



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME ~~IX~~
July 2, 1986

NUMBER 1
Pages 1 to 72

IOWA STATE LAW LIBRARY
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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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
2	Friday, June 27, 1986	July 16, 1986
3	Friday, July 11, 1986	July 30, 1986
4	Friday, July 25, 1986	August 13, 1986

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1985, to June 30, 1986	\$122.00 plus \$4.88 sales tax
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Fourth quarter	April 1, 1986, to June 30, 1986	\$ 33.00 plus \$1.32 sales tax

Single copies may be purchased for \$4.00 plus \$0.16 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

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Iowa Administrative Code - \$670.00 plus \$26.80 sales tax
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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 following rules will be reviewed by the Administrative Rules Review Committee at a special meeting Thursday, July 31, 1986, 10:00 a.m., in Committee Room 24, State Capitol.

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10:00 a.m.

ARC 6647**AGRICULTURAL DEVELOPMENT
AUTHORITY[25]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code chapter 175, the Iowa Agricultural Development Authority [Previously, Iowa Family Farm Development Authority (523). Existing rules of the Authority will be transferred to Agricultural Development Authority (25) at a later date.] proposes to amend Chapter 5, "Operating Loan Guarantee Program," appearing in the Iowa Administrative Code.

The amendment to Chapter 5 is intended to include displaced farmers as eligible recipients for assistance under the Operating Loan Guarantee Program. The amendment also changes the definition of a beginning farmer to include only those farmers who became engaged in farming on or after January 1, 1982.

Interested persons may submit comments orally or in writing to the Executive Director, Iowa Agricultural Development Authority, Henry A. Wallace Building, Des Moines, Iowa 50309 (515/281-6444), on or before July 22, 1986.

These rules are intended to implement 1986 Iowa Acts, Senate File 2212.

ITEM 1. Amend rule 523—5.1(175) as follows:

Add the following new definition.

"Displaced farmer" means a person who discontinued farming on or after January 1, 1982, due to foreclosure or voluntary liquidation for financial reasons, and who was actively engaged in farming for at least one year prior to discontinuing farming.

ITEM 2. Amend subrule 5.1(1) as follows:

5.1(1) "Beginning farmer" means an individual or partnership as defined by Iowa Code chapter 175, that became engaged in farming on or after January 1, 1982.

ITEM 3. Amend subrule 5.2(1) as follows:

5.2(1) Loan period. The loan period shall not be in excess of one year after the date the participating lender has advanced the first funds for the operating loan. The authority shall have the option to extend the loan guarantee for an additional year. The loan guarantee will automatically expire on the expiration date unless extended by the authority. The authority shall guarantee only one operating loan for each beginning farmer or displaced farmer.

ITEM 4. Amend subrule 5.3(1) as follows:

5.3(1) The loan guarantee fund shall not be used to guarantee a loan where the ratio of the beginning or displaced farmer's liabilities, excluding the amount of the loan, to net worth is greater than three to one.

ITEM 5. Amend subrule 5.4(1) as follows:

5.4(1) Application will be made on customary and appropriate forms approved by the authority. Each application will include, but not be limited to, the following: Names and addresses of beginning or displaced farmer and participating lender, amount of loan, state-

ment of beginning or displaced farmer's net worth determined in accordance with the authority's rules, length of loan guarantee plus certain certifications of the beginning or displaced farmer and lender including the ratio of the beginning or displaced farmer's liabilities, excluding the amount of the loan to net worth.

ARC 6682**AGRICULTURE,
DEPARTMENT OF[30]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 189.2(2), the Iowa Department of Agriculture hereby gives Notice of Intended Action to create a new Chapter 9, "On-Site Containment of Pesticides," Iowa Administrative Code.

Public concern for protection of Iowa's surface and groundwater from contamination by pesticides has prompted the agricultural chemical industry to request that rules governing the storage and handling of bulk pesticides be adopted by the Iowa Department of Agriculture. In response to this request, the Secretary appointed a task force comprised of representatives from the Iowa Department of Agriculture, Iowa Department of Water, Air and Waste Management, agricultural fertilizer and chemical industry and other interested persons to study the storage and handling of pesticides in Iowa. The task force was to make recommendations concerning rules for secondary containment of these materials. The following rules have been recommended by the appointed task force, as well as the Secretary's Pesticide and Fertilizer Advisory Council.

The proposed rules require that secondary containment structures capable of collecting product spills and storm water runoff be provided at permanent sites where pesticides are stored in nonmobile bulk containers. Under the rules, containment structures will be required at all permanent locations where bulk pesticides are being stored in nonmobile containers (containers with capacity for storing greater than 55 gallons of liquid pesticide or greater than 100 pounds of dry pesticide).

The proposed rules also require that all mixing, repackaging and transferring of pesticides at permanent storage and mixing sites shall be done in areas draining into a secondary containment structure. In addition, all rinsing of storage containers and application tanks and the washing of handling and application equipment at these sites must be done in areas draining into a secondary containment structure. These requirements do not apply if product mixing, rinsing of containers and applicator tanks and washing of handling and application equipment is done in the field.

The proposed rulemaking may have an impact on small business.

AGRICULTURE DEPARTMENT[30] (cont'd)

Any interested person may make written suggestions or comments on these proposed rules prior to July 22, 1986. Such written materials should be directed to Secretary of Agriculture, R. H. Lounsberry, Iowa Department of Agriculture, Henry A. Wallace Building, Des Moines, Iowa 50319. There will be a public hearing held on July 22, 1986, at 1:00 p.m. in the Auditorium of the Henry A. Wallace Building, East Ninth and Grand Avenue, Des Moines, Iowa. Persons may present their views at this hearing either orally or in writing.

These rules are intended to implement Iowa Code section 206.19.

The following rules are proposed:

A new Chapter 9, "On-Site Containment of Pesticides," is proposed, as follows:

**CHAPTER 9
ON-SITE CONTAINMENT
OF PESTICIDES**

30—9.1(206) Definitions. Where used in these rules:

Bulk pesticide. Bulk pesticide means any registered pesticide which is transported or held in an individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or 100 pounds net dry weight.

Bulk repackaging. Bulk repackaging means the transfer of a registered pesticide from one bulk container (containing undivided quantities of greater than 55 U.S. gallons liquid measure or 100 pounds net dry weight) to another bulk container (containing undivided quantities of greater than 55 U.S. gallons liquid measure or 100 pounds net dry weight) in an unaltered state in preparation for sale or distribution to another person.

Mobile containers. Containers designed and used for transporting pesticide materials.

Nonmobile containers. All containers not defined as mobile.

Permanent pesticide storage and mixing site. Site where pesticides are being stored for more than thirty days per year and at which more than 300 gallons of liquid pesticide or 300 pounds of dry pesticide are being mixed, repackaged or transferred from one container to another within a thirty-day period.

Secondary containment. Any structure used to prevent runoff or leaching of pesticide materials.

30—9.2(206) On-site containment of pesticides. Commencing two years after the adoption of these rules, all nonmobile bulk pesticide storage containers shall be located within a watertight secondary containment facility.

Commencing two years after the adoption of these rules, all mixing, repackaging and transfer of pesticides from one container to another performed at a permanent pesticide storage and mixing site shall be done within a containment area. The designated site shall be paved with asphalt or concrete and be elevated above surrounding area or curbed so as not to receive runoff from surrounding area that would overload recovery system and shall slope to a discharge point that allows materials to flow to a watertight containment structure in compliance with rule 30—9.10(206).

30—9.3(206) Design plans and specifications. Design plans and specifications for facilities required under these rules shall be submitted to the Iowa department of agriculture prior to the start of construction, along with certification from a registered engineer

(as defined in Iowa Code chapter 114) that the designed facilities will comply with all requirements of these rules.

A person may deviate from the requirements of these rules if such deviations are clearly noted on the design plans and specifications, along with certification from a registered engineer that these deviations will not reduce the effectiveness of the facilities in protecting surface or groundwaters.

30—9.4(206) Certification of construction. Upon completion of construction, certification by the owner or owner's agent shall be made to the Iowa department of agriculture that the facilities were constructed in accordance with rules 9.2(206) to 9.11(206). If departmental investigation, subsequent to the completion of construction, determines the constructed facilities were not constructed in accordance with the submitted plans and specifications or the requirements of these rules, the owner shall correct any deficiencies in a timely manner as set forth by the department.

The department may exempt any person from a requirement under rules 30—9.2(206) to 30—9.11(206) if an engineering justification is provided demonstrating variations from the requirements will result in at least equivalent effectiveness.

30—9.5(206) New pesticide storage and mixing site location. New permanent storage and mixing sites as defined in subrule 9.1(3) shall be selected in accordance with requirements of the Iowa department of water, air and waste management. The new site if located in a flood plain shall be protected from inundation from floods. New permanent pesticide storage and mixing sites shall be located a minimum of 400 feet from public water supply wells or below ground level finished water storage facilities and a minimum of 150 feet from private water supply wells.

30—9.6(206) Pesticide storage and mixing site. Each site shall comply with those ordinances and regulations enacted by the city or county affected by such location that relate to the location of such sites. All sites and facilities where flammable pesticides are stored shall comply with state and federal fire protection rules and regulations, including the National Fire Protection Standard (Standard 30) for storage of flammable liquids.

30—9.7(206) Secondary containment for nonmobile bulk pesticide storage and mixing. Base and walls of secondary containment facilities must be constructed of concrete, steel or other impervious materials which are compatible with the pesticides being stored and will maintain their integrity under fire conditions. Storage containers must be anchored, as necessary, to prevent flotation or instability in the event of discharge into the secondary containment facility. Routine inspection is required to assure against concrete cracks. Cracks that occur in a secondary containment structure must be repaired with an acceptable sealant.

The diked area shall not have a relief outlet and valve. The base shall slope to a collecting spot where precipitation water may be pumped out provided the liquid is not contaminated with pesticides. If contaminated with a pesticide, the liquid shall be disposed of or field applied according to the pesticide label instructions.

9.7(1) Secondary containment for outside nonmobile bulk pesticide storage shall be constructed with a volume sufficient to contain a minimum of 110 percent of the capacity of the largest single container, plus the space

AGRICULTURE DEPARTMENT[30] (cont'd)

occupied by other tanks located within the secondary containment structure.

9.7(2) Secondary containment for under roof nonmobile bulk pesticide storage shall be constructed with a volume sufficient to contain a minimum of 100 percent of the capacity of largest single container, plus the space occupied by other tanks located within the secondary containment structure.

9.7(3) Precipitation must not be allowed to accumulate in the secondary containment facility. Failure to properly maintain secondary containment facilities may subject firm to state and federal regulations related to hazardous waste generators.

9.7(4) Discharges into a secondary containment facility must be promptly recovered to the maximum extent possible. Failure to properly manage discharge may subject the firm to pesticide misuse regulations and possibly to regulations related to hazardous waste generators.

9.7(5) Pesticides must be handled in a manner that minimizes pesticide dusts, aerosols and vapors from movement off mixing site.

9.7(6) Discharge of pesticides from a secondary containment facility shall be recovered to the maximum extent possible. The Iowa department of water, air and waste management, the county sheriff or local police shall be contacted as soon as possible, but not later than six hours of onset or discovery of spill.

30—9.8(206) Pesticide storage and mixing site containers. Containers used for pesticide storage and handling shall be of materials and construction compatible with the pesticide stored and the conditions of storage and maintained in a manner as to minimize the possibility of a spill.

9.8(1) Storage container labeling and protection. Upon delivery of the bulk pesticide, the registered product label shall be affixed in a prominent location on the bulk pesticide storage containers and designed to remain intact and legible throughout active use of container.

Locking devices are required on bulk pesticide storage and mixing site containers and all valves shall be closed and locked when the facility is left unattended.

Containers, pipes and valves must be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles.

9.8(2) Reserved.

30—9.9(206) Transportation of bulk pesticides. Bulk pesticide containers shall meet all applicable standards of the appropriate state and U.S. Department of Transportation laws and regulations.

9.9(1) Mobile bulk pesticide containers shall be secured to prevent significant movement during transportation.

9.9(2) Mobile bulk pesticide containers shall bear the registered product label for the material contained therein.

30—9.10(206) Mixing, repackaging and transfer of pesticides. Pesticides shall be mixed, repackaged and transferred in a manner that will prevent unreasonable, adverse effects to humans or to the environment. Physical and chemical properties, including volatility, toxicity and flammability, shall be considered in the mixing, repackaging and transfer of pesticides.

9.10(1) Pesticides that are spilled, leaked or otherwise unchecked during the normal operation of perma-

nent pesticide storage and mixing sites (including mixing, repackaging and transfer of pesticides) must discharge or drain into a watertight catch basin from which discharges are to be recovered, including discharge from any empty pesticide containers not rinsed according to label.

9.10(2) All washing of pesticide handling and application equipment performed at a permanent pesticide storage and mixing site shall be conducted within an area which drains to a watertight containment structure. No pesticide rinsates or wash waters from pesticide equipment shall be disposed of through sanitary or storm sewer systems without a National Pollutant Discharge Elimination System Permit or sanitary sewers without prior approval of the sanitary sewer authority or publicly owned treatment works.

9.10(3) Prior to refilling, bulk pesticide containers must be thoroughly cleaned except when a sealed or dedicated recyclable bulk pesticide container is refilled with the same labeled pesticide product as the preceding product.

9.10(4) All drainage into a containment structure shall be monitored and properly managed. All rinsates and minor spillages related to pesticides which have not resulted from a container failure and which accumulated in the secondary containment structure shall be disposed of as provided by the product's original labeling. If contaminated with a pesticide product that is labeled incompatible because of chemical characteristics, the pesticide section of the Iowa department of agriculture shall be contacted for guidance.

9.10(5) All pesticide handling facilities shall be equipped with adequate personal protective equipment as required by each label of each pesticide handled and as needed for the number of employees handling these pesticides. Emergency first-aid provisions shall be maintained in an area immediately accessible by all employees, if and when needed.

9.10(6) Field mixing and transferring of pesticides, including field rinsing of equipment, is exempted from the on-site containment provisions of rule 30—9.2(206). Rinsates shall be field applied at rates compatible with pesticide product labeling. Field mixing and transferring of pesticides does not include public highways, roads and streets.

30—9.11(206) Distribution of bulk pesticides. Bulk repackaging for sale or delivery may be made provided the establishment conducting the transfer, sale or delivery shall comply with FIFRA, Section 7 (registration of pesticide producing establishments).

9.11(1) There shall be no change in pesticide formulation; product labeling, except for the addition of the required EPA establishment number and net contents statement; or identity of the party accountable for the integrity of the product, i.e., the manufacturer or registrant as evidenced by the assigned EPA product registration number.

9.11(2) A written letter of authorization from the registrant is required for the bulk repackaging.

9.11(3) Bulk repackaging may be made only into containers which conform with rules 30—9.8(206) and 9.9(206) and which meet the approval of the seller of the pesticide.

9.11(4) Scales or meters used for bulk pesticide sales shall meet the specifications, tolerances and other technical requirements for weighing and measuring

AGRICULTURE DEPARTMENT[30] (cont'd)

devices as specified by the Iowa department of weights and measures.

9.11(5) Appropriate measures shall be taken to prevent contamination of product when meters or other devices are used to dispense pesticides.

These rules are intended to implement Iowa Code section 206.19.

ARC 6681

AGRICULTURE, DEPARTMENT OF[30] NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 99D.22 and 159.5(11), the Iowa Department of Agriculture hereby gives Notice of Intended Action to amend Chapter 14, "Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs," Iowa Administrative Code.

The 1986 Iowa Acts, House File 2484, provided funding for administration of Iowa Code section 99D.22 relating to registration of Iowa-foaled horses and Iowa-whelped dogs. Accordingly, the Department hereby rescinds or amends former rules imposing registration fees.

The substance of these rules is also being submitted as emergency adopted and implemented rule, **ARC 6680**, published in the July 2, 1986 Iowa Administrative Bulletin.

The purpose of this notice is to solicit comments on that submission, the subject matter of which is incorporated herein by this reference. Any interested person may make written suggestions or comments on the proposed rules on or before July 22, 1986, addressed to R. H. Lounsberry, Secretary of Agriculture, Wallace State Office Building, Des Moines, Iowa 50319.

Oral presentation may be requested as set forth in Iowa Code section 17A.4(1)"b."

ARC 6683

AGRICULTURE, DEPARTMENT OF[30] NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 162.16, the Iowa Department of Agriculture gives Notice of Intended Action to amend Chapter 20, "Animal Welfare," Iowa Administrative Code.

The proposed amendment amends rule 30—20.1(162) to provide (1) that the word "dog" would include hybrid dog mixtures (such as wolf-dog hybrids), and thus would be covered by the standards and regulations applicable

to dogs; and (2) that animal welfare regulations are applicable to fish.

Any interested person may make written suggestions or comments not later than July 22, 1986. Such written material should be directed to R. H. Lounsberry, Secretary of Agriculture, Henry Wallace State Office Building, Des Moines, Iowa 50319. Oral presentation may be requested as set forth in Iowa Code section 17A.4(1)"b."

This rule implements Iowa Code sections 162.1 and 162.8.

The following amendment is proposed:

Rule 30—20.1(162) is amended to read as follows:

30—20.1(162) Animals included in rules. These rules are promulgated to apply to all dogs (*including hybrid dog mixtures*), cats, rabbits, rodents, nonhuman primates, birds, *fish* or other vertebrate animals handled ~~under section 162.1 of the Code by boarding kennels, commercial kennels, hobby kennels, commercial breeders, dealers, public auctions, pet shops, animal shelters and pounds.~~

This rule implements Iowa Code sections 162.1 and 162.8.

ARC 6684

AGRICULTURE, DEPARTMENT OF[30] NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 192A.28, the Iowa Department of Agriculture hereby gives Notice of Intended Action to amend Chapter 25, "Dairy Trade Practices," Iowa Administrative Code.

The 1986 Iowa Acts, House File 2066, amended the law to authorize the use in advertisements, or otherwise, of "cents-off" purchase price coupons or "refund" coupons on the redeeming of the coupons from a retailer. These rules amend Chapter 25, Iowa Administrative Code, to conform to these provisions.

Any interested person may make written suggestions or comments on the proposed rules on or before July 22, 1986, addressed to R. H. Lounsberry, Secretary of Agriculture, Wallace State Office Building, Des Moines, Iowa 50319. Oral presentation may be requested as set forth in Iowa Code section 17A.4(1)"b."

This rule is intended to implement Iowa Code sections 192A.13 to 192A.15 as amended.

The following amendment is proposed:

Rule 30—25.6(192A) is amended to read as follows:

30—25.6(192A) Gifts and promotions.

25.6(1) The general effect of Iowa Code sections 192A.13, 192A.14, 192A.15 is to:

- Prohibit processors and distributors from extending payments and gifts that may buy or retain accounts.
- Absolutely prohibit certain types of gifts and sales promotions practices.
- Specify promotional types of activities that are lawful.

AGRICULTURE DEPARTMENT[30] (cont'd)

25.6(2) "Free goods," as defined in *Iowa Code* section 192A.13, means one or more items of personal property:

- a. That is given gratuitously without increase in the regular purchase price of the dairy products it is offered with, or that is given gratuitously without charging the purchaser an additional sum over the regular purchase price of the dairy product it is offered with, or
- b. For which the wholesaler does not receive monetary consideration from any recipient thereof.

For example, it is unlawful for a processor or distributor to:

Give a retailer a free, extra quantity of selected dairy products upon purchasing of a certain volume of product.

Supply a retailer with free merchandise to be given away to the consumer with the consumer's purchase of selected dairy products (balloons, pencils, coins, food products, potholders, and similar items). However, there is no prohibition against a wholesaler supplying sample food products which can reasonably be expected to be consumed on the retailer's premises.

Supply a retailer with free merchandise to be sold in combination with or on the condition of a consumer's purchase of dairy products.

Run a "cents-off" purchase price coupon in newspapers that is redeemable at any retailer by the consumer upon his purchase of dairy product. The giving of coupons amounts to an offer to give money and the redemption of coupons is in effect, the giving of money. The result is no different than attaching a coin to a carton of milk.

Print a "refund" coupon on the package of a selected dairy product or provide a separate coupon whereby a consumer can receive a cash refund by sending the imprinted coupon or portion of package and separate coupon to the wholesaler or a third party.

Offer premiums of merchandise which the consumer may obtain by redeeming coupons printed on selected dairy products.

Offer premiums of merchandise which the consumer may obtain by redeeming coupons and paying an additional cash amount which does not fully compensate the wholesaler for the value of the merchandise.

Run a contest among its retail store accounts and give a prize to retailers for increases in volume of sales.

Reimburse a retailer for the cost of merchandise or other items of value given away by a retailer for promotional purposes.

Furnish retailers with free merchandising aids, such as tote bags for milk unless packaged at plant, recipe booklets, potholders.

Furnish retailers with the service of store personnel whose wages are paid by the wholesaler.

More than four promotions per year or more than one item per promotion being offered to any retailer, is a price reduction and a violation of the statute. However, nothing in this rule shall prevent the promotion offered to the retailer from including more than one item per promotion but each item so offered shall be considered a separate promotion. By this rule the department does not restrict the choice of item or items so offered.

Equipment may not be furnished for a promotion, which is predominantly commercial in nature, run at a retail store location, incidental to the retailer's course of business.

Furnishing of dispensers, freezers, etc., on the retail route without charge is the furnishing of free goods.

Transactions allowed by statute:

The furnishing of point of sale advertising material that remains inside retailer locations made of paper, cardboard or other material not of a permanent nature for use in the promotion of products of ~~such~~ the wholesaler.

Examples: Advertising display material such as picture signs or balloons with wholesaler's name, unprinted menu forms advertising the dairy's products but not including creamers or permanent wall-type menu board signs.

The furnishing of hostesses or demonstrators at any retailer's location to promote the products of the wholesaler, processor or distributor may also use equipment incidental to the function of its hostesses or demonstrators, such as equipment used for storage or for display for sale. However, ~~such~~ the equipment must be used only by such hostesses or demonstrators. It may not be used by the retailer for any purpose.

The advertising by a wholesaler of his own products through any advertising media he selects ~~selected~~ which does not involve allowances, payment for furnishing of other property to persons purchasing such products in a manner prohibited by this section.

Examples: Newspaper, radio or television advertising and printed material such as flyers, which only advertise the dairy and do not identify any retailer. Clock advertising signs are generally permitted under 25.6(1)"c."

Advertising allowances which do no more than reimburse a retailer for his costs in advertising the wholesaler's selected dairy products. Payments must be in the form of reimbursement and not paid in advance.

Examples: A dairy may pay a retailer for only that portion which advertises the dairy's products. A dairy cannot pay national line rates if local advertising rates are lower.

Conduct otherwise permitted by this section rule.

This rule is intended to implement Iowa Code sections 192A.13 to 192A.15 as amended.

ARC 6650

BEER AND LIQUOR CONTROL
DEPARTMENT[150]
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 the 1986 Iowa Acts, House File 2484, sections 754 and 757, the Iowa Beer and Liquor Control Department hereby gives Notice of Intended Action to amend Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code. The substance of these rules is published herein as ARC 6649, filed emergency and are hereby incorporated by reference.

Any interested party may make written suggestions or comments on these proposed amendments prior to July 24, 1986. Such written materials should be directed to

BEER AND LIQUOR CONTROL DEPARTMENT[150] (cont'd)

the Licensing Supervisor, Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who want to convey their views orally should contact the Licensing Supervisor, Iowa Beer and Liquor Control Department at 515/964-6831. Also, there will be a public hearing on Thursday, July 24, 1986, at 1:00 p.m. in the Conference Room in the Department's central office at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Licensing Supervisor at least one day prior to the date of the public hearing.

ARC 6654

**BEER AND LIQUOR CONTROL
DEPARTMENT[150]
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 the 1986 Iowa Acts, House File 2484, section 757, the Iowa Beer and Liquor Control Department hereby gives Notice of Intended Action to amend Chapter 8, "Transportation and Warehouse," Iowa Administrative Code. The substance of these rules is published herein as **ARC 6653**, filed emergency and are hereby incorporated by reference.

Any interested party may make written suggestions or comments on these proposed amendments prior to July 24, 1986. Such written materials should be directed to the Licensing Supervisor, Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who want to convey their views orally should contact the Licensing Supervisor, Iowa Beer and Liquor Control Department at 515/964-6831. Also, there will be a public hearing on Thursday, July 24, 1986, at 1:00 p.m. in the Conference Room in the Department's central office at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Licensing Supervisor at least one day prior to the date of the public hearing.

ARC 6652

**BEER AND LIQUOR CONTROL
DEPARTMENT[150]
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 the 1986 Iowa Acts, House File 2484, sections 742, 744, 753, 754, and 757, the Iowa Beer and Liquor Control Department hereby gives Notice of Intended Action to amend Chapter 5, "License and Permit Division," Iowa Administrative Code. The substance of these rules is published herein as **ARC 6651**, filed emergency and are hereby incorporated by reference.

Any interested party may make written suggestions or comments on these proposed amendments prior to July 24, 1986. Such written materials should be directed to the Licensing Supervisor, Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who want to convey their views orally should contact the Licensing Supervisor, Iowa Beer and Liquor Control Department at 515/964-6831. Also, there will be a public hearing on Thursday, July 24, 1986, at 1:00 p.m. in the Conference Room in the Department's central office at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Licensing Supervisor at least one day prior to the date of the public hearing.

ARC 6656

**BEER AND LIQUOR CONTROL
DEPARTMENT[150]
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 the 1986 Iowa Acts, House File 2484, section 757, the Iowa Beer and Liquor Control Department hereby gives Notice of Intended Action to amend Chapter 14, "Private Wine Sales," Iowa Administrative Code. The substance of these rules is published herein as **ARC 6655**, filed emergency and are hereby incorporated by reference.

Any interested party may make written suggestions or comments on these proposed amendments prior to July 24, 1986. Such written materials should be directed to

BEER AND LIQUOR CONTROL DEPARTMENT[150] (cont'd)

the Licensing Supervisor, Iowa Beer and Liquor Control Department, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who want to convey their views orally should contact the Licensing Supervisor, Iowa Beer and Liquor Control Department at 515/964-6831. Also, there will be a public hearing on Thursday, July 24, 1986, at 1:00 p.m. in the Conference Room in the Department's central office at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Licensing Supervisor at least one day prior to the date of the public hearing.

ARC 6674**COMMERCE COMMISSION[250]
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 476.2, the Iowa State Commerce Commission hereby gives Notice that on June 6, 1986, the Commission issued an order in Docket No. RMU-86-17, In Re: Rescission of Iowa State Commerce Commission Rules on "Energy Conservation Improvements—Pilot Programs," 250 Iowa Administrative Code Chapter 30, "Order Commencing Rulemaking." Pursuant to the authority of Iowa Code section 476.2 and 1986 Iowa Acts, Senate File 2083, the Commission proposes to rescind 250 Iowa Administrative Code Chapter 30, "Energy Conservation Improvements—Pilot Programs." The rules to be rescinded cover the administration of pilot programs which examine the feasibility of investments by public utilities in energy conservation improvements under section 476.61, 1985 Iowa Code Supplement. Senate File 2083 repealed these statutory provisions, and the rules contained in 250 Iowa Administrative Code Chapter 30, no longer serve any purpose.

Any interested person may file a written statement of position pertaining to the proposed amendment. The statement may be filed on or before July 22, 1986, by filing an original and ten copies of the written statement of position in a form substantially complying with 250 Iowa Administrative Code subrule 2.2(2). All communications shall clearly indicate the author's name and the docket in which the comment is submitted. All communications should be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319.

Amend 250—Chapter 30, Iowa Administrative Code, by rescinding chapter 30 in its entirety.

ARC 6659**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 §17A.4(1)"b", Iowa Code.

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

Pursuant to the authority of Iowa Code section 107.24, the State Conservation Commission hereby gives Notice of Intended Action to amend Chapter 45, "State Parks and Recreation Areas," Iowa Administrative Code.

This amendment allows the director to reduce the cost to the public for use of state park facilities such as campgrounds, enclosed shelters, cabins, etc. This was also filed as an emergency adopted and implemented rule ARC 6658 on June 13, 1986. The content of that filing is incorporated here by reference.

Any interested person may make written suggestions or comments on this rule prior to July 22, 1986. Such written materials should be directed to the Director, State Conservation Commission, Wallace State Office Building, Fourth Floor Conference Room, on July 22, 1986, at 11:00 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 111.47.

ARC 6657**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 §17A.4(1)"b", Iowa Code.

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

Pursuant to the authority of Iowa Code section 107.24, the State Conservation Commission hereby gives Notice of Intended Action to amend the following chapter, Chapter 51, "Park User Fee."

The rule being amended establishes how the park user permit is to be affixed to a vehicle.

Any interested person may make written suggestions or comments on this rule prior to July 22, 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 July 22, 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 Code Supplement section 111.85.

CONSERVATION COMMISSION[290] (cont'd)

Subrule 51.5(3) is amended by adding the following sentences.

51.5(3) Permit affixed. The permit shall be easily visible from outside the vehicle. The permit shall be affixed to the vehicle by its own adhesive. The use of tape, glue, or other methods of affixing the annual permit are prohibited. *Permits attached to plexiglass, cellophane, plastic, or similar material which allows the permit to be transferred from one vehicle to another may be removed by a peace officer. These permits shall be voided and returned to the commission.*

ARC 6667**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 239.18, the Department of Human Services proposes to amend Chapter 40, "Application for Aid," and Chapter 41, "Granting Assistance," appearing in the Iowa Administrative Code.

Some persons applying for Aid to Dependent Children (ADC) benefits have been or will be named as the beneficiaries of trusts or conservatorships. Currently, when it comes to the attention of the local office that an applicant or recipient is the beneficiary of a trust or conservatorship, the trust or conservatorship is frequently referred to central office for a determination of availability. In rare cases, the funds in the trust or conservatorship are determined to be an available resource and assistance is canceled. In most cases, however, the decision is made that the funds in the trust or conservatorship are not available and no further action is taken. In many cases, this involves situations where the funds in the trust or conservatorship could be made available upon filing a petition with the Court. However, since the Department has no rules requiring the applicant or recipient to file such a petition, the Department has no alternative but to consider the funds to be unavailable as a resource.

