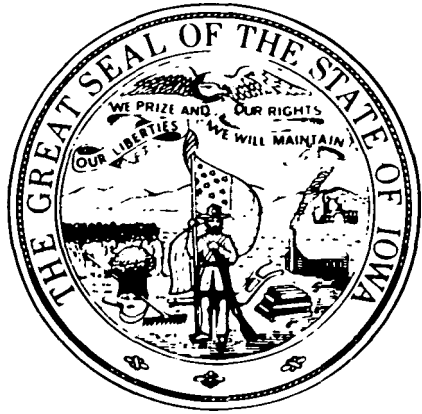


*L. J. ...*

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# IOWA ADMINISTRATIVE BULLETIN

JUN 3 1987

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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.

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

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### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
26	Friday, May 29, 1987	June 17, 1987
27	Friday, June 12, 1987	July 1, 1987
28	Friday, June 26, 1987	July 15, 1987

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### SUBSCRIPTION INFORMATION

#### Iowa Administrative Bulletin

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

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## Schedule for Rule Making 1987

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

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

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

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

## NOTICE

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

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

## UNIFORM RULES OF STATE AGENCY PROCEDURE

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

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

## SUPPLEMENTAL AGENDA

The following rules [in addition to the agenda published in IAB 5/20/87] will be reviewed by the Administrative Rules Review Committee at its regular statutory meeting Tuesday, June 9, 1987, 10 a.m. and Wednesday, June 10, 1987, 9 a.m. in Committee Room 22, State Capitol.

**Note: See agenda published in IAB 5/20/87.**

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## To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>EMPLOYMENT SERVICES DEPARTMENT[341]</b> Division of labor, 1.1(4) IAB 6/3/87 ARC 7649	Employment Services 1000 East Grand Ave. Des Moines, Iowa	June 24, 1987 9:30 a.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b> Amendments to ch 100, Scope of title; ch 103, Sanitary landfills; ch 110, Hydrologic monitoring system— solid waste disposal facilities IAB 5/20/87 ARC 7614	Conference Room Fifth Floor Wallace State Office Bldg. Des Moines, Iowa	June 9, 1987 3 p.m.
<b>HUMAN SERVICES DEPARTMENT[441]</b> Medical and remedial services, Hospitals, amendments to chs 78 and 79 IAB 5/20/87 ARC 7609	Public Library 123 S. Linn St. Iowa City, Iowa	June 11, 1987 3 p.m.
<b>IOWA FINANCE AUTHORITY[524]</b> Participation requirements for lenders, 9.15 IAB 6/3/87 ARC 7651	Conference Room 100 Des Moines District Office City View Plaza 1200 University Des Moines, Iowa	June 10, 1987 1 p.m.
<b>JOB SERVICE DIVISION[345]</b> Amendments to ch 2, Employer records and reports; ch 3, Employer's contribution and charges; ch 4, Claims and benefits; ch 5, Benefit payment control IAB 6/3/87 ARC 7650	Authority's Offices Suite 222 200 East Grand Ave. Des Moines, Iowa	June 23, 1987 10:30 a.m.
<b>LABOR SERVICES DIVISION[347]</b> Occupational safety and health—general industry, 10.20 IAB 5/20/87 ARC 7608 (See also ARC 7607)	Department of Employment Services 1000 East Grand Ave. Des Moines, Iowa	June 24, 1987 9:30 a.m.
Occupational safety and health—general industry, 10.20 IAB 6/3/87 ARC 7642 (See also ARC 7641, herein)	Division of Labor Services 1000 East Grand Ave. Des Moines, Iowa	June 10, 1987 9 a.m.
Occupational safety and health—agriculture, 28.1 IAB 6/3/87 ARC 7635 (See also ARC 7634, herein)	Division of Labor Services 1000 East Grand Ave. Des Moines, Iowa	June 24, 1987 9 a.m.
<b>MANAGEMENT DEPARTMENT[541]</b> Organization and operation, ch 1; Rulemaking, ch 5; Declaratory rulings, ch 6 IAB 5/20/87 ARC 7619	Division of Labor Services 307 East 7th St. Des Moines, Iowa	June 24, 1987 9 a.m.
<b>MANAGEMENT DEPARTMENT[541]</b> Organization and operation, ch 1; Rulemaking, ch 5; Declaratory rulings, ch 6 IAB 5/20/87 ARC 7619	Conference Room 14 Ground Floor State Capitol Des Moines, Iowa	June 12, 1987 1:30 p.m.

**NATURAL RESOURCE COMMISSION[571]**

Wildlife habitat on private  
land, 22.4, 22.5, and 22.6  
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Conference Room  
Fourth Floor  
Wallace State Office Bldg.  
Des Moines, Iowa

July 15, 1987  
10 a.m.

Wildlife refuges, 52.1  
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Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

July 15, 1987  
11 a.m.

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Conference Room  
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June 23, 1987  
10 a.m.

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IAB 6/3/87 ARC 7638

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

June 25, 1987  
10 a.m.

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

June 24, 1987  
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9 a.m.

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Hoover State Office Bldg.  
Des Moines, Iowa

June 10, 1987  
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Des Moines, Iowa

June 22, 1987  
10 a.m.



## AGENCY IDENTIFICATION NUMBERS

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas".

Other agencies are included alphabetically in lowercase type at the left-hand margin, e.g., Beef Industry Council, Iowa [101].

Implementation of reorganization is continuing and the following list will be updated as changes occur:

### AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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**ARC 7657****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]****Notice Terminated**

Pursuant to the authority of Iowa Code sections 17A.3, 163.1, and 164.4, the Department of Agriculture and Land Stewardship hereby terminates Notice of Intended Action to amend subrule 30-17.5(2), paragraph "b," numbered paragraph "3." The proposed rule, published in the Iowa Administrative Bulletin April 22, 1987, as **ARC 7546**, is being terminated due to objections noted with the Department regarding an adverse economic impact on those affected. The emergency rule currently in effect, published in the Iowa Administrative Bulletin April 22, 1987, as **ARC 7545**, is being rescinded effective July 1, 1987.

This rule is intended to implement Iowa Code section 163.11.

**ARC 7647****CULTURAL AFFAIRS  
DEPARTMENT[221]****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 303.1A(1), the Department of Cultural Affairs proposes to adopt a new Chapter 1 entitled, "Organization and Operation," and reserve Chapters 2 to 5 for later adoption of Uniform Rules on Agency Procedure. These rules explain the functions of the Administrative Services section of the Department, the duties of the Cultural Affairs Advisory Council, the Director, and the Divisions of the Department.

The Department further proposes to renumber the existing 220—Chapter 1, "Iowa Community Cultural Grants Program," as Chapter 6, and reserve Chapters 7 to 9.

In addition, the Department proposes to rescind the existing rules of the Iowa Arts Council [100] as they appear in the Iowa Administrative Code and adopt for the Arts Division, 221—Chapter 10, "Description of Organization," 221—Chapter 11, "Policies and Procedures," and 221—Chapter 12, "Forms." Chapters 10 to 12 describe the various functions and programs of the division and outline the duties of the administrator and council. The rules also inform potential grant applicants of the regulations, deadlines, and forms involved in applying for a grant from the Arts Division.

Any interested person may make written suggestions or comments on the proposed rules prior to 4:30 p.m. on June 23, 1987. Written comments should be addressed to:

Mark A. Peitzman, Department of Cultural Affairs, Historical Building, Capitol Complex, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code sections 303.1A to 303.2A, 303.87, and 303.88.

ITEM 1. Renumber existing 221—Chapter 1, "Iowa Community Cultural Grants Program" as Chapter 6 and adopt a new Chapter 1 as follows:

**CHAPTER 1****ORGANIZATION AND OPERATION**

**221—1.1(303) Definitions.** The definitions of terms listed in Iowa Code section 17A.2 shall apply for these terms as they are used throughout this chapter. In addition, as used in this chapter:

"Arts division" means the arts division of the department of cultural affairs.

"Council" means the cultural affairs advisory council.

"Cultural affairs advisory council" means the nine-member advisory council as defined in subrule 4.1(1).

"Department" means the department of cultural affairs.

"Director" means the director of the department of cultural affairs.

"Historical division" means the historical division of the department of cultural affairs.

"Library division" means the library division of the department of cultural affairs.

"Public broadcasting division" means the public broadcasting division of the department of cultural affairs.

**221—1.2(303) Purpose.** The department of cultural affairs has primary responsibility for development of the state's interest in the areas of the arts, history, libraries, and other cultural matters. In fulfilling this responsibility, the department is advised and assisted by the cultural affairs advisory council, the state library commission, the state historical board of trustees, the Iowa arts council, the Terrace Hill commission, and the Iowa public broadcasting board. The department performs the functions enumerated in Iowa Code section 303.1.

**221—1.3(303) Administrative services section.** The administrative services section performs the functions enumerated in Iowa Code section 303.2(1).

**221—1.4(303) Director's duties.** The director performs duties as specified in Iowa Code section 303.1A except for those matters prescribed by Iowa Code sections 303.75 to 303.83.

**221—1.5(303) Organization and function of the council.** The cultural affairs advisory council consisting of nine citizens of Iowa was created and organized as provided in Iowa Code section 303.2A.

The mission of the council is to advise the director on how best to fulfill the department's purpose to educate and heighten the awareness and understanding of Iowans about the importance of cultural events and activities, and their role in fostering a better quality of life through a strengthened economy, more employment and increased tourism in Iowa.

**221—1.6(303) Divisions.**

**1.6(1) Arts division.** The arts division performs the duties enumerated in Iowa Code section 303.2(4) and may perform other functions assigned to it by law or rule.

**1.6(2) Historical division.** The historical division performs the duties enumerated in Iowa Code section 303.2(2)

## CULTURAL AFFAIRS DEPARTMENT[221] (cont'd)

and may perform other functions assigned to it by law or rule.

**1.6(3)** Library division. The library division performs the duties enumerated in Iowa Code section 303.2(3) and may perform other functions assigned to it by law or rule.

**1.6(4)** Public broadcasting division. The public broadcasting division performs duties enumerated in Iowa Code sections 303.75 to 303.83 and may perform other functions assigned to it by law or rule.

**221—1.7(303) Central offices and communications.** Correspondence and communications shall be directed as follows:

**1.7(1)** The department and its administrative services section: Department of Cultural Affairs, Historical Building, Capitol Complex, Des Moines, Iowa 50319, phone (515) 281-6258.

**1.7(2)** The arts division: Iowa Arts Council, Executive Hills, Capitol Complex, Des Moines, Iowa 50319, phone (515) 281-4451.

**1.7(3)** The historical division: State Historical Society of Iowa, Historical Building, Capitol Complex, Des Moines, Iowa 50319, phone (515) 281-3159.

**1.7(4)** The library division: State Library of Iowa, East 12th and Grand Avenue, Des Moines, Iowa 50319, phone (515) 281-4105.

**1.7(5)** The public broadcasting division: Iowa Public Television, 6450 Pioneer Parkway, Post Office Box 6450, Johnston, Iowa 50131, phone (515) 281-4500.

These rules are intended to implement Iowa Code sections 303.1 to 303.2A.

