement Iowa Code section 442.44, and 1985 Iowa Acts, chapter 263.

Rescind Chapter 59 and insert in lieu thereof the following:

### CHAPTER 59 FOREIGN LANGUAGE SUPPLEMENTARY PAYMENTS

**670—59.1(442) Scope.** These rules apply to provisions which determine the number of pupils enrolled in foreign language courses which qualify for incentive payments to the school district.

**670—59.2(442) Definitions.**

"Latin, German, French or Spanish at the third or fourth year level" shall mean units of credit in a language sequence, successfully completed beyond the second unit of credit recorded on the high school transcript.

**PUBLIC INSTRUCTION DEPARTMENT[670] (cont'd)**

“A year long course in another foreign language at the first or second year level” shall mean a unit of credit, successfully completed and recorded on the high school transcript, in a foreign language other than French, German, Latin or Spanish.

**670—59.3(442) Report required.** Each school district shall report to the department of public instruction, on a form provided by the department, the number of pupils:

1. Successfully completing units of credit in French, German, Latin or Spanish beyond the second unit of credit recorded on the high school transcript.

2. Successfully completing units of credit, at the first or second year level, in a foreign language other than French, German, Latin or Spanish, which is recorded on the high school transcript.

**670—59.4(442) Department responsibilities:** The department shall:

1. Provide a reporting form to each school district at the close of each academic year.

2. Report to the state comptroller the number of pupils from each school district successfully completing the qualifying units of credit.

**670—59.5(442) Proration procedure.** When claims exceed the appropriated sum, funds will be paid to all grantees on a prorated basis.

These rules are intended to implement Iowa Code section 442.44 and 1985 Iowa Acts, chapter 263.

[Filed 1/10/86, effective 3/6/86]  
[Published 1/29/86]

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**ARC 6320**

**PUBLIC SAFETY DEPARTMENT[680]**

Pursuant to the authority of Iowa Code section 17A.3, the Iowa Department of Public Safety hereby adopts Chapter 1, “The Department,” Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, November 20, 1985, as **ARC 6151**.

Changes from such Notice are as follows:

1.4(7) Records of the department ~~which are~~ subject to inspection under the Iowa public records Act, Iowa Code chapter 22, ~~or which~~ are not privileged under Iowa Code section 622.11, ~~which~~ or are not required or permitted to be held in confidence by Iowa Code chapter 692, or other applicable provisions of law, may be examined in the offices of the department in accordance with the provisions of the Iowa public records Act and these rules.

This rule will become effective on March 6, 1986.

This rule is intended to implement Iowa Code chapters 17A and 80.

ITEM 1. Rule 680—1.4(17A) shall be amended by adding the following new subrules:

**1.4(6)** Reports by the Iowa state patrol division concerning motor vehicle accidents regarding observations, measurements, and examinations of physical evidence including photographs may be made available to any

party to the accident or the party’s legal representative or insurance company if the investigation of the accident is complete and the release of the information will not interfere with appropriate criminal proceedings or future investigations.

**1.4(7)** Records of the department subject to inspection under the Iowa public records Act, Iowa Code chapter 22, which are not privileged under Iowa Code section 622.11, or are not required or permitted to be held in confidence by Iowa Code chapter 692, or other applicable provisions of law, may be examined in the offices of the department in accordance with the provisions of the Iowa public records Act and these rules.

ITEM 2. Rule **680—1.5(17A)** shall be rescinded.

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[Published 1/29/86]

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**ARC 6321**

**PUBLIC SAFETY DEPARTMENT[680]**

Pursuant to the authority of Iowa Code section 80A.15, the Iowa Department of Public Safety adopts amendments to Chapter 2, “Private Investigation and Private Security Business System,” Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, November 20, 1985, as **ARC 6152**.

Changes from such Notice are as follows:

2.3(8)“b” line 4 - change “such” to “the”

2.4(5)“d” line 7 - change “said” to “the”

Paragraph 2, line 2 - delete “such,” line 3 - delete “shall,” add an “s” to “arise”.

These rules will become effective on March 6, 1986.

These rules are intended to implement Iowa Code chapter 80A.

ITEM 1. Rule 680—2.3(80A) shall be amended by adding the following new subrule:

**2.3(8)** Iowa Code sections 80A.2, 80A.4(1)“b,” and 80A.4(3) address the ability of peace officers to operate as private investigators and private security officers. The department interprets these three references, when read in concert to mean the following:

a. An individual peace officer may perform private investigative business or private security business with permission of the officer’s chief executive, without securing either a state license or I.D. card.

b. Two or more peace officers may form a partnership to perform private investigation business or private security business without securing either a state license or I.D. card. The partnership, association, or business may employ other peace officers to perform investigation or security functions; however, the chief executive of each partner, association member, owner, or employee must give permission to engage in the business.

c. A partnership owned and operated by peace officers may not employ nonpeace officers to perform investigation or security functions.

## PUBLIC SAFETY DEPARTMENT[680] (cont'd)

d. An agency licensed by the department may not have any peace officers involved in the ownership or management of the agency.

e. An agency licensed by the department may not employ a peace officer to do investigative or security functions.

f. No corporation in the private security or private investigation business is exempt from the license or I.D. card requirement or limitations on the employment of peace officers.

ITEM 2. Subrule 2.4(5), paragraph "d," shall be amended as follows:

d. An annual net worth statement, ~~certified signed by a licensed certified public accountant, public accountant, or accounting practitioner licensed to do business in this state~~, evidencing a net worth of at least three times the financial responsibility amount required in the definition of "Proof of financial responsibility," rule 680—2.2(80A). ~~Said~~ The net worth statement shall be as of a date not more than six months prior to the filing date and a new net worth statement shall be filed annually within thirty days of the date of the original filing.

Money or security deposited pursuant to this rule shall not be subject to attachment or execution unless ~~such~~ attachment or execution ~~shall~~ arises out of a suit for damages for liability on account of accidents or wrongdoings occurring subsequent to the effective date of the proof, arising out of ownership and operation of the licensed business.

[Filed 1/10/86, effective 3/6/86]  
[Published 1/29/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/29/86.

Dissemination of intelligence data by the department will be in compliance with Iowa Code section 692.8. Dissemination of intelligence data by other agencies will be in compliance with Iowa Code section 692.3.

ITEM 2. Further amend chapter 8 by adding the following new rule:

**680—8.101(692) Possession of criminal history and intelligence data and civil process.** Any agency or individual in possession of criminal history or intelligence data received from the department that is served with a subpoena, court order, request for production or other legal process in a civil case demanding the production of criminal history or intelligence data, shall notify the department in writing so that the department has an opportunity to make a timely resistance.

ITEM 3. Amend chapter 11 by adding the following new rule:

**680—11.16(692) Subpoenas and civil process.** Any agency or individual in possession of criminal identification information received from the department that is served with a subpoena, court order, request for production or other legal process in a civil case demanding the production of the criminal identification information, shall notify the department in writing so that the department has an opportunity to make a timely resistance if a resistance is deemed to be in the best interest of the department.

[Filed 1/10/86, effective 3/6/86]  
[Published 1/29/86]

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## ARC 6322

PUBLIC SAFETY  
DEPARTMENT[680]

Pursuant to the authority of Iowa Code section 692.10, the Iowa Department of Public Safety adopts amendments to Chapter 8, "Criminal Justice Information System" and Chapter 11, "Identification Section of the Division of Criminal Investigation," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, November 20, 1985, as ARC 6153.

These rules are identical to that published as Notice of Intended Action.

These rules will become effective on March 6, 1986.

These rules are intended to implement Iowa Code chapter 692.

ITEM 1. Chapter 8 is amended by adding the following new rule:

**680—8.2(692) Intelligence data.** An agency may store intelligence data in a computer system. The system shall not be accessible to persons outside of the agency and access to the information shall be controlled by coded password.

## ARC 6323

## PUBLIC SAFETY DEPARTMENT[680]

Pursuant to the authority of Iowa Code chapter 694 and 1985 Iowa Code Supplement section 694.10, the Iowa Department of Public Safety adopts Chapter 19, "Missing Person Information Clearinghouse," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, July 17, 1985, as ARC 5721. This was also filed emergency July 17, 1985, as ARC 5720.