This amendment will permit the Department to file a petition as an interested party when it appears that the funds in the trust or conservatorship could be made available by petition. This may result in either decreased future ADC expenditures or reimbursement for prior expenditures made on the client's behalf.

Consideration will be given to 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 July 23, 1986.

These rules are intended to implement Iowa Code section 239.5.

ITEM 1. Amend rule 498—40.1(239) by adding the following new definition:

"Central office" shall mean the state administrative office of the department of human services.

ITEM 2. Amend subrule 41.6(8) as follows:

41.6(8) Trusts. When assets from a trust or conservatorship, except one established solely for the payment of medical expenses, together with other resources exceed resource limitations, the department shall determine whether the assets are available by examining the language of the trust agreement or order establishing a conservatorship. ~~In the absence of evidence to the contrary, funds~~ *Funds clearly conserved and available for care, support, or maintenance shall be considered available toward resource or income limitations. When the local office questions whether the funds in a trust or conservatorship are available, the local office shall refer the trust or conservatorship to central office. When assets in the trust or conservatorship are not clearly available, central office staff may contact the trustee or conservator and request that the funds in the trust or conservatorship be made available for current support and maintenance. When the trustee or conservator refuses to make the funds available, the department may petition the court to have the funds released either partially or in their entirety or as periodic income payments. Funds in a trust or conservatorship that are not clearly available shall be considered unavailable until the trustee, conservator or court actually makes the funds available. Payments received from the trust or conservatorship for basic or special needs are considered income. Funds paid by the trustee or conservator to a third party for basic or special needs shall be considered unearned income in kind in accordance with subrule 41.7(1)"b."*

NOTICE — INSURANCE**NOTICE OF PUBLISHED MONTHLY AVERAGE FOR
INTEREST RATES ON LIFE INSURANCE POLICY LOANS**

Pursuant to Iowa Code section 511.36, notice is hereby given that the Commissioner of Insurance has determined that "published monthly average" for April of 1986 is 9.51%. This rate corresponds to Moody's corporate bond yield average—monthly average corporates as published in Moody's Investors Services, Inc. This rate was effective July 1, 1986.

ARC 6669**INSURANCE DEPARTMENT[510]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 505.8, the Iowa Department of Insurance hereby gives Notice

INSURANCE DEPARTMENT[510] (cont'd)

of Intended Action to amend Chapter 10 of the Iowa Administrative Code entitled "Insurance Agents," to bring the rule regarding license fees into compliance with Iowa Code section 522.2.

Any person may make written comments on these rules prior to July 22, 1986. Written comments should be directed to Sharon A. Henry, Insurance Department of Iowa, Lucas Building, Des Moines, Iowa 50319.

Subrule 10.18(6) is amended as follows:

10.18(6) The fee for licensure of nonresident agents shall be \$10 plus \$45 for each substantive line for which the agent is requesting qualification.

ARC 6646**IOWA DEVELOPMENT
COMMISSION[520]****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 280B.7, the Iowa Department of Economic Development hereby gives Notice of Intended Action to rescind Chapter 5, "Iowa Industrial New Jobs Training Program," Iowa Administrative Code.

Iowa Code chapter 280B provides for the creation of the Iowa Industrial New Jobs Training Program. The program is a tax increment financed training program designed to create new jobs through training assistance to industries. The program is delivered locally through the area community colleges and oversight is provided at the state level by the Iowa Department of Economic Development.

The present rules for the program require notice from the area school to the Iowa Department of Economic Development and the Iowa Department of Revenue and Finance of training agreements. The rules will change the time frame for notice (in most cases from ten to thirty days from the agreement). The rules also add provisions to allow limited administrative and legal fees to be paid prior to the training agreement and for determination of an indirect cost rate for the area schools.

Any interested person may make written suggestions or comments on these proposed rules prior to July 22, 1986. Such written materials should be directed to the Training Coordinator, Department of Economic Development, 600 E. Court Ave., Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Training Coordinator at 515/281-3600 or at the Department of Economic Development office at 600 E. Court Avenue, Des Moines, Iowa.

These rules are intended to implement Iowa Code chapter 280B.

The following rules are proposed.

CHAPTER 5**IOWA INDUSTRIAL NEW JOBS TRAINING
PROGRAM**

520—5.1(280B) Authority. The authority for rules governing the development of training projects under

the Iowa industrial new jobs training Act is provided in Iowa Code section 280B.7

520—5.2(280B) Purpose. The purpose of the Act is to provide an incentive to industries considering locating or expanding operations in Iowa, by providing tax aided training for employees needed in the new jobs, which would result from the location of a new or expanding operation. The Iowa department of economic development is required to "co-ordinate" the training programs described in the Act.

520—5.3(280B) Definitions. The definitions of terms as stated in Iowa Code section 280B.2, subsection 1 to 15, shall be deemed adequate except for clarifications as stated below.

Commission. Contacts with the department of economic development regarding activities referenced in this chapter shall be through the business and industry training co-ordinator. After July 1, 1986, references to the commission shall mean the Iowa Department of Economic Development.

Expanding industry. An expanding industry is one in which an increase in production will require the addition of new jobs which did not exist in that industry in Iowa prior to the signing of an agreement for training and which exceeds the level of employment in that industry six months prior to the date of the agreement.

Formerly existing jobs. Jobs which formerly existed do not qualify for training under the provisions of Iowa Code section 280B.2, subsection 15. A job is considered to have "formerly existed" if it was part of the payroll of the industry within the state any of the time during the six months prior to the start of a new operation or reopening of a former plant.

Industry. An industry is a business engaged in activities described as eligible in the Act rather than the generic definition encompassing all businesses in the state doing the same activities. For example, in the business of meat packing, an industry is considered to be a single, corporate entity or operating subdivision, rather than the entire meat packing business in the state.

New industry. A new industry is one which has not done business in Iowa or an existing industry implementing a new process and product used or produced for the first time in Iowa, which results in the creation of new jobs not previously available in that industry in the state.

New job. A new job shall be as defined in the Act subject to the clarifications of new and expanding industry described in the above definitions, except that an industry in violation of state or federal labor laws or involved in a lockout or strike in Iowa shall not be eligible for a training program under the Act.

520—5.4(280B) Agreements.

5.4(1) Notification. At least ten days prior to the signing of an agreement, the area school shall notify the commission and the Iowa revenue and finance department of its intent to enter into an agreement for training under the provisions of this Act. Notification may be by telephone with written followup on forms provided by the Iowa department of economic development.

5.4(2) Additional agreement items. In addition to the provisions of an agreement described in Iowa Code section 280B.3, subsections 1 to 5, the agreement shall include the following items:

1. The date the training will begin.
2. The length of time each new job category will be provided training.

IOWA DEVELOPMENT COMMISSION[520] (cont'd)**3. The ending date of the training.**

5.4(3) Compliance with Iowa revenue and finance department requirements. When an agreement to participate in a new jobs training project is entered into, the area school and the employer shall notify the commission and the Iowa revenue and finance department within thirty days of the date of signing the agreement. Notification must be in writing on forms provided by the department of economic development and is considered complete when response has been received on each item.

A copy of the agreement shall accompany the notification. If, at any time after notification, the estimates are revised, or if changes are made in the agreement that would affect the reporting requirements, the Iowa revenue and finance department and the commission shall be notified within thirty days.

5.4(4) Co-ordination with relevant agencies. Before a project is implemented, the area school shall investigate the applicability of other training programs such as those provided by the jobs training partnership Act, job service, the Iowa department of education and other state and federal agencies. Evidence of co-ordination of effort shall be provided to the commission on the notification of intent to enter into an agreement as described in subrule 5.4(1) above.

5.4(5) Allowable costs. A school may pay for reasonable administrative costs and legal fees incurred prior to the date of the preliminary agreement from certificate proceeds. Training costs may not be reimbursed if incurred prior to the date of the preliminary agreement.

5.4(6) Cost standards. The standard vocational preparation guide, as provided in the Dictionary of Occupational Titles for determining classification of jobs and the length of allowable training periods, shall be used by an area school in estimating the cost of on-the-job training. Where such standards are not appropriate, reasonable time periods for on-the-job training shall be based on the standard vocational preparation guide for similar classifications.

5.4(7) Indirect cost rate. The area schools may be reimbursed indirect costs at a rate to be determined annually. The rate will be determined by the department of economic development and the Iowa department of education. The indirect cost rate and procedures will be communicated to the area schools by the department of economic development. The rate will be based on function five and nine expenditures of the Iowa area school uniform financial accounting system. An institution may exceed the state indirect rate if documentation is provided for audit purposes. The indirect cost rate shall be applied against the total issuance. Acceptable accounting procedures, as determined by the area school with the Iowa department of education and the state auditor, shall be followed in claiming indirect costs.

5.4(8) Equipment. Equipment required for training will be an allowable provision in a training project as described in Iowa Code section 280B.2, subsection 2. The cost of equipment used in training, which is subsequently used in production, shall be prorated to the project in that proportion chargeable to the training program, and the remainder of the cost of such equipment will be the responsibility of the employer.

520—5.5(280B) Resolution on incremental property tax. A copy of the resolution by the board of directors of the area school as described in Iowa Code section 280B.4 shall be forwarded to the department of economic

development with the copy of the final agreement. A copy of the resolution shall also be forwarded to the county auditor(s) affected by it within the merged area.

An area school board of directors anticipating the use of the incremental property tax as a source of funding for an eligible training program is referred to Iowa Code section 403.19, and shall follow procedures as described therein, as provided in Iowa Code section 280B.4.

520—5.6(280B) New jobs withholding credit.

5.6(1) Notification of payments and claims for credit. Withholding credit for payments to area schools shall be claimed by an employer on the last withholding deposit form made for the calendar quarter in which payment is made to a school. No credit may be claimed until payment has been made to a school. The area school shall notify the Iowa revenue and finance department within thirty days following the end of a calendar quarter of payments covering withholding credit that have been received for that quarter. If a credit is claimed by an employer and payment is not made to the area school, the amount of credit will be considered to be a delinquent withholding liability and will be subject to assessment of tax, penalty and interest according to the provisions of Iowa Code section 422.16; subsection 1.

5.6(2) Notification of termination of credit. Area schools shall notify the Iowa revenue and finance department and the commission within thirty days when it is determined that payments for job training withholding creditors will no longer be applied against the costs of a project.

520—5.7(280B) Notice of intent to issue certificates.

5.7(1) The notice of intention to issue certificates, as provided in Iowa Code section 280B.6, subsection 5, shall be published by the area school in a legal newspaper in the merged area.

5.7(2) Resolution of issuance. A copy of the resolution authorizing the issuance of certificates to pay for a project over a period of time shall be forwarded to the commission and the Iowa revenue and finance department with a copy of the final agreement.

520—5.8(280B) Standby property tax levy.

5.8(1) A standby property tax levy may not be collected at any time unless actual default occurs, according to Iowa Code section 280B.6, subsection 4. The county auditor shall be notified by the area school board of directors not to levy the tax at the appropriate time annually. In the event default occurs the area school board shall notify the county auditor(s) affected to levy the tax.

5.8(2) The area school board of directors shall establish a separate account from which payments for certificates shall be made in the event of default.

520—5.9(280B) Reporting. For purposes of reporting the progress and success of the new jobs training Act, an annual report shall be completed by the area school for the period ending June 30 each year on or before August 15 of that year to the commission which shall be in writing on forms provided by the commission.

520—5.10(280B) State administration. "Iowa Business — Industry Information and Training Network" as defined in 1986 Iowa Acts, Senate File 2303 contains a provision for up to one percent of the gross sale amount of the certificates issued to be used for management of Iowa Code chapter 280B and for the development of this network. For administrative rules governing this

IOWA DEVELOPMENT COMMISSION[520] (cont'd)

provision, refer to rules for the "Iowa Business-Industry Information and Training Network."*

*Rules are being developed.

ARC 6677**MERIT EMPLOYMENT
DEPARTMENT[570]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Merit Employment Department hereby gives Notice of Intended Action to amend Chapter 8, "Appointments" and Chapter 11, "Separations, Disciplinary Actions and Reduction in Force," appearing in Iowa Administrative Code.

The substance of these rule amendments was published as **ARC 6676**, emergency adopted and implemented, and the content of that filing is incorporated here by reference.

Any interested person may make written suggestions or comments on this proposed rule prior to July 22, 1986. Such written materials should be directed to the Deputy Director, Iowa Merit Employment Department, Grimes State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Deputy Director at 515/281-6602 or at the above address. There also will be a public hearing on Thursday, July 24, 1986, at 9:20 a.m. in the Grimes Conference Room, South Half on the first floor of the Grimes State Office Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Director's Secretary prior to the date of the public hearing in order to be scheduled.

This rule is intended to implement Iowa Code section 19A.9.

ARC 6689**PLANNING AND
PROGRAMMING[630]**

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 chapters 7A, 7B, and section 17A.7 and Executive Order 47 the Office for Planning and Programming hereby gives Notice of Intended

Action to amend Chapter 19, "Iowa Job Training Partnership Program," Iowa Administrative Code. The substance of the amendments is published in this bulletin as **ARC 6688**, adopted and implemented emergency, and is hereby incorporated by reference.

The amendments rescind the existing complaint procedures and insert in lieu thereof new rules applicable to the local and state level grievance procedures under the Job Training Partnership Act (JTPA). The rules clarify the requirements for a local level complaint procedure, incorporate changes in response to Department of Labor monitoring findings, provide for an orderly transition of administrative responsibilities to the Department of Economic Development, and describes the state complaint procedure.

Any interested person may make oral or written suggestions or comments on these proposed rules no later than 4:30 p.m., July 22, 1986. Written materials should be directed to Melanie Johnson, Department of Economic Development, 523 East 12th Street, Des Moines, Iowa 50309. A hearing will be held on July 22, 1986 at 10:00 a.m. in the lower level conference room at 523 East 12th Street, Des Moines, Iowa 50309 to receive oral presentations. Persons who want to make oral presentations should contact Melanie Johnson at 515/281-6888 by July 21, 1986, 4:30 p.m.

ARC 6685**SOIL CONSERVATION,
DEPARTMENT OF[780]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 467A.4(1), the State Soil Conservation Committee gives Notice of Intended Action to amend Chapter 5, "Iowa Financial Incentives Program for Soil Erosion Control."

These changes expand authority of management practices 10 percent to 30 percent of amount, and change from previous authority for no-till to management practices those to include no-till, ridge-till, strip-till, contouring, and contour strip-cropping. Specifications are provided for newly added contouring and strip-cropping management practices and specifications are revised for no-till, strip-till and ridge-till. Funding levels for incentive payments and accompanying stipulations for each practice are established. Requirements for special watershed projects are also established.

SOIL CONSERVATION, DEPARTMENT OF[780] (cont'd)

Any interested person may submit written suggestions or comments on the rules proposed in this Notice of Intended Action. Comments conveyed by mail should be forwarded to the Director, Iowa Department of Soil Conservation, Wallace State Office Building, Des Moines, Iowa 50319, and must be received by the Department no later than 4:30 p.m., July 24, 1986.

A public hearing will be held on July 25, 1986, at 10:00 a.m. in the north half of the Second Floor Conference Room of the Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa. Comments presented at the hearing may be offered either orally or in writing.

Rules set forth in this Notice are intended to implement Iowa Code chapter 467A and 1986 Iowa Acts, House File 2484, section 504, subsection 3, paragraphs "d" and "e."

The following rules are proposed:

ITEM 1. Subrule 5.51(1), paragraph "f" is amended as follows:

f. *For fiscal years 1984, 1985 and 1986, Soil conservation district commissioners may allocate not more than ten percent of their original allocation and supplemental allocation to be used for incentive payments on a per acre basis, but not exceeding ten dollars per acre, to encourage no-till planting methods on row cropped land.*

For fiscal year 1987, soil conservation district commissioners may allocate not more than thirty percent of their original allocation and supplemental allocation to be used for the establishment of management practices to control soil erosion on land that is now row cropped. Incentive payments will be made on a per acre basis, but not exceeding ten dollars per acre for no-till, ridge-till, strip-till planting, \$6.00 per acre for contouring and \$15.00 per acre for contour strip-cropping.

ITEM 2. Rule 780—5.56(467A) is amended to read as follows:

780—5.56(467A) Special watershed projects. ~~Reserved.~~ *Soil conservation district commissioners will satisfy the following conditions with regard to special watershed projects:*

5.56(1) *Prior to approving a project application for 60 percent cost-share, the soil conservation district must obtain a project number from the department.*

5.56(2) *All participating landowners in a particular project will be required to show progress towards completion during the first year of the project. Progress will be evaluated by the soil conservation district. Failure of all participating landowners to show progress during the first year will result in loss of authorization of the project and 60 percent cost-share funding eligibility.*

5.56(3) *Authorization for each project shall not exceed five years.*

ITEM 3. Subrule 5.60(1) paragraph "b" is amended as follows:

b. *For fiscal years 1984, 1985 and 1986, The department will make a one-time payment of up to ten dollars per acre for no-tillage incentive payments to landowners or operators certified by the district as qualifying for payments to landowners or operators certified by the district as qualifying for payments in accordance with adopted district procedures, total dollars obligated not to exceed subrule 5.51(1), paragraph "f." The soil conservation district may allow the tillage incentive payment to be shared by landowner and operators.*

For fiscal year 1987, the department will make one-time payments of up to ten dollars per acre for no-tillage, ridge-till and strip-till, \$6.00 per acre for contouring and \$15.00 per acre for contour strip-cropping.

ITEM 4. Subrule 5.60(5) is amended as follows:

5.60(5) *Watersheds above publicly owned lakes. The state will cost share seventy-five percent of the approved cost of permanent soil and water conservation practices on watersheds above certain publicly owned lakes. Watersheds above publicly owned lakes that qualify for seventy-five percent cost sharing must be identified on a priority list established by the Iowa conservation commission department of natural resources.*

ITEM 5. A new subrule 5.82(1) is adopted as follows:

5.82(1) *Tillage practices.*

a. *No-till planting. A form of noninversion tillage that retains protective amounts of residue on the surface throughout the year.*

b. *Ridge-till planting. A form of noninversion tillage that retains protective amounts of residue on the surface throughout the year.*

c. *Strip-till planting. A form of noninversion tillage that retains protective amounts of residue on the surface throughout the year.*

ITEM 6. Subrules 5.82(1) and 5.82(2) are renumbered 5.82(2) and 5.82(3), respectively, and new subrule 5.82(2) is amended by adding new paragraphs "b" and "c" as follows:

5.82(2) *Temporary practices.*

a. *Iowa till. Reduced tillage practices, used in conjunction with row crop production to reduce sediment damage and soil depletion caused by wind or water.*

b. *Contouring. Farming sloping cultivated land in such a way that plowing, preparing land, planting and cultivating are done on the contour. This includes following established grades of terraces, diversions, or contour strips.*

c. *Contour strip-cropping. Growing crops in a systematic arrangement of strips or bands on the contour to reduce water erosion. The crops are arranged so that a strip of grass or close-growing crop is alternated with a strip of clean-tilled crop or fallow or a strip of grass is alternated with a close-growing crop.*

ITEM 7. Subrule 5.84(12) is deleted, existing subrule 5.84(13) is renumbered as 5.84(17), and new subrules 5.84(12), 5.84(13), 5.84(14), 5.84(15), and 5.84(16) are added as follows:

5.84(12) *No-till planting. Seedbed preparation and planting is completed in one operation by a coulter mounted in front of the planter. Starter fertilizers and pesticides are usually applied during the planting operation. Soil disturbance is 10 percent or less depending on the type of coulters and openers used. Contact herbicides are often used to burn down competing vegetation growing at planting time. An early application of a pre-emergence herbicide may lessen the need for the contact burn-down application. Pre-emergence herbicide may lessen the need for the contact burn-down application. Pre-emergence or post-emergence herbicides are used to control weeds during the growing season. Cultivation may be performed as needed.*

Contouring is necessary on slopes that normally require contouring with conventional tillage.

SOIL CONSERVATION DEPARTMENT[780] (cont'd)

5.84(13) Ridge-till. Seed preparation and planting are completed in one operation on ridges 8 - 9 inches in height. Crop residue may be left undisturbed or chopped or shredded. Planting is completed by scalping the top of the ridge with a sweep or disk. Less than one third of the field area is disturbed. Band application of pre-emergence herbicides along with mechanical cultivation normally controls most weed species. Ridges are reconstructed during the last cultivation of the season.

On the slopes exceeding 4 percent, ridges are to be constructed on the contour to avoid excessive erosion.

No-till planting on ridges is also included in this category. No more than 10 percent of the surface area is disturbed with this type of planting.

Contouring is necessary on slopes that normally require contouring with conventional tillage.

5.84(14) Strip-till. Seedbed preparation and planting are completed in one operation by a rotary tillage tool or other similar type equipment. Crop residue may be left undisturbed or chopped or shredded. Planting is completed by tilling a seedbed which is no more than one third of the field area. Weed control is accomplished with a combination of mechanical cultivation and herbicides.

Contouring is necessary on slopes that normally require contouring with conventional tillage.

5.84(15) Contouring. USDA-SCS-Iowa, Field Office Technical Guide, Section IVA, Code No. 330, February 1972.

5.84(16) Contour strip-cropping. USDA-SCS-Iowa, Field Office Technical Guide, Section IV, Code No. 585-A, February 1976.

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:

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%
March 1, 1986 - March 31, 1986	11.25%
April 1, 1986 - April 30, 1986	10.75%
May 1, 1986 - May 31, 1986	9.75%
June 1, 1986 - June 30, 1986	9.25%
July 1, 1986 - July 31, 1986	9.75%

ARC 6680

AGRICULTURE, DEPARTMENT OF[30]

Pursuant to the authority of Iowa Code sections 99D.22 and 159.5(11), the Iowa Department of Agriculture hereby emergency adopts rules amending Chapter 14, "Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs," Iowa Administrative Code.

The 1986 Iowa Acts, House File 2484, [section 503] provided funding for administration of Iowa Code section 99D.22 relating to registration of Iowa-foaled horses and Iowa-whelped dogs. Accordingly, the Department hereby rescinds or amends former rules imposing registration fees.

The Iowa Department of Agriculture finds that in compliance with Iowa Code section 17A.4(2), this rule should become effective without public participation because it implements legislation that will become effective July 1, 1986 and public participation would, therefore, be impracticable or unnecessary.

The rules confer a benefit on the public by rescinding registration fees. Therefore, the Department finds that the normal waiting period should be waived and these rules should become effective immediately upon filing with the Administrative Rule Coordinator, pursuant to Iowa Code section 17A.5(2)"b"(2).

These rules are intended to implement Iowa Code section 99D.22 and 1986 Iowa Acts, House file 2484[section 503].

These amendments are also being submitted simultaneously under Notice of Intended Action as ARC 6681, to solicit public comment.

The following amendments are adopted:

ITEM 1. Rescind rule 30—14.42(99D) and subrules 14.12(1), 14.13"8," 14.22(1), 14.23"8," 14.32(1) and 14.33"8," in their entirety.

ITEM 2. Subrule 14.15(3)"a" is amended to read:

a. A Thoroughbred Brood Mare Registration Application, Form M-4, must be submitted to the department; along with the one-time brood mare registration fee of \$35.00. This one-time fee registration will cover the mare her entire productive life as long as there is not a change of ownership and the thoroughbred mare continuously meets the eligibility rules set forth in 14.15(2).

ITEM 3. Subrule 14.16(2) is amended to read:

14.16(2) The form shall be completed by the owner(s) of the thoroughbred foal or horse or by the owner's authorized representative and include the appropriate fee as follows:

Table with 2 columns: Fee description and Amount. Rows: Iowa bred foals and yearlings (\$15.00), Two year olds (40.00), Three year olds and older (75.00)

This registration will cover the thoroughbred foal or horse its entire productive life.

ITEM 4. Subrule 14.25(3)"a" is amended to read:

a. A Standardbred Brood Mare Registration Application, Form M-4, must be submitted to the department; along with the one-time brood mare registration fee of \$35.00. The one-time fee registration will cover the mare her entire productive life as long as there is not a change of ownership and the standardbred mare continuously meets the eligibility rules set forth in 14.25(2).

ITEM 5. Subrule 14.26(2) is amended to read:

14.26(2) The form shall be completed by the owner(s) of the standardbred foal or horse or by the owner's authorized representative and include the appropriate fee as follows:

Table with 2 columns: Fee description and Amount. Rows: Iowa bred foals and yearlings (\$15.00), Two year olds (40.00), Three year olds and older (75.00)

This registration will cover the standardbred foal or horse its entire productive life.

ITEM 6. Subrule 14.35(3)"a" is amended to read:

a. A Quarterhorse Brood Mare Registration Application, Form M-4, must be submitted to the department; along with the one-time brood mare registration fee of \$35.00. This one-time fee registration will cover the mare her entire productive life as long as there is not a change of ownership and the quarterhorse mare continuously meets the eligibility rules set forth in 14.35(2).

ITEM 7. Subrule 14.36(2) is amended to read:

14.36(2) The form shall be completed by the owner(s) of the foal or horse or by the owner's authorized representative and include the appropriate fee as follows:

Table with 2 columns: Fee description and Amount. Rows: Iowa bred foals and yearlings (\$15.00), Two year olds (40.00), Three year olds and older (75.00)

These rules are intended to implement Iowa Code section 99D.22 and 1986 Iowa Acts, House File 2484[section 503].

[Filed emergency 6/13/86, effective 6/13/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6649

BEER AND LIQUOR CONTROL DEPARTMENT [150]

Pursuant to the authority of the 1986 Iowa Acts, House File 2484, sections 754 and 757, the Iowa Beer and Liquor Control Department emergency adopts and implements rules revising Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code, to reflect the fact that the Department will no longer wholesale wine, and to delete the fifteen percent licensee liquor tax.

In compliance with Iowa Code section 17A.4(2), the department finds that notice and public participation are impracticable because the department needs these rules to take effect on July 1, 1986, to implement House File 2484 which becomes effective July 1, 1986.

In compliance with Iowa Code section 17A.5(2)"b"(2), the department finds that the normal effective date of these rules thirty-five days after publication should be waived and these rules will become effective on July 1, 1986, because they confer a benefit on the public by creating rules which implement 1986 Iowa Acts, House File 2484 which becomes effective on July 1, 1986.

These rules are also being published as a Notice of Intended Action, ARC 6650, to solicit public input.

These rules implement 1986 Iowa Acts, House File 2484, sections 754 and 757.

BEER AND LIQUOR CONTROL DEPARTMENT[150] (cont'd)

These rules become effective July 1, 1986.
The following rules are adopted.

ARC 6651

BEER AND LIQUOR CONTROL
DEPARTMENT [150]

ITEM 1. Rule 150—4.19(123) is amended to read as follows:

150—4.19(123) Alcoholic liquors and wine levied upon bankruptcy proceedings of licensee or permittee. Alcoholic liquors and wine purchased and possessed by a liquor control licensee or permittee, and levied upon under execution of a valid judgment or a distress warrant, or under a bankruptcy proceeding against such licensee or permittee, must be sold under the following provisions:

1. An inventory must be made of all alcoholic liquors and wine and the sheriff or other official must contact the department, or one of its duly authorized agents, furnishing them with a copy of the inventory.

2. The department, or its duly authorized agent, may purchase the entire stock, or any part thereof, of the alcoholic liquors levied upon under execution at the retail price the licensee paid the department minus the fifteen percent licensee tax or any part thereof, of the wine levied upon under execution of the retail price the licensee or permittee paid the department, or arrange the disposition of the alcoholic liquors and wine in a manner to be determined by the department.

This rule is intended to implement Iowa Code section 123.21(3).

ITEM 2. Rule 150—4.21(123) is amended to read as follows:

150—4.21(123) Where retailers must purchase wine. Retail licensees and retail permittees must purchase their wine from either a wine wholesaler, or a wine and beer wholesaler, or this department. Retail licensees and retail permittees cannot buy wine from other retailers.

This rule is intended to implement Iowa Code subsections 123.30(3) and 123.178(3).

ITEM 3. Rule 150—4.22(123), introductory paragraph, is amended to read as follows:

150—4.22(123) Liquor on licensed premises. Holders of liquor control licenses must purchase their liquor supplies from state liquor stores. It is the responsibility of the licensee or their agents/employees to ensure that each bottle purchased for resale under the provisions of their license has a licensee tax decal affixed to it prior to leaving state liquor store. No licensee shall knowingly keep on the licensed premises nor use for resale purposes any alcoholic liquor on which the special tax has not been paid.

ITEM 4. Rule 150—4.32(123) is amended to read as follows:

150—4.32(123) Delivery of alcoholic liquor and wine. Individuals who do not work for this department may operate a delivery service in which they will charge licensees a fee for picking up their alcoholic liquor and wine orders at this department's liquor stores and delivering it to their establishments.

This rule is intended to implement Iowa Code subsection 123.21(10).

ITEM 5. Rule 150—4.39(123) is rescinded.

[Filed emergency 6/11/86, effective 7/1/86]
[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

Pursuant to the authority of the 1986 Iowa Acts, House File 2484, sections 742, 744, 753, 754, and 757, the Iowa Beer and Liquor Control Department emergency adopts and implements rules revising Chapter 5, "License and Permit Division," Iowa Administrative Code, to increase the wine gallonage tax, to rename the current class "E" liquor license a class "H" liquor license, to reflect the fact that the Department will no longer wholesale wine, and to add a surcharge to liquor license fees.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because the Department needs these rules to take effect on July 1, 1986, to implement 1986 Iowa Acts, House File 2484 which became effective on July 1, 1986.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of these rules thirty-five days after publication should be waived and these rules become effective on July 1, 1986, because they confer a benefit on the public by creating rules which implement House File 2484 which became effective on July 1, 1986.

These rules are also being published as a Notice of Intended Action, ARC 6652, to solicit public input.

These rules implement 1986 Iowa Acts, House File 2484, sections 742, 744, 753, 754, and 757.

These rules became effective July 1, 1986.

The following rules are adopted.