**ITEM 2.** Reserve chapters 2 to 5 for later adoption of Uniform Rules on Agency Procedure.

**ITEM 3.** Reserve chapters 7 to 9.

**ITEM 4.** Rescind existing rules for the Iowa arts council [100]—Chapters 1 to 3, and adopt Chapter 10, "Description of Organization"; Chapter 11, "Policies and Procedures"; Chapter 12, "Forms," within the arts division of cultural affairs department as follows:

## ARTS DIVISION

## CHAPTER 10

## DESCRIPTION OF ORGANIZATION

**221—10.1(303) Definitions.** The definitions of terms listed in Iowa Code section 17A.2 shall apply for these terms as they are used throughout this chapter. In addition, as used in this chapter:

"Administrator" means administrator of the arts division of the department of cultural affairs.

"Arts division" means the arts division of the department of cultural affairs.

"Council" means the Iowa arts council.

"Director" means director of the department of cultural affairs.

"Iowa arts council" means the 15-member advisory board of the arts division of the department of cultural affairs.

**221—10.2(303) Organization.** The Iowa arts council is a state advisory agency which consists of 15 citizens of Iowa which is organized as provided in Iowa Code section 303.86. Each member serves a 3-year term which begins on July 1. The governor designates a chairperson and vice chairperson from the members of the council. The council holds business meetings in the following months: Janu-

ary, March, April, June, August, September and November. These meetings are generally held on the third Friday of the month.

**10.2(1) Function.** The council was created by Iowa Code section 303.86. The mission of the council is to encourage active participation of the citizens of Iowa in aesthetic awareness and creative expression and to create a cultural climate in which the arts may flourish.

**10.2(2) Administrator.** The administrator of the arts division is appointed by the director of the department. The office of the administrator is located at Executive Hills East, 1223 E. Court Avenue, Des Moines, Iowa. The mailing address is Iowa State Arts Council, Executive Hills East, Des Moines, Iowa 50319.

**10.2(3) Duties of Iowa arts council and administrator.**

a. Iowa arts council performs the duties enumerated in Iowa Code section 303.87.

b. The administrator performs duties as specified in Iowa Code sections 303.1(6) and 303.88.

## CHAPTER 11

## POLICIES AND PROCEDURES

**221—11.1(303) Advisory committees.** Advisory committees may be designated by the director. The following policies apply:

**11.1(1)** Recommendations of panels of advisors on any aspect of administration or programs constitute advice and are not binding on the arts division. In the case of grants, final awarding authority rests with the director, after review by the Iowa arts council in a general business session.

**11.1(2)** Advisors are not restricted from submitting an application for arts division funds but shall refrain from any actions directly or indirectly capable of influencing the judgment of the Iowa arts council.

**11.1(3)** Council members are eligible for appointment to advisory panels immediately following the end of their terms on the council.

**11.1(4)** Advisors who violate state rules governing conflict of interest, by lobbying or advocating on behalf of any grant application in which they have an affiliated interest, by failing to reveal their association in an application, or by failing to absent themselves from all discussion and voting on such an application, shall be recommended for dismissal to the appointing authority. Affiliated interest shall be interpreted to include employee, board or trustee relationship with the applicant, and shall not be extended to include the spouse of the participant.

**11.1(5)** Advisors serve for periods of time established by the director or designee and may be removed from their advisory role at any time.

**11.1(6)** The administrator of the arts division is authorized to reimburse advisors for travel and living expenses directly related to their functions.

**221—11.2(303) Restraints on administrator.** The administrator shall avoid any actions which may interfere with the freedom of artistic expression or with the established or contemplated programs in any local community.

**221—11.3(303) Programs.** The administrator administers grants-in-aid programs, artists-in-schools/communities, solo artists, touring arts team, arts for special constituencies, technical assistance, touring exhibitions, art in state buildings programs, faces of Iowa, and other formally adopted programs as may be identified.

CULTURAL AFFAIRS DEPARTMENT[221] (*cont'd*)

**11.3(1)** Program eligibility requirements. The following requirements shall be met to participate in any Iowa arts council program.

a. The arts division shall provide direct financial support only to federally tax-exempt organizations under the Iowa nonprofit corporations Act.

b. Organizations that do not have nonprofit, tax-exempt status, and which are not profit-making corporations, may apply to the council through a fiscal agent. The fiscal agent, a nonprofit, tax-exempt organization, shall sign the application form and, if a grant is awarded, shall sign the contract. The fiscal agent is legally responsible for the completion of the project and for the management of the grant funds. It is recommended that a fiscal agent enter into a formal agreement with the group implementing the project, outlining the working relationship between the two parties.

c. Recipients shall agree to include in all promotions, publicity, advertising, and in any printed materials pertaining to the program, the following credit line: This program is supported in part by a grant from the Iowa Arts Council and the National Endowment for the Arts.

d. Programs supported in any way by arts division funds shall be open to the public. All reports from previous direct grants and programs shall be correctly submitted and filed in the arts division office before financial assistance funds will be released.

e. Unless otherwise contracted for in writing prior to surrender, any and all patents, copyrights, or other legal interests of relevance to projects supported by the council, shall be the sole and exclusive property of the recipient or the recipient's designee.

**11.3(2)** Grants-in-aid eligibility and restrictions. The following eligibility requirements shall be met in order to receive funds under any grants-in-aid program. Certain restrictions apply to the use of funds.

a. Eligibility requirements:

(1) A copy of the applicant's Internal Revenue Service tax determination letter shall be filed with the arts division prior to the review of any grant application.

(2) Applicant organizations shall have been in active service to the Iowa public for at least one year prior to the date of the application. This requirement may be waived by the administrator for minigrants.

(3) Individuals applying for and receiving grant funds from the general grants-in-aid program shall be legal residents of Iowa.

(4) The arts division maintains a general policy to provide up to 50 percent funding of any project except in categories designated as nonmatching. The applicant shall demonstrate the ability to provide at least 50 percent of the total project cost from other funding sources in categories requiring cash match.

(5) At the sole discretion of the arts division, legal residency will be based on evidence presented by the applicant from the following: valid Iowa voter's registration, proof of Iowa income tax payment, or valid Iowa driver's license.

(6) Applicant organizations shall be incorporated under the Iowa nonprofit corporation Act.

b. Restrictions:

(1) The arts division will not consider applications for capital improvements or construction, purchase of equipment, funding a previous year's deficit, requests to travel out of state (except where special guidelines are in effect), tuition assistance for academic study, reception expenses, projects excluding the general public, or projects which

occur prior to the grant review process. Organizations having negotiated indirect costs with the federal government shall neither list indirect costs as a project expense, nor use them as cash match on an application. Applications from colleges and universities requesting assistance for events which take place on campus will be considered low priorities for funding unless the projects feature significant community participation. The arts division reserves the right to question financial need of applicants which ignore the earned-income potential of ticket sales or participation fees.

(2) The arts division generally will not fund conservation of art works or projects which take place outside of Iowa.

(3) Recipients of grants shall agree that no moneys shall be used to influence federal legislation or appropriation by the United States Congress.

(4) No portion of arts division funds shall be used to meet the recipient's obligation to match other department of cultural affairs grants or programs.

(5) The arts division will not permit grantees to become dependent on it for continued funding of recurring projects. The projects may be considered a low priority after five years of arts division support unless circumstances encourage continued financial assistance.

(6) Applications will not be considered unless submitted on proper forms with support materials as requested. The standard application form shall be used except where noted under program classifications. Support materials are noted in application instructions and the grants-in-aid brochure.

**11.3(3)** General grants. The project year will run from July 1 to June 30. The general grants program awards matching grants to individuals and organizations for support of arts projects in performing, visual, literary, craft and folk arts. Programs and projects, salary support for full- or part-time employment with arts agencies, touring performances, and touring visual arts exhibitions and creative artists grants are included in this category.

a. Programs and projects. The arts division awards matching grants to organizations and individuals for programs and projects which are developed by and are in accordance with the purpose and goals of the applicant and which meet all eligibility requirements stated herein.

(1) Applicants requesting funds for artists' residencies, services, concerts, or exhibitions shall include artists' résumés with samples of work for review.

(2) In cases where specific artists have not yet been determined, applicants shall provide a description of the proposed selection process.

b. Salary support. Arts organizations having completed two years of service by the time of application may apply for full- or part-time salary support for their first paid administrative position. This category is based on a three-year decreasing scale by which the arts organization gradually takes over the entire salary of the position. Requests may be made for three consecutive years; however, renewal is subject to yearly application and review. Salary support dollar limitations are published annually in the grants-in-aid brochure. Applications shall include the following:

(1) Future funding sources demonstrating the applicant's ability to maintain the total salary in the fourth year and thereafter.

(2) Programs and services planned for this three-year period.

## CULTURAL AFFAIRS DEPARTMENT[221] (cont'd)

(3) A job description and résumé for the employee for whom salary support is requested.

(4) Evaluation of personnel when requesting second- and third-year support.

c. Touring performances. The arts division provides touring grants to performers and performing groups to make talent within the state available to a greater portion of the interested public.

(1) Any individual or organization receiving a grant for touring performances shall tour sites outside the metropolitan area in which the group or individual is based or resides.

(2) Up to 50 percent of the professional fee may be requested from the arts division with matching funds (cash) from the community sponsors.

(3) First-time applicants requesting performing assistance shall arrange to be heard or seen in performance or audition by the arts division or its duly appointed representative by January 1 of the year of application to the arts division.

(4) Repeat applicants will be reviewed periodically, especially when changes in personnel have occurred since the original audition. The arts division shall be notified when personnel changes do occur so that auditions can be arranged before the next application period.

(5) Artists shall submit résumés with their applications.

(6) Grantees shall schedule and coordinate tours of performances.

d. Touring exhibitions. The arts division provides financial assistance to tour high-quality visual arts exhibitions throughout the state.

(1) Funding is available for preparing exhibits of completed art works. Allowable expenses include crating and framing materials, insurance, supplies and materials, and catalogs.

(2) Visual artists applying for funding to prepare completed works shall submit required materials as stated in the current grants-in-aid brochure.

(3) Nonmatching grants are available to individual artists for the preparation of touring exhibitions. Applicants should ask sponsors to pay for shipping costs.

(4) Touring exhibitions shall be scheduled by the artists. (Performances and exhibitions are publicized in arts division publications.)

e. Creative artists grants. The arts division conducts a program for professional creative writers (poets, playwrights, and fiction authors), musical composers or arrangers, dance choreographers, and visual artists. Creative artists may apply for nonmatching grants to prepare works-in-progress for circulation to potential publishers, agents, sponsors or performers. Eligible projects include: hiring musicians to produce a demonstration tape of a new composition, studio recording fees, hiring a music copyist to prepare a score of parts, hiring dancers to produce a video tape of a new choreography, typist fees to finalize the manuscript of a novel, hiring a photographer to document work of a visual artist and prepare slides for portfolios to send to potential sales galleries. Creative artists grants are not fellowships and are not intended to fund the expenses of an artist while a new work is being produced.

11.3(4) General grant application procedures. The project year runs from July 1 through June 30. Applications shall be made on an official arts division grant application Form G-1, available at the arts division office.

Applications shall be postmarked or received, without exception, by January 10 to be eligible for consideration that year. If any application deadline falls on the weekend or on a state holiday, the following public business day becomes the deadline date.

11.3(5) General grant award process. General grant applications are reviewed by the staff and an administrator, by special panels and committee, by the Iowa arts council, and by the director, who then makes the award.

a. Staff processing. Applications are first processed by the staff to determine eligibility and make panel or committee assignments. The applicant is notified that the application has been received and is being processed.

b. Review by panels and committee. The grant applications are reviewed by the appropriate panel or committee. Panel and committee members are Iowans selected for their expertise by the director or designee. They serve a one-year term, running from July 1 through June 30. Panels and committee meet within 60 days of the grant application deadline to review applications and make recommendations to the Iowa arts council on which grant applications in their respective areas should be funded.