Changes from the Notice are as follows:

19.3, definition of "Prevention and education materials," delete "sexual" and insert: "address risks to missing children of . . ."; definition of "Prevention and education programs," delete "sexual" and insert after exploitation "of missing children."

19.4(3) revise to read as follows: "If the missing person is an unemancipated minor, after the filing of a complaint of a missing person to a law enforcement agency, any person may submit information on a Missing Person Report to the department."

19.4(4), 1st line; change "will" to "shall"; 4th line change "will" to "shall"

19.4(5) add after "individual" the words "or group"

## PUBLIC SAFETY DEPARTMENT[680] (cont'd)

- 19.4(6) add after "individual" the words "or group"  
 19.6 where it states "will" change to "shall" and delete "said" in the last sentence.  
 19.7 change "will" to "shall"  
 19.8 (5) delete  
 19.8(6) renumbered 19.8(5)  
 19.10 change "materials" to "material", delete "same" and add "the program"  
 19.12 delete "after" and insert "after" in lieu of "of"  
 19.14 changed "will" to "shall"  
 These rules will become effective on March 6, 1986.  
 These rules implement 1985 Iowa Code Supplement section 694.10.

Rescind existing Chapter 19 and insert the following in lieu thereof:

CHAPTER 19  
 MISSING PERSON  
 INFORMATION CLEARINGHOUSE

**680—19.1(694) Missing person information clearinghouse.** The missing person information clearinghouse provides a program for compiling, co-ordinating, and disseminating information, with the aim of helping to locate missing persons though public awareness and co-operation, and for educating law enforcement officers and parents about the missing persons problem.

**680—19.2(694) Administration of missing person information clearinghouse.** The administrative services division administers the missing person information clearinghouse statute and all questions, comments, or requests for, or submission of, information shall be directed to the administrative services division. Correspondence should be addressed to: Missing Person Information Clearinghouse, Administrative Services Division, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319.

**680—19.3(694) Definitions.**

"Approved" means having passed a set of criteria set by the department of public safety.

"Commercial product" means any item which is sold for a profit.

"Commissioner" means the commissioner of the Iowa department of public safety or the commissioner's authorized designee.

"Department" means the Iowa department of public safety.

"Missing person" means an individual having temporary or permanent residence in Iowa, or who is believed to be in Iowa, whose location has not been determined, who has been reported as missing to a law enforcement agency, and meets one of the following characteristics:

1. Is physically or mentally disabled.
2. Was, or is, in the company of another person under circumstances indicating that the missing person's safety may be in danger.
3. Is missing under circumstances indicating that the disappearance was not voluntary.
4. Is an unemancipated minor.

"Missing person report" means a report prepared on a form designed by the department of public safety for use by private citizens and law enforcement agencies to report missing person information to the missing person information clearinghouse.

"Prevention and education materials" means those materials which are designed to aid in the prevention of child abduction and address risks to missing children of

exploitation and are used in conjunction with a prevention program.

"Prevention and education programs" means those programs which have as their primary purpose the prevention of child abduction and exploitation of missing children.

"Registry" means a list of prevention and education materials and programs maintained by the department of public safety.

**680—19.4(694) Program information.**

**19.4(1)** The department shall maintain a toll-free telephone line, available twenty-four hours a day, seven days a week to collect and disseminate information concerning missing persons in Iowa.

**19.4(2)** After filing a complaint of a missing person to a law enforcement agency, the person filing the complaint may submit information to the department on a Missing Person Report form.

**19.4(3)** If the missing person is an unemancipated minor, after the filing of a complaint of a missing person to a law enforcement agency, any person may submit information on a Missing Person Report to the department.

**19.4(4)** The department shall maintain a registry of approved prevention and education materials and programs regarding missing and runaway children. The department shall aid in the co-ordination of the efforts of both public and private programs for missing and runaway children.

**19.4(5)** Any individual or group may contact the department regarding prevention and education materials and programs to ascertain if a specific program or material is on the registry.

**19.4(6)** Any individual or group may contact the department regarding available prevention and education materials and programs on the registry.

**19.4(7)** Any individual may file a complaint with the department regarding prevention and education materials and programs on the registry. Complaints shall be directed to the Director, Missing Person Information Clearinghouse, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, in writing.

**680—19.5(694) Forms.** These rules require the use of Form 380—1179, Missing Person Report form, for submission of information by citizens and law enforcement agencies to the department. Form 380—1179 is available from the department of public safety.

**680—19.6(694) Program and material submission information.** Any person or group wishing to submit prevention and education materials and programs for approval and inclusion in the registry may contact the department at the above address and request submission information. The information that shall be provided shall include a copy of the relevant Iowa Code sections, the Iowa Administrative Code and the criteria used to evaluate programs and materials.

**680—19.7(694) Submission for approval.** The department shall consider prevention and education materials and programs submitted for approval upon receipt by the department of all specified materials.

**680—19.8(694) Qualifications for approval.**

**19.8(1)** A prevention or education program must contain all elements determined necessary to adequately

## PUBLIC SAFETY DEPARTMENT[680] (cont'd)

cover the subject matter, as established by the department.

**19.8(2)** A prevention or education program shall not contain any elements determined to be offensive, pornographic or which sensationalize the problem of missing persons.

**19.8(3)** Prevention and education materials shall meet standards established by the department.

**19.8(4)** Prevention and education materials and programs which have been approved by the National Center for Missing and Exploited Children are approved by the department.

**19.8(5)** The department shall not endorse any commercial product.

**680—19.9(694) Program and material modification.** Modifications to approved programs shall be submitted to the department for review to avoid disqualification under 680—19.10(694).

**680—19.10(694) Disqualification after initial approval.** A prevention or education program or material may be disqualified for inclusion in the registry of approved prevention and education materials and programs if it is determined by the department that materials utilized or content of the program is other than what was submitted to the department for initial approval.

**680—19.11(694) Removal from registry.** Any prevention or education program or material which has been disqualified by the department shall be removed from the registry.

**680—19.12(694) Hearings.** The findings and conclusions of the commissioner regarding approval of prevention and education materials and programs shall be final thirty days after the submitter's receipt of the findings unless within the time the submitter files a protest with the Director of the Administrative Services Division, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by personal service or certified mail.

The filing of a protest as well as all proceedings under this rule, shall be in accordance with the procedures outlined in 680—chapter 10 of the Iowa Administrative Code.

**680—19.13(694) Release of information.** Prevention and education materials and program information filed with the department for review are public records. Information pertaining to a missing person received by the department, exclusive of criminal investigative data, shall be public record unless deemed confidential pursuant to Iowa Code chapters 22, 692 and 694, or other provision of law.

**680—19.14(694) Dissemination.**

**19.14(1)** The department shall distribute missing person information, containing the names, photos, descriptions, and information related to the events surrounding those persons' disappearance, in the form of a monthly bulletin. The law enforcement agency or person to contact if a person is located and the names of all located persons will be included in the bulletin. The bulletin shall be sent to law enforcement agencies, media outlets and other individuals and agencies which request missing person information.

**19.14(2)** Each week the department shall produce, update, and distribute public service announcements to

media outlets which request missing person information. These announcements shall contain missing person information similar to that contained in the monthly bulletins.

**680—19.15(694) Training.** The department shall develop training programs for law enforcement personnel and the general public.

**19.15(1)** Training for local law enforcement personnel shall include missing person reporting and legal procedures, and the tracking of missing persons and unidentified bodies.

**19.15(2)** Training for the general public shall include information to assist in the avoidance of child kidnapping.

These rules are intended to implement 1985 Iowa Code Supplement section 694.10.

[Filed 1/10/86, effective 3/6/86]

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## ARC 6316

## 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 12, "Filing Returns, Payment of Tax, Penalty and Interest," and Chapter 30, "Filing Returns, Payment of Tax, Penalty and Interest," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, volume VIII, number 12, on December 4, 1985, as ARC 6174.

These rule amendments are being made to clarify that sales and use tax returns and payments need only be filed and made for one quarter in certain instances and that use tax returns and payments may be filed and made annually if the annual tax liability does not exceed \$120.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective March 5, 1986, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rule amendments are intended to implement Iowa Code chapters 422 and 423.

The following amendments are adopted:

**ITEM 1.** Amend rule 730—12.1(422) by inserting the following new paragraph after the fifth unnumbered paragraph beginning with "On the quarterly return . . ."