ITEM 1. Subrule 5.1(11) is amended to read as follows:

5.1(11) Wine gallonage tax. A manufacturer of native wine must pay to the department a ~~\$1.50~~ \$1.75 wine gallonage tax on its native wine it sells at wholesale: (1) to retail liquor licensees, (2) to retail beer permittees, (3) to retail wine permittees, and (4) to the department. A manufacturer of native wine does not pay the ~~\$1.50~~ \$1.75 wine gallonage tax on its native wine it: (1) sells at retail in Iowa in its winery and in its retail establishments, (2) ships to individuals inside and outside Iowa, and (3) sells to other class "A" wine permittees and to class "F" beer permittees.

This rule is intended to implement Iowa Code section 123.56 as amended by 1985 Iowa Acts, Senate File 395, section 49, and section 123.183.

ITEM 2. Rule 150—5.10(123), introductory paragraph, is amended to read as follows:

150—5.10(123) Combination wine licenses and permits. The director shall issue the following class "E," "F," and "G," and "H" liquor licenses and class "D" and "E" beer permits after the application has been approved by a local authority and the following class "F" beer permit which application does not need local approval and is to be submitted directly to the department.

ITEM 3. Rescind subrule 5.10(1). Renumber subrule 5.10(2) as subrule 5.10(1). The new subrule 5.10(1) is amended to read as follows:

~~5.10(2)~~ 5.10(1) Class "F" liquor license. A class "F" liquor control license may be issued to a commercial establishment but must be issued in the name of the individuals who actually own the entire business and shall authorize the holder to purchase alcoholic liquors

BEER AND LIQUOR CONTROL DEPARTMENT[150] (cont'd)

from only the department, native wines from native wine manufacturers, wines from ~~either the department, only~~ a class "A" wine permittee; or a class "F" beer permittee, and to sell such liquors, wine, and beer, to patrons by the individual drink for consumption on the premises only, however, beer and wine may also be sold in original containers only for consumption off the premises.

ITEM 4. Renumber subrule 5.10(3) as subrule 5.10(2). The new subrule 5.10(2) is amended to read as follows:

~~5.10(3)~~ **5.10(2)** Class "G" liquor license. A special class "G" liquor control license may be issued and shall authorize the holder or holders to purchase wine containing not more than seventeen percent alcohol by weight from ~~either the department, only~~ a class "A" wine permittee; or a class "F" beer permittee, and to sell such wine and beer, to patrons by the individual drink for consumption on the premises only, however, beer and wine may also be sold in original containers only for consumption off the premises. The license issued to holders of a special class "G" license shall clearly state on its face "alcoholic liquor, limited to wine only."

ITEM 5. A new subrule 5.10(3) is added as follows:

5.10(3) Class "H" liquor license. A class "H" liquor control license may be issued to a hotel or motel and shall authorize the holder to purchase alcoholic liquors from only the department, native wines from native wine manufacturers, wines from only a class "A" wine permittee; or a class "F" beer permittee, and to sell such liquors, wine, and beer, to patrons by the individual drink for consumption on the premises only, however, beer and wine may also be sold in original containers only for consumption off the premises. Each license shall be effective throughout the premises described in the application.

ITEM 6. Rule 150—5.11(123), introductory paragraph, is amended to read as follows:

150—5.11(123) Fees and surcharge enacted by the legislature for combination wine licenses and permits. The annual fees for class "E," "F," and "G" and "H" liquor licenses and class "D," "E," and "F" beer permits are as follows:

ITEM 7. Rescind subrule 5.11(1) and insert in lieu thereof the new subrule 5.11(1) as follows:

5.11(1) Class "F" liquor control licenses, the sum as follows:

a. Commercial establishments located within the corporate limits of cities of ten thousand population and over, a \$1,800.00 fee plus a \$390.00 surcharge for a total cost of \$2,190.00.

b. Commercial establishments located within the corporate limits of cities of over fifteen hundred and less than ten thousand population, a \$1,450.00 fee plus a \$285.00 surcharge for a total cost of \$1,735.00.

c. Commercial establishments located within the corporate limits of cities of fifteen hundred population or less, a \$1,100.00 fee plus a \$180.00 surcharge for a total cost of \$1,280.00.

d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits are the nearest, the license fee which is the larger shall prevail.

ITEM 8. Rescind subrule 5.11(2) and insert in lieu thereof the new subrule 5.11(2) as follows:

5.11(2) Class "G" liquor control licenses which limit sales of alcoholic liquor to wine containing not more than seventeen percent alcohol by weight, a sum as follows:

a. Commercial establishments located within the corporate limits of cities of ten thousand population and over, a \$950.00 fee plus a \$135.00 surcharge for a total cost of \$1,085.00.

b. Commercial establishments located within the corporate limits of cities of over fifteen hundred and less than ten thousand population, an \$800.00 fee plus a \$90.00 surcharge for a total cost of \$890.00.

c. Commercial establishments located within the corporate limits of cities of fifteen hundred population or less, a \$650.00 fee plus a \$45.00 surcharge for a total cost of \$695.00.

d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits are the nearest, the license fee which is the larger shall prevail.

ITEM 9. Rescind subrule 5.11(3) and insert in lieu thereof the new subrule 5.11(3) as follows:

5.11(3) Class "H" liquor control licenses, the sum as follows:

a. Hotels or motels located within the corporate limits of cities of ten thousand population and over, a \$1,800.00 fee plus a \$390.00 surcharge for a total cost of \$2,190.00.

b. Hotels and motels located within the corporate limits of cities of over three thousand and less than ten thousand population, a \$1,550.00 fee plus a \$315.00 surcharge for a total cost of \$1,865.00.

c. Hotels and motels located within the corporate limits of cities of three thousand population and less, a \$1,300.00 fee plus a \$240.00 surcharge for a total cost of \$1,540.00.

d. Hotels and motels located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail.

ITEM 10. Rule 150—5.12(123), introductory paragraph, is amended to read as follows:

150—5.12(123) Distribution of fees and the surcharge enacted by the legislature for combination wine licenses and permits. The total annual fees and the surcharge enacted by the legislature for class "D," "E," and "F," "G," and "H" liquor licenses and class "D" and "E" beer permits are to be submitted to the department with the applications. The department shall distribute these fees and surcharge payments as follows:

ITEM 11. Rescind subrule 5.12(1) and insert in lieu thereof the new subrule 5.12(1) as follows:

5.12(1) Of the \$2,190.00 total cost for a class "F" liquor license in subrule 5.11(1), paragraph "a," the department shall retain a total of \$1,345.00 consisting of \$955.00 of the license fee and the \$390.00 surcharge, and the department shall forward \$845.00 of the license fee to the local authority.

ITEM 12. Rescind subrule 5.12(2) and insert in lieu thereof the new subrule 5.12(2) as follows:

5.12(2) Of the \$1,735.00 total cost for a class "F" liquor license in subrule 5.11(1), paragraph "b," the department shall retain a total of \$1,117.50 consisting

BEER AND LIQUOR CONTROL DEPARTMENT[150] (cont'd)

of \$832.50 of the license fee and the \$285.00 surcharge, and the department shall forward \$617.50 of the license fee to the local authority.

ITEM 13. Rescind subrule 5.12(3) and insert in lieu thereof the new subrule 5.12(3) as follows:

5.12(3) Of the \$1,280.00 total cost for a class "F" liquor license in subrule 5.11(1), paragraph "c," the department shall retain a total of \$890.00 consisting of \$710.00 of the license fee and the \$180.00 surcharge, and the department shall forward \$390.00 of the license fee to the local authority.

ITEM 14. Rescind subrule 5.12(4) and insert in lieu thereof the new subrule 5.12(4) as follows:

5.12(4) Of the \$1,085.00 total cost for a class "G" liquor license in subrule 5.11(2), paragraph "a," the department shall retain a total of \$747.50 consisting of \$612.50 of the license fee and the \$135.00 surcharge, and the department shall forward \$337.50 of the license fee to the local authority.

ITEM 15. Rescind subrule 5.12(5) and insert in lieu thereof the new subrule 5.12(5) as follows:

5.12(5) Of the \$890.00 total cost for a class "G" liquor license in subrule 5.11(2), paragraph "b," the department shall retain a total of \$665.00 consisting of \$575.00 of the license fee and the \$90.00 surcharge, and the department shall forward \$225.00 of the license fee to the local authority.

ITEM 16. Rescind subrule 5.12(6) and insert in lieu thereof the new subrule 5.12(6) as follows:

5.12(6) Of the \$695.00 total cost for a class "G" liquor license in subrule 5.11(2), paragraph "c," the department shall retain a total of \$582.50 consisting of \$537.50 of the license fee and the \$45.00 surcharge, and the department shall forward \$112.50 of the license fee to the local authority.

ITEM 17. Rescind subrule 5.12(7) and insert in lieu thereof the new subrule 5.12(7) as follows:

5.12(7) Of the \$2,190.00 total cost for a class "H" liquor license in subrule 5.11(3), paragraph "a," the department shall retain a total of \$1,345.00 consisting of \$955.00 of the license fee and the \$390.00 surcharge, and the department shall forward \$845.00 of the license fee to the local authority.

ITEM 18. Rescind subrule 5.12(8) and insert in lieu thereof the new subrule 5.12(8) as follows:

5.12(8) Of the \$1,865.00 total cost for a class "H" liquor license in subrule 5.11(3), paragraph "b," the department shall retain a total of \$1,182.50 consisting of \$867.50 of the license fee and the \$315.00 surcharge, and the department shall forward \$682.50 of the license fee to the local authority.

ITEM 19. Rescind subrule 5.12(9) and insert in lieu thereof the new subrule 5.12(9) as follows:

5.12(9) Of the \$1,540.00 total cost for a class "H" liquor license in subrule 5.11(3), paragraph "c," the department shall retain a total of \$1,020.00 consisting of \$780.00 of the license fee and the \$240.00 surcharge, and the department shall forward \$520.00 of the license fee to the local authority.

ITEM 20. Rule 150—5.13(123), introductory paragraph, is amended to read as follows:

150—5.13(123) Bonds for combination wine licenses and permits. The following bonds are required for class "E," "F," and "G," and "H" liquor licenses and class "D," "E," and "F" beer permits.

ITEM 21. Rescind subrule 5.13(1), renumber subrule 5.13(2) to 5.13(1), renumber subrule 5.13(3) to 5.13(2), and insert in lieu thereof the new subrule 5.13(3) as follows:

5.13(3) A bond in the amount of six thousand dollars is required for a class "H" liquor license.

ITEM 22. Amend rule 150—5.14(123) to read as follows:

150—5.14(123) Effect on retail and wholesale bottled wine licenses and permits. All applicable provisions of division I of Iowa Code chapter 123 and administrative rules relating to retail liquor licenses apply to class "E," "F," and "G," and "H" liquor licenses. All applicable provisions of division II of Iowa Code chapter 123 and administrative rules relating to retail beer permits apply to class "D" and "E" beer permits and class "B" wine permits. All applicable provisions of division II of Iowa Code chapter 123 and administrative rules relating to class "A" beer permits apply to class "F" beer permits and class "A" wine permits.

ITEM 23. Amend rule 150—5.15(123) to read as follows:

150—5.15(123) Refunds for fees for wholesale and retail bottled wine licenses. The department and local authorities shall give quarterly refunds on fees paid for class "E," "F," and "G," and "H" liquor licenses, class "D" and "E" beer permits, and the department shall give quarterly refunds on fees for class "A" and "F" beer permits and class "A" and "B" wine permits.

This rule is intended to implement Iowa Code section 123.38.

ITEM 24. Amend chapter 5 by adding the new rule 150—5.16(123) as follows:

150—5.16(123) Liquor license surcharge enacted by the legislature. Effective July 1, 1986, the surcharge enacted by the legislature will be added to the license fee for all class "A," class "B," class "C," and special class "C" liquor control licenses. The surcharge shall be equal to thirty percent of the statutory license fees. The statutory license fee and the surcharge shall be paid in one payment prior to the issuance of a liquor control license. All liquor licenses which take effect on or after July 1, 1986, are subject to the surcharge including those issued prior to July 1, 1986, which are effective on or after July 1, 1986.

This rule implements 1986 Iowa Acts, House File 2484, section 744.

ITEM 25. Amend chapter 5 by adding the new rule 150—5.17(123) as follows:

150—5.17(123) Calculating liquor license cost with Sunday Sales Privilege and surcharge enacted by the legislature. The fee for a Sunday Sales Privilege for a liquor license is twenty percent of the liquor license

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fee (not including the amount of the liquor license surcharge). The liquor license surcharge enacted by the legislature is equal to thirty percent of the sum of the regular liquor license fee and the Sunday Sales Privilege fee.

This rule implements 1986 Iowa Acts, House File 2484, section 744.

[Filed emergency 6/11/86, effective 7/1/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6653**BEER AND LIQUOR CONTROL DEPARTMENT [150]**

Pursuant to the authority of the 1986 Iowa Acts, House File 2484, section 757, the Iowa Beer and Liquor Control Department emergency adopts and implements rules revising Chapter 8, "Transportation and Warehouse," Iowa Administrative Code, to reflect the fact that the Department will no longer wholesale wine.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because the Department needs this rule to take effect on July 1, 1986 to implement House File 2484 which became effective July 1, 1986.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of this rule thirty-five days after publication should be waived and this rule become effective on July 1, 1986, because it confers a benefit on the public by creating a rule which implements House File 2484 which became effective on July 1, 1986.

This rule is also being published as a Notice of Intended Action, **ARC 6654**, to solicit public input.

This rule implements 1986 Iowa Acts, House File 2484, section 757.

This rule became effective July 1, 1986.

The following rule is adopted.

Subrule 8.2(1) is amended to read as follows:

8.2(1) Shipment into state. Shipments of alcoholic liquors and wines can only be made into the state of Iowa by suppliers. Shipments can only be made to the state warehouse, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021, or to receiving points designated by the director.

[Filed emergency 6/11/86, effective 7/1/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6655**BEER AND LIQUOR CONTROL DEPARTMENT [150]**

Pursuant to the authority of 1986 Iowa Acts, House File 2484, section 757, the Iowa Beer and Liquor Control Department emergency adopts and implements rules revising Chapter 14, "Private Wine Sales," Iowa Administrative Code, to reflect the fact that the Department will no longer wholesale wine.

In compliance with Iowa Code section 17A.4(2) the Department finds that notice and public participation are impracticable because the Department needs these rules to take effect on July 1, 1986 to implement House File 2484 which became effective July 1, 1986.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of these rules thirty-five days after publication should be waived and these rules become effective on July 1, 1986, because they confer a benefit on the public by creating rules which implement House File 2484 which became effective on July 1, 1986.

These rules are also being published as a Notice of Intended Action, **ARC 6656**, to solicit public input.

These rules implement 1986 Iowa Acts, House File 2484.

These rules became effective July 1, 1986.

The following rules are adopted.

ITEM 1. Rule 150—14.3(123) is amended to read as follows:

150—14.3(123) Wholesaler discrimination. There will be no discrimination by the department or a Class "A" wine permittee on the sale of wines to any Class "B" wine permittee. This will include, but not be limited to, pricing, delivery, and availability. This rule is not intended to discourage volume discounting.

This rule is intended to implement 1985 Iowa Code Supplement section 123.180, subsection 5.

ITEM 2. Rule 150—14.8(123) is rescinded.

[Filed emergency 6/11/86, effective 7/1/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6658**CONSERVATION COMMISSION[290]**

Pursuant to the authority of Iowa Code section 107.24, the State Conservation Commission emergency adopted and implemented an amendment to Chapter 45, "State Parks and Recreation Areas," Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation is unnecessary as this amendment confers a benefit to the public.

The Department also finds, pursuant to Iowa Code section 17A.5(2), that the normal effective date of this rule should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on June 13, 1986, as it confers a benefit to the public by allowing the director to reduce the cost to the public for use of state park facilities such as campgrounds, enclosed shelters, cabins, etc.

This rule is also being published as a Notice of Intended Action, **ARC 6659**.

This rule implements Iowa Code section 111.47 and shall become effective upon filing with the Administrative Rules Coordinator on June 13, 1986.

Rule 290—45.3(111) is amended by adding the following two sentences:

290—45.3(111) Fees. *The following are maximum fees for facility use in state parks and recreation areas. The fees*

CONSERVATION COMMISSION[290] (cont'd)

may be reduced or waived by the director for commission sponsored special events or special promotional efforts.

[Filed emergency 6/11/86, effective 6/13/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6675

EMPLOYMENT SECURITY[370]

JOB SERVICE

Pursuant to the authority of Iowa Code sections 96.11 and 17A.3, the Iowa Department of Job Service hereby emergency adopts and implements rules to amend Chapter 3, "Employer's Contribution and Charges," and Chapter 4, "Claims and Benefits," Iowa Administrative Code.

These rules are amended as follows:

Subrule 3.40(5) implements the provision in the Iowa Employment Security Law that provides for a special zero rate for employers who have one hundred dollars or less in benefit charges in the twenty-four calendar quarter period immediately preceding the rate computation date provided that the employer's percentage of excess contributions is seven and five-tenths percent or higher. The law and rule previously granted the special zero rate only if the employer had no charges during the twenty-four quarter period.

Subrule 3.40(6) implements the special one and eight-tenths percent and subsequent limits for the next three years for employers who lose their special zero rate.

New subrule 3.40(10) provides for a reduction in the average annual taxable payroll of certain expanding employers that have a positive reserve balance, which in turn may reduce the employer's rate of contribution. It also provides the formula for determining what part of the increase in the employer's average annual taxable payroll is attributable to the expansion in employment and what part is attributable to the increase in the taxable wage base, so that the reduction in the average annual taxable payroll may be accurately computed.

New rule 370—3.42(96) explains the formula which is used to allocate and credit the interest earned on the unemployment trust fund.

New subrules 3.43(17) and 4.26(28) provide that when an employee transfers to a successor employer when part of the predecessor's business is sold, the successor assumes all of the liability and charges if the transferred employee is laid off by the successor.

Rule 370—3.49(96) extends the deadline for the payment of voluntary contributions to the next business day when December 15 falls on Saturday, Sunday or a holiday; provides for the returning of late voluntary contributions; provides an opportunity for employers who would qualify for a special zero rate except for a percentage of excess contributions of less than seven and five-tenths percent to purchase the special zero rate; clarifies that employers who do not qualify for a special zero rate because of benefit charges can only reduce their rate by one rank by paying a voluntary contribution and that they cannot buy a zero rate; allows job service to compute the amount of voluntary contributions as a convenience to employers while leaving the responsibility

for the accuracy, etc., on the employer; provides an extension of the deadline for employers with legitimate rate appeals; and provides that the employer's canceled check is the receipt of the voluntary contribution.

Subrule 4.7(2) removes the word "weekly" so that substitution of wage credit quarters may be allowed to persons receiving monthly payments of workers' compensation.

New subrule 4.40(3) provides for up to one thousand dollars in any twenty-four calendar months to individuals who are financially incapable of paying for instructional costs of Department Approved Training.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation is impracticable in that 1986 Iowa Acts, Senate File 2283 and House File 2484, are effective July 1, 1986.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules thirty-five days after publication should be waived and the rules be made effective July 1, 1986, as they confer a benefit upon the public to ensure speedy and uniform compliance with the amended Iowa Code sections.

The Iowa Department of Job Service adopted these rules June 13, 1986.

These rules are intended to implement Iowa Code sections 96.5(1), 96.7, 96.7(3)"a"(7) and 96.7(3)"d," as amended by 1986 Iowa Acts, Senate File 2283; Iowa Code section 96.13(3), as amended by 1986 Iowa Acts, House File 2484; and Iowa Code sections 96.3(5), 96.9(2)"c" and 96.23.

These rules are amended as follows:

ITEM 1. Amend subrule 3.40(5) to read as follows:

3.40(5) Special rate provisions for certain employers with ~~no one hundred dollars or less in~~ benefit charges ~~for during the last six years~~. An employer with ~~no one hundred dollars or less in total~~ benefit charges ~~for during~~ the twenty-four consecutive calendar quarters immediately preceding the computation date will receive a "zero" contribution rate regardless of the employer's ranking against other employers provided that:

a. The employer has a percentage of excess contributions of ~~7-500% seven and five-tenths percent~~ or higher, and

b. The employer (and any predecessor employer) has ~~reported to job service been an insured employer~~ for at least twenty-four consecutive quarters immediately preceding the computation date.

This rule is intended to implement Iowa Code section 96.7(3)"d," as amended by 1986 Iowa Acts, Senate File 2283.

ITEM 2. Amend subrule 3.40(6) to read as follows:

3.40(6) Special rate provision for certain employers who qualified for a special "zero" rate the previous year. An employer who on the previous computation date qualified for a special "zero" rate for having ~~no charges one hundred dollars or less in total~~ benefit charges ~~for during~~ the twenty-four quarters ~~immediately preceding~~ the computation date and a percentage of excess of ~~7-500% seven and five-tenths percent~~ or greater, who does not qualify for the special "zero" rate on the current computation date for any reason, will be assigned the rate for the rank in which the employer's percentage of excess falls unless the rate exceeds ~~1-80% one and eight-tenths percent~~. If the computed rate exceeds ~~1-80% one and eight-tenths percent~~ the employer's rate will be ~~1-80%~~

EMPLOYMENT SECURITY[370] (cont'd)

one and eight-tenths percent.

For all subsequent years the employer will receive a normal computed rate unless the employer again qualifies for the special "zero" rate.

If the employer does not requalify for the special "zero" rate for the year following the special one and eight-tenths percent limitation, the employer will be assigned the rate of the rank in which the employer's percentage of excess falls unless that rate exceeds the rate of the rank three ranks higher than the rank in which the special one and eight-tenths percent rate (or the next lower rate) fell the previous year.

For the next two years, unless the employer again requalifies for a special "zero" rate, the employer's rate shall be limited to the rate in the "percentage of excess" rank which is no more than three ranks higher numerically than the rank in which the employer was placed for the previous year.

Surcharges for having had a negative balance on two, three, or four consecutive computation dates shall be in addition to the rates assigned under these special limitations.

This rule is intended to implement Iowa Code section 96.7(3)"d" as amended by 1986 Iowa Acts, Senate File 2283.

ITEM 3. Add new subrule 3.40(10) to read as follows:

3.40(10) Expanding employment incentives. Effective with the calendar year 1987, certain expanding employers shall receive a reduction in the average annual taxable payroll used in the computation of their contribution rate.

a. To qualify for this reduction in average annual taxable payroll an employer must meet each of the following five requirements:

(1) The employer must have been a covered employer for at least twenty-two quarters immediately preceding the rate computation date.

(2) The employer must be qualified for a computed rate.

(3) The employer must have a positive balance in the employer's account on the rate computation date.

(4) The employer's account must have been charged with benefit payments during the four calendar quarters immediately preceding the rate computation date in a dollar amount less than the difference of the taxable wages reported by the employer for the calendar year immediately preceding the computation date minus the taxable wages reported by the employer for the calendar year preceding the calendar year which immediately precedes the computation date.

(5) The employer must have had an increase in employment of at least one person in the calendar year immediately preceding the rate computation date over the average employment for the four calendar years prior to the year immediately preceding the rate computation date. The increase in employment shall be determined by applying the following tests, both of which must be met.

1. The employer's average mid-month employment for the calendar year immediately preceding the rate computation date must exceed, by at least one employee, the average mid-month employment for the four calendar years prior to the year immediately preceding the rate computation date.

2. The employer's taxable wages for the calendar year immediately preceding the rate computation date minus the average of the employer's taxable wages for the four

calendar years prior to the year immediately preceding the rate computation date divided by the taxable wage base for the year immediately preceding the rate computation date must equal at least one.

b. The reduction in average annual taxable payroll shall equal fifty percent of the increase in the employer's average annual taxable payroll that is attributable to the expanding employment.

(1) The increase in average annual taxable payroll attributable to expanding employment shall be determined by subtracting (or adding) any increase (or decrease) in the average annual taxable payroll that is attributable to the yearly change in the taxable wage base from the total increase in average annual taxable payroll. The increase (or decrease) in the average annual taxable payroll that is attributable to the change in the yearly taxable wage base shall be calculated by multiplying the percentage by which the average taxable wage base for the twelve quarters immediately preceding the rate computation date is greater (or smaller) than the average taxable wage base for the twelve quarters immediately preceding the rate computation date for the previous year, times the average annual taxable payroll for the previous year.

(2) The experience of any predecessor employer or employers shall be combined with employer's own experience in determining if the employer's average annual taxable payroll has increased.

c. Any reduction in the average annual taxable payroll given for expanding employment shall be in effect for the current year plus the next two consecutive years (total three years) unless the employer qualifies for a larger reduction. If the employer qualifies for a larger reduction, the larger reduction will be applicable for three years unless the employer qualifies for an even larger reduction.

d. Employer shall be ranked by percentage of excess contributions before any reductions in average annual taxable payroll for expanding employment. If the reduction in average annual taxable payroll is sufficient to move the employer to a more favorable rate rank, the employer shall be moved to the new rank without reranking all other employers.

e. An employer's eligibility for a special zero rate, a special one and eight-tenths percent rate, any other special rate limitation, and the amount of any voluntary contribution shall be determined after any reduction in the employer's average annual taxable payroll because of expanding employment.

f. The expanding employment incentive does not apply to government contributory employers in the government contributory rating system.

This rule is intended to implement Iowa Code section 96.7 as amended by 1986 Iowa Acts, Senate File 2283.

ITEM 4. Add new rule 370—3.42(96) to read as follows:
370—3.42(96) Distribution of interest earned on the unemployment trust fund.

3.42(1) Interest received for each calendar year on moneys deposited with the secretary of the treasury of the United States shall be allocated and credited to the account of each employer who had a positive reserve balance as of the close of the same calendar year. The allocation shall be made in the following manner:

a. The total interest received shall be divided by the total of the positive reserve balances to obtain the interest credit percentage.

EMPLOYMENT SECURITY[370] (cont'd)

b. The positive reserve balance of each individual account shall be multiplied by the interest credit percentage to obtain the portion of the total interest received that is to be credited to the employer's account.

3.42(2) The interest credited to each employer's account shall be used only in the computation of the employer's contribution rates and shall not be paid directly to the employer.

This rule is intended to implement Iowa Code section 96.9(2)"c."

ITEM 5. Add new subrule 3.43(17) to read as follows:

3.43(17) Transfer of wages upon the sale of a clearly segregable part of an employer's business or enterprise. An individual who accepts work with an acquiring employer and who works in and is paid wages for work with such acquiring employer shall have all of the wages which were paid to the individual by the transferring employer transferred to the acquiring employer.

This rule is intended to implement Iowa Code section 96.5(1), as amended by 1986 Iowa Acts, Senate File 2283.

ITEM 6. Strike all of rule 370—3.49(96) and insert in lieu thereof the following:

370—3.49(96) Voluntary payments of additional contributions. An employer may make voluntary payments into the unemployment compensation fund for the purpose of reducing the employer's contribution rate. Voluntary contributions are subject to the following:

3.49(1) To reduce the rate for any year the voluntary contribution must be paid no later than December 15 of the previous year. A voluntary contribution must be postmarked no later than December 15 to be considered paid by December 15. If December 15 falls on Saturday, Sunday, or a legal holiday, a voluntary contribution postmarked on the next succeeding business day shall be considered as paid by December 15. Voluntary contributions paid after December 15 will be returned to the employer.

3.49(2) An employer whose account has been charged with one hundred dollars or less in benefits during the twenty-four calendar quarters immediately preceding the rate computation date and whose percentage of excess contributions is less than seven and five-tenths percent may make a voluntary contribution of any amount that would bring the percentage of excess contributions to seven and five-tenths percent or greater to qualify for a "special" zero rate. However, the voluntary contribution must be equal to, or greater than, the amount of the benefits charged during the twenty-four calendar quarters immediately preceding the computation date.

3.49(3) An employer whose account has been charged with more than one hundred dollars in benefits during the twenty-four calendar quarters immediately preceding the rate computation date may make a voluntary contribution no larger than the amount needed to change the employer's percentage of excess rank to the next lower rank (whether or not the next lower rank has a different contribution rate). However, the employer may not make a voluntary contribution to change the percentage of excess rank to a rank that is assigned a zero contribution rate because of the rate table in effect.

3.49(4) Job service may, as a convenience to employers, determine the amount of a voluntary contribution needed to reduce the employer's rate and may notify the employer of that amount on the notice of job insurance contribution (tax) rate. Any such determination of the voluntary contribution amount (or that no voluntary

contribution provisions are applicable to the employer) will be based on the information in job service records at the time the rate computation is made. It shall be the sole responsibility of each employer to determine if the amount given is accurate (or if a voluntary contribution provision is applicable) and if it is the only voluntary contribution option available to the employer under the law. It shall also be the sole responsibility of each employer to determine if making a voluntary contribution is advantageous as a voluntary contribution, once made, is considered to be a required contribution and therefore cannot be refunded.

3.49(5) If an employer files a timely appeal of the contribution rate and a genuine controversy exists, the deadline for making a voluntary contribution shall be extended to thirty days from the date that the department initially replies to the employer's appeal.

3.49(6) Employers who make a voluntary contribution will be notified of the reduced rate on the first quarter reporting form and the employer's canceled check will serve as the receipt of the voluntary contribution.

This rule is intended to implement Iowa Code sections 96.7(3)"a"(7) and 96.7(3)"d," as amended by 1986 Iowa Acts, Senate File 2283.

ITEM 7. Amend subrule 4.7(2) to read as follows:

4.7(2) Job insurance benefits for those who have received workers' compensation or weekly indemnity insurance benefits.

a. An individual who has received weekly workers' compensation benefits as defined in Iowa Code chapter 85 during a healing period or for temporary total disability for an extended period of time or under an weekly indemnity insurance plan and has insufficient wage credits in the base period may qualify for a job insurance claim. Under specific circumstances, the department shall exclude certain quarters in the base period and substitute three or more consecutive calendar quarters immediately preceding the base period which were prior to the workers' compensation or weekly indemnity insurance benefits.

b. An individual may receive workers' compensation during a healing period or for temporary total disability or weekly indemnity insurance benefits until such time as the individual returns to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.

c. The department shall make an initial determination of eligibility for job insurance payments. If the claimant has no wage records or lacks qualifying wage requirements, the department shall substitute three or more current quarters of the base period with monetarily qualifying consecutive quarters immediately preceding the base period. The qualifying criteria for substituting quarters in the base period is that the claimant:

(1) Must have received workers' compensation payments under Iowa Code chapter 85 or weekly indemnity insurance benefits for which an employer is responsible during the excluded quarters and

(2) Did not work in and receive wages from insured work for:

1. Three or more calendar quarters in the base period, or

2. Two calendar quarters and lacked qualifying wages from insured work during another quarter of the

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base period.

d. Subject to the provisions of paragraph "c" of this subrule, the department shall use the following criteria for allowances and disqualifications.