(1) Panels. There are four panels: theatre/dance, multidiscipline, music, visual arts. Each panel consists of eleven members, nine chosen at large and two Iowa arts council members. One Iowa arts council member chairs the panel; the other is a voting member.

(2) Committee. There is one committee, literature. The literature committee consists of six members, five chosen at large and one Iowa arts council member. The Iowa arts council member chairs the committee.

c. Iowa arts council review. The Iowa arts council meets within 90 days of the grant application deadline and after the panel and committee meetings to review the grant applications. The council shall consider the recommendations of the panels and committee, but it is not bound by them. The Iowa arts council will then make its recommendations to the director of the department of cultural affairs or the director's designee.

d. Review and awards. The director or designee shall, within 90 days of the grant application deadline, review the applications and the recommendations of the Iowa arts council and officially award the grant moneys. Final authority to award arts division grants is retained by the director.

e. Notification. All applicants shall be officially notified in writing of the results of their requests 90 days after program deadlines. Grant moneys may be requested within the project year after the grantee has returned arts division contracts properly signed and notarized.

f. Revised budgets. Grantees receiving less than the requested amount are required to file revised budget Form G-2 prior to actual grant award and the issuance of a contract.

g. Contract. Recipients of grant awards are required to enter into a formal contract with the arts division, using contract Form G-3. Recipients shall also fill out cash request Form G-4. Grant moneys will be issued within the project year after the grantee has returned the arts division contract properly signed and notarized, and the cash request form.

h. Reporting. All grantees shall submit financial Form G-5 and narrative report Form G-6 (and photographs, if available) which indicate the project was completed. Touring grantees are required to have each sponsor fill out either a performance evaluation Form G-7 or

CULTURAL AFFAIRS DEPARTMENT[221] (*cont'd*)

an exhibition evaluation Form G-12. These evaluations shall be submitted to the arts division. These reports are due 30 days after the project completion date. Financial records, subject to examination and audit, shall be kept on all grant funds. These records shall be kept for three years after completion of the project and shall be available to the arts division or its duly authorized representative.

**11.3(6)** Minigrants and training grants. Applications may be submitted throughout the year for the minigrant program. Groups may apply for matching funds for projects unforeseen or undeveloped at the time of the annual general grants program and shall explain why the application could not have been made in time for the general grants program. The maximum amount awarded in this program is \$500.

a. To apply for a minigrant, the applicant shall compose a one- to three-page letter containing the following information:

- (1) Applicant's name,
- (2) Name of project director,
- (3) Mailing address,
- (4) Phone number of project director (office and home),
- (5) Project title,
- (6) Project date,
- (7) Project description,
- (8) Project budget (income and expenses by source),
- (9) Amount requested from the arts division (not to exceed \$500),
- (10) Employer identification number, and
- (11) Rationale for requesting emergency assistance.

b. Minigrants are reviewed monthly by the staff. Awards are made within the first seven working days of the month following receipt of the application.

c. Award of minigrant funds is made by the administrator.

d. Training grants. Nonmatching grants will be awarded on a monthly basis to arts administrators who wish to strengthen their managerial skills by attending seminars, institutes, workshops, conferences, or other short-term educational programs. Funds may be used for travel, registration fees, or other costs necessary to attend. The application procedure will be the same as that described under the minigrant program. Organizations may request only one training grant per conference.

**11.3(7)** Community arts development. The following grant category was designed specifically for community arts councils (local arts agencies working across discipline lines to produce or sponsor arts activities or to serve a coordinating role with the arts agencies existing within the community).

a. Community partnership incentive grants. The community partnership incentive program is a direct-grants program which provides assistance to community arts councils working in partnership with local government to provide cultural programs, projects and services.

(1) Grants shall be matched dollar-for-dollar in cash by funds allocated directly by local government. (First-year applicants may request up to \$1,000, second-year applicants may request up to \$2,000, and third-year applicants may request up to \$3,000. Three years of funding is the limit for any applicant, and the applicant is eligible to apply for three successful applications over a period of five years. Only one successful community partnership incentive application will be accepted per year from any one council).

(2) Community arts councils which have been in existence one full year and are nonprofit and federally tax-exempt corporations are eligible to apply. Municipal or county governments may apply only in the event local arts councils have not yet attained tax-exempt status.

(3) The application deadline is January 10. Application shall be made on grant application Form G-1. An affidavit from the local government, signed by a qualified government official, stating that the local government agrees to provide matching funds shall be attached to the application.

(4) The awards process is the same as stated in 11.3(5)"c" and "d."

(5) The notification and reporting procedures are the same as stated in 11.3(5)"e" and "f."

b. Technical assistance grants. Technical assistance grants are available throughout the year to assist in the professional development of arts organizations in Iowa. The program enables an arts council to engage professional consultants for a short period of time to solve administrative, technical, or artistic problems.

(1) Applications shall be accompanied by a résumé of the consultant to be hired. The arts division will supply assistance in locating a qualified consultant, if necessary. Funds up to \$500 may be requested and shall be matched by a combination of cash, services, facilities or volunteer time. Only one grant per fiscal year will be awarded to an applicant in this program.

(2) Applicants shall submit a one- to three-page letter including the eleven points listed in the minigrant program description, 11.3(6)"a."

(3) Application procedures are the same as stated in subrule 11.3(6)"b."

**11.3(8)** Operational support grants (OSG) program. The arts division awards a limited number of grants for unspecified operational support to major producing organizations providing cultural and managerial excellence on a continuing basis.

a. Operational support grants eligibility. OSGs are intended for large-budgeted performing and visual arts organizations incorporated in Iowa and holding federal tax-exempt status. The program is limited to established annual cash operating budgets of \$100,000 for performing arts organizations and \$200,000 for visual arts organizations; dance applicants are further limited to companies with an established touring season. Applicants shall be single-discipline organizations whereby exhibitions are organized, concerts are performed, or productions are mounted by the applicant. Organizations whose primary role is sponsorship of an artistic product produced elsewhere are not eligible for operational support. Applicants shall have at least one professional staff member, operate year-round, have organized plans for artistic and economic stability, and cannot be connected to any educational institutions.

b. Appeals for permission to apply. Applicants whose actual annual cash operating budgets fall within a ten percent variance of the established levels (\$90,000 for performing arts organizations and \$180,000 for visual arts organizations) may appeal in writing to the director or designee for permission to apply. Appeals must be received no less than 14 days prior to the established deadline for application and shall establish a compelling reason for the organization to be allowed to apply. Applications filed prior to a ruling by the director or designee will be returned unprocessed to the ineligible applicant. Suc-



## CULTURAL AFFAIRS DEPARTMENT[221] (cont'd)

cessful appeals cover one period of application and shall be renewed annually.

c. OSG restrictions. Operational support grants are unspecified grants, but also carry restrictions. The restrictions are the same as stated in 11.3(2)"b"(1) to (4).

d. Matching requirements. Matching requirements are met automatically when an applicant's operating budget contains nonfederal funds in excess of the grant award.

e. Application process. The project year runs from July 1 through June 30. Applications shall be submitted in the required format with support materials as requested. Applicants do not indicate a dollar amount to their request; grant award amounts will be determined by the arts division. Applications shall be made on an official arts division grant application Form G-9 (parts A and B) available at the arts division office. Applications shall be postmarked or received in the arts division office, without exception, by May 1. If any application deadline falls on a weekend or on a state holiday, the following public business day becomes the deadline date.

f. Review process. Applications will be reviewed first by an operational support grant advisory panel appointed by the arts division administrator, then will be reviewed by the Iowa arts council, with grants subsequently awarded by the director of the department of cultural affairs or designee. The panel will meet within 60 days of the grant application deadline.

g. Notification. The director or designee will, within 90 days of the grant application deadline, review the applications and the recommendations of the arts division and officially award the grant moneys. Grant moneys may be requested within the project year, after the grantee has returned arts division contracts properly signed and notarized. Grant funds will not be released until all reports from previous grants are correctly submitted and filed in the arts division office.

h. Revised budgets. Grantees whose eligibility is contingent upon pending appropriations, contributions, revenues, or grants from other sources, may be required to file a revised budget on Form G-10 prior to actual grant award and the issuance of a contract.

i. Contract and cash request. Recipients of grant awards are required to enter into a formal contract with the arts division, using contract Form G-3. Recipients must also fill out cash request Form G-4. Grant moneys will be issued within the project year after the grantee has returned the arts division contract properly signed and notarized, and the cash request form.

j. Reporting. All grantees shall submit final report Form G-11 which indicates the project was completed. The report form is due 30 days after the project completion date. Financial records, subject to examination and audit, shall be kept on all grant funds. These records shall be kept for three years after completion of the project and shall be available to the arts division or its duly authorized representative.

k. Appeals. A formal appeals process is available only to applicants whose grants were declined on procedural impropriety or error as evidenced by one or more of the following reasons:

(1) Application declined on the basis of review criteria other than those appearing in the relevant guidelines,

(2) Application declined based on influence on the advisory panel or council member(s) failing to disclose conflicts of interest, and

(3) Application declined based on highly erroneous information provided by staff, panelists, or council members at the time of review despite the fact that the applicant provided the council staff with accurate and complete information on regulation forms as part of the standard application process. Incomplete applications are denied any appeals process. Substantially revised applications may be recognized as new applications or may be declared ineligible if constraints of time preclude accurate information being made available to panelists.

A successful appeal will be determined at the discretion of the director or designee, who may award full or partial funding of the aggrieved application at the next earliest occasion.

**11.3(9) Artists-in-schools/communities (AIS/C) program.** This program places professional performing/visual/literary artists, folk artists and crafts people in learning centers for periods from five days to nine months.

a. Sponsor guidelines. Sponsors shall meet the following guidelines to be eligible for an AIS/C residency.

(1) Official sponsors shall be nonprofit, tax-exempt organizations; however, local public, private and commercial cosponsors may contribute funds, supplies, facilities, and services to AIS/C residencies.

(2) Local sponsor(s), artist(s), and the arts division shall join in a tripartite contract agreement for each program.

(3) Local sponsors shall match the total cost of the AIS/C residency with matching cash, services, and cash equivalents.

(4) Programs are usually at least five days and may be up to nine months. No more than four and one-half hours per day may be scheduled without the artist's expressed donation of time over that sanctioned by the AIS/C contract.

(5) Sponsors shall complete an evaluation-budget form for each program which shall be received by the arts division within 30 days after completion of the program.

b. Sponsors participation. To participate in the AIS/C program sponsors shall adhere to the following:

(1) Apply for AIS/C funding. Applications for the AIS/C program are accepted twice a year. To apply for AIS/C funding for the period from July 1 to December 31, applicants shall submit an application no later than April 15 preceding the school year for which the residency is requested. To apply for funding from January 1 to June 30, an applicant shall submit an application no later than November 1 preceding the school year for which a residency is requested. Applications are reviewed on a competitive basis by an AIS/C advisory panel.

(2) Choose an artist from the artists approved by the arts division. (Detailed information on each artist is available for the sponsor.)

(3) Sign and return contract Form P-2.

(4) Conduct residency with the artist.

(5) Fill out and return AIS/C evaluation Form P-3.

(6) Fill out and return final financial report Form P-36.

c. Artist application procedures. Artists interested in participating in AIS/C shall submit the following:

(1) A completed artist application form.