A seasonal business retailer with gross receipts in only one quarter during the year may request, and the director may grant, permission to file and remit sales tax for only that specific quarter in which the retailer conducted business.

**ITEM 2.** Amend rule 730—12.3(422) to read as follows:

**730—12.3(422) Permits.** Sales tax permits will be required of all resident and nonresident persons making retail sales at permanent locations within the state. A permit must be held for each location except that retailers conducting business at a permanent location who also make sales at a temporary location are not required to hold a separate permit for any temporary location. All tax collected from the temporary location shall be remitted

REVENUE DEPARTMENT[730] (cont'd)

with the tax collected at the permanent location. Persons who are registered retailers pursuant to rule 29.1(423) relating to use tax may remit sales taxes collected at a temporary location with their quarterly retailers use tax return. Retailers conducting a seasonal business shall also obtain a regular permit. However, returns will be filed on either a quarterly, ~~semiannual~~ or annual basis depending upon the number of quarters in which sales are made. Sales tax permits will be required of all persons, except cities and counties, who have sales activity from gambling.

ITEM 3. Amend rule 730—12.13(422), second unnumbered paragraph, to read as follows:

The following criteria will be used by the department to determine if a change in filing status is warranted.

<u>Filing Status</u>	<u>Statutory Requirement</u>	<u>Test Criteria</u>
Semimonthly	\$4,000 in tax in a semimonthly period.	Tax remitted in 3 of most recent 4 quarters exceeds \$24,000.
Monthly	\$50 in tax in a month.	Tax remitted in 3 of most recent 4 quarters exceeds \$150.
Annual filers	\$120 or less in tax in prior year.	Retailer remits \$120 or less in tax, for last 4 quarters and requests annual filing.
Seasonal		<i>Retailer remits tax for only one quarter during the previous calendar year and requests filing for one quarter only.</i>
Quarterly	All other filers.	<del>All other filers.</del>

ITEM 4. Amend rule 730—30.3(423) by adding the following new paragraphs:

A person purchasing tangible personal property or a taxable service in only one quarter during the year may request, and the director may grant, permission to file and remit use tax for only that specific quarter.

If it is expected that the total annual tax liability of a consumer will not exceed one hundred twenty dollars for a calendar year, the consumer may request, and the director may grant, permission to file and remit use tax on a calendar year basis. The return and tax will be due and payable no later than January 31 following each calendar year.

ITEM 5. Amend rule 730—30.3(423) at the implementation clause to read as follows:

This rule is intended to implement *Iowa Code* section 423.14, ~~The Code~~.

ITEM 6. Amend rule 730—30.4(423) by adding the following new paragraphs after the introductory paragraph:

A seasonal business retailer with gross receipts in only one quarter during the year may request, and the director may grant, permission to file and remit use tax for only that specific quarter in which the retailer conducted business.

If it is expected that the total annual tax liability of a retailer will not exceed one hundred twenty dollars for a

calendar year, the retailer may request, and the director may grant, permission to file and remit sales tax on a calendar year basis. The return and tax will be due and payable no later than January 31 following each calendar year in which the retailer carried on business.

ITEM 7. Amend subrule 30.4(3) by rescinding the subrule.

ITEM 8. Amend subrule 30.4(4) by renumbering the subrule as 30.4(3).

ITEM 9. Amend renumbered subrule 30.4(3), second unnumbered paragraph, to read as follows:

The following criteria will be used by the department to determine if a change in filing status is warranted.

<u>Filing Status</u>	<u>Statutory Requirement</u>	<u>Test Criteria</u>
Monthly	\$1,500 in tax per month.	Tax in 3 of most recent 4 quarters exceeds \$4,500.
Seasonal		<i>Retailer remits tax for only one quarter during the previous calendar year and requests filing for one quarter only.</i>
Annual	\$120 or less in tax in prior year.	<i>Retailer remits \$120 or less in tax, for last 4 quarters and requests annual filing.</i>
Quarterly	All other filers.	<del>All other filers.</del>

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**ARC 6317**

**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 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, volume VIII, number 6, on September 11, 1985, as ARC 5927.

The chapter is amended to reflect certain changes in the law mandated by 1985 Iowa Acts, chapter 32. That legislation subjects to tax fees paid to cities and counties for the privilege of participating in any athletic sport. The rule defines, with examples, what is and is not an athletic sport. The rule then mentions certain fees commonly paid to cities and counties for use of their services and facilities and states whether these fees are or are not paid for the privilege of participating in any athletic sport.

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

With the exception of changing the word "Such" to "These" in 18.39, numbered paragraph 1, at the request of the rules review committee, these rules are identical to those published under Notice of Intended Action. The amendments will become effective March 5, 1986, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code subsection 422.45(20) as amended by 1985 Iowa Acts, chapter 32.

The following rule amendments are adopted:

Rule 730—18.39(422) is amended to read as follows:

**730—18.39(422) Sales or services rendered, furnished, or performed by a county or city.** The gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, and communication service rendered, furnished, or performed by a county or city are subject to the tax. *On and after July 1, 1985, the gross receipts from fees paid to cities and counties for the privilege of participating in any athletic sports are also subject to tax.* Any other sales or services rendered, furnished, or performed by a county or city are not subject to the tax.

A "sport" is any activity or experience which involves some movement of the human body and gives enjoyment or recreation. An "athletic" sport is any sport which requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic sports: Baseball, football, basketball, softball, volleyball, golf, tennis, racquetball, swimming, wrestling, and foot racing.

The following is a list of various fees which would be considered fees paid to a city or county for the privilege of participating in any athletic sport, and thus subject to tax under this rule. The list is not exhaustive.

1. Fees paid for the privilege of using any facility specifically designed for use by those playing an athletic sport: Fees for use of a golf course, ball diamond, tennis court, swimming pool, or ice skating rink are subject to tax. These fees are subject to tax whether they allow use of the facility for a brief or extended period of time, e.g., a daily fee or season ticket for use of a swimming pool or golf course would be subject to tax. Group rental of facilities designed for playing an athletic sport would also be subject to tax.

2. Fees paid to enter any tournament or league which involves playing an athletic sport would be subject to tax. Both team and individual entry fees are taxable. Fees paid to enter any marathon or foot race of shorter duration would be subject to tax under this rule.

Not subject to tax as fees paid to a city or county for the privilege of participating in any athletic sport under this rule are the following charges. The list is not intended to be exhaustive.

1. Fees paid for lesson or instruction in how to play or to improve one's ability to play an athletic sport are not subject to tax. Golf and swimming lesson fees are specific examples of such nontaxable charges. The fees are excluded from tax regardless of whether the person receiving the instruction is a child or an adult. Fees charged for equipment rental, regardless of whether this equipment is helpful or necessary to participation in an athletic sport, are not subject to tax. The rental of a golf cart or moveable duck blind would not be subject to tax. The rental of a recreational boat is a transportation service, the gross receipts of which are not subject to tax if provided by a city or county.

2. Sales of merchandise, e.g., food or drink, to persons watching or participating in any athletic sport are not subject to tax.

3. Fees charged to improve any facility where any athletic sport is played are not subject to tax, unless such a fee must be paid to participate in an athletic sport which can be played within the facility.

4. Fees paid by any person or organization to rent any county or city facility or any portion of any county or city park shall not be subject to tax unless the portion of the park or facility is specifically designed for the playing of an athletic sport.

*EXAMPLE:* A local bridge club pays a fee to use a shelter house and the surrounding grounds at a county park for a picnic. During the course of the picnic, the club members set up a net and use the surrounding grounds to play volleyball. They also improvise a softball field and play a softball game there. The fee which the bridge club has paid to rent the shelter house and surrounding grounds would not be subject to tax.

5. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code sections 422.43 and 422.45; The Code as amended by 1985 Iowa Acts, chapter 32.

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[Published 1/29/86]

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**ARC 6318**

## 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 26, "Sales and Use Tax on Services," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, Volume VIII, Number 5, on August 28, 1985, as Item 11, ARC 5877.

The 1985 Iowa Acts, chapter 32, expanded the number of enumerated services subject to state sales and use tax. Included in this listing of newly taxable services was "security and detective service." This rule sets forth certain characteristics and activities which are considered taxable security and detective services. The rule also lists a number of activities traditionally performed by security or detective agencies which are not taxable as "security and detective service."