(1) Allowances. When the allowance criteria are met, the department shall always exclude and substitute at least three quarters of the base period if the claimant received workers' compensation or weekly indemnity insurance benefits in:

1. Four base period quarters with no earnings in at least two of the quarters and the claimant lacks qualifying earnings, the department will exclude and substitute all four quarters of the base period.

2. Three no earnings base period quarters, with or without earnings in the fourth quarter, the fourth quarter remains in the base period and the department will exclude and substitute only three quarters in the base period.

(2) Disqualifications. The request for retroactive substitution of base period quarters shall be denied if the claimant received workers' compensation or weekly indemnity insurance benefits in:

1. At least three base period quarters but the claimant is currently monetarily eligible with an established weekly and maximum benefit amount.

2. At least three base period quarters and the claimant has base period wages in three or more of the base period quarters, but the claim lacks qualifying earnings.

3. Less than three base period quarters.

e. The claimant shall be requested to complete the affidavit and questionnaire Form IESC 1829 which requests the following information:

(1) Claimant name and social security number.

(2) Name of employer responsible for the workers' compensation claim or the weekly indemnity insurance benefits.

(3) Names of employers and periods worked for the period preceding the workers' compensation or the weekly indemnity insurance pay period.

(4) Name of the workers' compensation or weekly indemnity insurance carrier or, if self insured, the name of the employer.

(5) Specify whether the wages determined to be in the claimant's base period were or were not received for working in insured work during the base period.

f. The department will mail the redetermined initial claim to the claimant. When the claim for benefits is determined to be monetarily eligible for payment, the employer responsible for the workers' compensation or the weekly indemnity insurance benefits shall be notified of the redetermination and shall be responsible for the charges on the redetermined claim which are solely due to wage credits considered to be in the claimant's base period due to the exclusion and substitution of calendar quarters. The employer responsible for the workers' compensation or weekly indemnity insurance benefits shall have the same right to protest as listed in subrule 4.7(1).

This rule is intended to implement Iowa Code sections 96.3(5) and 96.23.

ITEM 8. Add new subrule 4.26(28) to read as follows:

4.26(28) The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business

or enterprise. Under this condition, the acquiring employer shall immediately become chargeable for the benefits paid which are based on the wages paid by the transferring employer and no disqualification shall be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code section 96.5(1) as amended by 1986 Iowa Acts, Senate File 2283.

ITEM 9. Add new subrule 4.40(3) to read as follows:

4.40(3) For those individuals who are otherwise eligible, but who are financially incapable of paying tuition and related course fees, the department may provide up to one thousand dollars per individual in a twenty-four-calendar-month period. The criteria is:

a. Funds must be available.

b. Approval of department approved training must be received prior to payment to the educational institution.

c. Individuals must certify financial need.

d. Individuals must apply for financial assistance at educational institution and provide a copy to the department.

This rule is intended to implement Iowa Code section 96.13(3) as amended by 1986 Iowa Acts, House File 2484, section 623.

[Filed emergency 6/13/86, effective 7/1/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6668

INDUSTRIAL COMMISSIONER[500]

Pursuant to the authority of Iowa Code section 86.8, the Industrial Commissioner hereby adopts the amendment to Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code, to provide reference to current tables which determine payroll taxes.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and participation is unnecessary in that there is no change in agency policy, the rule is noncontroversial and further, that since Iowa Code section 85.61(10) requires adoption of current tables to determine payroll taxes by July 1 of each year, the agency must wait until the Internal Revenue Service and Iowa Department of Revenue determine whether there will be changes in their publications on July 1 of the current year. The Department has determined that the rule will have no impact on small business within the meaning of Iowa Code sections 17A.24 to 17A.30.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of this rule, thirty-five days after publication, should be waived and the rule made effective July 1, 1986, as it confers a benefit upon the public to ensure speedy and uniform compliance with the agency's legislative mandate.

The Industrial Commissioner adopted this rule on June 12, 1986.

This rule implements Iowa Code section 85.61(10).

Rule 500—8.8(85,17A) is amended to read as follows:

500—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 1985 1986 through June 30, 1986 1987 are the tables in effect on July 1, 1985 1986 for computation of:

INDUSTRIAL COMMISSIONER[500] (cont'd)

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service Circular E Publication 15 [Rev. January 1985 1986].)

2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue Publication 44-001 for wages paid after January 1, 1985.)

3. Social Security withholding (FICA) at the rate of ~~7.05%~~ 7.15% (Internal Revenue Service, Circular E Publication 15 [Rev. January 1985 1986].)

This rule is intended to implement Iowa Code section 85.61.

[Filed emergency 6/13/86, effective 7/1/86]
[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6676**MERIT EMPLOYMENT
DEPARTMENT[570]**

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Merit Employment Department hereby emergency adopts and implements amendments to Chapter 8, "Appointments" and Chapter 11, "Separations, Disciplinary Actions and Reduction in Force," appearing in Iowa Administrative Code.

Revise Iowa Merit Employment Department rules to include the prohibition of further state employment for employees who terminate under the Early Retirement Program as provided by 1986 Iowa Acts, Senate File 2242.

Amends language regarding types of employee terminations (and the re-employment consequences of specific forms of termination) to include the Early Retirement Program per 1986 Iowa Acts, Senate File 2242.

The Iowa Merit Employment Department finds that in compliance with Iowa Code section 17A.4(2) these rule changes should become effective without public participation because notice and public participation is impracticable because the rules conform to Senate File 2242, which became effective May 28, 1986.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal waiting period should be waived and this amendment be made effective upon filing with the Administrative Rules Coordinator in order to comply with the law which became effective May 28, 1986.

These rules are being published as Notice of Intended Action **ARC 6677**.

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

The following amendments are adopted.

ITEM 1. Rule 570—8.1(19A) is amended to read as follows:

570—8.1(19A) Appointments. All ~~vacancies in classified positions~~ *appointments* shall be filled *made* as provided by *Iowa Code* chapter 19A of the Code and these rules. No appointment shall be made without ~~prior~~ authorization of the director. Appointments shall be made at the minimum salary for the class, unless otherwise provided in these rules. No appointment may be made to any ~~classified~~ position until the position has been

classified in accordance with *Iowa Code* chapter 19A of the Code and these rules and, ~~the comptroller has certified that funds are available.~~ *An employee who has participated in the phased retirement program shall not be eligible for appointment to full-time state employment. An employee who has participated in the early retirement or early termination program shall not be eligible for appointment to any state employment.*

Rule 570—8.7(19A) is amended to read as follows:

570—8.7(19A) Reinstatement. A former permanent employee who resigned while in good standing or who was separated for other than just ~~good~~ cause may be reinstated at the discretion of an appointing authority. Reinstatement eligibility shall be to the class held at the time of separation, to a class in the same pay grade, or to a class in a lower pay grade. The person must be determined by the director to be eligible for appointment to the class, but need not be certified from a list of eligibles. The period of reinstatement eligibility shall be equal to the period of continuous state employment immediately prior to the employee's separation, to a maximum of two years. *An employee who has participated in the phased retirement program shall not be eligible for reinstatement to full-time state employment. An employee who has participated in the early retirement or early termination program shall not be eligible for reinstatement to any state employment.*

A permanent employee occupying a position that has been exempted from the state merit employment system provisions shall be eligible for reinstatement during the period of exempt service and for a period equal to the period of the employee's continuous state service, not to exceed two years, following separation from the exempt service.

ITEM 2. Subrule 11.1(1), first paragraph and paragraph "c," are amended to read as follows:

11.1(1) Resignation, retirement ~~or~~, phased retirement, *early retirement or early termination.*

c. Employees who received early retirement or early termination incentives provided by 1986 Iowa Acts, Senate File 2242, shall not be eligible for further state employment.

[Filed emergency 6/13/86, effective 6/13/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6670**PLANNING AND
PROGRAMMING[630]**

Pursuant to the authority of 1986 Iowa Acts, House File 2443, and Iowa Code chapter 7A, the Office for Planning and Programming emergency adopts and implements rules applicable to the Green Thumb Program.

In compliance with Iowa Code section 17A.4(2), the Office of Planning and Programming finds that notice and public participation would be unnecessary and impracticable in that the 1986 Iowa Acts, House File 2443, transfers administrative responsibilities for a Green Thumb Program to the Office of Planning and Programming or its successor agency and the program year is scheduled to begin July 1, 1986. The Iowa

PLANNING AND PROGRAMMING[630] (cont'd)

Conservation Commission previously administered a Green Thumb Program and adopted rules governing its operation. These rules are in the Iowa administrative Code 290—Chapter 70, "Conservation and Outdoor Recreation Employment for Senior Citizens." The Office of Planning and Programming has adopted rules similar to the existing Iowa Conservation Commission rules with only minor changes. There are no major substantive changes from the present rules except for new provisions mandated by 1986 Iowa Acts, House File 2443, e.g. new matching requirements.

Notice and public participation would be unnecessary since there are no substantive changes from the existing rules other than those required by state legislation and the content of the Iowa Conservation Commission rules was previously available for public comment. Since the program year begins July 1, 1986, notice and public participation would be impracticable.

The Office of Planning and Programming finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date should be waived and the rule be made effective July 1, 1986, as it confers a benefit upon the public to ensure that the Green Thumb Program will be operational by the beginning of the program year and that the agency has enforceable rules meeting the requirements of House File 2443. The Office of Planning and Programming adopted these rules on June 11, 1986.

This rule is intended to implement 1986 Iowa Acts, House File 2443, section 2.

The following amendment is adopted:

Amend Chapter 14, Youth Affairs, by adding the following new rule:

630—14.6 (71GA, House File 2443) Green thumb component.

14.6(1) Purpose and intent. The purpose of the green thumb program is the employment of persons, sixty years of age or older, in conservation and outdoor recreation related positions with the department of natural resources, county conservation boards, and other public and private nonprofit entities. The funds appropriated for this program shall be used only for wage payments including the employer's share of social security payments, to persons employed under this program and for any physical examinations that may be required of persons selected for employment.

14.6(2) Fund distribution. Funds appropriated from the state general fund for the green thumb program shall be divided approximately sixty percent for state agencies and forty percent for other public and private nonprofit entities.

14.6(3) Conditions and guidelines for program participants. The following conditions and guidelines shall apply to any person employed in the green thumb program:

a. A person shall be sixty years of age or older to be eligible for employment.

b. A lower income person shall be preferred for employment. "Lower income" means a person who meets the requirements for "lower income families" described in section eight (8), subsection "f" of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 (Public Law 93-383), section 201, subsection "a." If there is more than one applicant for a green thumb position, the person interviewing and directly hiring the program participants shall give preference to the lower income applicant

and may make use of any reasonable means to make this determination.

c. At the option of the employee, persons may cease being employed when they have earned the maximum amount allowed before retirement benefits are reduced.

d. A person employed shall be paid at least the minimum wage as established by federal law, and not more than five dollars per hour. The project sponsor may pay a rate in excess of five dollars per hour, but none of the excess shall be used as cash match, or be eligible for reimbursement from program funds.

e. A person shall be employed for the purpose of doing a job in a conservation or outdoor recreation related field that is both meaningful and respectable.

f. Persons shall be carefully selected so as to ensure that they are physically capable of doing a particular job.

g. Persons may be employed on either a part-time or a full-time basis.

h. Persons shall not be used to replace existing maintenance or other full-time employment provided by a project sponsor.

14.6(4) Project conditions and guidelines. Any public or nonprofit entity may submit a proposed project to the administering agency for funding. Such submissions must meet the following conditions and guidelines to be considered.

a. The submission shall contain a narrative which describes in detail the type of work, the location of the work area, and the anticipated results and benefits of the proposed project.

b. The submission shall include the number of participants, the total number of program participant's labor hours requested for the proposed project, the estimated administrative and supervisory hours related to the project, the estimated materials needed for the project, and the estimated value of equipment used on the project.

c. The submission shall contain a statement relative to the anticipated project beginning date and completion date. The completion date may be the last day of the state fiscal year. Nothing in this rule is to be construed as guaranteeing funding beyond the last day of the state fiscal year for program participants.

d. The submission shall contain the name, position title, address, and telephone number of the person who will be directly responsible for supervision of the project. This person will be responsible for interviewing applicants, providing necessary training, materials, supplies, and equipment, maintain project records, and any other generally recognized responsibilities of supervision.

e. At least fifteen percent of the program participant's wages, including the employer's share of social security payments, must be provided by the project sponsor as cash match. Additionally, in-kind contributions of the supervisory time, materials, and equipment use contributed by the project sponsor shall be at least equal to twenty-five percent of the total wages, including employer's share of social security payments, paid to the program participants. Any wage payment from project sponsor funds in excess of fifteen percent may be used to meet the in-kind contribution required by this rule from the project sponsor.

f. For convenience of the project sponsor, the following equipment hourly rates may be used to value equipment use contributed to the project.

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Brush Cutter	.75	Chain Saw	1.00	Concrete Mixer	1.50
Bulldozer	20.00	Push Mower	1.00	Riding Mower	2.00
Power Auger	.50	Small Power Tools	.50	Tractor	5.00 - 7.00
Backhoe	7.60 - 10.00	Tree Planter	2.00	Large Truck	12.50
Pickup or Car	7.50				

14.6(5) Project submission and approval. All proposed green thumb projects shall be submitted on forms provided by the administering agency. Each submission by a division of the department of natural resources shall be approved by the appropriate division chief. Each submission by a county conservation board shall be approved by the board chairperson or the board's executive officer. Each submission by any other entity shall be approved by the chairperson or chief executive officer. Submissions must be received at the address and by the date specified in the notice to all potential project sponsors.

A review committee, composed of one person each appointed by the director of the department of economic development, the director of the department of natural resources, and a person appointed by the director of the commission on the aging shall consider the project submissions. The review committee shall recommend for approval by the director of the department of economic development a priority list of those project submissions which best fulfill the intent of the program. Those submissions that will provide continued employment for senior citizens currently employed on previously approved projects will be given first priority. The number of program participants or labor-hours requested on one or more submissions may be reduced by the review committee in order to achieve this goal. Project submissions which specifically provide facilities or enhance outdoor opportunities for the handicapped or the elderly shall be given special consideration. Priority shall also be given to areas of the state likely to receive the greatest benefit.

Funds will be allocated for each program as it is approved to the full amount appropriated for the program. If additional funds become available by reason of modifications or cancellations of approved projects, then projects on the priority list not previously funded may be approved. Project submissions received after the date specified for review will be considered only if funds are available and not allocated for projects received before that date.

14.6(6) Recruitment of program participants. Upon approval of a project, the administering agency shall notify the commission on the aging and the Iowa department of job service or successor agencies. These agencies, in turn, may notify any regional or local agency that might be in a position to refer prospective program participants.

If the project supervisor does not receive a sufficient number of applicants within fifteen days following the receipt of the project approval notification by the local or regional agencies, the project supervisor may recruit other persons sixty years of age or older by any reasonable means. In all cases, the project supervisor shall prefer "lower income" applicants.

If the project supervisor believes it is necessary, the applicant, who has been offered employment, shall be given a physical examination by a qualified physician to determine whether or not the prospective program participant can adequately assume the responsibilities of the position. The cost of the examination shall be

charged the green thumb program in the same manner as wage payments.

14.6(7) Termination of employment. The project sponsor may terminate the employment of a program participant upon completion of the project or because of the unavailability of program funds.

Any disciplinary action, including discharge, shall be conducted in the same manner as for other temporary or part-time employees of the project sponsor. Program participants shall have the same rights under the project sponsor's grievance procedure as any regular temporary or part-time employee, except that program participants working for state agencies are not covered by provisions of Iowa Code chapters 19A, 96 and 97B.

14.6(8) Claims by program participants. Claims by program participants for workers' compensation shall be paid by the project sponsor in the same manner that similar claims are paid for other employees of the project sponsor. These costs shall not be used as matching expenditures for program funds. Program participants are not eligible for unemployment compensation benefits.

14.6(9) Program evaluation and accounting. The project supervisor shall keep an accurate record of the hours worked and accomplishments of program participants, the cost of materials and supplies used for the project, the value of equipment used on the project, the amount of supervisory labor-hours provided by the regular staff, and the comments and reactions of the program participants.

Upon completion of each project, or when requested by the administering agency, the project sponsor shall provide an exact accounting on project billings forms provided by the administering agency of the actual program participant labor-hours and a detailed account of the matching expenditures from project sponsor funds. The project sponsor shall also provide a narrative of the accomplishments and problems relative to the project; and the comments, reactions, and recommendations of the program participants.

Local project sponsors will be reimbursed eighty-five percent of wage payments, including the employer's share of social security payments, contingent on a showing that supervisory time, materials, and services contributed by the sponsor equaled at least twenty-five percent of total wages paid to green thumb participants. However, reimbursements may not exceed the amount of the approved grant. Program participants sponsored by a state agency shall be paid by the state payroll system from the green thumb funds appropriated from the general fund. Quarterly, the sponsoring state agency shall reimburse the fund from which payroll payments were made fifteen percent of total wage and benefit payments. The program's share of wage payments to any state agency's program participants shall not exceed the total of grants approved to the project sponsor.

The administering agency shall have the right to request any additional fiscal documents as may be necessary to support the final accounting.

This rule is intended to implement 1986 Iowa Acts, House File 2443, section 2, subsection (1), paragraph "e" and House File 2484, section 505.

[Filed emergency 6/13/86, effective 7/1/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6688**PLANNING AND PROGRAMMING[630].**

Pursuant to the authority of Iowa Code section 17A.7 and chapters 7A, 7B, and Executive Order 47, [1982] the Office for Planning and Programming emergency adopts and implements rules for local and state level complaints procedures under the Job Training Partnership Act (JTPA), Public Law 97-300.

In compliance with Iowa Code section 17A.4(2), the agency finds that public notice and participation is unnecessary, impracticable and contrary to the public interest in that the JTPA mandates both local and state level complaint procedures to resolve grievances arising under the JTPA. It is necessary for the state to ensure that there is a procedure in effect to process local and state level complaints during and after OPP transitions to the new department [Economic Development]. The adopted rules incorporate findings from Department of Labor (DOL) monitoring reports which identified necessary changes to remain in compliance with the federal JTPA, e.g. notification of a complainant's right to request a federal level review of a state decision if not issued within the specified time period; exhaustion of local level procedures before a complaint is escalated; notification of opportunity to request a review of an SDA level decision; no voluntary extension is permitted of the sixty-day time period for the issuance of a written decision; and discrimination-based complaints are to be filed with the DOL Office of Civil Rights.

The two rules adopted outline procedures for SDA and state level grievance procedures which are consistent with the federal Act and regulations, DOL monitoring findings, and the reassignment and delegation of JTPA administrative responsibilities to the Department of Economic Development. The rules clarify the jurisdiction of the local and state complaint procedures; reflect provisions of Iowa Code chapter 17A concerning discovery, subpoenas, rules of evidence, settlement, and duties of the hearing officer.

The OPP also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of this rule, thirty-five days after publication, should be waived and the rule be made effective on July 1, 1986, as it confers a benefit upon the public to ensure that local and state level JTPA grievance procedures are in effect and made available to the public during and after the agency transition period.

These amendments are also being published under Notice of Intended Action as **ARC 6689** herein.

These rules are intended to implement Iowa Code chapters 7B, 17A, 1986 Iowa Acts, Senate File 2175, and 29 USC 1554.

ITEM 1. Amend chapter 19 by reserving the following rules:

19.17 to 19.1952

ITEM 2. Rescind **630—19.20** (7A, 29 USC1554) and insert in lieu thereof the following:

630—19.53 (7A,7B,29 USC1554) **SDA level complaint procedures.**

19.53(1) SDA grantee complaint procedures. Each service delivery area (SDA) grantee shall establish procedures for resolving any complaint by a participant,

subgrantee, subcontractor and other interested persons alleging a violation of the JTPA, regulations, grant or other agreements under the JTPA by the SDA grantee, administrative entity, private industry council, subgrantee or subcontractor. At a minimum, the SDA level complaint procedure shall provide for:

a. Resolution of any complaint, except discrimination complaints which shall be resolved consistent with 19.53(1)"k" and 19.53(2), alleging a violation of the Act, Federal regulations, JTPA administrative rules, grant or other agreements under the Act;

b. Resolution of complaints arising from actions such as audit disallowances or the imposition of sanctions taken with respect to audit findings, investigations or monitoring reports;

c. Filing of complaints within one year of the alleged violation, except for allegations of fraud or criminal activity and discrimination prohibited under the Act;

d. An opportunity for a hearing within thirty days of the date the complaint is filed;

e. Written notice of the date, time, and place of the hearing;

f. An opportunity to present evidence at the hearing;

g. Opportunity to have records or documents relevant to the issues produced by their custodian when the records or documents are kept by or for the SDA grantee or its subgrantees in the ordinary course of business and where prior reasonable notice has been given to the presiding officer;

h. A written decision within sixty days of the date a complaint is filed;

i. A written explanation to all parties of the right to request a review by the state of the complaint if a party receives an adverse decision or if there is no final decision within the sixty-day period. Requests for review by the state must meet the requirements of 19.86(3);

j. If the state should fail to issue a decision within thirty days of the filing of the request for state review, a party may request from the Secretary of Labor a determination whether reasonable cause exists to believe that the Act or regulations have been violated. A request to the Secretary of Labor must be filed within ten days of the date a decision should have been issued by the state and conform to the requirements of 20 CFR 629.52(d) as of October 7, 1980;

k. A written procedure made available to all parties of the right to file a discrimination complaint which includes notice that:

(1) Discrimination complaints on the basis of race, color, religion, sex, national origin, political affiliation or belief shall be filed with the Regional Department of Labor, office of civil rights within one hundred eighty days of occurrence; and

(2) Discrimination complaints on the basis of handicap shall follow the procedure outlined in 19.53(2);

l. Upon enrollment, all participants must receive a written description of the complaint procedures which they are to follow. The description must include notification of the right to file a complaint and instructions on how to do so;

m. If a person is not familiar with English, a written or oral translation into a language understood by the individual must be provided. If a person is illiterate or semiliterate, the person must be advised of such right to the satisfaction of that person's understanding;

n. Upon filing a complaint, and at each stage

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thereafter, each complainant and party must be notified in writing of the next step in the complaint procedure;

o. A complaint log and a record of each complaint filed must be maintained at the local level.

p. Grantees and other subrecipients of JTPA funds must ensure that employers of participants under this Act continue to operate, or establish and maintain, a grievance procedure relating to the terms and conditions of employment. Employers may operate their own grievance procedure or use the grievance procedure established by the grantee. Employers shall inform participants of the grievance procedure they are to follow and of their right to have the employer's decision reviewed by the grantee.

19.53(2) Discrimination complaints. All complaints alleging discrimination based on race, color, religion, sex, national origin, age, handicap or political affiliation or belief must be filed within one hundred eighty days of occurrence. The local grantees must provide the charging party with the U.S. Department of Labor complaint information form and assistance in the completion and the filing of the discrimination complaint.

Complaints alleging discrimination based on handicap are to be filed with the local grantee and processed in accordance with 29 CFR 32.45 as of March 15, 1983. These procedures require the grantee to utilize an internal review procedure incorporating appropriate due process standards which provide for prompt and equitable resolution of handicapped-based complaints within sixty days. If the complaint has not been resolved satisfactorily to the charging party within sixty days of the filing referral, the charging party or representative may file a complaint directly with the Regional Office for Civil Rights within thirty days of the appropriate grantee decision or ninety days from the date of filing the complaint, whichever is earlier.

ITEM 3. Amend chapter 19 by adding the following:
19.54 to 19.85 Reserved.

ITEM 4. Rescind **630—19.21** (7A, 17A, 29 USC 1501 et seq.) and insert in lieu thereof the following:

630—19.86 (7A, 7B, 17A, 29 USC 1554) **State administrative entity complaint procedures.**

19.86(1) General information.

a. These rules indicate and specify the minimum procedural requirements for resolving complaints, arising in connection with the Job Training Partnership Act (JTPA) program administered by the department of economic development and operated by grantees within each service delivery area (SDA), alleging a violation of the JTPA, state or federal regulations, grant or other agreements under the Act. For complaints involving audit reports, compliance review reports and the imposition of sanctions on the grantee, refer to the rules applicable to audit resolution, debt collection, compliance reviews and sanctions for filing deadlines and procedures.

b. The JTPA and federal implementing regulations require the establishment of both local and state level complaint procedures. Grievances or complaints about local level actions, decisions, activities, and programs are to be resolved through the SDA level complaint procedure. As provided in subrule 19.86(3) the state may, upon request of a party or upon its own motion, review a final local complaint decision. Complainants may file initially with the state if the requirements of subrule 19.86(4) are met.

c. These rules do not apply to proceedings that determine law or policy of general applicability based on legislative fact nor to automatic grant adjustments for classes of contractors, subcontractors or participants when adjustments are required by state or federal law.

d. Complaints may be brought by participants, subgrantees, subcontractors, and other interested persons. The department of economic development may also initiate complaints as required by statute or constitution in order to determine the legal rights, duties, or privileges of a party which are at issue.

e. The identity of any person who has furnished information relating to, or assisting in an investigation of a possible violation of JTPA shall be kept confidential to the extent possible, consistent with due process and a fair determination of the issues.

f. No grantee, administrative entity, private industry council, or subgrantee shall in any manner discriminate against or discharge any individual because the individual has filed a complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any proceeding or investigation under or related to this Act.

19.86(2) Definitions. As used in this complaint procedure the following definitions apply, unless the context otherwise requires.

"Complaint" means an alleged injury, injustice or wrong and includes the term grievance.

"Contested case" means a proceeding in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by the department of economic development, after an opportunity for an evidentiary hearing.

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

"Dismissal" means that a complaint will not be pursued for the following reasons:

1. The alleged violation is not one that arises in connection with the JTPA Act, regulations, grant, or other agreements, under the Act; or
2. No useful purpose would be derived in pursuing further action on the complaint.

"Final action" means resolution of the complaint by withdrawal, settlement agreement, dismissal, or final decision.

"Interested person" incorporates the legal concept of "standing" and means a person who has some personal and legal interest in the matter which is the subject of the complaint and can demonstrate a specific injurious effect on this interest.

"JTPA" means the Job Training Partnership Act of 1982, Public Law 97-300.

"SDA" means service delivery area; the geographical area designated under the Act within which employment and training services are provided.

"Settlement agreement" means that a written agreement, signed by the parties, that has been executed which recites the subject of the controversy and the solution mutually agreed upon by the parties, including a statement of the action to be taken, or to be refrained from, by each of the parties.

"State administrative entity" or "state" for the purpose of this complaint procedure means the department of economic development.

"Withdrawal" means the complainant has requested, prior to a hearing, that no further action be taken by the state on the complaint.

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19.86(3) State review of SDA complaint decisions. If a party does not receive a final decision at the SDA level within sixty days of filing of the complaint or receives an adverse decision, a party may request a review of the complaint by the state.

a. Filing deadline. To be considered, a request must be filed with the state within ten days of receipt of the adverse decision or ten days from the date on which a party should have received a decision.

b. Exhaustion of local procedures. No party may file a request for review by the state until the SDA procedures have been exhausted, unless a decision has not been issued within sixty days of the filing of the complaint.

c. Where to file. The request shall be filed with the JTPA complaint officer at the department of economic development.

d. Contents. The request shall be in writing and shall include:

- (1) The date of filing the request for review;
- (2) The names and addresses of all parties involved;
- (3) A clear statement of the facts, including relevant dates, and the provision(s) upon which review is requested. Provisions not identified for review will be considered resolved, unless the agency desires to review a provision on its own motion;
- (4) The date the complaint was filed with the SDA, the date the SDA decision was issued or should have been issued;
- (5) Signature of the party requesting the review; and
- (6) A copy of the SDA level decision.

e. Notice. After receipt of the request for review, the JTPA complaint officer will:

- (1) Send written notice of the filing and a description of the review process to each party;
- (2) Request from the SDA complaint officer a copy of the SDA complaint file consisting of all pertinent documents including, but not limited to, the original complaint, evidence, hearing transcript, briefs, pleadings and written decision(s);
- (3) Transmit the request to appropriate personnel; and
- (4) Establish a deadline for submission of briefs, exceptions or additional evidence.

f. State review process.

(1) Review procedure. The director, or an individual designated by the director, will review the SDA decision, complaint file, all timely filed briefs and exceptions, and any other relevant information. The director, or the director's designee, may request additional information from the parties, investigate any matter, request oral arguments on the complaint, or take any other appropriate action to aid in the review process;

(2) Standard of review. Deference will be given to the findings of fact made at the local level. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence and decision. The local decision will be reviewed to determine:

1. Consistency with state, federal and local law, regulation and policy under the JTPA;
2. The lawfulness of the local procedure;
3. Whether the decision is in violation of any statutory or regulatory provision;
4. Whether it is in excess of the authority delegated to the SDA;
5. Whether it is supported by substantial evidence

in the record when that record is reviewed as a whole; and

6. Whether it is unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(3) Final decision.

1. When the director reviews the SDA decision, the decision of the director is final. When an individual designated by the director reviews the SDA decision, the designee will prepare a recommended decision which the director may adopt, modify or reject. The director shall issue a final written agency decision.

2. A final written agency decision will be made within thirty days of the filing of the request for state review. This written decision of the director is final agency action and subject to judicial review as provided in Iowa Code section 17A.19.

19.86(4) State complaint procedure.

a. Who may file. A participant, subgrantee, subcontractor or other interested person may file a complaint.

b. Jurisdiction. A complaint may be filed with the state to adjudicate or otherwise resolve an allegation that the department of economic development has violated the JTPA, applicable federal or state regulations, grants, contracts or other agreements under the JTPA.

c. Time.

(1) Except for complaints alleging fraud or discrimination prohibited under the Act, complaints shall be filed within one year of the alleged occurrence.