(2) A résumé which includes biographic information, education or learning experiences, work, teaching experiences, special workshops, awards, publication and participation in shows, galleries, performances or readings.



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(3) A paragraph of philosophy about personal art form, relating it to schools and communities.

(4) Samples of artist's own work in the form of slides, copies of writing, tapes, photographs, or films.

(5) Three professional references with complete addresses and telephone numbers.

d. Artist evaluation. The artist's work will be evaluated by a panel chosen by the arts division for expertise in the field.

e. Artist notification. The artists will be notified in writing of acceptance in the AIS/C program after final panel recommendations are made to the administrator.

f. Out-of-state artist participation policy. In the employment of artists for arts division programs, preference in all disciplines and programs is given to Iowa artists. When artists from outside Iowa are employed, specific reasons must be sufficient to balance the loss of support to Iowa artists. Reasons may include:

(1) Lack of qualified, available artists in a specific discipline, or lack of the particular combination of skills required for a particular residency.

(2) Need to establish a model for which no Iowa artists seem appropriate.

(3) Benefit of bringing in an outside expert for the stimulation of Iowa artists as well as program participants and of involving this expert in an event that ultimately stimulates interest, support, and funding from increased activity by local artists.

(4) Response to requests by local sponsors for artists from outside when the requests are supported by strong local support and objectives consistent with arts division philosophy.

**11.3(10) Solo artists program.** Solo artists make it possible for professional artists to present programs of up to one day in length to communities, schools, arts organizations, clubs and businesses. Performing, visual, and literary artists, folk artists, and craft people are available.

a. Sponsor guidelines. Sponsors shall abide by the following guidelines:

(1) Any nonprofit, tax-exempt organization may apply for a solo artists program; however, funding preference will be given organizations that might not otherwise locate funds to cover expenses of the program. The local sponsor pays one-half of the annually published fee and the arts division pays the balance.

(2) A maximum of two programs may be allowed per local sponsor during one state fiscal year.

(3) Artists shall be approved by the arts division and shall be selected from outside the local sponsor's community.

(4) Programs shall be at least two hours in length and shall not exceed four and one-half hours unless the artist volunteers additional time.

(5) Artists available through this program are Iowa residents. If an artist is not available from within Iowa, the local sponsor may select an out-of-state artist. The arts division funding assistance will remain the same, with all extra costs assumed by the sponsor. A professional résumé of the out-of-state artist shall be submitted with the request for funding assistance.

(6) Applications from sponsors for programs should be received by the arts division two weeks or more prior to the program date, and planning at least two months in advance is advised. The arts division will not fund solo artists programs "after the fact."

(7) Sponsors shall submit an evaluation of their solo artists program 30 days following the event and will not qualify for further funding if evaluations are outstanding.

b. Sponsor procedures. To participate the sponsor shall do the following:

(1) Select a discipline and request biographical information on artists available in that discipline from the arts division.

(2) Select the artist from the arts division listing or present data to the arts division regarding the desired artist.

(3) Contact the artist directly to discuss availability, program content, and all other arrangements.

(4) Complete and return sponsor application Form P-7 to the arts division. (Contracts for the sponsoring group and the artist will be prepared and funds reserved for each program only upon receipt of this form.)

(5) Sign and return contract Form P-8 within seven days of the date of receipt.

(6) Pay the artist one-half of the currently published fee on-site immediately after completion of the program.

(7) Complete program evaluation Form P-9 and return it to the arts division within 30 days.

c. Artists application and participation procedures. Follow the procedures stated in 11.3(9)"c" to "e."

**11.3(11) Touring arts team (TAT).** The touring arts team has five to seven professional artists who do one and one-half day residencies in towns with populations of 1500 or less. Residency dates run from mid-June to July 31. Each stop allows for citizens of all ages to participate in varied arts activities. Classes take place during the day; informal performances by artists and local participants take place during the evenings.

a. Community guidelines. The community guarantees to meet the following guidelines:

(1) Provide a local coordinator and committee to manage local details of the TAT residency.

(2) Ensure general public awareness of the purposes, nature, and schedule of the TAT.

(3) Provide necessary spaces, utilities, and services.

(4) Protect the personnel and property of the TAT.

(5) Provide accommodations and meals for TAT members.

(6) Pay a materials and equipment fee in cash directly to the arts council, such fees to be set annually and differentiated between first-time or repeating sponsors.

b. Community application procedures. To apply for the TAT, communities must do the following:

(1) Request the TAT packet from the arts division.

(2) Complete an application Form P-11, signed by a municipal official, a school administrator and a local citizen coordinator, and return it to the arts division by March 31 preceding the program date.

c. Sponsor reporting. The local coordinator shall fill out and return report Form P-13 within 30 days of the TAT residency.

d. Artist application procedures. Preference will be given to artists in the AIS/C artist roster. Artists who want to participate in the TAT shall do the following:

(1) Complete and return a TAT application form.

(2) Submit a plan for short, intensive classes and workshops for a varied age group.

e. Artists notification. All artists will be officially notified of the results of their applications within 60 days of the application deadline. Participating artists will be

## CULTURAL AFFAIRS DEPARTMENT[221] (cont'd)

sent contract Form P-15, which shall be signed and returned to the arts division.

f. Artist payment. Artists will be paid the currently published fee by the arts division.

**11.3(12)** Arts for special constituencies. Programs for the physically, mentally, and emotionally handicapped, programs for the elderly; and programs for the institutionalized may be individually designed by sponsors to fulfill the needs of special groups. Special constituencies are defined as groups and individuals removed from society's mainstream by virtue of physical or mental handicaps, geographic or socioeconomic conditions, detention, or the process of aging.

a. Program guidelines. The mission of the arts division's special constituents program is to employ artists to initiate, guide, and document quality programs of projects in special settings. Quality is defined as seriousness of intention, validity of purpose, and potential for creative development of the individual involved. Programs of projects are individually tailored to meet the needs or concerns of the applicant. Usually the applicant will provide half of the program or project costs with cash or in-kind services. Groups and individuals interested in special constituents programs should contact the arts division for application forms.

b. Procedures for sponsors. The following procedures apply to sponsors involved with programs for special constituents.

(1) The applicant shall submit for arts division approval the résumé of any artist or artists proposed for residency.

(2) The applicant shall submit completed application Form P-26. The applicant will be notified in writing within 30 days of receipt of the application by the arts division of the status of the application.

(3) A successful application will receive contract Form P-16A or P-16B. The contract shall be signed and returned within seven days of the date of receipt.

(4) Sponsors shall complete and return programs final report Form P-36 within 30 days of the completion of the final project as granted.

**11.3(13)** Iowa arts council literary awards. Literary awards are made annually to recognize the talented writers within the state of Iowa.

a. Categories of awards. Literary awards will be made in two categories which are as follows:

(1) Poetry. Entries must be a single poem or group of poems with a minimum of 50 lines and a maximum of 150 lines. None of the poems may have been previously published.

(2) Short fiction. Entries shall be a single short story, group of short stories, or excerpt from a novel with a minimum of 10 pages and a maximum of 50 pages in length. None of the fiction may have been previously published.

b. Awards. There will be two cash awards given in each category. First prize is a \$1,000 cash award and second prize is a \$500 cash award. In the case that no work is deemed worthy, no award will be given.

c. Eligibility. The contest is open to Iowa writers of all ages.

d. Requirements for making entries. The following requirements are made for all entries to the literary awards:

(1) All entries shall be postmarked or hand delivered the last state working day in July. Mailed manuscripts

shall be sent to: Literary Awards, Iowa Arts Council, Executive Hills East, Des Moines, Iowa 50319. Hand delivered entries shall be taken to the Arts Division Offices, 1223 East Court Avenue, Des Moines; office hours correspond with the usual state office hours.

(2) Only one entry may be submitted in each category by each contestant.

(3) Each manuscript submitted shall be accompanied by a letter from the author containing the following: legal name, address, and day telephone number of the author; title of manuscript and category in which it is entered; a statement that the manuscript is original; and a statement that the manuscript has not been published.

(4) The name of the author shall not appear on the manuscript.

(5) The arts division will not be responsible for lost or damaged manuscripts. The author should retain a copy of the work submitted to ensure against loss.

(6) Manuscripts shall be typewritten in black ink and double-spaced on 8 1/2-by 11-inch paper. Illegible manuscripts will be refused eligibility.

(7) The arts division has sole and final authority in making awards.

(8) Authors of winning entries retain all copyright and related rights to their material. The arts division reserves the right to limited, noncommercial use of winning entries for promotional purposes only.

**11.3(14)** Faces of Iowa. Faces of Iowa is an all-Iowa student photography exhibition.

a. Program guidelines and description. The exhibition is open to students in public and private schools, grades 6 through 12. Students need not enter through their schools, but administrators and teachers are encouraged to assist in the project. The purpose of the exhibition is to capture Iowa's faces, places, landscapes, building and terrain; to stimulate and reward quality in student photography; and to emphasize the power of visual communication.

b. Official rules and guidelines for students are as follows:

(1) Entries shall be black and white photographs conforming to the following photographic dimensions: 4 inches by 5 inches, 5 inches by 7 inches, 8 inches by 10 inches, or 11 inches by 14 inches. Each photograph shall be mounted on 11-inch by 14-inch black matboard for durability.

(2) The maximum number of entries per student is five. Each entry shall be accompanied by an official entry Form P-17. The entry form gives permission for photographs to be published in publications of the arts division or another publication so designated and displayed as part of a touring exhibition should they be selected by the judges.

(3) Students or schools shall bear the mailing expenses incurred in submitting entries. Entries will be returned to students only if accompanied by stamped, self-addressed envelopes.

(4) Entries will be judged on the basis of impact, imagination and unity, composition, balance, and contrast, camera techniques, and darkroom skills.

(5) Photographs and entry forms shall be postmarked or hand delivered by the annual deadline of May 15.

**11.3(15)** Touring exhibitions. The arts division supports tours of special art exhibitions to communities throughout Iowa. Descriptions, requirements and scheduling procedures of available exhibitions are published

## CULTURAL AFFAIRS DEPARTMENT[221] (cont'd)

annually in the touring programs brochure. Exhibitions available after publication of the brochure are announced in Iowa Arts News.

a. Cost to the sponsor. Exhibit fees and estimated shipping costs are published in the touring brochure. Occasionally exhibitions require additional fees or arrangements after publication of the touring brochure. The arts division coordinator or the organizer will inform the sponsor of any unpublished requirements.

b. Application to participate. Nonprofit, tax-exempt organizations may sponsor a touring exhibit by filling out and returning application Form P-31 printed in the back of the touring brochure. Applications are processed in order of receipt. Applications are accepted at any time but should be received at least one month in advance of the requested exhibition date.

c. Requirements. Sponsors shall agree to the following conditions:

(1) Exhibit installation. The exhibition shall be shown in a dignified and suitable manner and, unless otherwise specifically agreed, shall be installed in the location named in the contract. All exhibit spaces shall be easily accessible to the general public (hallways, work spaces or rooms not easily accessible to the general public are not considered proper areas for arts division exhibitions).

(2) Admittance to exhibit. No charge for admission may be levied.

(3) Insurance. Generally, insurance for the exhibition is carried by the arts division or the organizer. All damages, whether in transit or on the borrower's premises, and regardless of responsible party, shall be reported to the arts division immediately. Exhibitors will be held responsible for items lost or damaged through their carelessness. Repair of all minor damage is to be paid by the exhibitor, after receiving approval from the arts division for the repairs.