This rule is identical to that published under Notice of Intended Action except it was renumbered. The amendments will become effective March 5, 1986, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

This rule is intended to implement Iowa Code subsection 422.43(11) as amended by 1985 Iowa Acts, chapter 32, section 83.

The following new rule is adopted:

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

730—Chapter 26 is amended by inserting the following new rule:

**730—26.69(422) Security and detective services.** On or after July 1, 1985, persons engaged in the business of providing security or detective services are performing services, the gross receipts of which are subject to tax.

**26.69(1) Security service characterized.** Any person who provides a service, the purpose of which is to protect property from theft, vandalism or destruction; or individuals from physical attack or harassment is providing a "security service." Persons engaged in the following services are providing a taxable security service. The list is not exclusive: Rental of guard dogs, burglar and fire alarm systems; providing security guards, body guards and mobile patrols; and protection of computer systems against unauthorized penetration.

**26.69(2) Detective services characterized.** Persons engaged, for a consideration, in the service of investigation for the purpose of obtaining information regarding any one or more of the following matters are engaged in the business of providing a "detective service," and their gross receipts shall be subject to tax. Investigation of crimes or wrongs done or threatened; the habits, conduct, movements, whereabouts, associations, transactions, or reputation or character of any person; the credibility of witnesses or other persons; the investigation or recovery of lost or stolen property or the cause, origin, or responsibility for fires, accidents, or injuries to property; the investigation of the truth or falsity of any statement or representation; the detection of deception; or the business of securing evidence to be used before authorized investigating committees, boards of award or arbitration, or in the trial of civil or criminal cases. The services of a peace officer engaged privately in security or detection work are also subject to tax.

**26.69(3) Gross receipts not subject to tax.** Gross receipts from the following activities are not subject to tax as the gross receipts from security or detective services.

a. The services of a person employed full or part time by an employer in connection with the affairs of the employer.

b. The services of an attorney licensed to practice in Iowa, while performing duties as an attorney.

c. The services of a person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of any person.

d. The services of a person exclusively engaged, either as an employee or an independent contractor, in making investigations and adjustments for insurance companies.

e. The service of notice, or any other document, to a party, witness or any other person in connection with any criminal, civil or administrative litigation.

f. The service of soliciting any debtor to pay or collecting payment for any debt.

g. The service of securing information regarding the fitness or unfitness of any individual for prospective employment, if such information is secured by written or electronic communication only, e.g., checking of résumés.

h. Services as a consultant, who is rendering advice or providing training with regard to security and detection matters.

**26.69(4) Charges excluded from gross receipts.** Mileage and other travel expenses, lodging and meal expenses, fees paid for records, and amounts paid for information do not constitute a portion of the gross

receipts from security or detective services if separately identified, separately billed and reasonable in amount.

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

[Filed 1/10/86, effective 3/5/86]

[Published 1/29/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement. 1/29/86.

## ARC 6324

## REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code section 421.14, the Iowa Department of Revenue hereby adopts amendments to Chapter 71, "Assessment Practices and Equalization," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, Volume VIII, Number 12, on December 4, 1985, as **ARC 6175**.

This rule is identical to that published as Notice of Intended Action. The amendment will become effective March 5, 1986, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

This rule contains the procedure to be followed by local property tax officials in making assessments of omitted property.

The amendment is intended to implement Iowa Code section 443.6.

The following new rule is adopted.

ITEM 1. Reserve rules **730—71.22 to 71.24** for future use.

ITEM 2. Chapter 71 is amended by adding the following new rule:

**730—71.25(441,443) Omitted assessments.**

**71.25(1) Property subject to omitted assessment.**

a. Land and buildings. An omitted assessment can be made only if land or buildings were not listed and assessed by the assessor. The failure to list and assess an entire building is an omission for which an omitted assessment can be made even if the land upon which the building is located has been listed and assessed. See Okland v. Bilyeu, 359 N.W.2d 412 (Iowa 1984). However, the failure to consider the value added as a result of an improvement made does not constitute an omission for which an omitted assessment can be made if the building or land to which the improvement was made has been listed and assessed.

b. Previously exempt property. Property which has been erroneously determined to be exempt from taxation may be restored to taxation by the making of an omitted assessment. See Talley v. Brown, 146 Iowa 360, 125 N.W. 243 (1910). An omitted assessment is also made to restore to taxation previously exempt property which ceases to be eligible for an exemption.



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

71.25(2) Officials authorized to make an omitted assessment.

a. Local board of review. A local board of review may make an omitted assessment of property during its regular session only if the property was not listed and assessed as of January 1 of the current assessment year. For example, during its regular session which begins May 1, 1986, a local board of review may make an omitted assessment only of property that was not assessed by the assessor as of January 1, 1986. During that session, the board of review could not make an omitted assessment for an assessment year prior to 1986.

b. County auditor and local assessor. The county auditor and local assessor may make an omitted assessment. However, no omitted assessment can be made by the county auditor or local assessor if taxes based on the assessment year in question have been paid or otherwise legally discharged. For example, if a tract of land was listed and assessed and taxes levied against that assessment have been paid or legally discharged, no omitted assessment can be made of a building located upon that tract of land even though the building was not listed and assessed at the time the land was listed and assessed. See Okland v. Bilyeu, 359 N.W.2d 412, 417 (Iowa 1984).

c. County treasurer. The county treasurer may make an omitted assessment within four years from the date the tax list which should have contained the assessment should have been delivered to the county treasurer. For example, for the 1985 assessment year, the tax list is to be delivered to the county treasurer on or before June 30, 1986. Thus, the county treasurer may make an omitted assessment for the 1985 assessment year at any time on or before June 30, 1990. However, the county treasurer may make an omitted assessment of a building even if taxes levied against the land upon which the building is located have been paid or legally discharged. See Okland v. Bilyeu, 359 N.W.2d 412, 417 (Iowa 1984). The county treasurer may not make an omitted assessment if the omitted property is no longer owned by the person who owned the property on January 1 of the year the original assessment should have been made.

[Filed 1/10/86, effective 3/5/86]

[Published 1/29/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/29/86.

**EFFECTIVE DATE DELAY**

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
Human Services Department[498]	chapter 87 [IAB 1/1/86, ARC 6263]	Seventy days from effective date of March 1, 1986
Planning and Programming[630]	rule 19.8 [IAB 12/18/85, ARC 6235]	Seventy days from effective date of January 22, 1986

## SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

December 1985

COUNTIES AND COUNTY OFFICERS

Board of Supervisors; Publication of Claims. Iowa Code §§ 349.16 and 349.18 (1985). Expenditures of every county office or department which are approved by the board of supervisors must be published in accordance with §§ 349.16 and 349.18. (Weeg to Johnson, Auditor of State, 12/10/85) #85-12-2(L)

ELECTIONS

Political Nonparty Organizations; Duplication of Designated Titles. Iowa Code ch. 43; §§ 43.2, 43.3. Ch. 44; §§ 44.1, 44.11, 44.12. Ch. 45; §§ 45.1, 45.4. Ch. 49; §§ 49.31(1), 49.36. A candidate who files a petition and affidavit of candidacy pursuant to chapter 45 which designates the title of a political nonparty organization ordinarily should be listed on the ballot under the title designated pursuant to the authority of § 49.31(1). If two candidates file petitions and affidavits of candidacy for the same office pursuant to chapter 45 which designate the same title of a political nonparty organization, the duplication constitutes a failure to designate which creates a duty on the part of the commissioner of elections to select a suitable title for each of the nominees. If a candidate files a petition and affidavit of candidacy pursuant to chapter 45 which designates the title of a political nonparty organization and a candidate is nominated by convention or caucus pursuant to chapter 44 by the same political nonparty organization, the duplication constitutes a failure to designate which creates a duty on the part of the commissioner of elections to select a suitable title for each of the nominees. (Pottorff to Steinbach, Director of Elections, 12/10/85) #85-12-1(L)

Township Trustees; Residency Requirement. Iowa Code ch. 39; § 39.22. Ch. 69; § 69.2(3). S.F. 261. Under circumstances in which the township trustee resided inside the corporate limits of a city when Senate File 261 became effective, a vacancy resulted. (Pottorff to Maulsby, State Representative, 12/11/85) #85-12-4