(2) Discrimination-based complaints. All complaints alleging discrimination based on race, color, religion, sex, national origin, age, handicap, or political affiliation, or belief must be filed within one hundred eighty days of occurrence. All discrimination-based complaints, other than handicap, are to be filed with the Regional Department of Labor, Office of Civil Rights. The JTPA complaint officer will provide the charging party with the U.S. Department of Labor complaint information form and assistance in the completion and filing of the complaint.

d. Contents. Complaints shall be clearly portrayed as such by the complainant and shall satisfy the following requirements:

(1) Complaints shall be legible and signed by the complainant or the complainant's authorized representative;

(2) Complaints shall pertain to a single subject, situation or set of facts;

(3) The name, address and phone number (or TTY number) shall be clearly indicated. If the complainant is represented by an attorney or other representative of the complainant's choice, the name, address and phone number of the representatives shall also appear in the complaint;

(4) Complaints shall state the name of the party or parties complained against and, if known to the complainant, the address and phone number of the party or parties complained against;

(5) Complaints shall contain a clear and concise statement of the facts, including pertinent dates, constituting the alleged violations;

(6) Complaints shall cite the provisions of JTPA regulations, grants or other agreements under JTPA believed to have been violated;

(7) Complaints shall state the relief or remedial action(s) sought;

(8) Copies of documents supporting or referred to in

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the complaint shall be attached to the complaint; and

(9) Complaints shall state whether or not an oral hearing is requested.

e. Where filed. Complaints shall be filed with the JTPA Complaint Officer, Division for Human Resources Co-ordination, Department of Economic Development.

19.86(5) Acknowledgment of complaint and notice of opportunity for hearing.

a. A complaint shall be deemed filed with the state when it has been received by the JTPA complaint officer in a form which satisfies the requirements of subrule 19.86(4) paragraph "d."

b. Upon receipt of a complaint in proper form, the department of economic development will send by personal service or certified mail, a copy of the complaint and a letter of acknowledgment and notice to the parties. The letter of acknowledgment and notice shall contain the filing date, the docket number, and guidance concerning the following:

(1) The opportunity for informal resolution of the complaint at any time before a contested case hearing is convened.

(2) The opportunity for a party to request a hearing by filing with the complaint officer within seven days of receipt of the acknowledgment of the complaint a request for hearing.

(3) Opportunity for a party to be represented by counsel at their own expense.

(4) Failure to file a written request for a hearing within the time provided constitutes a waiver of the right to a hearing and the presiding officer will rule on the complaint based upon the pleadings, evidence and briefs submitted.

(5) If a hearing is requested, the hearing shall be held within thirty days of the filing of the complaint.

(6) The opportunity for a party to submit written evidence, pleadings and briefs in a time and manner prescribed by the presiding officer.

(7) When a hearing officer presides, the hearing officer shall issue a proposed decision within sixty days of the filing date of the complaint and forward a copy to each party, the complaint officer and the director.

(8) Should the hearing officer fail to issue a written decision within sixty days or if a party receives an adverse decision, a party may request an independent state review of the complaint in accordance with subrules 19.86(19) and 19.86(20). The request must be filed with the director within ten days of the issuance date of the adverse decision or within ten days from the date on which the decision should have been issued. If accepted for review, a decision shall be made within thirty days and the director's decision is final.

(9) Parties may file exceptions to and appeals of the proposed decision for review by the director no later than ten days from the issuance date of the proposed decision by filing with the complaint officer exceptions, appeals, and appeal briefs or briefs in support of the exceptions. The parties will receive written notice of the acceptance or denial of the request for review. The state reserves the right to review the hearing officer's decision on its own motion.

(10) If no exceptions to or appeals of the proposed decision are filed within the time provided or not reviewed upon agency motion, the proposed decision of the hearing officer shall become the final agency decision.

19.86(6) Settlement. A controversy may, unless precluded by statute, be informally settled by mutual

agreement of the parties any time before or after a controversy is formally identified by the filing of a complaint, notice, or petition, and before a contested case hearing is convened. The settlement shall be effected by a written settlement agreement signed by all parties or a written statement from the complainant that the complaint has been withdrawn or resolved to the complainant's satisfaction. The complaint officer shall acknowledge the informal settlement and notify the parties of the final action. With respect to the specific factual situation which is the subject of controversy, the informal settlement shall constitute a waiver, by all parties of the formalities to which they are entitled under the terms of the Iowa Administrative Procedure Act, Iowa Code chapter 17A, JTPA and the rules and regulations under JTPA.

19.86(7) Waiver of right to a hearing. Failure to request a hearing in a timely fashion constitutes a waiver of a right to a hearing. If no hearing is requested the presiding officer shall make a record of the written evidence, pleadings and briefs submitted by the parties. These documents shall be considered the complete record and will be the basis for the hearing officer's proposed decision.

19.86(8) Notice of hearing.

a. Upon receipt of a timely request for a hearing, the JTPA complaint officer will assign the matter to a hearing officer. The parties shall be notified of this assignment and all future correspondence and filings shall be directed to the hearing officer and copies of the documents shall be served on all parties, and the JTPA complaint officer.

b. The hearing officer shall give all parties at least seven days' written notice either by personal service or certified mail of the date, time and place of the hearing. The notice may be waived in case of emergency, as determined by the hearing officer, or for administrative expediency upon agreement of the interested parties.

c. Contents of notice. Notice of hearing shall include:

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

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

(3) A reference to the particular sections of the statutes, rules or regulations involved; and

(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 opportunities at hearing:

Opportunity for the requesting party to withdraw the request for hearing before the hearing;

Opportunity to reschedule the hearing for good cause, provided that the hearing is not held later than thirty days after the filing of the complaint;

Opportunity to be represented by an attorney or other representative of their choice at their own expense;

Opportunity to respond and present evidence and bring witnesses to the hearing;

Opportunity to have records or documents relevant to the issues produced by their custodian when such records or documents 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;

Opportunity to question any witnesses or parties;

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The right to an impartial hearing officer; and
A written proposed decision shall be issued by the hearing officer.

19.86(9) Applicability of Iowa rules of procedure.

a. These administrative rules govern the JTPA complaint procedure and all hearings before the hearing officer.

b. In the absence of a specific provision in these rules and to the extent they are not inconsistent with the Act, implementing regulations or Iowa Code chapter 17A, procedural matters will be in accordance with the Iowa rules of civil procedure.

19.86(10) Service and notice.

a. At the time of filing pleadings or other documents, a copy shall be served by the filing party on each party and the JTPA complaint officer.

b. Service upon a party who has appeared through a representative shall be made only upon the representative.

c. Unless otherwise ordered, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if mailed) or at the time of personal delivery (if by personal delivery).

19.86(11) Discovery.

a. Pursuant to Iowa Code section 17A.13(1) discovery procedures applicable to civil actions shall be available to all parties in a contested case before the agency.

b. Where there is a failure to comply with any proper method of discovery permitted, the party seeking discovery may apply to the hearing officer for an order compelling discovery.

19.86(12) Issuance of subpoenas.

a. Pursuant to Iowa Code section 17A.13(1) parties to a contested case proceeding may request, and the agency may grant, subpoenas.

b. It shall be the responsibility of the parties to request the attendance of persons they believe have knowledge of the facts at issue at the hearing.

c. Upon written request of a party, a subpoena compelling the attendance of a person may be issued by the hearing officer. The request shall be in writing and submitted at least three days prior to the hearing date and shall include:

(1) A statement of the relevance of the witness' testimony and that it will not be duplicative of other testimony;

(2) A statement that the witness has been requested and refuses to voluntarily attend; and

(3) The name, address and telephone number of the witness.

d. A subpoena duces tecum shall include the items identified in subrule 19.86(12)"c," and shall state specifically the documents, books or records desired.

e. At the discretion of the hearing officer, an opportunity to object to the issuance of a subpoena may be afforded the person(s) to whom a subpoena is directed. The hearing officer may hear and rule on the objection prior to commencing the hearing.

f. The hearing officer shall issue a subpoena if it is satisfactorily shown that the testimony to be offered is relevant and pertinent; not hearsay; not cumulative or repetitive of other evidence or testimony; and, in the case of a subpoena duces tecum, the records do not disclose protected communications or cause an undue hardship on the party to whom it is directed.

g. If any person to whom a subpoena is directed

refuses to honor the subpoena, the agency may, in its discretion, apply to the district court for an order to compel the person to obey the subpoena.

19.86(13) Prehearing conference. At any time before a hearing, on motion of the hearing officer or a party, the hearing officer may direct the parties or their representatives to exchange information or participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues to expedite the proceedings.

19.86(14) Conduct of hearing.

a. Time. If requested, a hearing will be conducted within thirty days of the filing of the complaint.

b. Telephone hearings. Hearings may be conducted, in whole or in part, by telephone. When it is impractical for the state to conduct an in-person hearing, a telephone hearing may be scheduled.

c. Hearing procedure.

(1) The hearing officer will receive in evidence the testimony of witnesses and any documents which are relevant and material to the matters at issue. The hearing officer shall mark in a clear manner by number or letter each exhibit received into the record.

(2) The hearing officer shall give a brief opening statement outlining the jurisdictional authority by which the hearing is conducted; the names of the parties and their representatives, if any; the date the complaint was filed, the issue(s) involved; and what matters, if any, will be officially noticed.

(3) The hearing officer shall determine the order of presentation and offer the parties an opportunity to present opening statements.

(4) The hearing shall be confined to evidence relative to the issue(s) stated in the complaint and in the notice of hearing. If an entirely new, but related, issue is raised at the hearing by a party, the hearing officer may take testimony on the new issue provided the parties waive their right to notice and no objection is made by a party.

(5) Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party, as authorized in Iowa Code section 17A.12(7). Requests for transcription shall be in writing and submitted to the JTPA complaint officer.

(6) If a party fails to appear at the hearing after proper service of notice, the hearing officer may:

1. Proceed with the hearing and make a decision in the absence of the party;

2. Adjourn and decide the matter without an oral proceeding based on the pleadings, briefs, and evidence submitted by the parties; or

3. Dismiss the complaint.

19.86(15) Rules of evidence. Hearings under this complaint procedure shall be governed by the rules of evidence applicable to contested case proceedings as outlined in Iowa Code section 17A.14 and the following:

a. The complainant has the burden of establishing, by a preponderance of the evidence, the validity of the complaint allegation(s).

b. The hearing officer may take official notice of facts well known to the public and within the specialized knowledge of the agency. The hearing officer will notify the parties of facts so noticed and offer the parties an opportunity to contest these facts.

c. Subject to the approval of the hearing officer, the parties may enter into a stipulation as to all or a portion of the facts involved in the hearing. The hearing officer

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may make a decision on the basis of the information contained in such stipulations or may take additional evidence.

d. Objections to evidentiary offers may be made and shall be noted in the record. Before ruling on an objection, it must be specific in nature and the objecting party must state how the objection relates to the evidence to which it refers. The hearing officer shall rule on the objection at the time it is made or indicate to the parties that a ruling will be reserved and made in the written decision.

e. All witnesses, prior to testifying, shall be identified by name and address, and shall take an oath or affirmation administered by the hearing officer. Subject to the discretion of the hearing officer, witnesses may be excluded from the hearing room until time to present testimony. All witnesses shall be subject to cross-examination by each party.

19.86(16) Ex parte communications.

a. Hearing officer. Where the hearing officer desires to communicate with any party or person with a personal interest in or engaged in prosecuting or advocating in either the case under consideration before them or a pending factually related case involving the same parties, that officer shall notify these persons or parties indicating the time and place at which all affected persons or parties may meet to discuss the matters.

However, without notice and opportunity for all parties to participate, individuals assigned to render a proposed or final decision, or to make findings of fact and conclusions of law in a contested case, may communicate with members of the state and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties.

b. Parties or their representatives. Where any party or their representative desires to discuss certain matters with the hearing officer, they should notify the hearing officer and the opposing party of the desire to meet with the hearing officer, and the hearing officer, upon notification of the affected persons or parties, may meet to discuss any matters.

c. Sanction. The recipient of a prohibited communication as provided in Iowa Code section 17A.17, may be required to submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceedings. As sanctions for violations of any prohibited communication provided in Iowa Code section 17A.17, a decision may be rendered against a party who violates these rules, or for reasonable cause shown the director may censor, suspend, or revoke a privilege to practice before the department, or for reasonable cause shown after notice and opportunity to be heard, the director may censor, suspend, or dismiss any state personnel.

19.86(17) Duties of the hearing officer and disqualifications.

a. Upon the filing of a request for a hearing, a hearing officer will be assigned to preside at the hearing.

b. The duties of the hearing officer shall include handling prehearing procedures, conducting assigned hearings, writing a proposed decision, and any other duties incidental to and not inconsistent with the duties and responsibilities of a hearing officer.

c. No hearing officer shall conduct assigned hearings or make decisions where the impartiality of the hearing

officer is questioned by a party. Instances in which the impartiality of the hearing officer may be questioned include, but are not limited to, the following:

(1) Has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Individually has, or is related to a person who has, a financial interest in the subject matter in controversy or any other interest that could be substantially affected by the outcome of the proceeding; or

(3) Is likely to be a material witness in the proceeding.

d. A hearing officer shall withdraw from the case where the hearing officer's own impartiality might be affected as outlined in subrule 19.86(17)"c."

e. Parties to the proceeding may challenge the impartiality of the hearing officer, prior to an evidentiary hearing, by contacting the JTPA complaint officer. The party shall state orally or in writing the factual basis for the challenge.

19.86(18) Hearing officer's proposed decision. The hearing officer will issue a written proposed decision which shall:

a. Include a listing of the issues to be decided, a brief history of the case, specific findings of fact based on the record, reasoned conclusions of law, citations to relevant statutory and regulatory provisions;

b. Be based upon the evidence on which reasonably prudent persons rely and may be based upon such evidence even if it would be inadmissible in a nonadministrative proceeding; and

c. Include a notice that the proposed decision becomes the final agency decision without further proceedings unless there is an appeal to, or review on motion of, the director within ten days of the issuance date of the proposed decision.

19.86(19) Request for an independent state review.

a. Filing. A request for an independent state review of a hearing officer's proposed decision shall be filed within ten days of the issue date of the adverse decision or within ten days of the date the decision should have been issued. The request shall be filed with the JTPA complaint officer.

b. Contents. A request for an independent state review shall include:

(1) The name, address, signature of the requesting party and date;

(2) The specific provisions of the proposed decision upon which a review is requested. Those provisions upon which a review is not requested will be considered resolved and not subject to further review. The agency reserves the right to review any provision of a proposed decision upon its own motion.

c. Notice. Upon receipt of a request for review, the JTPA complaint officer will provide written notice to the parties of the filing of the request for review and set a deadline for submitting any briefs the parties may wish to have considered.

19.86(20) Independent state review. Timely requests for an independent state review of the hearing officer's proposed decision may be accepted by the director.

a. The director, or an individual designated by the director, will review the proposed decision, the record, and all timely filed briefs.

b. The director may adopt, modify or reject the proposed decision of the hearing officer. If the director designates an individual to review the proposed decision, the designee will prepare a recommended decision which

PLANNING AND PROGRAMMING[630] (cont'd)

the director may adopt, modify or reject.

c. A final, written decision will be issued and forwarded to each party within thirty days of the filing date of the request for an independent state review. The written decision of the director is final. The decision of the director is final agency action and subject to judicial review as provided in Iowa Code section 17A.19.

d. If the state does not issue a written decision within thirty days of the notice of acceptance of a request for an independent state review, a party has the right to request from the secretary of labor a determination whether reasonable cause exists to believe that the Act or its regulations have been violated. This request shall follow the requirements of 20 CFR 629.52(d) as of March 15, 1983.

ITEM 5. Amend chapter 19 by adding a new rule as follows:

630—19.87(7A,7B,29 USC1554) Transition provision and effective date. Rules 630—19.53(7A,7B,29 USC1554) and 630—19.86(7A,7B,29 USC1554) shall govern all JTPA complaints filed with SDA grantees or the office for planning and programming which have not been set for hearing on or before the July 1, 1986, effective date of these rules. If necessary, the department of economic development will allow complainants sufficient time to refile complaints, without prejudice, in accordance with the jurisdictional and procedural requirements of these rules.

[Filed emergency 6/17/86, effective 7/1/86]
[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6673

REGENTS, BOARD OF[720]

Pursuant to the authority of Iowa Code section 262.9, subsection 7, the Iowa State Board of Regents emergency adopts and implements the following amendments to Chapter 3, "Personnel Administration."

As of July 1, 1986, all regent employees will have moved from 14- to 8-step pay schedules. The rule which provided for the conversion over the past year should be deleted. Other revisions are needed to change references to two-step movements on a 14-step matrix to movement of an equivalent amount on an 8-step matrix, a movement of one step.

In compliance with Iowa Code section 17A.4(2), the Board of Regents finds that notice and public participation are impractical because the board needs immediately to make its administrative rule consistent with the negotiated agreement with the American Federation of State, County, and Municipal Employees regarding comparable worth implementation.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Board of Regents finds that the normal effective date of this rule should be waived and this rule become effective on July 1, 1986.

ITEM 1. Rule 720—3.39(19A) Administration of the pay plan, is amended by deleting the second paragraph.

ITEM 2. Subrule 3.39(1), paragraph "b," Appoint-

ment based on exceptional qualifications, is amended as follows:

b. Appointment based on exceptional qualifications. Employees whose qualifications substantially exceed the minimum required for the class, or who possess outstanding experience relative to the demands of the position, may at the request of an employing department, be appointed at a rate higher than the minimum, provided that the pay of all other employees with similar qualifications working under the same conditions at the same institution are raised to that higher rate. Such appointments must be approved by the resident director and reported to the merit system director. Such appointments which necessitate the adjustment of the salaries of employees other than the appointee will, in addition, require prior approval of the merit system director.

Increases of two or more pay steps authorized and granted to other employees as the result of appointments based on the scarcity of qualified applicants, 3.39(1)"a," or appointments based on exceptional qualifications, 3.39(1)"b," will establish new merit review dates for affected employees. Merit review dates will not change when such increases are less than two steps:

ITEM 3. Subrule 3.39(2) is amended to read as follows:

3.39(2) Merit increases. Permanent and probationary employees on Step 1 or Step 2 in a pay grade will be eligible for a two-step merit increase upon completion of six months of satisfactory performance in their assigned classification at the same step. Permanent and probationary employees on Step 3 or above in a pay grade will be eligible for a two-step merit increase upon completion of one year of satisfactory performance in their assigned classification at the same step except that no merit increase will be granted above the last step in the pay grade. The period of satisfactory performance will be measured from the last merit review date if such a date has been established. Merit increases in pay will not be made retroactively, but may be denied or deferred by the employing department on the basis of work performance. Employees whose merit increases are denied or deferred will, prior to the scheduled effective date of increase, be informed of such action by a written statement from their employing department which specifies the reason for the denial or deferral. Denials or deferrals of a merit increase for six months or less for reason of unsatisfactory work performance will not result in the establishment of a revised merit review date. Deferrals resulting from leaves of absence without pay, layoff, or medically related disability leave exceeding thirty calendar days will cause a change of the merit review date equal to the time away from work. An extra meritorious increase of two or more steps in the pay range may be approved by the resident director for exceptional service, on written request from a department head and with the approval of the chief executive of the institution. No employee will be given more than one increase in any twelve-month period, nor will employees who have served in their position less than three months receive an extra meritorious increase. Extra meritorious increases will be reported to the merit system director who will periodically submit a report thereon for review by the board of regents.

ITEM 4. Subrule 3.39(3), first two paragraphs, are amended to read as follows:

REGENTS, BOARD OF [720] (cont'd)

3.39(3) Pay on promotion. An employee who is promoted will be moved to the minimum rate of the new grade, or to the next higher rate on the new grade which provides an adjustment that is the salary equivalent of not less than ~~two~~ *a* steps higher than the employee's present base pay. In no event will the adjustment result in pay above the maximum of the new grade.

If the promotion involves movement to a new grade that is three or more grades higher than the employee's present grade, the resident director may approve, on written request from the employing department, an increase that is ~~no greater than four~~ *two* steps higher than the employee's present base pay.

ITEM 5. Subrule 3.39(7)"d"(1) is amended to read as follows:

(1) An adjustment to the higher advanced starting rate if the base pay prior to transfer is less than the higher advanced starting rate, and if the minimum qualifications are met for the class. When the base pay adjustment is the salary equivalent of ~~two~~ *a* steps or greater an adjustment in merit review date will result, and be computed from the effective date of transfer and in accordance with 3.39(2); or

ITEM 6. Subrule 3.39(7)"f"(2) is amended to read as follows:

(2) An adjustment to any rate that is below the base pay prior to transfer.

The above provision notwithstanding, no employee will receive base pay above the maximum step of the class following transfer. The base pay of an employee whose transfer involves a change in pay grade shall be determined in accordance with the provisions of these rules regarding promotion and demotion. If the base pay is adjusted to ~~a rate below step 3~~ *1* of the new class,

the merit review date shall be changed in accordance with 3.39(2) if scheduled more than six months from the effective date of transfer; otherwise it shall remain unchanged.

ITEM 7. Subrule 3.39(12) is amended to read as follows:

3.39(12) Lead worker status. On request of an employing department and with approval of the resident director, an employee who is assigned and performs limited supervisory duties (such as distributing work assignments, maintaining a balanced workload within a group, and keeping attendance and work records) in addition to the duties performed by other employees in the same class, may be designated as lead worker in the classification assigned, and paid during the period of such designation a salary equivalent of a ~~two~~ *one*-step increase.

ITEM 8. Subrule 3.39(13) is amended to read as follows:

3.39(13) Pay for trainees and apprentices. The schedule of wages for trainees and apprentices will consist of ~~two~~ *a* steps in the pay matrix for every year of training required. Each employee whose performance is satisfactory as determined by the employing department will progress *one-half* step at a time in six-month intervals from the first step of the schedule to the entrance rate established for the journeyman class in the length of time established for training or apprenticeship.

[Filed emergency 6/13/86, effective 7/1/86]
[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6666

COLLEGE AID COMMISSION[245]

Pursuant to the authority of Iowa Code section 261.37(5), the College Aid Commission adopts amendments to Chapter 10, "Iowa Guaranteed Student Loan Program," Iowa Administrative Code.

These amendments change the Iowa guaranteed student loan late disbursement policy to allow lenders to disburse guaranteed student loan checks up to thirty days after the expiration of an academic period and thereby allow students to expeditiously receive loan proceeds.

Notice of Intended Action was published in the Iowa Administrative Bulletin Volume VIII, Number 21, April 9, 1986, as ARC 6457.

These rules were adopted in final form on June 10, 1986, and will become effective on August 6, 1986.

These rules implement Iowa Code section 261.37.

ITEM 1. Rule 245—10.10(261) unnumbered paragraphs 5 and 7 are amended to read as follows:

A school may release a loan check that arrives between terms included in the loan period covered by the check after verifying that the student was enrolled for the prior term. *A school may release a check up to thirty days after the end of the loan period covered by the check after verifying that the student was enrolled for the full term.*

A school may not release a check *more than thirty days* after expiration of the academic period for which the loan is intended *or without prior written approval from the ICAC. A school may not release a check* after a student has withdrawn or ceased attendance at least half time without prior written approval from the ICAC.

ITEM 2. Rule 245—10.17(261) unnumbered paragraphs 1 and 3 are amended to read as follows:

Proceeds of a loan may be disbursed no earlier than thirty days before the beginning date of the loan period on the application and no later than *to permit processing and delivery by the school within thirty days after the ending date of the loan period, except when late disbursement has been approved under the conditions specified in subrule 10.17(2).*

A lender may make checks for loan proceeds payable to the borrower or copayable to the borrower and the school. *The ICAC encourages the use of copayable checks.* The lender must provide the student's social security number on the check.

Subrule 10.17(2) first and second paragraphs are amended to read as follows:

10.17(2) Late disbursement. *A lender may not disburse a loan more than thirty days after the end of the loan period without prior written approval from the ICAC. A lender may not disburse a loan after the expiration of the academic period for which the loan is intended or after a student has withdrawn or ceased attendance at least half time without prior written approval from the ICAC. A borrower must complete a Late Disbursement Request (ICAC LD-81) and submit it to the lender within sixty days of the date attendance ceases to be at least half time or within sixty days of the end of the loan period, whichever applies. If there is outstanding debt with a school, the school must also complete (sign and date) the request within this sixty-day period. The lender submits the form to the ICAC office in Des Moines.*

Approval of an amount for late disbursement is limited

to the lesser of the original loan amount guaranteed or the total of the verified outstanding educational debt and fees, *the guarantee fee, and the origination fee.*

ITEM 3. Rule 245—10.57(261) unnumbered paragraphs 1 and 4 are amended to read as follows:

Proceeds of a loan may be disbursed no earlier than thirty days before the beginning date of the loan period on the application and no later than to permit processing and delivery by the school *before within thirty days after the ending date of the loan period; except when late disbursement has been approved under the conditions specified in subrule 10.57(1).*

A lender may make a check for a PLUS Loan to a student borrower payable to the borrower or copayable to the borrower and the school. *The ICAC encourages the use of copayable checks for student borrowers.* A lender must mail a student borrower's PLUS Loan check directly to the school where the check may be delivered to the student only after commencement of the loan period.

ITEM 4. Subrule 10.57(1) first paragraph is amended to read as follows:

10.57(1) Late disbursement. *A lender may not disburse a loan more than thirty days after the end of the loan period without prior written approval from the ICAC. A lender may not disburse a loan after the expiration of the academic period for which the loan is intended or after a student has withdrawn or ceased attendance at least half time without prior written approval from the ICAC. A borrower must complete a Late Disbursement Request (ICAC LD-81) and submit it to the lender within sixty days of the date attendance ceases to be at least half time or within sixty days of the end of the loan period, whichever applies. If there is outstanding debt with a school, the school must also complete (sign and date) the request within this sixty-day period. The lender submits the request to the ICAC office in Des Moines.*

These rules are intended to implement Iowa Code section 261.37.

[Filed 6/13/86, effective 8/6/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6660

CONSERVATION
COMMISSION[290]

Pursuant to the authority of Iowa Code sections 107.24, 109.38, 109.39, and 109.48, the State Conservation Commission on June 5, 1986, adopted the following amendment to Chapter 101, "Crow Hunting Regulations," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, February 26, 1986, as ARC 6376.

This rule gives the regulations for hunting crows and includes season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

CONSERVATION COMMISSION[290] (cont'd)

There are no changes from the Notice.

This rule implements Iowa Code sections 109.38, 109.39, and 109.48.

This rule will become effective on September 1, 1986.

Rule 290—101.1(109) is amended to read as follows:

290—101.1(109) Crow season. Open season for hunting crows shall be from October 15 of each year through February 15 of the following year. ~~Shooting hours shall be one-half hour before sunrise to sunset each day.~~ No bag or possession limit. Entire state open.

This rule is intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

[Filed 6/11/86, effective 9/1/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6661

CONSERVATION
COMMISSION[290]

Pursuant to the authority of Iowa Code sections 107.24, 109.38, and 109.39, the State Conservation Commission on June 5, 1986, adopted the following amendments to Chapter 102, "Rabbit and Squirrel Hunting Season," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, February 26, 1986, as ARC 6377.

These rules give the regulations for hunting rabbits and squirrels and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

There are no changes from the Notice.

These rules implement the provisions of Iowa Code sections 109.38, 109.39, and 109.48, and shall become effective August 15, 1986.

The following amendments are adopted:

ITEM 1. Rule 290—102.1(109) is amended to read as follows:

290—102.1(109) Cottontail rabbit season. Open season for hunting cottontail rabbits shall be from August ~~31~~ ~~30~~, ~~1985~~ 1986, through February 28, ~~1986~~ 1987. Bag limit shall be ten per day; possession limit twenty. Legal hunting hours shall be from sunrise to sunset. Entire state open.

ITEM 2. Rule 290—102.2(109) is amended to read as follows:

290—102.2(109) Jackrabbit season. Open season for hunting jackrabbits shall be from November ~~2~~ 1, ~~1985~~ 1986, through December ~~15~~ 14, ~~1985~~ 1986. Bag limit shall be three per day; possession limit six. Legal hunting hours shall be from sunrise to sunset. Entire state open.

ITEM 3. Rule 290—102.3(109) is amended to read as follows:

290—102.3(109) Squirrel season. Open season for hunting squirrels (fox and gray) shall be from August ~~31~~ 30, ~~1985~~ 1986, through January 31, ~~1986~~ 1987. Bag limit shall be six squirrels per day; possession limit twelve. Entire state open.

These rules are intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

[Filed 6/11/86, effective 8/15/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6662

CONSERVATION
COMMISSION[290]

Pursuant to the authority of Iowa Code sections 107.24, 109.6, 109.38, and 109.39, the State Conservation Commission on June 5, 1986, adopted the following amendments to Chapter 104, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, Otter, and Spotted Skunk Seasons," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, February 26, 1986, as ARC 6379.

These rules give the regulations for taking furbearers (except groundhog) and include season dates, bag limits, possession limits, shooting hours, and areas open to taking.

Changes from the notice of intent are as follows:

1. Rule 104.1(109), line 3, November 8 was changed to November 1.
2. Rule 104.2(109), line 4, November 8 was changed to November 1.
3. Rule 104.4(109), line 2, November 8 was changed to November 1.
4. Subrule 104.7(2), delete paragraphs "e," "f," and "g."

These rules implement the provisions of Iowa Code sections 109.6, 109.38, 109.39, 109.87, and 109.90, and shall become effective August 15, 1986.

The following amendments are adopted:

ITEM 1. Rule 290—104.1(109) is amended to read as follows:

290—104.1(109) Mink and muskrat. Open season for the taking of mink and muskrat shall be from 8:00 a.m., November ~~2~~ 1, ~~1985~~ 1986, through January ~~19~~ 25, ~~1986~~ 1987. Entire state open. No bag or possession limit.

104.1(1) Molesting or disturbing muskrat houses. Any commission officer may permit trappers to molest or disturb muskrat houses on specific state game management areas as provided in Iowa Code section 109.90, after finding that muskrats are causing extensive damage by destroying the vegetation essential to the welfare of a marsh and after so posting the area.