(4) Handling. All packing and unpacking instructions shall be followed explicitly. Exhibitions may be installed only in buildings which have adequate security and adequate fire protection. Periodic security inspections must be made during the hours the exhibition is open to the public.

(5) Shipping. The sponsor is required to ship the exhibit within three days after the closing date to ensure meeting exhibit schedules. The sponsor is required to ship or deliver the exhibit, prepaid to the next site. Sponsors are to contact the arts division for shipping addresses.

(6) Cancellation. Notice of cancellation shall be given to the arts division visual arts coordinator at least three months before the scheduled opening date.

d. Contract. Contract Form P-32 should be signed by the sponsor's authorizing official and returned to the arts division within seven days of the date of receipt.

e. Reporting. Sponsors are required to complete and return the following report forms:

(1) Form P-33 as soon as the exhibit is uncrated and its contents are inspected.

(2) Form P-36, final financial report, within 30 days after the end of the exhibit.

11.3(16) Art in state buildings (AiSB). Iowa reserves one-half of one percent of the cost of state construction projects for the acquisition of fine art in state buildings. The art in state buildings advisory committee, an 11-member committee appointed by the director of the department of cultural affairs or designee, advises the arts division and other state agencies on the overall operation of the AiSB program. The committee meets at the

discretion of the director or designee to review the program.

a. Eligibility. Visual artists, 18 years of age or older, are eligible for the AiSB program. Initial preference is given to living or deceased Iowa artists (artists' agents or representatives, art dealers, the heirs of artists and art collectors). Those individuals ineligible are the project architect, employees of the architect, or employees of the architect's firm or consulting firms, building art selection committee, art in state buildings advisory committee, the arts division staff, and others excluded by policies or state law.

b. Announcement of projects. Art purchase projects are publicized in Iowa Arts News, in mailings to artists, in the artist/slide registry, and in news releases through the media. Project information is available by contacting the arts division visual arts coordinator.

c. Artist/slide registry. The registry is designed to facilitate application to AiSB projects. The artist/slide registry is available for viewing by making prior arrangements with the arts division visual arts coordinator. Artists wishing to be included in the registry should do the following:

(1) Fill out and return application Form P-35.

(2) Submit five 35mm slides characteristic of recent work. Examples may or may not be available for purchase.

(3) Mark slides with the artist's name and the title of the art work. A small dot shall be placed in the lower left-hand corner of the slide.

d. Building art selection committee. The director or designee and the state agency appoint a building art selection committee for each building project to recommend the type of purchase program appropriate for the building and budget, method of selecting the artist or art work, placement of art work in the building, and selection of art work to purchase or selection of the artist for commission. The committee acts only as an advisor with final decisions made by the state agency and the director or designee. Members of the committee will be determined by the director or designee and the principal user.

e. Selection criteria. The following selection criteria are used when selecting the artist and work for state buildings:

(1) Quality of art work. Is the art work original and of high quality?

(2) Media. Does the art work meet media requirements, as defined in the project guidelines?

(3) Style and nature of art work. Is the art work appropriate for the site and a public building?

(4) Permanence of art work. Are the structure and surface of the art work sound, will the art work withstand weathering and avoid excessive maintenance or repair costs?

(5) Management capabilities. Will the project be completed successfully within the time frame and budget?

(6) Cost. Is the cost reasonable?

(7) Artist background. What are the artist's qualifications?

(8) Iowa artist. Preference is given to Iowa artists.

f. Purchase agreements. The state of Iowa will enter into formal purchase agreements with artists for purchasing existing art work or commission contracts for commissioned art work.

11.3(17) Outstanding achievement awards. Achievement awards are made for significant achievement and contributions to the arts during a previous fiscal year period. Iowa individuals, organizations, and businesses

## CULTURAL AFFAIRS DEPARTMENT[221] (cont'd)

are eligible to participate in this program designed to honor those who work hard to make the arts a vital force in the lives of Iowans.

a. Categories. There are two categories for nominations for outstanding achievement awards. The nominator shall specify only one category for each nomination. Categories are:

(1) Outstanding achievement as an individual or organization. Four awards will be presented in this category.

(2) Outstanding business or corporate support for the arts. One award will be presented in this category.

b. Eligibility. Any person who resided in Iowa during the award time period is eligible to be nominated or to act as a nominator for the arts division outstanding achievement awards. Nominees may be individuals, organizations, businesses or corporations which have made significant achievements to the arts on a state, regional, national or international level during the fiscal year beginning July 1 and ending June 30. No arts division member, staff member, or member of their immediate family is eligible for nomination.

c. Nomination procedure. Nominations shall be made on an official arts division Outstanding Achievement Award Nomination Form A-1. Only one nomination may be made per form. Additional forms are available from the arts division.

d. Timeline. The achievement period will correspond with the state of Iowa's previous fiscal year. The nomination deadline will be the third Monday in July, followed by advisory panel review, and announcement and presentation of awards.

**11.3(18) Folk arts apprenticeships program.** The folk arts apprenticeships program identifies, documents, honors and perpetuates the diverse ethnic, religious, occupational, local and familial folk traditions of Iowa. The program offers apprenticeships to artists for individual, face-to-face instruction from a recognized master folk artist.

a. Folk arts defined. Folk arts are defined as those traditional artistic practices which have a community or family base, express that community's aesthetic values, have endured through several generations, and were learned informally through imitation or word-of-mouth. The folk arts include, but are not limited to, such areas as traditional song, music, dance, storytelling, drama, architecture, festivals, and crafts.

b. Purposes of apprenticeships. Apprenticeships offer accomplished artists an opportunity for individual, face-to-face instruction from a recognized master folk artist. Apprentices shall already have expertise and ability in the traditional art form they wish to study and master artists shall be among the finest practitioners of their traditional art forms.

c. Eligibility. Apprenticeships are open to persons 18 years of age and older who are legal residents of Iowa and who commit to the requirements of the program. Apprenticeships are nonmatching grants. To be eligible, the projects shall request grant funds to be used for: fees for the master artist; travel and supplies needed for the apprenticeship.

d. Application procedures. Applicant artists seeking to apply for an apprenticeship shall follow the following procedures:

(1) Fill out application Form P-18, signed by the applicant and the master artist.

(2) Describe a budget on application Form P-18.

(3) Design a course of study for individualized instruction.

(4) Submit supporting materials that will give evidence of the applicant's skills and the skills of the master artist.

e. Award and notification. The deadline for apprenticeship applications is the first working day in May annually. All materials shall be postmarked or received at the arts division offices by 4:30 p.m. on the established deadline date. Applications are processed by staff, reviewed by a folk arts panel appointed by the director or designee, reviewed by selected arts division members, and funds are subsequently awarded by the director or designee. All applicants will be officially notified in writing of the results of their requests within 90 days after the established program deadlines. Apprenticeship grant moneys will be made available to the grantee only after the grantee has returned to the arts division all necessary contracts, properly signed, using contract Form P-19.

f. Certification. All successful applicants shall certify that they will keep records of the apprenticeship and submit to the arts division necessary financial and narrative accounts concerning the project. Grantees shall allow the apprenticeships to be documented by staff members of the arts division or other persons duly authorized by the arts division for the purposes of encouraging the general preservation of the folk arts in Iowa. Grantees shall be prepared to loan art work originating from the apprenticeships to the arts division for exhibition purposes, such loans to be accomplished without further stipends to the apprentice artist.

g. Apprenticeship payments. If an application is approved, the apprentice shall contact the arts division to arrange for a specific date to begin the apprenticeship. Grant moneys will be sent by the arts division within 30 days of the starting date of the apprenticeship, provided that the apprentice has returned notarized contract Form P-19.

h. Reporting. All grantees shall submit financial and narrative report Form P-20 which indicates that the project was completed. This report shall be due within 30 days after the completion of the apprenticeship. Financial records, subject to examination and audit, shall be kept for a period of three years after completion of the project and shall be available to the arts division or its duly authorized representative on request.

This rule is intended to implement Iowa Code sections 303.87 and 303.88.

## CHAPTER 12

## FORMS

**221-12.1(303) Grants-in-aid forms.** The following are forms used in carrying out the grants-in-aid programs.

**12.1(1) Grant application Form G-1.** This form requires basic information such as the applicant's name, address and phone number and detailed fiscal information on the project. It is used to apply for general grants and community partnership incentive grants.

## CULTURAL AFFAIRS DEPARTMENT[221] (cont'd)

**12.1(2)** Revised budget Form G-2. This form is required from grantees who receive less money than they request. It requires basic information and revised fiscal information. It is used for the general grants program and the community partnership incentive program.

**12.1(3)** Grants-in-aid program memorandum of agreement Form G-3. This is a formal contract which legally commits the arts division to release to the grantee the specified funds and legally binds the grantee to fulfill the requirements of the grants-in-aid program. It is used for all grants-in-aid programs.

**12.1(4)** Cash request Form G-4. On this form the grantee indicates the month the grant funds are needed. It is used for all grants-in-aid programs.

**12.1(5)** Financial report Form G-5. This final report form is to be filled out by the grantee after the project is completed. It requires detailed fiscal information on the project. It is used for all grants-in-aid programs.

**12.1(6)** Narrative report Form G-6. This final report form is to be filled out by the grantee after the project is completed. It requires the grantee to make a written report, including a description of the project and problems encountered. It is used for all grants-in-aid programs.

**12.1(7)** Performance evaluation Form G-7. Performers receiving funds under the touring artist program are required to have each sponsor fill out a performance evaluation form describing the program, how it was financed, and who benefited from it. This form is used only for touring performers.

**12.1(8)** Touring applicants evaluation Form G-8. This form is used by the person designated to audition a touring applicant. It includes an evaluation of technical skill and audience response. It is used only for touring performers.

**12.1(9)** Operational support grants application Form G-9. This form is in two parts and requires basic information about applicants to the operational support grants program. Part A requires basic information under the headings of applicant profile (such as name, address, city, county, and the signature of a person with the legal authority to obligate the applicant organization), an activities profile, an attendance/membership profile, a service area profile, an audience development and marketing profile, and artistic development profile, a staff profile, and a financial planning profile. Section B requires basic information in the areas of income (earned and unearned sources) and expenses. Section B information covers actual figures from the immediate previous fiscal year, anticipated figures from the current fiscal year, and projected figures for the year of the grant. Application Form G-9 also requires the following attachments: an Internal Revenue Service tax-determination letter, bylaws of the organization, articles of incorporation, and a copy of the organization's most recent audited financial statement.

**12.1(10)** Operational support grants revised budget Form G-10. This form is required from grantees whose eligibility is contingent upon pending appropriations, contributions, revenues, or grants from other sources. The revised information is basically the same as required on Form G-9 (part B-financial).

**12.1(11)** Operational support grants program final report Form G-11. This form verifies the completion of the project year and contains narrative and financial questions suitable to determine whether or not the grant-

ee expended funds in compliance with the guidelines of the program.

**12.1(12)** Touring exhibitions evaluation Form G-12. Visual artists receiving funds to tour exhibitions are required to complete this form which describes how the event was financed, information about the people served, and rates the artistic quality of the exhibition.

**12.1(13)** Photographic consent or release Form G-13. This form lists photographic materials or subjects which the arts division may use or reproduce for noncommercial uses. The consent form remains in effect in perpetuity unless so noted, waives financial compensation unless so noted, allows the artist to retain all rights to copyrighted materials assigned to them unless so noted, orients the consent form and agreement to the laws of the state of Iowa, and requires a signature of the legal guardian if the consenter is not of legal age.