EMPLOYMENT SECURITY

Unemployment Compensation Fund; Employer Bonding or Security Requirements. All nonprofit reimbursable employers who make payments in lieu of contributions to the state unemployment compensation fund are required to post bond or other security, notwithstanding an election to make payments in lieu of contributions prior to the effective date of 1975 Iowa Acts, ch. 92, § 17, Iowa Code §§ 4.5, 4.13, 96.6(14), 96.7(10), 96.7(14), 96.11(6) (1985); Iowa Code §§ 96.7(10), 96.7(11) (1975); 1976 Iowa Acts, ch. 1068, § 21; 1975 Iowa Acts, ch. 92, § 17. (Lyman to Freeman, Director, Department of Job Services, 12-30-85) #85-12-8

MUNICIPALITIES

City Finance; Capital Improvements Reserve Fund. Iowa Code § 384.7 (1985). A capital improvements levy, established for a specified time period, may not be repealed prior to the lapse of that period. (Walding to Black, State Representative, 12/18/85) #85-12-6(L)

SCHOOLS

Board of Regents: Lobbyists. Iowa Code §§ 280A.16, 280A.23, 262.9 (1985). A merged area school is not prohibited by law from hiring a lobbyist, but spending of such schools is subject to the approval of the State Board of Public Instruction. The difference in the governance of Regents' institutions and of merged area schools does not create a distinction in connection with the legality of hiring lobbyists or legislative liason staff. (Fleming to Paulin, State Representative, 12/12/85) #85-12-5(L)

TAXATION

Property Tax Assessment; Forest Reservation. Iowa Code §§ 161.2, 161.12, 443.6 (1985). If the county board of supervisors designates the county conservation board to inspect an area to determine if it satisfies the criteria for a tax-exempt forest reservation, the county assessor may not overrule the conservation board in initially granting the exemption, but the assessor may later add the property to the tax list as "omitted property," under the authority of § 443.6. A portion of a tract of land may be exempt from property tax as a forest reservation while the remainder of the tract is taxable and should be assessed. An aerial photograph can be sufficient to indicate the location of the forest reservation, in lieu of having the reservation surveyed and given a separate legal description. (Mason to Bair, Director of Iowa Department of Revenue and Wilson, Director of State Conservation Commission, 12/10/85) #85-12-3(L)

Property Tax; Consideration of Value of Mineral Rights Underlying Agricultural Land in Valuing Land. Iowa Code §§ 84.18 and 441.21(1)(a), (e) and (g) (1985). Assessor should not give any consideration to the value of minerals, or any rights or interests thereto, underlying agricultural land in determining the actual value of agricultural land. Where § 84.18 applies, the underlying mineral rights or interests are separately assessed and taxed, independently of the agricultural land, to the owner of such rights or interests. (Kuehn to Gustafson, Crawford County Attorney, 12/24/85) #85-12-7(L)

STATUTES CONSTRUED

<u>1985 Code</u>	<u>Opinion</u>
4.5	85-12-8
4.13	85-12-8
ch. 39	85-12-4
39.22	85-12-4
ch. 43	85-12-1(L)
43.2	85-12-1(L)
43.3	85-12-1(L)
ch. 44	85-12-1(L)
44.1	85-12-1(L)
44.11	85-12-1(L)
44.12	85-12-1(L)
ch. 45	85-12-1(L)
45.1	85-12-1(L)
45.4	85-12-1(L)
ch. 49	85-12-1(L)
49.31(1)	85-12-1(L)
49.36	85-12-1(L)
ch. 69	85-12-4
69.2(3)	85-12-4
84.18	85-12-7(L)
96.6(14)	85-12-8
96.7(10)	85-12-8
96.7(14)	85-12-8
96.11(6)	85-12-8
161.2	85-12-3(L)
161.12	85-12-3(L)
262.9	85-12-5(L)
280A.16	85-12-5(L)
280A.23	85-12-5(L)
349.16	85-12-2(L)
349.18	85-12-2(L)
384.7	85-12-6(L)
441.21(1)(a)	85-12-7(L)
441.21(1)(e)	85-12-7(L)
441.21(1)(g)	85-12-7(L)
443.6	85-12-3(L)
<u>1975 Code</u>	<u>Opinion</u>
96.7(10)	85-12-8
96.7(11)	85-12-8

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED - January 15, 1986

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.

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No. 84-1281. COOPER v. STATE.

Appeal from the Iowa District Court for Black Hawk County, Roger F. Peterson and Peter Van Metre, Judges. **AFFIRMED.** Considered en banc. Opinion by Harris, J. Special concurrence by Shultz, J. (7 pages \$2.80)

The applicant appeals from the denial of two applications for postconviction relief. **OPINION HOLDS:** I. In his first postconviction petition Cooper claimed he was denied his sixth amendment right to effective assistance of counsel because his lawyer's trial preparations and trial conduct were inadequate. We have considered these complaints without detailing them, and we conclude that the petitioner has failed to demonstrate he was prejudiced. II. The petitioner's second claim of ineffective counsel is based on the failure of his trial or appellate counsel to challenge the jury panel. He relies on the fact, conceded by the State, that between 1976 and early 1985 the Black Hawk County auditor violated Iowa Code section 609.4 by using voter registration lists rather than precinct population to decide how many persons from each precinct would be called for jury duty. However, we do not believe that the violation of the statutory duty necessarily invalidates subsequent convictions; the statutory duty in question is not essential to the main statutory objectives. The petitioner has not demonstrated that he was deprived of a trial before a jury that fairly represented his peers. **SPECIAL CONCURRENCE ASSERTS:** I believe that if a proper and timely objection had been made at the original trial, the court would have been bound to set aside the jury panel. However, error in selecting the jury panel was not preserved at trial or on direct appeal, and I would not hold that counsel's failure to object to the jury panel amounted to ineffective assistance. Therefore I join the result reached by the majority.

NO. 85-643. DYER V. NATIONAL BY-PRODUCTS, INC.

Appeal from the Iowa District Court for Polk County, Richard A. Strickler, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, McCormick, McGiverin, and Schultz, JJ. Opinion by Schultz, J. (10 pages \$4.00)

The plaintiff was injured in a job-related accident. He asserts that his employer promised him lifetime employment in return for his forbearance from suing the employer for damages. However, the employer later laid him off. He then sued, claiming that his discharge violated an oral contract of lifetime employment in return for his forbearance from litigation. The district court granted the employer a summary judgment, concluding as a matter of law that there was no consideration for the alleged oral contract because the forborne claim was not a viable cause of action. The plaintiff has appealed. OPINION HOLDS: The district court erred by holding that consideration was absent as a matter of law solely because of the invalidity of the forborne cause of action. Forbearance from litigation can be consideration for a settlement agreement if the forbearing party believes in good faith that the forborne claim is just or viable, even if that belief later proves incorrect. The invalidity of the claim may be evidence of lack of good faith, but it is not conclusive on the issue. In the present case there has been no examination into the plaintiff's good faith belief in the justice of the forborne claim. Therefore there is still an issue of material fact, and summary judgment for the employer was unwarranted.

NO. 84-1471. STATE EX REL. MILLER V. HYDRO MAG, LTD.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, McCormick, McGiverin, and Schultz, JJ. Opinion by Schultz, J. (5 pages \$2.00)

The State has been granted interlocutory appeal from the district court's ruling on its application for adjudication of law points pursuant to Iowa Rule of Civil Procedure 105 wherein the court outlined the elements of proof required for an injunction and restoration of money pursuant to Iowa Code section 714.16. OPINION HOLDS: I. Generally an application for separate adjudication of law points is only considered when the questions of law arise from uncontroverted pleadings. We will, however, adjudicate a rule 105 application, despite the existence of controverted pleadings or unstipulated facts, only when the trial court is presented a legal issue that is independent of a disputed factual issue and a ruling favorable to the applying party will necessarily be dispositive of the case in whole or in part. II. This case was not an appropriate one for a rule 105 disposition.