104.1(2) Game management areas. Open season for taking muskrats on certain state game management areas, certain federal national wildlife refuges, and certain county conservation board areas, only where approved by the commission and posted accordingly, shall be from 8:00 a.m., March ~~8~~ 7 through April ~~12~~ 12, ~~1986~~ 1987. The use of leghold traps during this season is prohibited unless each trap is placed completely inside a muskrat house. No bag or possession limit.

CONSERVATION COMMISSION[290] (cont'd)

ITEM 2. Rule 290—104.2(109) is amended to read as follows:

290—104.2(109) Raccoon, badger, opossum, and striped skunk. Open season for the taking of raccoon, badger, opossum, and striped skunk shall be from 8:00 a.m., November 2 1, 1985 1986, through January 19 25, 1986 1987. Entire state open. No bag or possession limit.

ITEM 3. Rule 290—104.3(109) is amended to read as follows:

290—104.3(109) Red and gray fox. Open season for the taking of red and gray fox shall be from 8:00 a.m., November 9 8, 1985 1986, through January 19 25, 1986 1987. Entire state open. No bag or possession limit.

ITEM 4. Rule 290—104.4(109) is amended to read as follows:

290—104.4(109) Beaver. Open season for the taking of beaver shall be from 8:00 a.m., November 2 1, 1985 1986, through April 13 12, 1986 1987, except for the federal Upper Mississippi Wildlife and Fish Refuge. In this area the season shall be from 12:00 noon, December 28 13, 1985 1986, through February 23 28, 1986 1987. No bag or possession limit.

ITEM 5. Rule 290—104.7(109) is added to chapter 104 as follows:

290—104.7(109) Trapping restrictions. Trapping for all furbearers will be restricted as follows:

104.7(1) Exposed bait. No person shall set or maintain any leghold, body-clasping trap, or snare on land within twenty feet of exposed bait. Exposed bait means meat or viscera of any animal, bird, fish, amphibian, or reptile with or without skin, hide, or feathers visible to soaring birds.

104.7(2) Trapping near beaver lodges and dens. There will be no trapping within ten yards of active or inactive beaver lodges or dens on public lands of Red Rock Reservoir in certain areas described as follows:

a. Area one. All federal and state-owned lands or waters of the Red Rock Reservoir in Marion, Polk, and Warren Counties.

b. Area two. That portion of the Middle Raccoon River floodplain in Guthrie County bounded by State Highway 141 on the north and State Highway 44 on the south.

c. Area three. That portion of the Iowa River floodplain in Tama, Benton, and Iowa Counties bounded by U.S. Highway 63 on the west and State Highway 21 on the east.

d. Area four. Those portions of the Boone and Des Moines River floodplain in Webster and Hamilton Counties bounded by U.S. Highway 20 on the north and State Highway 175 on the south.

[Filed 6/11/86, effective 8/15/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6663

**CONSERVATION
COMMISSION[290]**

Pursuant to the authority of Iowa Code sections 107.24, 109.38, and 109.39, the State Conservation Commission

on June 5, 1986, rescinded Chapter 106, "Deer Hunting Regulations," Iowa Administrative Code, and adopted the following rules in lieu thereof.

Notice of Intended Action was published in the Iowa Administrative Bulletin, February 26, 1986, as ARC 6380.

These rules give the regulations for hunting deer and include season dates, bag limits, possession limits, season limits, shooting hours, areas open to hunting, license quotas, licensing procedures, means and methods of take, and transportation tag requirements.

Changes from the notice of intent are as follows:

1. Subrules 106.2(3) and 106.6(3), muzzleloader season dates, were changed from October 25 to 31 to October 11 to 17.

2. Subrule 106.6(2), any sex license quotas by zone are provided as noted in the notice of intent.

3. Subrules 106.8(2) and 106.8(3), new language was added.

These rules implement the provisions of Iowa Code sections 109.38, 109.39, and 109.48, and shall become effective August 6, 1986.

CHAPTER 106

DEER HUNTING REGULATIONS

290—106.1(109) Licenses. Every hunter must have in possession a valid 1986 deer license when hunting, possessing, or transporting deer. No person, while hunting deer, shall carry or have in possession any license or transportation tag issued to another person.

106.1(1) Bow season license. Bow and arrow deer licenses shall be valid only during the bow season.

106.1(2) Regular gun season license. Regular gun season licenses will be issued for antlered deer or any sex deer. Paid antlered deer only regular gun season licenses will be issued by period and will be valid for the designated period only. Paid any deer regular gun season licenses will be issued by zone and period and will be valid in the designated zone and for the designated period only. Landowner-tenant regular gun season licenses will be issued by period and will be valid for the designated period only. Any applicant who fails to designate the zone on the application form will be issued an antlered deer only license.

106.1(3) Special muzzleloader season. Special muzzleloader season licenses will be issued for antlered deer or any sex deer, and shall be valid only during one of the special muzzleloader seasons.

106.1(4) Iowa Army Ammunition Plant (IAAP). Those individuals with a valid deer license and transportation tag and a valid permit to hunt in the Iowa Army Ammunition Plant may hunt in the Iowa Army Ammunition Plant for antlerless deer only. After an antlerless deer has been taken, tagged and brought to the check station at the Iowa Army Ammunition Plant, a second transportation tag which shall be valid for an any sex deer will be issued for that individual hunter's license.

290—106.2(109) Season dates. Deer may be taken in 1986 only during the following periods.

106.2(1) Bow season. Deer of any age or sex may be taken by bow and arrow only from October 11 through December 5, 1986, except at the Iowa Army Ammunition Plant deer may be taken during these dates only as described in subrule 106.1(4).

CONSERVATION COMMISSION[290] (cont'd)

106.2(2) Regular gun season. Deer may be taken with gun only in accordance with the type, tenure, and zone of license issued, from December 6 through December 10, or from December 13 through December 19.

106.2(3) Special muzzleloader season. Deer may be taken by muzzleloader only in accordance with the type of license issued, from October 11 through October 17 or from December 20, 1986, through January 4, 1987.

106.2(4) Iowa Army Ammunition Plant. Deer may be taken from December 6 through December 10, from December 13 through December 19, or December 20 and 21, 1986, in accordance with subrule 106.1(4). If 1,500 antlerless deer are not taken during the bow and gun hunting periods described above, additional hunting periods will be allowed on December 27 and 28, 1986, and January 3 and 4, 1987, for gun hunters holding an unfilled transportation tag as described in subrule 106.1(4). Hunter numbers for the additional hunting periods of December 27 and 28, 1986, and January 3 and 4, 1987, may be regulated by the Iowa Army Ammunition Plant authorities.

290—106.3(109) Shooting hours. Legal shooting hours vary according to the type of season.

106.3(1) Bow season. Legal shooting hours for hunting deer with bow and arrow shall be one-half hour before sunrise to one-half hour after sunset each day.

106.3(2) Regular gun season and Iowa Army Ammunition Plant. Legal shooting hours for hunting deer with a gun shall be sunrise to sunset each day.

106.3(3) Special muzzleloader season. Legal shooting hours for hunting deer during the special muzzleloader season shall be one-half hour before sunrise to one-half hour after sunset each day.

290—106.4(109) Limits.

106.4(1) Bow season. Daily bag limit one deer; possession limit one deer, except at the Iowa Army Ammunition Plant.

106.4(2) Muzzleloader season. Daily bag limit one deer; possession limit one deer.

106.4(3) Regular gun seasons. Bag limit shall be one deer for each hunter in the party who has a valid deer transportation tag. Possession limit shall be one deer; "possession" shall mean that the deer is in possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

106.4(4) Iowa Army Ammunition Plant. A hunter's bag limit shall be one deer for each transportation tag in accordance with subrule 106.1(4). Possession limit shall be two deer; "possession" shall mean that the deer is in possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

106.4(5) Maximum annual possession limit.

a. General. Hunters may possess a maximum of two deer. One taken with a bow and one taken during a gun season.

b. Iowa Army Ammunition Plant. Maximum possession limit is two deer taken with a bow or two deer taken with a gun.

c. Combined Iowa Army Ammunition Plant and general. Maximum possession limit is three deer. A hunter can take one deer with a bow outside the IAAP and two with a gun inside the IAAP or take two deer with a bow inside the IAAP and one with a gun outside the IAAP.

290—106.5(109) Areas open to hunting. Certain types of licenses will be valid only in designated areas as follows:

106.5(1) Bow season. Bow and arrow deer licenses will be valid over the entire state.

106.5(2) Regular gun season. Paid regular gun season antlered deer only licenses will be valid over the entire state. Paid regular gun season any sex deer licenses will be valid only in the zone designated on the license. The zones are described as areas bounded as follows:

a. Zone 1. Beginning at a point where U.S. Highway 169 crosses the Minnesota-Iowa state line; thence along U.S. Highway 169 to state Highway 3; thence along state Highway 3 to U.S. Highway 71; thence along U.S. Highway 71 to U.S. Highway 20; thence along U.S. Highway 20 to the Nebraska-Iowa state line; thence along the Nebraska-Iowa, South Dakota-Iowa and Minnesota-Iowa state lines to the point of beginning.

b. Zone 2. Beginning at the point where state Highway 3 and Interstate Highway 35 intersect; thence along Interstate Highway 35 to U.S. Highway 30; thence along U.S. Highway 30 to state Highway 4; thence along state Highway 4 to state Highway 141; thence along state Highway 141 to U.S. Highway 59; thence along U.S. Highway 59 to U.S. Highway 20; thence along U.S. Highway 20 to U.S. Highway 71; thence along U.S. Highway 71 to state Highway 3; thence along state Highway 3 to the point of beginning.

c. Zone 3. Beginning at the point where U.S. Highway 20 crosses the Nebraska-Iowa state line; thence along U.S. Highway 20 to U.S. Highway 59; thence along U.S. Highway 59 to the Missouri-Iowa state line; thence along the Missouri-Iowa and Nebraska-Iowa state lines to the point of beginning.

d. Zone 4. Beginning at the point where Interstate Highway 35 and U.S. Highway 30 intersect; thence along Interstate Highway 35 to its eastern junction with Interstate Highways 80 and 235; thence along Interstate Highway 235 to its western junction with Interstate Highways 80 and 35; thence along Interstate Highway 35 to the Missouri-Iowa state line; thence along the Missouri-Iowa state line to U.S. Highway 59; thence along U.S. Highway 59 to state Highway 141; thence along state Highway 141 to state Highway 4; thence along state Highway 4 to U.S. Highway 30; thence along U.S. Highway 30 to the point of beginning.

e. Zone 5. Beginning at the point where Interstate Highway 235 and state Highway 163 intersect; thence along state Highway 163 to state Highway 92; thence along state Highway 92 to U.S. Highway 218; thence along U.S. Highway 218 to U.S. Highway 34; thence along U.S. Highway 34 to U.S. Highway 63; thence along U.S. Highway 63 to the Missouri-Iowa state line; thence along the Missouri-Iowa state line to Interstate Highway 35; thence along Interstate Highway 35 to its western junction with Interstate Highways 80 and 235; thence along Interstate Highway 235 to the point of beginning.

f. Zone 6. Beginning at the point where U.S. Highway 63 crosses the Missouri-Iowa state line; thence along U.S. Highway 63 to U.S. Highway 34; thence along U.S. Highway 34 to U.S. Highway 218; thence along U.S. Highway 218 to state Highway 92; thence along state Highway 92 to the Illinois-Iowa state line; thence along the Illinois-Iowa and Missouri-Iowa state lines to the point of beginning.

g. Zone 7. Beginning at the point where U.S. Highway

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61 intersects with state Highway 92 at its northern junction; thence along state Highway 92 to state Highway 163; thence along state Highway 163 to Interstate Highway 235; thence along Interstate Highway 235 to its eastern junction with Interstate Highways 80 and 35; thence along Interstate Highway 35 to state Highway 3; thence along state Highway 3 to state Highway 38; thence along state Highway 38 to U.S. Highway 61; thence along U.S. Highway 61 to the point of beginning.

h. Zone 8. Beginning at the point where state Highway 92 intersects with the Illinois-Iowa state line; thence along state Highway 92 to U.S. Highway 61; thence along U.S. Highway 61 to state Highway 38; thence along state Highway 38 to state Highway 3; thence along state Highway 3 to the Illinois-Iowa state line; thence along the Illinois-Iowa state line to the point of beginning.

i. Zone 9. Beginning at the point where state Highway 3 intersects with the Illinois-Iowa state line; thence along state Highway 3 to U.S. Highway 63; thence along U.S. Highway 63 to the Minnesota-Iowa state line; thence along the Minnesota-Iowa, Wisconsin-Iowa, and Illinois-Iowa state lines to the point of beginning.

j. Zone 10. Beginning at the point where U.S. Highway 63 crosses the Minnesota-Iowa state line; thence along U.S. Highway 63 to state Highway 3; thence along state Highway 3 to U.S. Highway 169; thence along U.S. Highway 169 to the Minnesota-Iowa state line; thence along the Minnesota-Iowa state line to the point of beginning.

106.5(3) Special muzzleloader seasons. Special muzzleloader deer licenses will be valid over the entire state.

106.5(4) Iowa Army Ammunition Plant. Special Iowa Army Ammunition Plant licenses are valid for Iowa Army Ammunition Plant only.

106.5(5) Closed areas. There shall be no open season for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly.

290—106.6(109) License quotas. A limited number of deer licenses or a limited number of certain types of licenses will be issued as follows:

106.6(1) Bow season. There will be no restrictions on the number or type of licenses issued for the bow and arrow deer season.

106.6(2) Regular gun season. A limited number of paid any sex deer regular gun season licenses will be issued for each zone. Quotas for paid any sex regular gun season licenses by zone and period will be as follows: in zone 1, 500 for the first period and 1,000 for the second period; in zone 2, 325 for the first period and 650 for the second period; in zone 3, 425 for the first period and 850 for the second period; in zone 4, 2,400 for the first period and 4,800 for the second period; in zone 5, 1,075 for the first period and 2,150 for the second period; in zone 6, 2,600 for the first period and 5,200 for the second period; in zone 7, none for the first period and 1,200 for the second period; in zone 8, 500 for the first period and 1,000 for the second period; in zone 9, 2,000 for the first period and 4,000 for the second period; and in zone 10, 500 for the first period and 1,000 for the second period.

The commission shall conduct a drawing to determine which applicants are to receive an any sex deer license except all applications for free landowner-tenant licenses received during the application period will be issued an any sex license. Those applicants submitting their

certificate issued when they received a bucks only license in 1985, except those requesting an antlered deer only license and those failing to designate the zone on the application form, shall receive first priority in the drawing for any sex deer licenses. All other regular gun season applicants will receive a license valid only for antlered deer. Antlered deer are defined as those deer having at least one forked antler.

106.6(3) Special muzzleloader season. No more than 3,000 licenses, which will be for antlered only deer, will be issued for the period October 11 through October 17. If applications exceed that number, the commission shall conduct a drawing to determine which applicants are to receive a deer license. No more than 1,500 any sex licenses will be issued for December 20, 1986, through January 4, 1987. If applications exceed that number, the commission shall conduct a drawing to determine which applicants are to receive an any sex deer license. All other applicants will receive a license valid only for antlered deer. Antlered deer are defined as those deer having at least one forked antler.

290—106.7(109) Method of take. Permitted weapons and devices vary according to the type of season.

106.7(1) Bow season. Only bows with broadhead arrows will be permitted in taking deer during the bow and arrow season.

106.7(2) Regular gun season and Iowa Army Ammunition Plant. Only 10-, 12-, 16-, or 20-gauge shotguns, shooting single slugs only, and flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only, will be permitted in taking deer during the regular gun season.

106.7(3) Special muzzleloader season. Only flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only, will be permitted in taking deer during the special muzzleloader seasons.

106.7(4) Prohibited weapons and devices. The use of dogs, domestic animals, salt or bait, shotguns with rifled barrels or rifled extensions on the barrel, rifles other than muzzleloaded, handguns, crossbows, automobiles, aircraft, or any mechanical conveyance, is prohibited.

290—106.8(109) Application procedures.

106.8(1) Bow season licenses. Paid bow and arrow deer licenses will be issued by county recorders and the Des Moines office of the state conservation commission upon receipt of the twenty-dollar fee. All applications for landowner-tenant bow and arrow licenses shall be made on forms furnished by the state conservation commission and returned to the state conservation commission in Des Moines, Iowa.

106.8(2) Regular gun season licenses. All applications for regular gun season deer hunting licenses for the 1986 deer hunting season shall be made on forms provided by the state conservation commission and returned to the state conservation commission office in Des Moines, Iowa. Applications for paid regular gun season deer hunting licenses must be accompanied by twenty dollars. Only individual applications and only individual remittances of the twenty-dollar fee will be accepted. Applications will be received and accepted only from July 28 through September 10, 1986, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. Any incomplete or improperly completed application, any

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application not meeting the above conditions, or any application received prior to the application period will not be considered as a valid application, except that any application for a gun license not showing the designated zone or received after the application period through October 31, 1986, shall be presumed to be a valid application for an antlered deer only license provided it meets all other conditions. If the number of applications for any sex regular gun licenses is less than the assigned quota for that season, the remaining licenses will be re-allocated to the other season in the same zone. If the quota of paid gun any sex regular gun season deer licenses has not been filled, applications shall then be accepted in the order in which such applications are received and shall continue to be accepted until such quota has been met or until October 31, 1986, whichever first occurs.

106.8(3) Special muzzleloader season licenses. All applications for special muzzleloader season deer hunting licenses for the 1986 season must be made on forms provided by the state conservation commission and returned to the state conservation commission office in Des Moines, Iowa. Applications must be accompanied by twenty dollars. Only individual applications and only individual remittances of the twenty-dollar fee will be accepted. Applications will be received and accepted only from July 28 through September 10, 1986, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. Any incomplete or improperly completed application, any application not meeting the above conditions, or any application received prior to or after the application period will not be considered as a valid application. If the quotas for special muzzleloader season deer licenses have not been filled, applications shall then be accepted in the order in which such applications are received and shall continue to be received until such quotas have been met or until October 31, 1986, whichever first occurs.

106.8(4) Iowa Army Ammunition Plant. All applications for special Iowa Army Ammunition Plant gun season deer licenses for the 1986 deer hunting season shall be made on forms provided by the Iowa Army Ammunition Plant. Applications must be accompanied by twenty dollars. All hunters will be required to have an Iowa Army Ammunition Plant permit to hunt at the Iowa Army Ammunition Plant.

106.8(5) Restrictions. No person shall make application for, nor obtain, more than one deer bow license, and no person shall make application for, nor obtain, more than one gun deer license. A gun deer license is a license issued for the regular gun season or a license issued for a special muzzleloader season.

290—106.9(109) Transportation tag. A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each deer, in such a manner that the tag cannot be removed without mutilating or destroying the tag, within fifteen minutes of the time the deer is killed or before the carcass of the deer is moved in any manner, whichever first occurs. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to all deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility, or until the deer has been processed for consumption.

These rules are intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

[Filed 6/11/86, effective 8/6/86]
[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6664**CONSERVATION
COMMISSION[290]**

Pursuant to the authority of Iowa Code sections 107.24, 109.38, and 109.39, the State Conservation Commission on June 5, 1986, adopted the following amendments to Chapter 109, "Common Snipe, Virginia Rail, Sora, Woodcock, and Ruffed Grouse Hunting Seasons," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, February 26, 1986, as **ARC 6382**.

These rules give the regulations for hunting common snipe, Virginia rail, sora, woodcock, and ruffed grouse and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

There are no changes from the Notice.

These rules implement the provisions of Iowa Code sections 109.38, 109.39, and 109.48, and shall become effective August 15, 1986.

The following amendments are adopted:

ITEM 1. Rule 290—109.1(109) is amended to read as follows:

290—109.1(109) Common snipe season. Open season for hunting common snipe shall be from September 7 6, through December 22 21, ~~1985~~ 1986. Shooting hours shall be from sunrise to sunset each day. Daily bag limit eight birds; possession limit sixteen birds. Entire state open.

ITEM 2. Rule 290—109.2(109) is amended to read as follows:

290—109.2(109) Virginia rail and sora season. Open season for hunting Virginia rails and sora shall be from September 7 6 through November 15 14, ~~1985~~ 1986. Shooting hours shall be from sunrise to sunset each day. Daily bag limit fifteen and possession limit twenty-five in aggregate of both species. Entire state open.

ITEM 3. Rule 290—109.3(109) is amended to read as follows:

290—109.3(109) Woodcock season. Open season for hunting woodcock shall be from September 14 20 through November 17 23, ~~1985~~ 1986. Shooting hours shall be from sunrise to sunset each day. Daily bag limit five; possession limit ten. Entire state open.

ITEM 4. Rule 290—109.4(109) is amended to read as follows:

290—109.4(109) Ruffed grouse season. Open season for hunting ruffed grouse shall be from October 12 11, ~~1985~~ 1986, through January 31, ~~1986~~ 1987. Shooting hours shall be from sunrise to sunset each day. Bag limit three; possession limit six.

109.4(1) Portion of the state open to hunting. The area open to hunting shall be that portion of the state lying north and east of a line described as follows:

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beginning at Sabula, Iowa; thence west along State Highway 64 to U.S. Highway 151; thence west along U.S. Highway 151 to State Highway 13; thence north along State Highway 13 to U.S. Highway 20; thence west along U.S. Highway 20 to U.S. Highway 63; thence north along U.S. Highway 63 to the state line.

109.4(2) Reserved.

These rules are intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

[Filed 6/11/86, effective 8/15/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6665**CONSERVATION
COMMISSION[290]**

Pursuant to the authority of Iowa Code sections 109.38 and 109.39, the State Conservation Commission on June 5, 1986, rescinded Chapter 114, "Trapping Limitations," Iowa Administrative Code and adopted the following chapter in lieu thereof.

Notice of Intended Action was published in Iowa Administrative Bulletin 22, April 23, 1986, as **ARC 6501**.

These rules would limit the use of snares, body-gripping and conibear type traps on public road rights of way within one hundred yards of a dwelling except for water-set snares and body-gripping and conibear type traps that are set completely underwater. Also, the rule establishes eight inches as the maximum measurable loop on snares set on land. This rule establishes a maximum size of seven inches for foothold traps on land and prohibits the use of foothold traps with serrated or toothed jaws. The rule further clarifies that all traps possessed by a person engaged in trapping must be tagged.

Changes from the Notice of Intended Action are as follows:

1. 114.2—The requirements that all snares used on land be required to have a device on them that would prohibit the loop from closing to less than 2½ inches in diameter and that all snares be attached to a stake driven in the ground has been deleted. Also, the maximum size of a snare loop on land was changed from 12 inches to 8 inches.

2. 114.4—This rule has been deleted.

These rules are intended to implement Iowa Code sections 109.38 and 109.39 and shall become effective August 6, 1986.

**CHAPTER 114
TRAPPING LIMITATIONS**

290—114.1(109) Public roadside limitations—snares, body-gripping, and conibear type traps. No person shall set or maintain any snare, body-gripping, or conibear type trap within any public road right of way within one hundred yards of buildings inhabited by human beings unless a resident of the dwelling

adjacent to the public road right of way has given permission or unless the body-gripping or conibear type trap is completely underwater or at least one half of the loop of a snare is underwater. Nothing in this rule shall be construed as limiting the use of foothold traps or box-type live traps in public road rights of way.

290—114.2(109) Snares. No person shall set or maintain any snare in any public road right of way so that the snare when fully extended can touch any fence. No snare when set will have a loop larger than eight inches in horizontal measurement except for snares set with at least one half of the loop underwater. Snares may not be attached to a drag.

290—114.3(109) Body-gripping and conibear type traps. No person shall set or maintain any body-gripping or conibear type trap on any public road right of way within five feet of any fence.

290—114.4(109) Foothold and leghold traps. No person shall set or maintain on land any foothold or leghold trap with serrated jaws, toothed jaws or a spread inside the set jaws of greater than seven inches.

290—114.5(109) Trap tag requirements. This rule is intended to clarify the trap tagging requirements in Iowa Code section 109.92. All traps and snares, whether set or not, possessed by a person who can reasonably be presumed to be trapping shall have a metal tag attached plainly labeled with the owner's name and address.

These rules are intended to implement Iowa Code section 109.38.

[Filed 6/11/86, effective 8/6/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6648**HEALTH DEPARTMENT[470]****BOARD OF PHYSICAL AND
OCCUPATIONAL THERAPY EXAMINERS**

Pursuant to the authority of Iowa Code section 258A.2, the Board of Physical and Occupational Therapy Examiners hereby amends Chapter 138 of the Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin April 23, 1986, as **ARC 6510**.

The rule removes the reference to credit for self-study for the purpose of meeting continuing education requirements.

The rule is the same as published under Notice of Intended Action.

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

The rule shall become effective August 6, 1986.

Amend rule 138.3(258A) by rescinding subrule 138.3(4).

[Filed 6/11/86, effective 8/6/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6671
PUBLIC INSTRUCTION
DEPARTMENT[670]

Pursuant to the authority of Iowa Code section 257.10(11), the Iowa State Board of Public Instruction hereby adopts rules for teaching endorsements in Chapter 70, "Issuance of Certificates and Endorsements."

The Iowa State Board of Public Instruction adopted these rules in their final form on Friday, May 16, 1986. Public hearings were held on March 11, 1986, (1:00 to 4:00 p.m. and 7:00 to 9:00 p.m.) in the Auditorium of the Wallace State Office Building; other written comments were also received. On the basis of the oral and written comments, changes were made in the adopted rules.

The Department's Notice of Intended Action to adopt the rules was published in the Iowa Administrative Bulletin on February 12, 1986, as **ARC 6353**.

Changes from such notice are as follows:

Subrule 70.20(1) Athletic coach K-12 was augmented by the inclusion of an introductory authorization statement.

Subrules 70.20(2), 20(3), 20(4), 20(8) "a," and "b," 20(9) were augmented by the inclusion of introductory authorization statements and a more detailed and common listing of program requirements.

Subrule 70.20(2) Teacher—Elementary Classroom was modified by broadening the methods courses to include "methods and materials" at the elementary level. One requirement was eliminated as it duplicated a course from the professional core.

Subrule 70.20(3) was modified by the elimination of the requirement in field experiences since those experiences are already mandated in the professional core.

Subrule 70.20(4) was modified by the inclusion of two recommended course areas ("nature of language" and the "process of language acquisition") and the elimination of the course in "contrastive analysis."

Subrule 70.20(5) was modified in paragraphs "a" and "b" at item 8 in both paragraphs by specifying the developmental studies and at "c," "2" by clarifying the prerequisite.

Subrule 70.20(6) was modified in paragraphs "a," "b," and "c" by the inclusion of terminology which provided more clarity and specificity with regard to each endorsement.

Rule 70.21(257) was modified to read "Minimum content requirements for teaching endorsements."

Subrule 70.21(3) Business—general 7-12 was modified by dropping the term "economics" and inserting "consumer studies."

Subrule 70.21(4) was modified by changing the terminology from "secretarial" to "office."

Subrule 70.21(5) was modified by the elimination of the term "distributive education" and the content requirements, and inserting in lieu thereof "business—marketing/management, 7-12," and the recommended content requirements. The occupational requirements previously specified for this area will become part of proposed chapter 74, "Occupational and Postsecondary Certification."

Subrule 70.21(6) was modified by eliminating "a course in" in the last line.

Subrule 70.21(7) was modified in paragraphs "a" and

"b" by the addition of a course in reading at each level, and in paragraph "b" a course in adolescent literature.

Subrule 70.21(9) was modified by the addition of a course requirement in human nutrition.

Subrule 70.21(10) as proposed has been modified and placed within the general social studies area in 70.21(18).

Subrule 70.21(12) was renumbered as 70.21(11) and modified by adding this sentence: "The course work is to include at least six semester hours in three different areas."

Subrule 70.21(14) was renumbered as 70.21(13) and paragraph "a" was modified by adding more specific course work in mathematics.

Subrule 70.21(16) Office Education has been removed from this chapter and will become part of proposed chapter 74, "Occupational and Postsecondary Certification."

Subrule 70.21(17) was renumbered as 70.21(15) and paragraphs "a" and "b" were modified as follows: paragraph "a" added "human physiology" and "adapted physical education"; paragraph "b" added "human physiology."

Subrule 70.21(18) was renumbered as 70.21(16) and both subrules were modified by the listing of specific course work appropriate for elementary or secondary level reading.

Subrules 70.21(19) to 70.21(22) have been modified, expanded and renumbered under the broad heading of science in 70.21(17). Under this heading, seven separate teaching endorsements are set forth with minimum requirements: a) Science-basic K-6; Biological; Chemistry; Earth Science; General Science; Physical Science; and Physics.

Subrule 70.21(23) Social Studies was modified, expanded and renumbered under the broad heading of social sciences in 70.21(18). Under this heading, ten separate teaching endorsements are set forth with minimum requirements: a) American Government, b) American History, c) Anthropology, d) Economics, e) Geography, f) History K-6, g) Psychology, h) Social Studies K-6, i) Sociology, and j) World History.

Subrule 70.21(24) was renumbered as 70.21(19) and paragraph "a" was modified by the deletion of the course "children's literature."

Additionally, because of the modifications adopted in rules 670—70.20(257) and 670—70.21(257), based on input at the public hearing and written comment, the State Board also amended previously adopted rule 670—70.18(257) to include the corresponding teaching endorsement areas.

These rules are intended to implement Iowa Code section 257.10(11).

These rules become effective October 1, 1988.

ITEM 1. Rule 670—70.18(257) is amended by deleting Business—Secretarial, Distributive Education/Marketing and inserting in lieu thereof Business—Office and Business—Marketing/Management.

Rule 670—70.18(257) is amended by deleting History, Office Education, and Social Studies.

Rule 670—70.18(257) is amended by adding Science with subheading of Science—Basic K-6, Biological 7-12, Chemistry 7-12, Earth Science 7-12, General Science 7-12, Physical Science 7-12, and Physics 7-12.

Rule 670—70.18(257) is amended by adding Social Sciences with subheading of American Government 7-12, American History 7-12, Anthropology 7-12, Econom-

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ics 7-12, Geography 7-12, History K-6, Psychology 7-12, Social Studies K-6, Sociology 7-12, and World History 7-12.