**221—12.2(303) Artists-in-schools/communities (AIS/C) forms.** The following forms are used in carrying out AIS/C.

**12.2(1)** AIS/C sponsor application Form P-1 requires information about the site, the program coordinator, the subject and objectives of the residency, and the local money committed to the program.

**12.2(2)** AIS/C contract Form P-2, is a tripartite agreement between the arts division, the school and the artist. The parties legally commit to fulfill their individual responsibilities as stated in the program guidelines.

**12.2(3)** AIS/C evaluation Form P-3. At the end of the program the sponsor is required to fill out a narrative report which includes information about program operation and response.

**12.2(4)** AIS/C evaluation Form P-4 is an evaluation postcard passed out to participants requesting their reactions to the program.

**12.2(5)** AIS/C artist application Form P-5 requires information about the artist, the proposed residency, and references.

**12.2(6)** AIS/C evaluation Form P-6 is the artist's evaluation of the program.

**12.2(7)** AIS/C final financial report Form P-36 requires detailed fiscal accounting of how project funds were spent.

**221—12.3(304A) Solo artist forms.** The following forms are used in carrying out the solo artists program.

**12.3(1)** Solo artists sponsoring group application Form P-7 requires basic information about the sponsor and the choice of artist.

**12.3(2)** Solo artist contract Form P-8 is a tripartite agreement between the arts division, the local sponsor and the artist in which the parties legally commit to follow the operations guidelines.

**12.3(3)** Solo artist local sponsor report Form P-9 requests a brief narrative report on the program operation and an evaluation of the artist.

**12.3(4)** Solo artist financial report Form P-36.

**12.3(5)** Solo artist registration Form P-10 for artists requires basic information, program information, a résumé, references, and samples of work where appropriate.

**221—12.4(303) Touring arts team (TAT).** The following forms are used in carrying out TAT residencies:

## CULTURAL AFFAIRS DEPARTMENT[221] (cont'd)

**12.4(1)** Touring arts team community application Form P-11 requires specific information about the community, the site, and the local people involved.

**12.4(2)** Touring arts team letter of agreement Form P-12 commits the community to a specific date for hosting the TAT and to payment of a specified fee to the arts division by a specified date.

**12.4(3)** Touring arts team sponsor report Form P-13 is a narrative evaluation of the TAT and the community response.

**12.4(4)** Touring arts team artist application Form P-14 requires basic information, dates of availability, artistic discipline, and references.

**12.4(5)** Touring arts team artist performance agreement Form P-15 is a legal contract between the artist and the arts division which spells out the exact responsibilities of each party.

**12.4(6)** Touring arts team final financial report Form P-36 requires detailed fiscal accounting of how project funds were spent.

**221—12.5(303) Arts for special constituents (ASC) forms.** The following are forms used in carrying out ASC.

**12.5(1)** Arts for special constituencies application Form P-26 requires basic information from the applicant, program choices, and the signature of an authorized official.

**12.5(2)** Contract Form P-16A legally commits the sponsor and the arts division to fulfill their individual responsibilities as stated in the program guidelines. Contract Form P-16 is used for two-party contracts between the sponsor and the arts division.

**12.5(3)** Final report Form P-36 requires detailed fiscal accounting of how project funds were expended.

**12.5(4)** Evaluation Form P-29 requires information about the success or failure of ASC programs.

**12.5(5)** Photo release Form P-30 authorizes the arts division to use program photographs in publicity.

**221—12.6(303) Touring exhibition forms.** The following forms are used in carrying out touring exhibitions.

**12.6(1)** Touring exhibit request Form P-31 requires basic information about the exhibition organization and its facilities.

**12.6(2)** Touring exhibit contract Form P-32 legally commits the exhibitor to the exhibition guidelines.

**12.6(3)** Touring exhibit evaluation report Form P-33 requests information from the exhibitor about the condition of the exhibition and its reception by the public.

**12.6(4)** Touring exhibit final financial report Form P-36 requires detailed fiscal accounting of how project funds were spent.

**221—12.7(303) Art in state buildings application.** Art in state buildings application Form P-35 requests basic information, the name of the exhibit requested, the date requested and information about the exhibition space.

**221—12.8(303) Faces of Iowa forms.** The following form is used in carrying out faces of Iowa, an all-Iowa student photography exhibition. Faces of Iowa official entry Form P-17 gives permission for photographs to be published in publications of the arts division, or other publications so designated, and permission to display the

works in an exhibition should they be selected by the judges.

**221—12.9(304A) Outstanding achievement awards form.** The following form is used in carrying out the outstanding achievement awards program for significant achievement or contributions to the arts during the state of Iowa's fiscal year. Outstanding achievement awards entry Form A-1 requires information about the nominee, the nomination category, the nominator, endorsement references who may be contacted to verify the scope and extent of the nominee's achievements or contributions, a one-sentence nomination summary, and a nomination narrative of not more than 500 words which will describe the achievements and contributions of the nominee.

**221—12.10(303) Folk arts apprenticeships program.** The following forms are used in carrying out the folk arts apprenticeships program.

**12.10(1)** Program Form P-18 contains descriptive and financial data supplied by the applicant. The form identifies the apprentice and the proposed master artist, and includes address, telephone numbers and social security numbers. The form specifies a starting date and ending date for the proposed residency, and a detailed description of the apprenticeships being proposed, and a budget for the project. The form also asks for a background and experience in the art form within which the applicant has expertise, and a description of the background and experience of the master artist. The form also contains signature lines for the apprentice and the master which will bind them to the application as submitted. The form concludes with statements of certification concerning legal Iowa residency and acceptance of the guidelines and terms of the program.

**12.10(2)** Contract Form P-19 legally binds the grantee to the use of state funds in the manner intended by the program. This is a formal contract which legally commits the arts division to release funds to the grantee, denotes timelines and methods of payment of funds, describes elements of public law which will influence the conduct of the grantee, and specifies the requirements of final reports.

**12.10(3)** Final narrative and financial report Form P-20 records the final outcome of the apprenticeship. The form requires the grantee to make a brief narrative written report, including a description of the project, and outcome and problems encountered during the apprenticeship. The report also contains fiscal information on the project, and will be used to document the final status of the use of state funds.

**12.10(4)** Folk arts apprenticeship revised budget form records project revisions if grant is less than original grant request. This form requires the grantee to briefly describe the revised project and revised budget. The form must be signed by both the apprentice artist and the master artist and returned to the arts division before grant funds will be released.

These rules are intended to implement Iowa Code sections 303.87 and 303.88.

ITEM 5. Renumber rules under Historical Division [229], Terrace Hill Commission, Chapters 25 and 27 as 221—Chapters 25 and 27.



**ARC 7649****EMPLOYMENT SERVICES  
DEPARTMENT[341]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 17A.3, the Director of the Department of Employment Services hereby gives Notice of Intended Action to amend Chapter 1, "Administration," Iowa Administrative Code.

Subrule 1.1(4) contained erroneous references to the Iowa labor laws which necessitated this change.

Interested persons, governmental agencies, and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m., June 24, 1987, to Paul H. Moran, Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. A public hearing will be held at 9:30 a.m., June 24, 1987, at the above address. The proposed amendments are subject to revision after the Department considers all written and oral presentations. Persons who want to convey their views orally should contact Mr. Moran at 515/281-4986 or at the above address.

This rule is intended to implement Iowa Code chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91B, 92, 93, and 95.

Amend subrule 1.1(4) as follows:

1.1(4) Division of labor. The division of labor is the office of the labor commissioner with the function to administer, inform, regulate, and enforce the labor laws as provided in Iowa Code chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91B, 92, 94, and 95, 99C, 104, and 455D, and Iowa Code section 327F.37. The division consists of four bureaus: occupational health and safety enforcement, occupational health and safety consultation and education, inspections and reporting, and employee protection. A specific description of the division is contained in 347—chapter 1.

**ARC 7651****IOWA FINANCE AUTHORITY [524]****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 220.91, subsection 9, the Iowa Finance Authority hereby gives

Notice of Intended Action to amend Chapter 9, "Title Guaranty Division," Iowa Administrative Code.

The Iowa Finance Authority proposes amending the rule that requires lenders in the program to carry insurance and pay an annual renewal fee. The amendment is needed to enable more lenders to participate in the program.

The proposed rule making appears to have no impact on small businesses.

Any interested person may make written suggestions or comments on the proposed amendment prior to 10:30 a.m. on June 23, 1987. Such written material should be directed to the General Counsel, Iowa Finance Authority, Suite 222, 200 East Grand, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the General Counsel, Ted Chapler, at (515) 281-4058 or in the offices of the Authority at Suite 222, 200 East Grand, Des Moines, Iowa 50309. There also will be a public hearing on June 23, 1987, at 10:30 a.m. in the Authority's offices at Suite 222, 200 East Grand, Des Moines, Iowa 50309. Persons may present their views at this public hearing either orally or in writing. The public hearing will be concluded at 11:30 a.m. or whenever all persons wishing to convey their views have finished, whichever is later.

The amendment is intended to implement Iowa Code section 220.91.

The following amendment is proposed:

Rule 524—9.15(220) is amended to read as follows:

**524—9.15(220) Participation requirements for lenders.** Any mortgage lender as defined in Iowa Code section 220.1(14), that is authorized to make mortgage loans on Iowa real estate shall be eligible to participate in the title guaranty program upon execution and acceptance by the division of a participation agreement in the form prescribed by the division. The participation agreement shall require the participating lender to:

1. ~~Maintain fidelity coverage, or furnish a direct surety bond issued in favor of the division on policy forms normally used by lenders of the same class as the participating lender, in a minimum amount of one hundred thousand dollars (\$100,000). Additionally, each participating lender shall maintain errors and omissions coverage on policy forms normally used by lenders of the same class as the participating lender, in a minimum amount of one hundred thousand dollars (\$100,000). Each participating lender shall disclose to the division the name of each liability insurance or bond carrier and the amount of insurance or bond maintained.~~

2. ~~Notify the division when the lender receives information that a mortgage covered by a title guaranty has been satisfied of record.~~

~~3.1. Pay an initial participation fee of twenty-five dollars (\$25) for the year beginning January 1, 1987, and pay an annual renewal fee of ten dollars (\$10) for each year thereafter. Participation fees are due no later than January 30 of each calendar year.~~

4.2. Abide by the rules of the division and applicable law.

**ARC 7650****JOB SERVICE DIVISION[345]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 17A.3, the Director of the Department of Employment Services hereby gives Notice of Intended Action to amend Chapter 2, "Employer Records and Reports," Chapter 3, "Employer's Contribution and Charges," Chapter 4, "Claims and Benefits," and Chapter 5, "Benefit Payment Control," Iowa Administrative Code.

Subrule 2.7(1) is amended to include the name of the form which an employer fills out for a determination from the Department as to whether their workers are covered.

Subrule 2.8(3) is amended and 2.8(4) is rescinded to eliminate redundant information for appealing employer liability status determinations and provide a reference to a uniform set of rules for all employer liability cases detailing the specific procedure and requirements for perfecting an appeal.

Subrule 3.8(2) is amended as it contains the definition of the due date of the quarterly tax returns and the reference to "constructively paid" wages serves no purpose in this rule.