NO. 84-1737. SHEERIN v. HOLIN CO.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge. Reversed and remanded. Considered en banc. Opinion by Carter, J. Dissent by Harris, J.  
(13 pages \$5.20)

The plaintiff's decedent was murdered by a fellow employee. The plaintiff brought a wrongful death suit against the employer, among others. The district court granted the employer a summary judgment on the ground workers' compensation provided the plaintiff's exclusive remedy as to the employer. The plaintiff has appealed. OPINION HOLDS: The employer's motion for summary judgment was insufficiently supported to establish as a matter of law that the death of plaintiff's decedent occurred in the course of her employment. Accordingly, we reverse the grant of summary judgment. DISSENT ASSERTS: It seems plain to me that the injury was covered by workers' compensation. Because the worker's compensation remedy is exclusive this tort suit is precluded.

NO. 84-1633. STATE EX REL. IOWA DEPARTMENT OF SOCIAL  
85-475. SERVICES v. BARNES.

Appeal from the Iowa District Court for Polk County, Ray Hanrahan, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter, and Wolle, JJ. Opinion by Carter, J.  
(8 pages \$3.20)

Respondent appeals judgment that he reimburse the State for Aid to Dependent Children support payments paid to his former wife and minor children. OPINION HOLDS: I. A court order adopting an agreement between respondent and his former wife whereby he waived a lien on his former residence in exchange for relief from payment of future child support payments was not res judicata on the issue of his child support obligations. II. Iowa Code section 252A.6 (15) requires credit for payments made under support orders in other court proceedings only when the payments are made subsequent to the entry of the judgment in the chapter 252A action. Therefore respondent is entitled to no credit for the release of the lien. III. The presence of respondent's former wife and children on the public assistance rolls creates a prima facie showing that she is not able to provide for their support. IV. The district court properly required reimbursement of that portion of the ADC payments made for the former wife's benefit, because she was receiving such support only by reason of her role as custodian of the dependent children.



NO. 85-921. DELAMORE v. IOWA DEPARTMENT OF TRANSPORTATION.  
Appeal from the Iowa District Court for Black Hawk County, George Stigler, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter, and Wolle, JJ. Per curiam. (5 pages \$2.00)

Delamore was arrested for OWI on the strength of a breath test suggesting intoxication. The breath test results were suppressed in the criminal prosecution on the ground the police had denied due process to Delamore by failing to retain a breath sample. However, the Department of Transportation later revoked Delamore's driver's license on the basis of the same breath test. Upon judicial review of the agency action, the district court upheld the license revocation. Delamore has appealed. OPINION HOLDS: I. The doctrine of issue preclusion does not prevent the use in an administrative revocation proceeding of breath test results which had been suppressed in a criminal proceeding. II. Delamore was not entitled to exclusion of the breath test results from evidence in the administrative hearing; the administrative record before the agency here does not support Delamore's contention that the State's post-arrest procedures violated his due process rights.

NO. 85-420. HOWELL v. RIVER PRODUCTS COMPANY.

Appeal from the Iowa District Court for Louisa County, William S. Cahill, Judge. Reversed and remanded with instructions. Considered by Uhlenhopp, P.J., and Harris, McCormick, McGiverin, and Schultz, JJ. Opinion by Uhlenhopp, J. (8 pages \$3.20)

The plaintiffs, landowners, sued a limestone mining company for extracting limestone from the plaintiffs' land because of a mistake in determining a land boundary. The mining company cross-claimed for indemnity against an engineering firm which had made maps relied on by the mining company. Before trial the mining company entered into a settlement with the plaintiff landowners; following trial the mining company was awarded an indemnity judgment against the engineering firm. The engineering firm appealed, and the mining company cross-appealed, from this indemnity judgment. OPINION HOLDS: I. The proper measure of the amount of indemnity is the amount the mining company is actually out of pocket in buying its peace from the landowners' lawsuit. In this case the evidence shows that amount is \$6550. II. Since about one third of the limestone improperly mined from the plaintiffs' land was attributable to the mistake of a previous engineer not involved in this lawsuit, the cross-claim defendant is responsible for only two thirds of the amount determined above, or \$4367. III. There is no evidence to support the engineering firm's contention that the mining company itself was partially responsible for the boundary mistake.

NO. 84-868. SCHERMER v. MULLER.

On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Butler County, John F. Stone, Judge. Decision of court of appeals affirmed; judgment of district court reversed; remanded. Considered en banc. Opinion by Wolle, J. Dissent in part by McGiverin, J. (24 pages \$9.60)

We granted further review to defendants of a decision of the court of appeals that reversed in part a trial court summary judgment for defendants in a three motor vehicle negligence action. OPINION HOLDS: I. The evidence was sufficient to generate a genuine issue of material fact on a claim that one of the decedent drivers negligently crossed the center line of the roadway. II. The evidence was sufficient to generate a genuine issue of material fact on a claim that the other decedent driver had stopped and blocked the roadway in violation of the duty imposed by Iowa Code section 321.254. DISSENT IN PART ASSERTS: The evidence was insufficient to generate a genuine issue of material fact on a claim that one of the drivers negligently crossed the center line.

NO. 84-1832. PHILLIPS v. IOWA DISTRICT COURT FOR JOHNSON COUNTY.

Certiorari to the Iowa District Court for Johnson County, Paul J. Kilburg, Judge. Writ Sustained. Considered by Uhlenhopp, P.J., and Harris, Larson, Carter, and Wolle, JJ. Opinion by Wolle, J. (12 pages \$4.80).

Plaintiff challenges via certiorari a judgment of contempt based on violation of visitation provisions of a dissolution decree. OPINION HOLDS: I. No person may be found in contempt and punished for that contempt unless the person's contumacious actions are established by proof beyond a reasonable doubt. II. The district court did not have statutory authority under Iowa Code section 598.23 (1985) in this contempt proceeding to punish plaintiff with both a modification of the dissolution decree and a determinate jail sentence. The district court did have the authority to provide for the jail sentence in the contempt proceeding and to modify visitation in the separate modification proceeding which was tried at the same time. Because the case must be reversed and remanded for a new trial under Division I, no determination is made as to whether the second issue involved harmless error.

No. 84-1894. STATE v. CULLEN.

On appeal from the Iowa District Court for Pottawattamie County, Paul H. Sulhoff, Judge. AFFIRMED. Considered by Uhlenhopp, P.J., and Harris, McCormick, McGiverin, and Schultz, JJ. Per Curiam. (3 pages \$1.20).

The state was granted discretionary review of an order granting a new trial following defendant's conviction for first-degree murder. OPINIONS HOLDS: The ruling in question fell within the unusually broad discretion enjoyed by the trial court.

No. 84-1303. STATE V. JACKSON.

Appeal from the Iowa District Court for Black Hawk County, Carroll Engelkes and Peter Van Metre, Judges. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, McCormick, McGiverin and Schultz, JJ. Opinion by McCormick, J.

(11 pages \$4.40)

Defendant appeals from his conviction and sentence for first-degree murder in violation of Iowa Code sections 707.2(1) and 707.2(2). He contends the trial court erred in overruling his motion to suppress evidence of inculpatory statements he made during police interrogation in absence of counsel. OPINION HOLDS: I. Participation of a prosecuting attorney in the investigative stage of the proceeding is, in itself, not the determinative factor in showing the State's commitment to prosecute defendant. Here no doubt exists prosecutorial forces had focused their attention on defendant as perpetrator of the offense for which the officers procured the arrest warrant. Defendant's sixth and fourteenth amendment rights to counsel had attached at the time he was interrogated by the Waterloo police officers. II. Under these facts the State did not meet its heavy burden to prove defendant understood his right to counsel and intentionally relinquished it. The trial court erred in overruling defendant's suppression motion.

No. 85-387. SMITH V. LALLY.

Appeals from the Iowa District Court for Scott County, David J. Sohr, Judge, and Dubuque County, Thomas H. Nelson, Judge. Affirmed. Considered by Uhlenhopp, P.J., and Harris, McCormick, McGiverin and Schultz, JJ. Opinion by McCormick, J.

(6 pages \$2.40)

Plaintiffs filed the same medical malpractice action against defendants on three occasions. They voluntarily dismissed the first two actions. Later they were unsuccessful in seeking to have the second dismissal modified or vacated. The district court subsequently entered summary judgment against plaintiffs in the third action, holding that under Iowa R. Civ. P. 215 the second voluntary dismissal acted as an adjudication against plaintiffs on the merits and precluded the third petition. Plaintiffs appeal from the order refusing to modify or vacate their second dismissal and the order dismissing their third action. OPINION HOLDS: We find no merit in plaintiffs' contention that rule 215 did not apply in this case. Plaintiffs' dismissal of their second action was absolute and deprived the court of jurisdiction of the case.