These rules are intended to implement Iowa Code section 257.10(11).

ITEM 2. Chapter 70 is amended by adding the following new rules:

670—70.20(257) Requirements for other teaching endorsements.

70.20(1) Athletic coach. K-12.

a. The holder of this endorsement may serve as a head coach or an assistant coach in kindergarten and grades one through twelve.

b. Program requirements.

(1) One semester hour college or university course in the structure and function of the human body in relation to physical activity.

(2) One semester hour college or university course in human growth and development of children and youth as related to physical activity.

(3) Two semester hour college or university course in athletic conditioning, care and prevention of injuries and first aid as related to physical activity.

(4) One semester hour college or university course in the theory of coaching interscholastic athletics.

NOTE: An applicant for the coaching endorsement must hold a teacher's certificate with one of the teaching endorsements.

70.20(2) Teacher—elementary classroom.

a. Authorization. The holder of this endorsement is authorized to teach in kindergarten and grades one through six.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations component.

(3) Completion of the professional education core. See 70.19(3).

(4) Content:

1. Child growth and development with emphasis on the emotional, physical and mental characteristics of elementary age children, unless completed as part of the professional education core. See 70.19(3).

2. Methods and materials of teaching elementary language arts.

3. Methods and materials of teaching elementary reading.

4. Elementary curriculum (methods and materials).

5. Methods and materials of teaching elementary mathematics.

6. Methods and materials of teaching elementary science.

7. Children's literature.

8. Methods and materials of teaching elementary social studies.

9. Methods and materials in two of the following areas:
Methods and materials of teaching elementary health.
Methods and materials of teaching elementary physical education.

Methods and materials of teaching elementary art.

Methods and materials of teaching elementary music.

10. Prestudent teaching field experience in at least two different grades.

11. A field of specialization in a single discipline or a formal interdisciplinary program of at least twelve semester hours.

70.20(3) Teacher—prekindergarten-kindergarten.

a. Authorization. The holder of this endorsement is authorized to teach at the prekindergarten-kindergarten level.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 70.19(3).

(4) Content:

1. Human growth and development: infancy and early childhood, unless completed as part of the professional education core. See 70.19(3).

2. Curriculum development and methodology for young children.

3. Child-family-school-community relationships (community agencies).

4. Guidance of young children three to six years of age.

5. Organization of prekindergarten-kindergarten programs.

6. Child and family nutrition.

7. Language development and learning.

8. Kindergarten: programs and curriculum development.

70.20(4) ESL. K-12.

a. Authorization. The holder of this endorsement is authorized to teach English as a second language in kindergarten and grades one to twelve.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 70.19(3).

(4) Content. Completion of twenty-four semester hours of course work in English as a second language to include the following:

1. Teaching English as a second language.

2. Applied linguistics.

3. Language in culture.

4. Bilingual education.

5. Nature of language.

6. Process of language acquisition.

70.20(5) Elementary counselor.

a. Authorization. The holder of this endorsement is authorized to serve as a counselor in kindergarten and grades one through six.

b. Program requirements.

(1) Degree—master's.

(2) Content. Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. This sequence is to be at least twenty-seven semester hours to include the following:

1. Human development (career, personal and social development of children and youth).

2. Elementary school guidance.

3. Theory of counseling.

4. Individual and group appraisal.

5. Group methods in guidance and counseling.

6. Educational psychology/learning theory/elementary curriculum.

7. Social, philosophical, or psychological foundations.

8. Child developmental studies.

9. Practicum in elementary school counseling.

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c. Other.

(1) Have had one year of successful teaching experience.

(2) Be the holder of or eligible for one other teaching endorsement listed under rule 70.18(257).

70.20(6) Secondary counselor.

a. Authorization. The holder of this endorsement is authorized to serve as a counselor in grades seven through twelve.

b. Program requirements.

(1) Degree—master's.

(2) Content. Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. This sequence is to be at least twenty-seven semester hours to include the following:

1. Human development (career, personal and social development of children and youth).

2. Secondary school guidance.

3. Theory of counseling.

4. Individual and group appraisal.

5. Group methods in guidance and counseling.

6. Educational psychology/learning theory/secondary curriculum.

7. Social, philosophical, or psychological foundations.

8. Adolescent developmental studies.

9. Practicum in secondary school counseling.

c. Other.

(1) Have had one year of successful teaching experience.

(2) Be the holder of or eligible for one other teaching endorsement listed in rule 70.18(257).

70.20(7) Reading specialist. K-12.

a. Authorization. The holder of this endorsement is authorized to serve as a reading specialist in kindergarten and grades one through twelve.

b. Program requirements.

(1) Degree—master's.

(2) Content. Completion of a sequence of courses and experiences which may have been a part of, or in addition to, the degree requirements. This sequence is to be at least twenty-seven semester hours to include the following:

1. Educational psychology/human growth and development.

2. Educational measurement and evaluation.

3. Foundations of reading.

4. Diagnosis of reading problems.

5. Remedial reading.

6. Psychology of reading.

7. Language learning and reading disabilities.

8. Practicum in reading.

9. Administration and supervision of reading programs at the elementary and secondary levels.

NOTE: The applicant must have met the requirements for the educational certificate and a teaching endorsement, and present evidence of at least one year of experience which included the teaching of reading as a significant part of the responsibility.

70.20(8) Elementary school media specialist.

a. Authorization. The holder of this endorsement is authorized to serve as a school media specialist in kindergarten and grades one through six.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 70.19(3).

(4) Content. Completion of twenty-four semester hours in school media course work to include the following:

1. Knowledge of materials and literature in all formats for elementary children.

2. Selection, utilization and evaluation of library media materials and equipment.

3. Design and production of instructional materials.

4. Acquisition, cataloging and classification of materials and organization of equipment.

5. Information retrieval, reference services and networking.

6. Planning, evaluation and administration of media programs.

7. Practicum in an elementary school media center.

70.20(9) Secondary school media specialist.

a. Authorization. The holder of this endorsement is authorized to serve as a school media specialist in grades seven through twelve.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 70.19(3).

(4) Content. Completion of twenty-four semester hours in school media course work to include the following:

1. Knowledge of materials and literature in all formats for adolescents.

2. Selection, utilization and evaluation of library media materials and equipment.

3. Design and production of instructional materials.

4. Acquisition, cataloging and classification of materials and organization of equipment.

5. Information retrieval, reference services and networking.

6. Planning, evaluation and administration of media programs.

7. Practicum in a secondary school media center.

70.20(10) School media specialist. K-12.

a. Authorization. The holder of this endorsement is authorized to serve as a school media specialist in kindergarten and grades one through twelve.

b. Program requirements:

(1) Degree—master's.

(2) Content. Completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements. This sequence is to be at least thirty semester hours in school media course work, to include the following:

1. Planning, evaluation and administration of media programs.

2. Curriculum development and teaching and learning strategies.

3. Instructional development and communication theory.

4. Selection, evaluation and utilization of library media materials and equipment.

5. Acquisition, cataloging and classification of materials and organization of equipment.

6. Design and production of instructional materials.

7. Methods for instruction and integration of media skills into the school curriculum.

8. Information retrieval, reference services and networking.

9. Knowledge of materials and literature in all formats

PUBLIC INSTRUCTION DEPARTMENT[670] (cont'd)

for elementary children and adolescents.

10. Reading, listening and viewing guidance.

11. Utilization and application of computer technology.

12. Practicum at both the elementary and secondary levels.

13. Research in media and information science.

NOTE: The applicant must be the holder of or eligible for the provisional certificate.

70.20(11) School nurse.

a. Authorization. The holder of this endorsement is authorized to provide service as a school nurse at the prekindergarten and kindergarten levels and in grades one through twelve.

b. Program requirements.

(1) Degree—baccalaureate.

(2) Completion of an approved human relations program.

(3) Completion of the professional education core. See 70.19(3).

(4) Content:

1. Organization and administration of school nurse services including the appraisal of the health needs of children and youth.

2. School-community relationships and resources/co-ordination of school and community resources to serve the health needs of children and youth.

3. Knowledge and understanding of the health needs of exceptional children.

4. Health education.

c. Other. Hold a license as a registered nurse issued by the board of nursing.

NOTE: Although the school nurse endorsement does not authorize general classroom teaching, it does authorize the holder to teach health at all grade levels.

670—70.21(257) Minimum content requirements for teaching endorsements.

70.21(1) Agriculture. 7-12. Completion of twenty-four semester hours in agriculture to include course work in agronomy, animal science, agricultural mechanics, and agricultural economics.

70.21(2) Art. K-6 or 7-12. Completion of twenty-four semester hours in art to include course work in art history, studio art, and two and three dimensional art.

70.21(3) Business—general. 7-12. Completion of twenty-four semester hours in business to include six semester hours in accounting, six semester hours in business law, and course work in computer applications, and course work in consumer studies.

70.21(4) Business—office. 7-12. Completion of twenty-four semester hours in business to include advanced course work in both shorthand and typewriting, computer applications or word processing, and office management.

70.21(5) Business—marketing/management. 7-12. Completion of twenty-four semester hours in business to include a minimum of six semester hours each in marketing, management, and economics.

70.21(6) Driver and safety education. 7-12. Completion of fifteen semester hours in driver and safety education to include course work in accident prevention, vehicle safety, and behind-the-wheel driving.

70.21(7) English/language arts.

a. K-6. Completion of twenty-four semester hours in English and language arts to include course work in oral communication, written communication, language development, reading, children's literature, creative

drama or oral interpretation of literature, and American literature.

b. 7-12. Completion of twenty-four semester hours in English to include course work in oral communication, written communication, language development, reading, American literature, English literature and adolescent literature.

70.21(8) Foreign language. K-6 and 7-12. Completion of twenty-four semester hours in each foreign language.

70.21(9) Health. K-6 and 7-12. Completion of twenty-four semester hours in health to include course work in public or community health, consumer health, substance abuse, family life education, mental/emotional health, and human-nutrition.

70.21(10) Home economics—general. 7-12. Completion of twenty-four semester hours in home economics to include course work in family life development, clothing and textiles, housing, and foods and nutrition.

70.21(11) Industrial technology. 7-12. Completion of twenty-four semester hours in industrial technology to include course work in manufacturing, construction, energy and power, graphic communications and transportation. The course work is to include at least six semester hours in three different areas.

70.21(12) Journalism. 7-12. Completion of fifteen semester hours in journalism to include course work in writing, editing, production and visual communications.

70.21(13) Mathematics.

a. K-6. Completion of twenty-four semester hours in mathematics to include course work in algebra, geometry, number theory, measurement, and computer programming.

b. 7-12. Completion of twenty-four semester hours in mathematics to include course work in algebra, geometry, calculus, and computer programming.

70.21(14) Music.

a. K-6. Completion of twenty-four semester hours in music to include course work in music theory (at least two courses), music history, and applied music.

b. 7-12. Completion of twenty-four semester hours in music to include course work in music theory (at least two courses), music history (at least two courses), applied music, and conducting.

70.21(15) Physical education.

a. K-6. Completion of twenty-four semester hours in physical education to include course work in human anatomy, human physiology, movement education, adapted physical education, physical education in the elementary school, human growth and development of children related to physical education, and first aid and emergency care.

b. 7-12. Completion of twenty-four semester hours in physical education to include course work in human anatomy, kinesiology, human physiology, human growth and development related to maturational and motor learning, adapted physical education, curriculum and administration of physical education, assessment processes in physical education, and first aid and emergency care.

70.21(16) Reading.

a. K-6. Completion of twenty semester hours in reading to include at least twelve semester hours specifically in reading by course title which must include foundations in methods and materials for teaching reading in the elementary classroom, corrective reading, remedial reading, a supervised tutoring experience, and at least eight hours of course work from oral and written

PUBLIC INSTRUCTION DEPARTMENT[670] (cont'd)

communication, language development, children's literature, and tests and measurement.

b. 7-12. Completion of twenty semester hours in reading to include at least twelve semester hours specifically in reading by course title which must include foundations in methods and materials of teaching reading in the secondary classroom, corrective reading, reading in content areas, remedial reading, a supervised tutoring experience, and at least eight hours of course work from oral and written communication, the structure of language, adolescent literature, and tests and measurement.

70.21(17) Science.

a. Science—basic. K-6. Completion of twenty-four semester hours in science to include course work in biological and physical sciences.

b. Biological. 7-12. Completion of twenty-four semester hours in biological science or thirty semester hours in the broad area of science to include fifteen semester hours in biological science.

c. Chemistry. 7-12. Completion of twenty-four semester hours in chemistry or thirty semester hours in the broad area of science to include fifteen semester hours in chemistry.

d. Earth science. 7-12. Completion of twenty-four semester hours in earth science or thirty semester hours in the broad area of science to include fifteen semester hours in earth science.

e. General science. 7-12. Completion of twenty-four semester hours in science to include course work in biological science, chemistry and physics.

f. Physical science. 7-12. Completion of twenty-four semester hours in the physical sciences to include course work in physics, chemistry, and earth science.

g. Physics. 7-12. Completion of twenty-four semester hours in physics or thirty semester hours in the broad area of science to include fifteen semester hours in physics.

70.21(18) Social sciences.

a. American government. 7-12. Completion of twenty-four semester hours in American government or thirty semester hours in the broad area of social sciences to include fifteen semester hours in American government.

b. American history. 7-12. Completion of twenty-four semester hours in American history or thirty semester hours in the broad area of the social sciences to include fifteen semester hours in American history.

c. Anthropology. 7-12. Completion of twenty-four semester hours in anthropology or thirty semester hours in the broad area of social sciences to include fifteen semester hours in anthropology.

d. Economics. 7-12. Completion of twenty-four semester hours in economics or thirty semester hours in the broad area of the social sciences to include fifteen semester hours in economics, or thirty semester hours in the broad area of business to include fifteen semester hours in economics.

e. Geography. 7-12. Completion of twenty-four semester hours in geography or thirty semester hours in the broad area of the social sciences to include fifteen semester hours in geography.

f. History. K-6. Completion of twenty-four semester hours in history to include at least nine semester hours in American history and nine semester hours in world history.

g. Psychology. 7-12. Completion of twenty-four semester hours in psychology or thirty semester hours

in the broad area of social sciences to include fifteen semester hours in psychology.

h. Social studies. K-6. Completion of twenty-four semester hours in social studies, to include course work from at least three of these areas: history, sociology, economics, American government, psychology and geography.

i. Sociology. 7-12. Completion of twenty-four semester hours in sociology or thirty semester hours in the broad area of social sciences to include fifteen semester hours in sociology.

j. World history. 7-12. Completion of twenty-four semester hours in world history or thirty semester hours in the broad area of social sciences to include fifteen semester hours in world history.

70.21(19) Speech communication/theatre.

a. K-6. Completion of twenty semester hours in speech communication/theatre to include course work in speech communication, creative drama or theatre, and oral interpretation.

b. 7-12. Completion of twenty-four semester hours in speech communication/theatre to include course work in speech communication, oral interpretation, creative drama or theatre, argumentation and debate, and mass media communication.

These rules are intended to implement Iowa Code section 257.10(11).

[Filed 6/13/86, effective 10/1/88]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6672**PUBLIC SAFETY
DEPARTMENT[680]**

Pursuant to the authority of Iowa Code chapter 101, the Iowa Department of Public Safety adopts amendments to Chapter 5, "Fire Marshal," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, April 9, 1986, as **ARC 6474**.

Changes from the Notice are as follows:

- Subrule 5.301(1)- Line 5, delete "thereof"
Line 9, delete "cause the same to be"
delete the "d" on "examined"
and insert "them"
Line 12, delete "forthwith"
Line 13, delete "either" and "thereon"
and "by" and "thereto"
Line 15, change "the" to "all" and
change "copy" to "copies" -
delete remainder of line.
Line 16, delete "applicant"
Line 18, delete "as aforesaid" and
"within the"
Line 19, delete "time aforesaid"
- Subrule 5.301(2)- Line 5, insert comma after "then"
Line 6, insert comma after "dispute"
Line 12, delete "as aforesaid"
Line 13, delete "forthwith"
Line 14, delete "in the matter"
- Subrule 5.301(3)- Line 3, delete "thereof"

PUBLIC SAFETY DEPARTMENT[680] (cont'd)

Subrule 5.301(4)- Line 7, delete comma and insert
 "and"
 delete "therefor"

Subrule 5.301(7)— Line 3, delete "therein"

This rule will become effective on August 6, 1986.

This rule is intended to implement Iowa Code chapter 101.

The following amendments are adopted:

ITEM 1. 680—5.301(101) shall be amended as follows:

680—5.301(101) Storage, and handling and use -plans approved.

5.301(1) Before any construction or new or additional installation for the storage, handling or use of flammable or combustible liquids is undertaken in bulk plants, service stations and processing plants, drawings or blueprints thereof made to scale shall be submitted to the state fire marshal with an application, all in duplicate, for his approval. Within a reasonable time after receipt of the application with drawings or blueprints, the state fire marshal will ~~cause the same to be examined~~ examine them and if ~~he the fire marshal~~ finds that they conform to the applicable requirements of this chapter as written or as modified, shall ~~forthwith~~ signify his approval of the application either by endorsement ~~thereon~~ or by attachment ~~thereto~~, retain one copy for ~~his the~~ files and return to the applicant ~~the all other copy copies plus any additional copies submitted by the applicant.~~ If the drawings or blueprints do not conform to the applicable requirements of this chapter as written or modified ~~as aforesaid~~, ~~he the fire marshal~~ shall ~~within the time aforesaid~~ notify the applicant accordingly.

5.301(2) If proposed construction or installation is to be located within a local jurisdiction which requires that a local permit be first obtained, the drawings or blueprints shall be submitted to the appropriate local official or body with the application for permit and then, except in case of dispute, need not be submitted to the state fire marshal. The local official or body, as a condition to the issuance of the permit, shall require compliance with the applicable requirements of this chapter as written or as modified. In the event of dispute as to whether the drawings or blueprints show conformity with the applicable requirements of this chapter ~~as aforesaid~~ the plans and drawings shall ~~forthwith~~ be submitted to the state fire marshal whose decision ~~in the matter~~ shall be controlling.

5.301(3) Drawings shall show the name of the person, firm or corporation proposing the installation, the location thereof and the adjacent streets or highways.

5.301(4) In the case of bulk plants the drawings shall show, in addition to any applicable features required under ~~subrules~~ 5.301(6), ~~and~~ 5.301(7) ~~and rule 5.309(101) with the exception of subrule 5.309(4) of this rule~~, the plot of ground to be utilized and its immediate surroundings on all sides; complete layout of buildings, tanks, loading and unloading docks; ~~and~~ heating devices ~~therefor~~, if any.

5.301(5) In the case of service stations, the drawings, in addition to any applicable features required under ~~subrules~~ 5.301(6), ~~and~~ 5.301(7) ~~and rule 5.309(101) with the exception of subrule 5.309(4) of this rule~~, shall show the plot of ground to be utilized; the complete layout of the buildings, drives, dispensing equipment, greasing or washing stalls and the type and location of any heating device.

5.301(6) In the case of aboveground storage the drawing shall show the location and capacity of each tank; dimensions of each tank the capacity of which exceeds fifty thousand gallons; the class of liquid to be stored in each tank; the type of tank supports; the clearances ~~as covered in NFPA Pamphlet No. 30, 1981 edition~~; the type of venting and pressure relief relied upon and the combined capacity of all venting and pressure relief valves on each tank; ~~as covered in NFPA Pamphlet No. 30, 1981 edition~~; and the tank control valves as covered in NFPA Pamphlet No. 30, 1981 1984 edition; and the location of the pumps and other facilities by which liquid is filled into and withdrawn from the tanks.

5.301(7) In the case of underground storage, the drawings shall show the location and capacity of each tank, class of liquids to be stored ~~therein, together with the clearances and requirements covered in NFPA Pamphlet No. 30, 1981 edition~~; and the location of fill gauge and vent pipes and openings ~~together with the clearances and requirements~~ as covered in NFPA Pamphlet No. 30, 1981 1984 edition.

5.301(8) In the case of an installation for storage, handling or use of flammable or combustible liquids within buildings, or enclosures at any establishment or occupancy covered in this chapter, the drawing shall be in such detail as will show whether applicable requirements are to be met.

ITEM 2. Subrule 5.304(5) shall be amended as follows:

5.304(5) The standard of Automotive and Marine Service Station Code, No. 30 A, 1984 edition of the National Fire Protection Association ~~with the exception of section 8-3.6 together with its reference to other specific standards~~, shall be the rules governing automotive and marine service stations.

ITEM 3. Subrule 5.305(2) shall be amended as follows:

5.305(2) Dispensing aboveground tanks. The dispensing of flammable or combustible liquids from aboveground tanks into the fuel tanks of motor-driven vehicles shall not be permitted in cities or towns except in conformity with ~~Section 8-3.6, NFPA Pamphlet No. 30A, 1984 edition~~ ~~Section 7-7.3.5 NFPA No. 30, 1977 edition~~, or the "Iowa Standards for the Storage of Flammable and Combustible Liquids on Farms and Isolated Construction Projects."

ITEM 4. 680—5.307(101) shall be amended as follows:

680—5.307(101) Underground leakage and flammable and combustible liquids. The standard of "Underground Leakage of Flammable and Combustible Liquids," No. 329, 1977 1983 edition of the National Fire Protection Association, and the following rule entitled "Testing Underground Tanks," shall be the rules governing underground leakage of flammable and combustible liquids in the state of Iowa.

ITEM 5. 680—5.308(101) shall be amended as follows:

680—5.308(101) Testing underground tanks. Air tests of underground tanks ~~or piping~~ containing product shall not be permitted.

ITEM 6. 680—5.350(101) shall be amended as follows:

680—5.350(101) Rules generally. "The Standard for the Installation of Oil Burning Equipment," No. 31, 1978 1983 edition of the National Fire Protection Association ~~with the exception of section 1-10-1, together with its~~

PUBLIC SAFETY DEPARTMENT[680] (cont'd)

reference to other specific standards referred to and contained within the volumes of the National Fire Code 1982 1985 edition of the National Fire Protection Association published in 1982 1985 shall be the rules governing oil burning equipment in the state of Iowa.

Subrules 5.350(1) to 5.350(6) are rescinded.

ITEM 7. 680—5.400(101) shall be amended as follows:

680—5.400(101) Rules generally. "The Standard for the Storage of Flammable and Combustible Liquids on Farms and Isolated Building Projects," No. 395, 1980 1984 edition of the National Fire Protection Association together with its reference to other specific standards referred to and contained within the volumes of the National Fire Code 1982 1985 edition of the National Fire Protection Association published in 1982 1985 shall be the rule for "Storage of Flammable and Combustible liquids on Farms and Isolated Building Projects."

ITEM 8. 680—5.450(101) shall be amended as follows:

680—5.450(101) Rules generally. The "Recommended Regulatory Standard for Tank Vehicles for Flammable and Combustible Liquids," No. 385, 1979 1985 edition of the National Fire Protection Association with the exception of the following sections: 6-1.7 and 2-4.1.1, together with its reference to other specific standards referred to and contained within the volumes of the National Fire Code 1982 1985 edition of the National Fire Protection Association published in 1982 1985 shall be the rules governing the transportation of flammable and combustible liquids in tank vehicles in the state of Iowa.

[Filed 6/13/86, effective 8/6/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6679

SECRETARY OF STATE[750]

Pursuant to the authority of Iowa Code sections 47.1 and 52.5, the Secretary of State adopts rules amending 750—Chapter 10, Iowa Administrative Code, "Alternative Voting Systems."

The Notice of Intended Action published in Iowa Administrative Bulletin May 7, 1986, as ARC 6527, is terminated.

Amendments to Chapter 10 were also published as ARC 6526 on May 7, 1986, under emergency provisions of Iowa Code chapter 17A.

The purpose of this rulemaking is to correct grammatical errors as recommended by the Administrative Rules Review Committee and to correct errors in the text of subrule 10.2(1) under the heading "Marking Your Ballot," numbered paragraphs 3 and 4.

The amendments are intended to implement Iowa Code section 52.5 and they will become effective on September 3, 1986.

ITEM 1. Subrule 10.1(2), paragraph "e" is amended as follows:

1. Strike the word "thereof" following "portions."
2. Further amend paragraph "e," last unnumbered paragraph to read as follows:

Write-in ballots shall be printed inside the ballot envelope in such a manner so that write-in votes are hidden from view when the flap is closed.

ITEM 2. Subrule 10.1(4), paragraph "c," is amended by striking the word "thereof" following "portions."

ITEM 3. Subrule 10.2(1), first paragraph, is amended to read as follows:

10.2(1) Instructions for voting absentee ballots where electronic voting systems using ballot labels and ballot cards, as defined in Iowa Code section 52.1, are used, shall be in substantially the following form:

Further amend subrule 10.2(1), "VOTING WITH ASSISTANCE" instruction as follows:

Voters who are blind, cannot read, or because of any other physical disability, are unable to mark their own ballots, may have the assistance of any person the voter may select.

Further amend subrule 10.2(1), "MARKING YOUR BALLOT," numbered paragraphs "3." and "4." to read as follows:

3. Write-in votes. If you wish to vote for any person whose name is not printed on the ballot, write the name of the person for whom you wish to vote in the appropriate blank space and punch the black dot opposite the name. If you do not punch out the black dot opposite the name you have written on the ballot, your write-in vote cannot be detected, and therefore, will not be counted. Punching the black dot opposite a blank without writing in a name will not affect the validity of the rest of your ballot. space provided on the ballot card envelope. Instructions for write-in voting are printed on the ballot card envelope.

4. Overvoting. If you punch the black dots next to the above the number corresponding to the names of more candidates than can be elected to any single office, your vote for that office will not be counted.

ITEM 4. Subrule 10.2(2), unnumbered paragraph titled "VOTING WITH ASSISTANCE," is amended to read as follows:

Voters who are blind, cannot read, or because of any other physical disability are unable to mark their own ballots, may have the assistance of any person the voter may select.

[Filed without Notice 6/13/86, effective 9/3/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6686

SOIL CONSERVATION
DEPARTMENT[780]

Pursuant to the authority of Iowa Code section 467A.4(1), the State Soil Conservation Committee, on June 2, 1986, adopted rules amending Chapter 4, "Surface Coal Mining and Reclamation Operations."

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 23, 1986, as ARC 6493.

These rule amendments make modifications in the requirement for detention time of sedimentation ponds. Changes are allowed as a result of modifications of federal regulations by the U.S. Office of Surface Mining.

SOIL CONSERVATION DEPARTMENT[780] (cont'd)

Due to their length and pending major revisions, Chapter 4 is not presently published in the Iowa Administrative Code. The complete text of Chapter 4 rules is available for inspection at the Iowa Department of Soil Conservation, Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa 50319, 515/281-5851.

This rule implements Iowa Code chapter 83.

These rule amendments will become effective August 7, 1986. The following amendments are adopted:

ITEM 1. Subrule 4.522(15)"c" is amended as follows:

c. Detention time. ~~Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event). Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of subrule 4.522(11) will be met.~~

ITEM 2. Subrule 4.522(15)"g" is amended as follows:

g. ~~There shall be no out flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond. Reserved.~~

[Filed 6/13/86, effective 8/7/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6687**SOIL CONSERVATION,
DEPARTMENT OF[780]**

Pursuant to the authority of Iowa Code section 467A.4(1), the State Soil Conservation Committee on June 2, 1986, adopted rules amending Chapter 29, "Oil, Gas, and Metallic Minerals."

Notice of Intended Action was published in Iowa Administrative Bulletin on March 26, 1986, as **ARC 6448**.

This rule provides for a variance in the requirements for collecting sample cuttings, and will allow a reduction in frequency for core samples if a geophysical log is to be taken for the entire depth of the well. The additional language will better accommodate large drill rigs.

No changes were made prior to adoption from the language of the rule as proposed in the Notice of Intended Action.

The rule is intended to implement Iowa Code chapter 84.

The rule amendment will become effective August 7, 1986.

The following amendment is adopted:

The introductory paragraph of subrule 29.6(7) is amended to read as follows:

29.6(7) Preservation of cores and samples. Sample cuttings shall be taken at five-foot intervals and at each change of formation, if less than five-feet thick, in all wells drilled for oil, gas or metallic mineral exploration

or production, for the storage of dry natural gas, or casinghead gas, and for the development of reservoirs for the storage of liquid petroleum gas in the state of Iowa, *unless a geophysical log is to be taken for the entire depth of the well. Where a geophysical log is to be taken for the entire depth of the well, sample cuttings shall be taken at ten-foot intervals and at each formation change if less than ten-feet thick. The state geologist may grant a variance from the ten-foot sample interval under special conditions.* Each sample shall be carefully identified as to well name and depth of sample, and all samples shall be shipped at the operator's expense to the office of the state geologist.

[Filed 6/13/86, effective 8/7/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

ARC 6645**TRANSPORTATION,
DEPARTMENT OF[820]****09 PUBLIC TRANSIT**

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on June 3, 1986, adopted 820—[09,B] Chapter 4 entitled "Petroleum Overcharge Funds." The Transportation Commission also rescinded, effective on August 6, 1986, the identical chapter of rules which was adopted under emergency rulemaking procedures as **ARC 6489**, published in the Iowa Administrative Bulletin on April 23, 1986, and which has been in effect since April 4, 1986.

A Notice of Intended Action for these rules was published in the April 23, 1986, Iowa Administrative Bulletin as **ARC 6490**.

The 1985 Iowa Acts, chapter 265, appropriated money from the petroleum overcharge fund to the Department to establish a revolving loan fund for capital purchases by public transit systems. The revolving loan fund is intended to provide public transit systems with the matching funds required to qualify for federal funding, although borrowers must demonstrate the ability to repay the loan.

This chapter of rules establishes the revolving loan fund and specifies the criteria for system eligibility, project eligibility, and project selection. The rules also outline the procedure for loan application and project approval.

These rules are intended to implement 1985 Iowa Acts, chapter 265.

These rules are to be published as adopted in the July 2, 1986, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective August 6, 1986, and the identical rules adopted under emergency rulemaking procedures are rescinded effective August 6, 1986.