Subrule 3.31(4) is amended because the rule eliminates redundant information for appealing employer liability status determinations and provides a reference to a uniform set of rules for all employer liability cases detailing the specific procedure and requirements for perfecting an appeal.

Rules 3.34(96) and 3.35(96) are being rescinded and a new rule added as part of a series of appeal rules providing information to the public in one location.

Subrule 3.40(8) is being rescinded and a new rule added as part of a series of appeal rules providing information to the public in one location.

Subrule 3.40(9) is being rescinded, as an employer, under a special temporary provision, could appeal the 1983 or 1984 tax rate within 30 days of the 1985 rate notice which had a deadline of December 1984. This subrule is obsolete.

Subrule 3.43(4), paragraph "a," is being amended because on July 5, 1981, the Legislature allowed a noncharge exception to Iowa Code section 96.8(5) which requires mandatory charges to the employer who has elected to reimburse the trust fund for benefits paid and the transition language serves no purpose.

Subrule 3.43(5) is being amended because the Iowa Supreme Court in its decision of *W.A. Wood v. the Iowa Department of Job Service*, 312 N.W.2d 579 (Iowa 1981) stated that an individual who accepts better employment but is terminated by the employer prior to starting employment does meet the provision of the Iowa Code section 96.5(1)"a."

Subrule 3.43(11), paragraph "b," is being amended as there is no longer a federal trigger for extended benefits and the word "state" is excess verbiage.

Rule 3.51(96) is being amended by moving subrule 3.54(3) to this rule to provide one rule describing the quarterly billing of benefits for reimbursable employers..

Rule 3.52(96) is being rescinded in its entirety and a new rule added which restates the requirements as formerly contained in the rules in several other locations for perfecting an employer liability appeal and the procedure to be utilized by the agency in such appeal. The rule gives the public basic information as to the requirements of an appeal and delineates responsibilities of the agency in the appeal process.

Rule 3.53(96) is being rescinded in its entirety and a new rule added which states information regarding the removal of benefit charges because of reversed or pending claims disputes as affected by a timely rate appeal.

Rule 3.54(96) is being rescinded in its entirety and a new rule added which is a restatement of the issue of acquiescence as was previously contained in Iowa Administrative Code subrules 3.60(1) and 3.60(2). A provision has been added allowing the Department to waive acquiescence, at the request of the employer, and allow the employer to pay the disputed assessment while the action is pending within the adjudication process. This could save an employer potential interest and penalty which might accrue if a determination was made that a genuine controversy did not exist.

New rule 3.55(96) is being added which established the burden of proof in all liability cases including the case of an independent contractor issue.

Rule 3.56(96) is being rescinded in its entirety and a new rule added which outlines the procedure for an informal settlement of a potential or existing contested case before the Department and the procedure for a formal settlement of an assessed contribution via district court action.

Rule 3.60(96) is being rescinded in its entirety and a new rule added which establishes procedures and specific conditions under which interest and penalty shall accrue on unpaid tax contributions. Extraneous information contained within this rule as it previously existed at 3.54(96) has been removed and moved to other locations.

Rule 3.61(96) is being rescinded in its entirety and a new rule added which simply states that penalty and interest when no contributions are due shall be collected in the same manner as the tax itself is collected.

New subrule 4.1(134) is being added which defines weekly indemnity benefits for the purpose of substituting base period quarters as constituted by a program by an employer to pay benefits for nonoccupational related illness or injury.

Subrule 5.10(2) is being amended as Iowa Administrative Code 5.10(1) refers to the potential of fraud when three or four consecutive weeks of overpayment are involved and the same time period was mistakenly repeated in this subrule 5.10(2) when Chapter 5 was rewritten.

Interested persons, governmental agencies, and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m., June 24, 1987, to Paul H. Moran, Department of Employment Services, Division of Job Service, 1000 East Grand Avenue, Des Moines, Iowa 50319. A public hearing will be held at 9:30 a.m., June 24, 1987, at the above address. The proposed amendments are subject to revision after the Department considers all written and



## JOB SERVICE DIVISION[345] (cont'd)

oral presentations. Persons who want to convey their views orally should contact Mr. Moran at 515/281-4986 or at the above address.

These rules are intended to implement Iowa Code sections 96.5(1)"a," 96.7, 96.7(1)"b," 96.7(3)"a"(2), 96.7(3)"b," 96.7(3)"e," unnumbered paragraph 2, 96.7(4), 96.7(5), 96.7(6), 96.11(1), 96.14, 96.14(5), 96.16(2), 96.19, 96.19(6)"f," 96.19(25), 96.23, 96.29, 17A.10(1), 17A.10(2), 17A.12(5), and 17A.19(5), and 1984 Iowa Acts, chapter 1255, section 10, and Supreme Court Iowa Case, Ames General Contractors, Inc.v. Iowa Employment Security Commission, 200 N.W.2d 538 (Iowa 1972).

The amendments are as follows:

ITEM 1. Amend subrule 2.7(1) as follows:

**2.7(1)** Any employing unit having workers performing services for it which it considers exempt from this Act shall file a Form 68-0192, *job service questionnaire for determining status of workers*, along with supporting exhibits and documents (i.e., contract, statements from employer and claimant) so that a decision can be made as to whether or not such service is in fact exempt from the provisions of this Act.

ITEM 2. Rescind subrule 2.8(3) in its entirety and insert in lieu thereof the following:

**2.8(3)** For the specific procedure and requirements for perfecting an appeal of an employer liability determination see administrative rules 3.52(96) to 3.56(96).

ITEM 3. Rescind subrule 2.8(4) in its entirety and reserve for future use.

ITEM 4. Amend subrule 3.8(2) to read as follows:

**3.8(2)** Regular due date. Each employing unit which is a covered employer subject to *Iowa Code* section 96.7, shall file with the division quarterly reports on or before the due date, and any employer failing to file a quarterly report when due shall be delinquent. Except as otherwise provided in this rule, quarterly contributions and wage reports are due and contributions are due and payable on or before the last day of the month following the close of each calendar quarter in which the wages were paid; ~~except that contributions with respect to wages which are constructively paid shall be payable for the quarter in which such wages are constructively paid.~~ Payments in lieu of contributions are due and payable on or before the thirtieth day after notification of the amount due is mailed to the last known address of the employer. Quarterly notification of the amount of payments in lieu of contributions due from an employer shall be mailed to the last known address following the end of each calendar quarter.

ITEM 5. Amend subrule 3.31(4), as follows:

**3.31(4)** Denial of transfer and appeals.

a. Upon receipt of application (see subrule 3.31(1)) and accompanying information as required, the division shall issue a determination approving or denying the partial transfer. The determination approving a partial transfer will include notice to both parties as to their contribution rate for the current year. ~~The rates assigned will become final unless a written appeal of the rate is filed within thirty (30) days of the date of the notice by either party.~~

b. If the division finds in any case that the acquisition of a business or a severable portion thereof was made solely or primarily for the purpose of obtaining a more favorable rate of contribution, the transfer of the reserve account shall not be approved. An acquisition shall be

deemed to have been solely or primarily for such purpose if the division finds an absence of any reasonable business purpose for the acquisition other than a more favorable contribution rate.

c. Any determination made hereunder denying a partial transfer shall become conclusive and binding upon both the predecessor and successor unless one or both of them file a written request for reconsideration within fifteen (15) days after written notice is served. ~~A reconsidered determination is subject to the same finality and appeal rights as liability determinations made in accordance with rule 3.34(96) an appeal. For the specific procedure and requirements for perfecting an appeal of an employer liability determination see administrative rules 3.52(96) to 3.56(96).~~

ITEM 6. Rescind rule 3.34(96) in its entirety and reserve for future use.

ITEM 7. Rescind rule 3.35(96) in its entirety and reserve for future use.

ITEM 8. Rescind subrules 3.40(8) and 3.40(9) in their entirety and reserve the numbers for future use.

ITEM 9. Amend subrule 3.43(4), paragraph "a," to read as follows:

a. An eligible claimant who has been separated from a regular employer and who remains in the employ of the claimant's supplemental base period employer will continue to be eligible for payments as long as the claimant is receiving the same employment from the employer that the claimant received during the base period. The supplemental employer's account *including the reimbursable employer's account* may be relieved of charges for benefits paid ~~except that any employer who is required by law or by election to reimburse the trust fund shall be charged with the benefits paid for all unemployment compensation benefits received for periods up to and including the week ending July 4, 1981. For any unemployment compensation received from the period beginning on or after July 5, 1981, the reimbursable employer may be relieved of charges by charging the balancing account for benefits paid in the same manner as a regular contributory supplemental employer.~~ On a second benefit year claim where the claimant has continued to work for his supplemental employment only, supplemental employment shall not be an issue with the onset of the second benefit year. It is the supplemental employer's responsibility to notify the division of the supplemental employment situation so the division may render a decision as to charges. The claimant is required to report gross wages earned from the supplemental employment each week and the wages shall be deducted from the benefit payment in accordance with *Iowa Code* section 96.3(3).

ITEM 10. Amend subrule 3.43(5) to read as follows:

**3.43(5)** Better employment. A claimant who voluntarily quits for *and accepts* better employment and *is laid off or terminated by the employer before the employment is started or after having started employment is laid off or terminated by the employer prior to the expiration of* remains in such better employment for more than one week but less than six weeks shall be paid benefits if otherwise eligible. No charge shall accrue to either the former employer or the subsequent better employer except that when the former employer is a reimbursable employer such reimbursable employer shall be charged with the benefits paid.

## JOB SERVICE DIVISION[345] (cont'd)

ITEM 11. Amend subrule 3.43(11), paragraph "b," to read as follows:

b. Whenever the ~~state or federal~~ extended benefits trigger is in an "on" condition in compliance with Iowa Code section 96.19, subsections 26 and 28, on all claims with a maximum benefit amount of 26 times their weekly benefit amount or less, the extended benefit amount shall be equal to one half of the claimant's original maximum benefit amount. The employer will be charged with 50 percent of the extended benefit amount paid to the claimant and the federal government will be charged for the remaining 50 percent. Government contributory and government reimbursable employers, however, must bear full cost of the extended benefit program without the 50 percent relief of charges from the federal government.

ITEM 12. Amend rule 3.51(96) as follows:

**345—3.51(96) Payments in lieu of contributions.**

**3.51(1)** *That each nonprofit organization which has been approved to make payments in lieu of contributions shall be billed each quarter for benefits paid during such quarter.*

**3.51(2)** The money payments to the unemployment fund which are required by Iowa Code section 96.7 for those employers who elect to reimburse the division shall be in an amount equal to the regular benefits and one half of the extended benefits paid, and charged to such employer's account. Government reimbursable employers will be charged all of the extended benefits paid.

ITEM 13. Rescind rule 3.52(96) in its entirety and insert in lieu thereof the following:

**345—3.52(96) Employer liability appeal.**

**3.52(1)** An initial employer liability determination including employer status and liability, assessments, rate of contributions, successorships, worker's status and all questions regarding coverage of a worker or group of workers may be appealed to the division of job service for a hearing before a hearing officer.

**3.52(2)** The appeal shall be in writing stating:

a. The name, address, and Iowa employer account number of the employer.

b. The name and official position of the person filing the appeal.

c. The decision which is being appealed.

d. The grounds for the appeal and the relief sought.

**3.52(3)** The appeal shall be addressed to: Job Service of Iowa, Tax Section, 1000 East Grand Avenue, Des Moines, Iowa 50319. The employer shall provide adequate postage.