No. 84-1855. LINCOLN V. IOWA DISTRICT COURT FOR POLK COUNTY.

Certiorari to the Iowa District Court for Polk County, James P. Denato, Judge. Writ annulled. Considered by Uhlenhopp, P.J., and McCormick, Larson, Schultz and Carter, JJ. Per curiam. (2 pages \$.80)

Plaintiff challenges her conviction and sentence for contempt. OPINION HOLDS: I. Plaintiff failed to demonstrate or preserve error concerning her contention that the standard of proof should have been proof beyond a reasonable doubt. II. The evidence was sufficient to support beyond a reasonable doubt that plaintiff's admitted conduct was a willful disturbance within the meaning of Iowa Code section 665.2 (1983). III. The record made in the district court satisfies the requirements of section 665.10.

No. 84-1946. WOODY V. MACHIN.

Appeal from the Iowa District Court for Jasper County, Gene L. Needles, Judge. Affirmed in part and reversed and remanded in part. Considered by Uhlenhopp, P.J., and Harris, McCormick, McGiverin, and Schultz, JJ. Opinion by McCormick, J. Special concurrence by Uhlenhopp, J. (11 pages \$4.40)

Plaintiffs appeal from the trial court's apportionment of costs and the order of abatement in a nuisance action. OPINION HOLDS: I. A. The applicability of Code section 625.3 is not limited to equity cases. We find no abuse of the trial court's discretion in apportioning costs pursuant to that section. B. The trial court was not authorized to include deposition costs in the cost award in this case. Therefore the court did not err in ordering the parties to be responsible for the costs of their own depositions. II. We have no basis to interfere with the trial court's determination concerning the scope of the nuisance. We find that the trial court erred in giving defendants a right in plaintiffs' land in fashioning its abatement remedy. We reverse and remand the abatement order to permit the court to order a different remedy, based on principles in our cases. SPECIAL CONCURRENCE ASSERTS: I concur in all the court's opinion except the statement concerning the extent of the Iowa Rule of Civil Procedure 157(a) limitation on awards of deposition costs.

No. 85-505. HALL V. IOWA MERIT EMPLOYMENT COMMISSION.

Appeal from the Iowa District Court for Linn County, August F. Honsell, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter and Wolle, JJ. Opinion by McGiverin, J. (13 pages \$5.20)

The Department of Human Services (DHS) demoted and transferred its employee, petitioner Betty Hall, after her entry of a guilty plea to a criminal charge of mechanical and electronic eavesdropping, three months after she had been suspended for misuse and abuse of state telephones in

connection with the same incident. The respondent commission upheld the action of DHS. The district court on judicial review reversed the respondent commission's ruling and ordered Hall reinstated to her former position. The respondent commission has appealed. OPINION HOLDS: I. Discipline of employees in the state merit system of personnel administration is governed by Iowa Code section 19A.9(16) and 570 Iowa Administrative Code section 11.2. II. Petitioner's plea of guilty arose out of the same operative facts that served as grounds for petitioner's first suspension. It was not a separate act of misconduct on the part of petitioner. III. Petitioner's three-day suspension was the final agency action in the matter. Because petitioner had not committed a further act of misconduct, the department was precluded from ordering further disciplinary action based on the same factual incident.

No. 85-96. ERICKSON V. SALAMA.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Reversed. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter and Wolle, JJ. Opinion by McGiverin, J. (8 pages \$3.20)

Plaintiffs appeal from an order of the district court denying their request for reinstatement of a civil action which had been automatically dismissed pursuant to Iowa Rule of Civil Procedure 215.1, contending that the clerk of court failed to give a "try or dismiss" notice to plaintiffs' counsel of record as provided in the rule. OPINION HOLDS: Service of a rule 215.1 notice pursuant to that rule is a prerequisite to dismissal of a case under the rule. Because one of the plaintiffs' separate counsel of record was not given or mailed the rule 215.1 notice to which he was entitled, it appears that dismissal of the case was inappropriate.

NO. 85-330. WALDSCHMIDT v. IOWA LAKES PRODUCTION CREDIT ASSOCIATION.

Appeal from the Iowa District Court for Kossuth County, James H. Andreasen, Judge. Reversed and remanded. Considered en banc. Opinion by Wolle, J. (4 pages \$1.60)

The district court sustained the defendant's special appearance, holding that the federal district court had exclusive jurisdiction to decide plaintiff's claims. The plaintiff has appealed. OPINION HOLDS: In South Central Iowa Production Credit Association v. Scanlan, \_\_\_ N.W.2d \_\_\_ (Iowa 1986), decided today, we address the issue of exclusive federal court jurisdiction and uphold the jurisdiction of Iowa courts to decide actions sounding in tort against production credit associations. We do not approve plaintiff's failure to respond to the special appearance in a manner which would have helped the district court. However, plaintiff's act of filing his petition in the district court preserved error as to the legal issue of the court's subject matter jurisdiction.

NO. 85-241. SOUTH CENTRAL IOWA PRODUCTION CREDIT ASSOCIATION  
v. SCANLAN.

Appeal from the Iowa District Court for Adams County, Van Wifvat, Judge. Reversed and Remanded. Considered by Uhlenhopp, P.J., and Harris, Larson, Carter, and Wolle, JJ. Opinion by Wolle, J. (14 pages \$5.60)

Defendant farmers appeal from interlocutory rulings in a mortgage foreclosure action granting plaintiff's special appearance with respect to their tort counterclaim and striking their jury demand. OPINION HOLDS: I. Plaintiff, a federally chartered production credit association, is not a federal instrumentality within the meaning of the Federal Tort Claims Act, and therefore that federal statute does not deprive the Iowa district court of jurisdiction to decide this case. State courts have jurisdiction to decide actions in which production credit associations are parties. II. The fact that the plaintiff has instituted an equitable action is not sufficient reason to deprive the counterclaimant of a jury trial with respect to issues ordinarily triable to a jury.

NO. 84-1870. NORTH STAR STEEL CO. v. IOWA DEPARTMENT  
OF REVENUE.

Appeal from the Iowa District Court for Muscatine County, David J. Sohr, Judge. Affirmed on the department's appeal; reversed on the cross-appeal. Considered by Reynolds, C.J., and Uhlenhopp, McCormick, Schultz, and Wolle, JJ. Opinion by Wolle, J. (19 pages \$7.60)

The department of revenue appeals and the taxpayer cross-appeals from a judicial review decision concerning a use tax assessment on materials used in an electric arc furnace. OPINION HOLDS: I. The taxpayer had the burden of proving that its use of furnace materials fell within the scope of statutory language excepting "processing" from the Iowa use tax. II. Purchased property is exempt from use tax if it generally is used for an exempt purpose or if any substantial part of the function of the property is encompassed within a specific statutory exemption. The department of revenue erred in applying a primary use test in its determination that furnace materials were subject to use tax because they did not satisfy that test. III. The processing exemption as defined in Iowa Code section 423.1(1)(a) covers the taxpayer's use of carbon electrodes and refractory materials in its steelmaking furnace.

NO. 84-963. KURTH v. FIRST NATIONAL BANK.

Appeal from the Iowa District Court for Carroll County, Russell J. Hill, Judge. Reversed on appeal, affirmed on cross-appellant's appeal. Considered by Harris, P.J., and McGiverin, Larson, Carter, and Wolle, JJ. Opinion by Larson, J. (15 pages \$6.00)

The defendant bank loaned money to a financially troubled tenant farmer on a note cosigned by the tenant and his landlord. The note was secured by a mortgage on land

owned by the landlord. Shortly after these transactions the landlord died. Beneficiaries of his estate, and the trustee of a trust established thereunder, later sued the bank and its president alleging fraud and breach of fiduciary duty. Various account creditors of the tenant farmer joined the suit as plaintiffs, alleging a conspiracy to defraud them of the amounts owed them. The district court awarded the trustee and estate beneficiaries a judgment for breach of fiduciary duty and an order cancelling the real estate mortgages. The bank and its president have appealed from these rulings. The district court also dismissed the claims of the tenant farmer's account creditors; those creditors have cross-appealed. OPINION HOLDS: I. The evidence does not meet the substantial evidence standard required to withstand a directed verdict motion on the question of fiduciary duty. The record fails to show the customer relied upon the bank for advice in connection with this transaction or that, even if such reliance was placed in the bank, the bank was aware of it. II. Because we have concluded there was no fiduciary duty established, the basis for cancellation of the mortgage no longer exists. It was error for the trial court to order it cancelled. III. There was no sufficient evidence to support the account claimants' claim based on conspiracy to defraud.