Pursuant to the authority of 1985 Iowa Acts, chapter 265, section 1, the following new chapter of rules is adopted:

TRANSPORTATION, DEPARTMENT OF[820] (cont'd)

ARTICLE B
FINANCIAL ASSISTANCE PROGRAM

CHAPTER 4

PETROLEUM OVERCHARGE FUNDS

820—[09,B]4.1(71GA,ch265) **General information.**

4.1(1) Scope of chapter. The general assembly appropriated money from the petroleum overcharge fund to the department to be used as a revolving loan fund for transit capital purchases by public transit systems. The revolving loan fund will enable public transit systems to obtain the matching funds required to qualify for capital purchases under federally funded projects. The fund will provide multiyear interest-free loans to public transit systems to allow faster capital acquisitions. Loan recipients shall be required to demonstrate ability to repay the loan from budgeted funds or revenues.

4.1(2) Information. Information, requests for assistance, and answers to questions about the preparation and submission of loan requests may be obtained by contacting: Air and Transit Division, Iowa Department of Transportation, State Capitol, Des Moines, Iowa 50319; phone 515/281-4265.

820—[09,B]4.2(71GA,ch265) **Definitions.** The definitions in rule 820—[09,B]1.3(307), Iowa Administrative Code, for "department," "public transit system," and "project" shall also apply to this chapter.

820—[09,B]4.3(71GA,ch265) **System eligibility.** A public transit system is eligible to request a capital assistance loan from the revolving loan fund if it complies with all of the following criteria:

4.3(1) It uses a centralized accounting system that maintains primary documentation for all revenue and expenses.

4.3(2) One person is responsible for managing the assets, operations and funding of the system.

4.3(3) It maintains its policies, routes, schedules, fare structure, and budget in a manner that encourages public review, responsiveness to user concerns, energy conservation, and fiscal solvency.

820—[09,B]4.4(71GA,ch265) **Project eligibility.**

4.4(1) A project is eligible if it meets all of the following criteria:

a. It is a transit-related project for a capital purchase, e.g., new or replacement vehicles, facilities, or both.

b. It qualifies for federal funding approval which includes meeting the federal spare vehicle ratio requirement.

c. It meets an identifiable transit need that has been included in the public transit system's planning or programming document.

d. The local funding needed for the project justifiably exceeds the public transit system's annual capital match funding capability.

4.4(2) A project to purchase vans for a vanpool, as defined in Iowa Code subsection 325.1(9), may be submitted by an individual or a group through the appropriate public transit system. A vanpool project is eligible for an interest-free loan from the revolving loan fund only after funds for all other projects have been allocated.

820—[09,B]4.5(71GA,ch265) **Procedure.**

4.5(1) Federal funding request. The public transit system shall submit an application for federal funding

approval of the proposed project to either the air and transit division or to the Federal Urban Mass Transportation Administration, as required by the type of funding requested.

4.5(2) Loan request. The public transit system shall normally submit a request for a revolving fund loan to the air and transit division when the annual grant application is made, but may submit a request at any time if a specific need arises. The request shall include, but not be limited to, the following topics and documents:

a. A description and cost estimate of the proposed project.

b. An explanation of the benefits to be gained from the project.

c. An explanation and justification of need for the loan.

d. A proposed schedule of when funds will be needed for the project.

e. A proposed loan repayment plan with schedule and source of funds.

4.5(3) Criteria for selection. The air and transit division shall review each loan request and shall select the projects to be recommended for funding. Based on the following criteria (not listed in order of preference), preference shall be given to projects that:

a. Foster co-ordination among transit services, such as a ground transportation center, a joint maintenance facility, or co-operative vehicle usage.

b. Enhance local or regional economic development, such as a transit mall, passenger shelter facilities, or vehicles for extension of services.

c. Increase federal funding to the state, such as accelerating purchase of replacement vehicles.

d. Extend services to the transportation disadvantaged.

e. Promote energy conservation, such as fuel efficiency.

f. Require the loan as only a portion of the local matching funds required.

4.5(4) Approval. Based on available funds, the air and transit division shall submit recommended loan projects to the transportation commission for approval. Submission may be on an annual or an individual basis.

4.5(5) Agreement. Upon approval by the transportation commission, the air and transit division shall prepare a loan contract and send it to the public transit system for signing. The signed contract shall be returned to the air and transit division for signing by the department.

4.5(6) Default. If a public transit system fails to make a loan payment as agreed in the contract, the air and transit division may, at its option, deduct the amount of any loan payment past due from state transit assistance payments allocated to that transit system.

These rules are intended to implement 1985 Iowa Acts, chapter 265.

[Filed 6/10/86, effective 8/6/86]

[Published 7/2/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/2/86.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
Health Data Commission[465]	6.4(2) [IAB 5/21/86, ARC 6558]	Seventy days from effective date of July 1, 1986.
Merit Employment Department[570]	1.1, 2.1, 2.2, 4.5(1)"b"(4), 4.5(2)"b," 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, 8.9, 10.1, 11.3(3)"a"(1), 11.3(5), 11.3(6), 19.1 [IAB 4/23/86, ARC 6515]	Seventy-day delay of effective date (May 28, 1986) was lifted by the Administrative Rules Review Committee, effective June 27, 1986.



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER TWENTY-THREE

- WHEREAS, in order for the State of Iowa to receive funds under the Federal Highway Safety Act, the Governor must designate a State Highway Safety Agency that has adequate powers and is suitably equipped and organized to carry out the program; and
- WHEREAS, the Office of Planning and Programming which has carried out this program since its inception in Iowa is being discontinued in the reorganization and downsizing of state government; and
- WHEREAS, the goals of the highway safety program are consistent with the mission of the State Department of Public Safety to save lives and reduce injuries and property damage through alcohol countermeasures, enforcement of traffic laws, driver education and vehicle safety improvement programs; and
- WHEREAS, the State Department of Public Safety can re-allocate resources to assume the State Highway Safety Agency duties and is suitably equipped and organized to deliver the programs to the state and local agency recipients.
- NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and by the Laws of Iowa, do hereby designate the State Department of Public Safety as the State Highway Safety Agency and the Commissioner of Public Safety as the Governor's Representative for Highway Safety. This transfer of responsibility shall be completed by June 13, 1986.

IN TESTIMONY WHEREOF, I have here unto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 9th day of June in the year of our Lord one thousand nine hundred and eighty-six.


Governor



SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED - June 18, 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.

No. 84-1948. IN RE MARRIAGE OF ZABECKI.

Appeal from the Iowa District Court for Scott County, Max R. Werling, Judge. On review from the Iowa Court of Appeals. Decision of court of appeals vacated and judgment of district court affirmed. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Wolle, JJ. Opinion by Reynoldson, C.J. (14 pages \$5.60)

Mother was granted further review of court of appeals decision modifying dissolution decree to give physical care of child to father. OPINION HOLDS: I. We agree with the district court that the father has not carried his heavy burden to show a substantial change of circumstances that would justify a custody change, nor has he demonstrated an ability to minister more effectively to the child's well-being. II. We have discretion to consider all issues that were presented on appeal, whether or not raised in the application for further review. We do not choose to exercise our discretion to consider the child support and attorney fees issues. III. We tax each of the parties with fifty percent of the costs on appeal. Although Christine is the prevailing party, her appellate brief was not printed on both sides of the page, in violation of Iowa Rule of Appellate Procedure 16(a).

No. 85-346. COMMITTEE ON PROFESSIONAL ETHICS & CONDUCT v. PIAZZA.

On review of the report of the Grievance Commission. License suspended. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Wolle, JJ. Opinion by Reynoldson, C.J. (4 pages \$1.60)

The grievance commission report in a disciplinary proceeding recommended suspension of respondent's license to practice law. OPINION HOLDS: At the hearing the complainant produced a convincing preponderance of the evidence to support the grievance commission's subsequent finding that the respondent violated Iowa's revenue laws by failing to timely file Iowa income tax returns for the years 1980, 1981, and 1982. A convincing preponderance of the evidence also supports the commission's finding that respondent falsely certified on two questionnaires to the Client Security and Attorney Disciplinary Commission of the Supreme Court that he had filed an Iowa income tax return in 1980 and 1981. We suspend respondent's license to practice law indefinitely with no possibility of reinstatement for twelve months.

NO. 85-1121. IOWA ELECTRIC LIGHT & POWER CO.,
v. WENDLING QUARRIES, INC.

Appeal from the Iowa District Court for Muscatine County,
Jack L. Burns, Judge. Reversed and remanded. Considered en banc.
Opinion by McGiverin, J. (7 pages \$2.80)

Wendling Quarries, Inc. operates a quarry located in Atalissa, from which it mines and sells its products. In 1977, Iowa Electric Light and Power Co., the supplier of Wendling's electricity for its business, installed a new electric meter. In June 1981 IE informed Wendling that it had been underbilled for approximately four years in the amount of \$127,594.36 due to a clerical error. IE brought this suit seeking payment for the electricity used. Plaintiff then filed an application for adjudication of law points, contending that defendant's counterclaim and various defenses of estoppel, laches, and accord and satisfaction were barred as a matter of law. The trial court overruled the application on the ground there were material facts in dispute. We granted plaintiff permission for this interlocutory appeal. OPINION HOLDS: Iowa Rule of Civil Procedure 105 allows a party to obtain an adjudication of "any point of law raised in any pleading which goes to the whole or any material part of the case." Our cases have interpreted this rule to mean that an adjudication can be made in two instances. First, such a ruling is proper when no material facts are in dispute. See Montz v. Hill-Mont Land Co., 329 N.W.2d 657, 657 (Iowa 1983). Second, a purely legal issue may be adjudicated despite the existence of controverted pleadings if the court is presented with 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." State ex rel. Miller v. Hydro Mag, Ltd., 379 N.W.2d 911, 913 (Iowa 1986). Under the test stated in Hydro Mag, an adjudication would have been proper. We note the trial court did not have the benefit of that case when making its ruling. Because the trial court did not consider the legal issues raised in the application that were independent of the disputed factual issues and a ruling favorable to the applicant on those legal issues may necessarily be dispositive of the case in part, we remand for further appropriate proceedings.

NO. 85-445. GRELL v. POULSEN

Appeal from the Iowa District Court for Johnson County,
Thomas Koehler, Judge. Reversed. Considered by Reynoldson, C.J.,
and Harris, Carter, Wolle, and Lavorato, JJ. Opinion by Wolle, J.
(9 pages \$3.60)

Appeal from judgment in favor of counterclaimants on their abuse of process counterclaims. Defendants recovered damages from the plaintiffs on the theory that plaintiffs had initiated the litigation for the purpose of gaining a competitive business advantage. OPINION HOLDS: We conclude that neither the plaintiffs' filing of a damage lawsuit nor their request for production of customer lists constituted an irregular or illegal act in the use of process on which an actionable claim could be founded. The plaintiffs were entitled to a directed verdict and judgment notwithstanding the verdict on the defendants' counterclaims.

NO. 85-03. WOLFE v. GRAETHER.

Appeal from the Iowa District Court for Marshall County, Dale E. Ruigh, Judge. Reversed and remanded on both appeals. Considered by Harris, P.J., and Larson, Schultz, Carter, and Wolle, JJ. Opinion by Carter, J.

(46 pages \$18.40)

A professional corporation and a medical doctor who is a shareholder and director of the corporation appeal from judgments against them in an action for breach of a contract of employment and tortious interference with a contractual relationship. OPINION HOLDS: I. The court of appeals decision in a previous appeal did not determine as a matter of law that plaintiff's contract of employment was terminable at will by either party. The court of appeals decision recognized that extrinsic evidence could be considered in interpreting what the contract called for. Because much of that evidence was not before the court of appeals at the summary judgment stage of this litigation, its decision on those issues has little direct application to the determinations required to be made in regard to defendant clinic's motion for directed verdict. We do not interpret the court of appeals decision as fixing for further purposes in the litigation the meanings to be accorded to the voluntary retirement or "intolerability" clauses of the contract. II. The evidence presented at trial was not insufficient as a matter of law to permit a determination that plaintiff's employment contract was not of indefinite duration and, as such, terminable at will. III. It was not established as a matter of law that the contract was properly terminated in accordance with its terms. IV. We find no error in the utilization of parole evidence in the trial of the present claims. V. The court erred in failing to submit the issues of contract interpretation to the jury in light of all the circumstances surrounding the agreement. VI. The evidence was insufficient to support instructing the jury on the claim lodged by the clinic that the termination of plaintiff's employment was justified as a result of his own breach of the agreement of hire. VII. A breach of contract by the clinic was not an element of plaintiff's claim against defendant doctor for tortious interference with a contractual relationship but the errors which affected the jury's ability to determine the breach of contract issues also require reversal with respect to the tortious interference issues. VIII. On the facts of the present case, the language of the trial court's instructions on the elements of the tortious interference claim would have been adequate had proper instructions also been given on the element of privilege. If, on retrial of this action, defendant doctor requests an instruction on the qualified privilege of corporate officers and directors to act with respect to corporate matters, such an instruction should be given. IX. The doctor's motion for directed verdict was properly denied by the trial court. Threat of economic reprisal is a well-established basis for permitting recovery in tortious interference cases. X. The judgment entered on Count III of the petition was not involved in this appeal and is unaffected by the disposition of those issues which were raised on appeal.

NO. 85-1174. LUNDY v. IOWA DEPARTMENT OF HUMAN SERVICES.

Appeal from the Iowa District Court for Keokuk County, James P. Rielly, Judge. Reversed. Considered en banc. Opinion by Schultz, J. (8 pages \$3.20)

Lundy traded for a new pickup truck and his food stamp benefits were subsequently terminated. The Iowa Department of Human Services determined the value of the new pickup caused his maximum allowable resources to exceed the \$1500 per household limit. Lundy appealed through administrative proceedings claiming the value of the vehicle should be excluded from being included in allowable resources because the vehicle was used for transportation of a physically disabled person. The agency applied a federal regulation definition of "disability" to determine that Lundy was not disabled and unable to receive the exclusion. On judicial review the district court reversed concluding the definition was inapplicable and ruled Lundy was a disabled person. OPINION HOLDS: The federal food stamp program was established by the Food Stamp Acts of 1964 and 1977. Iowa has chosen to participate in the food stamp program and the state program is administered pursuant to Iowa Code section 234.12. The Iowa Department of Human Services has incorporated 7 C.F.R. Parts 270-82, as amended, through December 31, 1984, into the department regulations. The parties agree the value of the vehicle would be excluded if the vehicle was necessary to transport a "physically disabled household member." See 7 C.F.R. § 273.8(h)(1)(vi) (1984). Although the term "physically disabled household member" is not defined in the regulations there is a definition of an "elderly or disabled member." See C.F.R. § 271.2. The only possible applicable subsection is 271.2(2), which defines a "disabled member" as an individual receiving social security disability benefits. Lundy does not meet this criteria because at the time of these administrative proceedings Lundy has filed for, but not yet received, social security disability benefits. We agree with the department's conclusion that the section 271.2 definition of a "disabled member" was applicable in its determination that Lundy was not a "physically disabled household member" under section 271.8.

NO. 85-791. STATE v. RONEK.

Appeal from the Iowa District Court for Jackson County, David J. Sohr, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Wolle, JJ. Opinion by Schultz, J. (7 pages \$2.80)

The defendant appeals from his conviction of first-degree murder. OPINION HOLDS: The district court did not violate the defendant's privilege against self-incrimination by compelling his attorney to produce an incriminating statement which had been written by the defendant and which was in the attorney's possession.

No. 85-673. SUNDHOLM v. CITY OF BETTENDORF.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge. Affirmed in part, reversed in part and remanded. Considered en banc. Opinion by Harris, J. (10 pages \$4.00)

The plaintiffs, mother and daughter, brought claims against the City of Davenport, Scott County, and certain peace officers for false arrest and for deprivation of constitutional rights under 42 U.S.C. section 1983. The civil rights claims were dismissed by a trial court ruling, and the false arrest claims were rejected by the jury. The plaintiffs have appealed from the resulting judgment.

OPINION HOLDS: I. Error was not preserved on the plaintiff mother's challenge to the sufficiency of the evidence to support the jury verdict as to her. II. The evidence was sufficient to support the jury's determination that the plaintiff daughter had suffered no damages. III. The district court did not abuse its discretion by excluding evidence that both plaintiffs were acquitted of criminal charges. In a false arrest suit, probable cause does not depend on the guilt or innocence of the accused party, but rather on what the arresting officer reasonably believed at the time of the arrest. IV. The district court also did not abuse its discretion by excluding statements about the plaintiff daughter's alleged delay in seeking employment because the pending criminal charge prevented her from moving to Seattle. The district court did not abuse its discretion by determining that this item of damages was too speculative. V. Because no actual damages were allowed, we need not consider Christine's assignment that her claim for punitive damages should have been submitted. VI. In the case of the plaintiff mother, the jury finding precludes her right to recover under section 1983. In the case of the plaintiff daughter, the jury's finding of no damage precludes her from recovering actual damages under section 1983; however, the jury's finding does not preclude her section 1983 claims for punitive damages against the officers and attorney's fees against all defendants. These items are recoverable under section 1983 without regard to actual damages. To this extent the district court erred by dismissing the daughter's section 1983 claims; the daughter is entitled to a remand for submission of these issues.

NO. 85-422. STATE v. KLUESNER.

Appeal from the Iowa District Court for Dubuque County, T. H. Nelson, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Harris, Carter, Wollé and Lavorato, JJ. Opinion by Wollé, J. (8 pages \$3.20)

The State appeals with permission from the district court's refusal to order restitution upon granting a deferred judgment. OPINION HOLDS: Iowa Code section 910.2 imposes a duty upon the trial court to order restitution when a defendant has pleaded guilty and has been granted a deferred judgment.

NO. 85-02. FARMLAND FOODS, INC. v. TEN EYCK.

Appeal from the Iowa District Court for Carroll County, James C. Smith, Judge. On review from the Iowa Court of Appeals. Decision of court of appeals vacated; reversed and remanded with directions. Considered en banc. Per curiam. (3 pages \$1.20)

In this workers' compensation case arising from a shoulder injury, the industrial commissioner determined that the claimant had sustained an industrial disability of

thirty percent of the body as a whole. Upon judicial review, the district court reversed this administrative decision. The court of appeals affirmed the district court's ruling, and we granted further review. OPINION HOLDS: We need not decide whether a shoulder injury is always an injury to the body as a whole, nor do we decide which party correctly interprets our case of Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). A commissioner's findings have the effect of a jury verdict, and this court will broadly and liberally construe those findings in order to uphold the commissioner's decision. Because we find substantial support in the record for the industrial commissioner's ruling, we conclude it was error for the district court and the court of appeals to reverse.

NO. 85-243. STATE v. KLINDT.

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge. Affirmed. Considered en banc. Opinion by Larson, J. (16 pages \$6.40)

Defendant appeals from his conviction of second-degree murder. OPINION HOLDS: I. The trial court did not err in admitting expert testimony in the fields of forensic serology, anthropology, and statistics for the purpose of showing that a torso found in the Mississippi River was that of defendant's wife. II. In a case involving a prosecution for a crime committed against a spouse, the communication privilege of Iowa Code section 622.9 is inapplicable. The trial court therefore did not err in admitting a tape recording of a communication between defendant and his wife. III. The evidence was not insufficient to support a charge of second-degree murder.

NO. 85-915. McFARLANE v. EQUITABLE LIFE ASSURANCE SOCIETY.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. Affirmed. Considered en banc. Per Curiam. (3 pages \$1.20)

An employee appeals from summary judgment entered by the district court in favor of his former employer in an action for wrongful discharge. He does not appeal from the trial court's determination that he had not furnished additional consideration for "permanent" employment. OPINION HOLDS: Absent some claim that an employer has, in some way, violated public policy in discharging an employee, we will not re-examine the common-law rule that an employee who merely promises to perform services is not a permanent employee, and may be discharged with or without cause.

NO. 85-93. WIESE v. IOWA DEPARTMENT OF JOB SERVICE.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Van Wifvat, Judge. Decision of the Court of Appeals Vacated; Judgment of District Court Reversed and Remanded with Directions. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Wolle, JJ. Opinion by Schultz, J. (10 pages \$4.00)

The employee quit his job because he refused to temporarily work out of state. The agency determined that the

employee voluntarily quit without good cause attributable to his employer because the employee knew near the time of hire that out-of-state employment was a customary practice of the employer. On judicial review, the district court affirmed the agency decision; however, on appeal the court of appeals reversed. In a plurality opinion that court held the agency erred as a matter of law by relying upon rule 4.25(32) because that rule requires that the terms of the contract of hire be known to the employee at the time of hire, rather than near the time of hire. OPINION HOLDS: I. The agency erred as a matter of law in relying upon rule 4.25(32). II. An employee leaving his or her employment may quit with "cause attributable to his or her employer," as that term is mentioned in section 96.1(1), if the employer makes a substantial change in the terms or conditions of the contract of hire. We believe that a good faith effort by an employer to continue to provide employment for his employees, especially during a recessionary period, may be considered in examining whether contract changes are substantial and whether such changes are cause of an employee quit attributable to the employer. We believe rule 4.26(1), which specifies when cause is attributable to the employer regarding a change in the employment contract, falls within the principles which we have outlined and is applicable under the facts of this case. Additional findings of facts would be appropriate regarding whether there was an express or implied agreement that the employee would not work out of state. If the facts show a change of contract by the employer, it will also be necessary for the agency to make additional findings and conclusions as to whether the change of contract is substantial and if good cause for termination is attributable to the employer.

NO. 85-304. MIGUEL v. VOLLERTSEN & BRITT, P.C.

Appeal from the Iowa District Court for Scott County, Max Werling, Judge. Affirmed. Considered en banc. Per Curiam. (8 pages \$3.20)

Plaintiffs appeal from the judgment in a legal malpractice action raising issues concerning the measure of damages. OPINION HOLDS: Although we have made a special effort, we have had difficulty comprehending the precise legal issues that plaintiffs are endeavoring to advance in the appeal. As we understand them, none have merit. The correct principles of law were applied by the trial court and its findings of fact have substantial evidentiary support. Any claim of conflict of interest is unsupported by the record.

No. 85-1078. SONKSEN v. LEGAL SERVICES CORP.

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge. Affirmed. Considered en banc. Opinion by Harris, J. (8 pages \$3.20).

Plaintiffs appeal from the district court's refusal to award attorney fees in accordance with a federal statute. OPINION HOLDS: I. Plaintiffs failed to present any evidence that the legal action against them by parties represented by the Legal Services Corporation, a federally funded corporation, was commenced or pursued for the sole purpose

of harrassment or that there was an abuse of process to establish grounds for the award of attorney fees pursuant to 42 U.S.C. section 2996e(f) (West Supp. 1986). II. The statements in the appellant's brief, consisting of diatribe against the defendants, replete with the most offensive racism and cruel sarcasm about the poor, and intemperate and disparaging remarks toward opposing counsel and the trial court, are flagrantly unprofessional and in violation of various ethical and disciplinary rules. William H. Michelson is censured for his unethical comments.

NO. 84-1810. ANDERSON v. STATE FARM MUTUAL
AUTOMOBILE INSURANCE CO.

On review from Iowa Court of Appeals. Appeal from the District Court for Scott County, Max Werling, Judge. Decision of Court of Appeals Vacated, Order of District Court Affirmed. Considered en banc. Per Curiam.
(7 pages \$2.80)

Plaintiff sued his insurer following its denial of his claim under a medical insurance policy. As a defense the insurer relied on plaintiff's incorrect answers to questions in his application for insurance coverage. The jury returned a verdict for plaintiff. The court of appeals reversed the trial court's grant of the insurer's motion for new trial and reinstated the jury verdict. OPINION HOLDS: I. The trial court correctly instructed the jury that the insurer had to prove by a preponderance of the evidence that plaintiff knew the statement in question was false or made it without regard to its truth or falsity. Iowa Code section 514A.5(3) does not change prior Iowa law dealing with scienter. II. Evidence on the issue of scienter was not sufficient to require a directed verdict for the insurer as a matter of law. III. Upon review of the entire record and consideration of a trial court's discretion, we are unwilling to overturn the trial court's grant of a new trial.

NO. 86-205. THE COMMITTEE ON PROFESSIONAL ETHICS AND
CONDUCT OF THE IOWA STATE BAR ASSOCIATION
v. BROMWELL.

On review of report of the Grievance Commission. License Suspended. Considered en banc. Opinion by Lavorato, J.
(10 pages \$4.00)

The commission found that Bromwell acted unethically in his dilatory handling of an estate, and in his failure to assist the Professional Ethics and Conduct Committee in its investigation of the complaint. Bromwell raises four issues on appeal: (1) whether this matter should be dismissed because the commission did not timely file its report with the clerk of this court; (2) whether his inactions with regard to the estate warrant a finding of neglect; (3) whether his failure to respond to the committee constitutes unethical conduct; and (4) whether evidence of a prior suspension should have been considered by the commission. OPINION HOLDS: I. We decline to reconsider our decision in Committee on Professional Ethics and Conduct v. Behnke, 276 N.W.2d 838, 842 (Iowa 1979), which held that the language of Iowa Supreme Court Rule 118.9 is directory and not man-

datory. II. Bromwell's repeated failure to respond to the delinquency notices, and his violation of two probate statutes and three court orders constituted more than "a single act or omission." The evidence amply supports the commission's finding that Bromwell violated DR6-101(A)(3) and EC6-4. III. We decline to reconsider Committee on Professional Ethics and Conduct v. Horn, 379 N.W.2d 6, 8-9 (Iowa 1985). In that case we noted public confidence in the legal profession may wane if an attorney fails to cooperate in an investigation of misconduct. We agree that Bromwell violated EC1-4 and EC9-6; in addition, we conclude he violated DR1-102(A)(5). IV. We conclude that Iowa Supreme Court Rule 118.3 is valid, and that the commission did not err in considering Bromwell's prior suspension to practice law. V. We reject the commission's recommendation of a four-month suspension, and suspend Bromwell's license to practice law for six months.

No. 85-630. State v. Robinson.

Appeal from the Iowa District Court for Monroe County, James D. Jenkins, Judge. Reversed and remanded. Considered en banc. Opinion by Harris, J. (7 pages \$2.80).

Defendant appeals following convictions on two counts of attempt to murder. OPINION HOLDS: I. We hold that it was an abuse of discretion to overrule defendant's renewed motion for change of venue. II. We find no merit in defendant's challenge to a ruling on the State's motion in limine to exclude evidence of defendant's relationship with the victim's daughter. There was no error in denying defendant's application to pay psychologist fees for a witness he chose without court authorization. In the interest of protecting the appearance of justice we direct the trial on remand be before a different trial judge.

NO. 85-1070. STATE v. HOLLAND.

Appeal from the Iowa District Court for Scott County, Linda K. Neuman and Margaret S. Briles, Judges. Affirmed. Considered en banc. Opinion by McGiverin, J. (14 pages \$5.60)

Defendant appeals his conviction of two counts of second-degree burglary. OPINION HOLDS: I. The district court erred in admitting into evidence the videotaped deposition of prosecution witness DeWitt. The deposition was a violation of defendant's sixth amendment right of confrontation and hearsay, because the State failed to meet its burden of establishing DeWitt's unavailability. However, under the facts of this case, the error was harmless. II. The district court did not err in refusing to suppress evidence found in two searches of the apartment of defendant's girlfriend. The tape deck was properly seized in the first search, under the plain view doctrine; the police officer's presence in the room without a warrant was justified as part of a cursory safety check. Defendant's girlfriend voluntarily consented to the second search of her apartment, during which the jewelry and cassette recorder were seized. III. The district court did not abuse its discretion in admitting the police officers' testimony that defendant offered to kill any person they chose in order to secure his release from custody; the probative value of this testimony substantially outweighed the danger of unfair prejudice.

NO. 85-57. IN RE MARRIAGE OF ORTE.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Jefferson County, James D. Jenkins, Judge. Court of appeals decision vacated; decree of district court affirmed. Considered en banc. Opinion by Larson, J. Dissent by Harris, J. (7 pages \$2.80)

The court of appeals reversed a district court decision and placed the parties' one child in the father's physical care. The mother was granted further review. OPINION HOLDS: We affirm the district court's custody award, which placed the parties' one child in the mother's physical care. An important factor in this decision is the child's close relationship with an older half brother, the mother's child by a previous marriage. DISSENT ASSERTS: I would place the child in the father's physical care.

NO. 85-713. GORDON v. IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION.

Appeal from the Iowa District Court for Clarke County, M. J. Streit, Judge. On review from the Iowa Court of Appeals. Decision of court of appeals vacated; reversed. Considered en banc. Opinion by Carter, J. (7 pages \$2.80)

The plaintiff was administered an intoxilyzer breath test to determine sobriety. Although officers observed and recorded the intoxilyzer's visual digital readout, the machine's printer malfunctioned. The agency later revoked the plaintiff's driver's license. The district court reversed the agency's revocation, and we granted further review. OPINION HOLDS: The determination of whether an operator's license is properly to be revoked under Iowa Code section 321B.16 is not made by the arresting officer, but is the province of the agency. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an agency's finding from being supported by substantial evidence. We conclude that, in the absence of more persuasive evidence that the machine was malfunctioning, the similarities between the visible numerals on the machine's printed record and the numerals appearing on the digital display constitute substantial evidence in favor of the agency's interpretation of the test results.

NO. 85-279. OLIVER v. SIOUX CITY COMMUNITY SCHOOL DISTRICT.

Appeal from the Iowa District Court for Woodbury County, Richard F. Branco, Judge. On review from Iowa Court of Appeals. Decision of Court of Appeals Affirmed; Judgment of District Court Reversed; Remanded with Directions. Considered en banc. Opinion by Lavorato, J. (13 pages \$5.20)

In this municipal tort law case arising from a spinal column injury sustained by plaintiff, the district court granted the defendants a summary judgment because of the plaintiff's alleged failure to comply with the notice requirements of Iowa Code section 613A.5. The court of appeals

reversed the district court's order, and we granted further review. OPINION HOLDS: I. We believe that the plaintiffs substantially complied with the notice provisions of section 613A.5 by presenting the bill for the ambulance service to the school district. II. We believe that the legislature did not intend that damages be limited to those stated in the notice of injury. III. We believe plaintiff's petition was sufficient under Iowa Rule of Civil Procedure 69.

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