No. 85-367. SMALLEY v. DEWBERRY.

Appeal from the Iowa District Court for Linn County, Harold J. Swailes, Judge. AFFIRMED. Considered by Uhlenhopp, P.J., and Harris, McCormick, McGiverin, and Schultz, JJ. Opinion by Harris, J. (9 pages \$3.60).

The defendant Dewberry operates an automotive parts store in Tennessee, adjacent to a military base. Dewberry sold a steering wheel to an Iowan stationed at the military base. After his military service the purchaser returned to Iowa and brought the steering wheel with him. The steering wheel was later implicated as the cause of a traffic accident in Iowa. The plaintiff, who was injured in that accident, brought a product liability suit against Dewberry and against other defendants who had been involved in the design, manufacture, and sale of the steering wheel. Dewberry filed a special appearance, alleging that Iowa courts lacked jurisdiction over him because he had insufficient minimum contacts with Iowa. The district court sustained this special appearance, and the plaintiff appealed. OPINION HOLDS: Since the defendant Dewberry sought to conduct no activities in Iowa and had no direct or indirect involvement with Iowa, he lacked sufficient minimum contacts to confer personal jurisdiction on Iowa's courts. The sole ground for claiming sufficient minimum contacts is that Dewberry sold the steering wheel to an Iowa soldier who might be expected to return to Iowa with the wheel. However, the anticipated return to Iowa is solely a matter of foreseeability, and the United States Supreme Court has held that the foreseeability of a product's reaching a state in the stream of commerce is not by itself sufficient to confer jurisdiction on the courts of that state. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559,

62 L. Ed. 2d 490 (1980). Woodson requires us to overrule our earlier decision in Edmundson v. Miley Trailer Co., 211 N.W.2d 269 (Iowa 1973).

No. 85-389. STATE v. MYERS.

On appeal from the Iowa District Court for Black Hawk County, James C. Beeghly, Judge. AFFIRMED. Considered en banc. Per Curiam. Dissent by Schultz, J. (3 pages \$1.20).

The defendant appeals from his conviction for operating a motor vehicle while intoxicated, third offense. OPINION HOLDS: The defendant contends his pretrial challenge to the jury panel should have been sustained. We rejected an identical contention in State v. Lohr, 266 N.W.2d 1, 6 (Iowa 1978). We reject it again in Cooper v. State, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 1986) which we file today. DISSENT ASSERTS: I believe the trial court should have sustained the defendant's objection to the jury panel.

NO. 84-1428. LAMP V. AMERICAN PROSTHETICS, INC.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Cerro Gordo County, B. C. Sullivan, Judge. Decision of the court of appeals and judgment of district court affirmed. Considered en banc. Opinion by Larson, J. (7 pages \$2.80)

We granted further review of a court of appeals decision affirming the unenforceability of a restrictive covenant in an employment contract. OPINION HOLDS: I. The restrictive covenant not to compete with the employer within 100 miles of any of its Iowa offices effectively prohibited competition within the whole state. The evidence does not show such an extensive restriction is reasonably necessary to protect the employer. Therefore the restrictive covenant swept too broadly to be enforced as written. II. The issue of modification and partial enforcement was not properly raised in district court and therefore not preserved for appeal. We conclude it is waived.

NO. 85-522. HEMPHILL v. IOWA DEPARTMENT OF TRANSPORTATION.

Appeal from the Iowa District Court for Linn County, William Thomas, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter, and Wolle, JJ. Opinion by Larson, J. (5 pages \$2.00)

Petitioner appeals from the district court order affirming revocation of his driver's license under Iowa Code section 321B.13 for his refusal to submit to body specimen tests. OPINION HOLDS: I. A signed affidavit and notary form, although referred to on the request form for body specimens, is not required under Iowa Code section 321B.4. II. The destruction of a video tape taken of petitioner following his arrest was the result of defendant's failure to properly provide for its preservation. He had adequate time and opportunity to preserve the video tape.



NO. 84-950. ADAM v. STATE.

Appeal from the Iowa District Court for Van Buren County, James P. Rielly, Judge. Affirmed in part, reversed in part, and remanded. Considered en banc. Opinion by Uhlenhopp, J. Dissent in part by Schultz, J. (29 pages \$11.60)

Defendant State appeals from judgment holding it liable to plaintiff grain producers for negligent licensing and inspecting of a grain dealer and warehouse. Plaintiffs cross appeal on measure of damage. OPINION HOLDS: I. Iowa Code sections 542.14 and 543.38 are applicable to plaintiffs' claims. II. Settlement of a similar case during the pendency of an appeal does not preclude the State from asserting that those statutes bar the imposition of liability. Plaintiffs' claims under Iowa Code chapter 543 are completely foreclosed under section 543.38, enacted in 1967. Iowa Code section 542.14, enacted in 1978, should not be given retrospective effect. Plaintiffs are not barred from recovering for losses, if any, which accrued prior to the effective date of the statute for negligence under chapter 542. III. Failure of the commerce commission to perform mandated duties and its performance of authorized functions without due care constitute negligence. IV. Plaintiffs' claims are cognizable under the general waiver of immunity under the State Tort Claims Act. The discretionary function exception is inapplicable. V. The trial court's findings of negligence and causation have substantial evidentiary support. VI. In determining plaintiffs' damages the trial court properly deducted from the principal amount of each plaintiff's loss the amount such plaintiff received from the grain dealer's bankruptcy trustee. DISSENT IN PART ASSERTS: I would not hold that inspector's failure to perform their duties constitutes actionable negligence.

No. 85-415. STATE v. WALK.

On appeal from the Iowa District Court for Black Hawk County, James C. Beeghly, Carroll E. Engelkes, and George L. Stigler, Judges. AFFIRMED. Considered en banc. Per Curiam. Dissent by Schultz, J. (3 pages \$1.20).

The defendant appeals from his conviction for third-degree theft. OPINION HOLDS: I. The defendant contends the trial court erred by rejecting his challenge to the jury panel, which alleged that a failure to follow the procedure under section 609.4 and 609.5 denied his right to be tried by a representative cross-section of the community. We rejected this contention in State v. Lohr, 266 N.W.2d 1, 6 (Iowa 1978). We reject it again in Cooper v. State, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 1986) which we file today. II. We agree with the trial court that the various continuances which delayed trial were necessary to act on motions filed by the defense. None were attributable to the State. Speedy trial was waived. DISSENT ASSERTS: I believe the trial court should have sustained the defendant's objection to the jury panel.

NO. 85-347. MATA v. CLARION FARMERS ELEVATOR COOPERATIVE.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, McCormick, McGiverin, and Schultz, JJ. Opinion by Uhlenhopp, J. (16 pages \$6.40)

A worker's compensation insurer appeals from the district court's dismissal of its petition of intervention in an employee's tort action against a third party. Prior to filing of the petition of intervention the parties to the tort action settled loss of consortium claims involving the employee's wife and children and the employee also dismissed his action with prejudice. OPINION HOLDS: I. Under Iowa Code section 85.22(3) a dismissal of an employee's third-party action is not valid without the written consent of the employer or insurer or, if they refuse, without the written approval of the industrial commission. Whether or not the employee's dismissal of his action was part of the consideration for the settlement of the loss of consortium claims, it was ineffective and intervention should have been permitted. Complexity of issues provides no basis for prohibiting intervention. When the insurer aligned itself with an employee who had filed a claim with the state, the insurer's failure to await disposition of its state tort claim does not bar intervention. II. A question remains for trial as to whether some portion of the settlement is to be allocated to the employee's lawsuit and the insurer's reimbursement. The district court should have stricken the employee's dismissal subject to that reservation. III. The court should have allowed an amendment to the petition of intervention enlarging upon the original plaintiff's allegations of negligence.



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