**3.52(4)** All initial determinations by the tax section will be dated and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal all or any part of the initial determination. The employer has only 15 days to appeal a notice of reimbursable benefit charges, (Form 65-5324).

**3.52(5)** If the division concludes, upon reviewing an appeal, that the original determination is correct, the tax section may write to the employer and further explain the decision. If the employer still desires a hearing before a representative of the division, the employer should notify the division within 30 days of the date of the letter from the division.

**3.52(6)** Upon receipt of a request for hearing, the tax section will ask the appeals bureau to schedule a hearing for the employer. A copy of the request will be mailed

to the employer. A copy of the file containing all relevant information regarding the issue of the appeal shall be forwarded to the appeals bureau. Documents that may be sent to the appeals bureau include a copy of the disputed decision, the employer's original letter of appeal, all relevant correspondence from the division, and the employer's letter requesting a hearing. All employer liability appeals shall be heard by a hearing officer of the division and shall be scheduled for hearing at the earliest possible date. Procedures for employer liability hearings are set out in rule 6.7(96).

**3.52(7)** In those cases in which the division finds that a genuine controversy exists or has existed regarding an employing unit's liability for contributions on all or a part of its employees or, a rate appeal or other employer liability question and the case has been resolved against such employing unit, then no interest or penalty will accrue from the date of such controversy between the division and the employing unit until 30 days after the decision becomes final.

ITEM 14. Rescind rule 3.53(96) in its entirety and insert in lieu thereof the following new rule:

**345—3.53(96) Rate appeal and eligibility decision reversal.**

**3.53(1)** An employer who appeals a rate notice or corrected rate notice within 30 days following the procedures outlined in rule 3.52(96) may have its rate recomputed based upon the reversal of a benefit eligibility decision under the following circumstances:

a. An employer may appeal on the grounds that benefit charges against the employer's account have been reversed by a decision issued subsequent to the rate computation date. The division will investigate and remove benefit charges, which have been reversed by a subsequent decision, from the computation and will issue a corrected rate notice to the employer.

b. The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed. However, the rate will not become final and the appeal may be reopened by the employer, in writing upon receipt of a decision reversing the allowance of benefits or relieving the employer of charges provided that the request to reopen the appeal is submitted within 30 days of the date of the next rate notice following the date of the decision. The charges will be removed from the computation of the original rate and a corrected rate notice will be issued. A refund of any overpayment of contributions and interest paid as a result of the recomputation of the rate will be issued, subject to the 3-year statute of limitations set out in Iowa Code section 96.14(5). The employer may designate within the letter reopening the appeal that the overpayment is to be left in the account as a voluntary contribution to reduce future rates in lieu of the refund.

c. The employer's payment of contributions at the disputed rate in the circumstances described in 3.53(1)"b" will not be an acquiescence of the disputed rate.

d. The employer, in the circumstances described in 3.53(1)"b," must file a separate appeal of each rate notice received that contains the disputed benefit charges. If the employer does not file a timely appeal of each affected rate notice, any appeal filed following receipt of a decision reversing the allowance of benefits will be considered

## JOB SERVICE DIVISION[345] (cont'd)

as applying only to rate notices that were timely appealed and to the next rate notice.

e. If the employer appeals on the grounds that the benefits charged against the employer's account were paid to an employee who was still working for the employer in the same employment as in the base period of the claim, the division will remove the charges and will issue a corrected rate notice. However, the employer's appeal must have been made within 30 days of the date on the first rate notice received that included any of the disputed charges. Provided further that the issue of charging of benefits had not been previously adjudicated in either an appeal of the original claim notice or an appeal of a quarterly benefit charge statement.

**3.53(2)** Reserved.

ITEM 15. Rescind rule 3.54(96) in its entirety and insert in lieu thereof the following:

**345—3.54(96) Payment of disputed assessments.**

**3.54(1)** Payment of a disputed assessment is held to be an acquiescence in the assessment and it waives any further right of appeal. It is immaterial whether the assessment is paid before, at the time of, or after the taking of the appeal.

**3.54(2)** An employing unit which has appealed a determination of liability, or a payment of contributions due, shall file Form 65-5300, employer's contribution and payroll report, for all quarters for which the employer is held liable. Such reports are to be marked by the employer filed under protest and submitted without payment.

**3.54(3)** The division may waive acquiescence and allow payment of the disputed tax. The division may in its discretion waive acquiescence for good cause. The employer should make application for the waiver by letter directed to the supervisor of the tax section.

ITEM 16. Insert new rule 3.55(96) as follows:

**345—3.55(96) Burden of proof.**

**3.55(1)** The burden of proof in all employer liability cases shall rest with the employer.

**3.55(2)** The burden of proof shall rest with an employing unit which employs any individual during any calendar year but which considers itself not an employer subject to the Act, to establish that it is not an employer subject to the Act by presenting proper records, including a record of the identity of the employees, number of individuals employed during each week, and the particular days of each week on which services have been performed, and the amount of wages paid to each employee.

ITEM 17. Rescind rule 3.56(96) in its entirety and insert in lieu thereof the following:

**345—3.56(96) Informal settlement.**

**3.56(1)** Pursuant to Iowa Code chapter 17A a controversy may, unless precluded by statute, at the discretion of the division be informally settled by mutual agreement of the division of job service and the person or employer who is or is about to be engaged in the controversy with the division. The settlement shall be effected by a written statement reciting the subject of the controversy and the proposed 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. The informal settlement shall constitute a waiver, by all parties, of

the formalities to which they are entitled under the terms of Iowa Code chapter 17A, with respect to the specific fact situation which is the subject of the controversy.

Either party may initiate a proposal for informal settlement of the controversy by communicating a proposal to the other party before the contested hearing is convened.

**3.56(2)** If the parties agree to a settlement, the written statement shall be presented to the chief of the bureau of job insurance for review and approval.

**3.56(3)** In the event a settlement is reached in a case which has been appealed to the courts, then the formal settlement will be presented to the appropriate district court. If an assessment of contributions or a decision upon which an assessment is based has become final without appeal, then the actual established contribution may be compromised by agreement of the parties and submission to the district court pursuant to Iowa Code section 96.14(5). Doubtful collectibility as contained in section 96.14(5) includes tax debts which are doubtful as to validity or as to collectibility. The division is not required to enter into any informal settlement or compromise with regard to any employer liability determination and may or may not do so at its own discretion.

ITEM 18. Rescind rule 3.60(96) in its entirety and insert in lieu thereof the following:

**345—3.60(96) Accrual of interest and penalties.**

**3.60(1)** An employer who fails to file or make sufficient a report of wages paid to each of its employees for any period in the time and manner set forth in Iowa Code section 96.7 and rule 2.3(96) shall pay to the division a penalty in accordance with Iowa Code section 96.14(2).

**3.60(2)** The amount of the penalty for delinquent and insufficient reports shall be based on the total wages paid by the employer in the period for which the report was due, except that no penalty shall be less than \$10 for each delinquent report or each insufficient report not made sufficient within 30 days of a request to do so.

**3.60(3)** Interest and penalty shall not accrue with respect to contributions required from an employer based upon wages for employment in those cases in which the employer's liability is based solely upon the provisions of Iowa Code section 96.19(5)"g" until 30 days after determination of such liability under the Federal Unemployment Tax Act.

**3.60(4)** Interest and penalty shall not accrue in those cases where the division finds that, as a matter of equity and good conscience, the employer should not be required to pay interest.

**3.60(5)** Interest as provided under Iowa Code section 96.14 shall accrue 30 days after the quarterly billing to reimbursable employers.

**3.60(6)** The penalties applicable to contributory employers shall be applicable to employers who have been approved to make payments in lieu of contributions.

**3.60(7)** Payment checks not honored by bank. An employer is liable for interest for a check in payment of contributions which is not honored by the bank upon which it is drawn.

ITEM 19. Rescind rule 3.61(96) and insert in lieu thereof the following:

**345—3.61(96) Collection of interest and penalties.** The collection of penalties and interest where no

## JOB SERVICE DIVISION[345] (cont'd)

contributions are due from the employer shall be done in the same manner as when contributions are due.

ITEM 20. Add new subrule 4.1(134) as follows:

**4.1(134)** Weekly indemnity insurance benefits. Payment for nonoccupational illness or injury pursuant to a benefit plan implemented by an employer.

ITEM 21. Amend subrule 5.10(2) to read as follows:

**5.10(2)** When an overpayment occurs due to misrepresentation involving ~~three~~ (3) *five* or more consecutive weeks, mandatory prosecution shall result in most cases; however, the investigator may recommend full and immediate repayment in lieu of referring a case to the county attorney for prosecution.

a. The claimant shall be afforded an opportunity to give testimony either refuting or affirming the overpayment.

b. The benefit payment control section will issue a decision concerning the overpayment.

**ARC 7642****LABOR SERVICES DIVISION[347]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)“6”.

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

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to adopt an amendment to rule 347—10.20(88) relating to occupational safety and health rules for general industry. The amendment makes minor corrections to existing rules regarding hazardous waste operations and emergency response.

In compliance with Iowa Code section 88.5(1)“b,” a public hearing will be held on June 24, 1987, at 9 a.m. in the office of the Department of Employment Services, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than June 23, 1987, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The agency has determined that this Notice of Intended Action may have an impact on small business. The agency has considered the factors listed in Iowa Code section 17A.31. The agency will issue a regulatory flexibility analysis as provided in Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than June 23, 1987, to the Deputy Labor Commissioner, Division of Labor Services, 307 East 7th Street, Des Moines, Iowa 50319. The request may be

made by the Administrative Rules Review Committee, the governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

These rules were filed as emergency rules effective on May 14, 1987, **ARC 7641**, and the content of that filing is incorporated here by reference.

**ARC 7635****LABOR SERVICES DIVISION[347]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)“6”.

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

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to adopt an amendment to rule 347—28.1(88) relating to Occupational Safety and Health Standards for Agriculture. The amendment relates to occupational exposure to general environmental controls, especially field sanitation, for employees engaged in agricultural operations.

In compliance with Iowa Code section 88.5(1)“b,” a public hearing will be held on June 24, 1987, at 9 a.m. in the office of the Department of Employment Services, Division of Labor Services, 307 East 7th Street, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rule. Written data or arguments to be considered in adoption may be submitted by interested persons no later than June 23, 1987, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The agency has determined that this Notice of Intended Action may have an impact on small business. The agency has considered the factors listed in Iowa Code section 17A.31. The agency will issue a regulatory flexibility analysis as provided in Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than June 23, 1987, to the Deputy Labor Commissioner, Division of Labor Services, 307 East 7th Street, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

This rule was filed as emergency adopted and implemented effective on May 14, 1987, **ARC 7634**, and the content of that filing is incorporated by reference.

**ARC 7654****NATURAL RESOURCE  
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 107.24, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 22, "Wildlife Habitat on Private Lands Promotion Program," Iowa Administrative Code.

These rules give the procedures by which revenues from the sale of wildlife habitat stamps and revenue from the income tax checkoff will be used to assist landowners in establishing wildlife habitat on private lands, and to cost-share these developments with other conservation groups.

Any interested person may make written suggestions or comments on these proposed rules prior to July 15, 1987. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. Persons who wish to convey their views orally should contact the Wildlife Section at 515/281-6156 or at the Wildlife offices on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on July 15, 1987, at 10 a.m. in the conference room on the fourth floor of the Wallace State Office Building, at which time persons may present their views either orally or in writing.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code chapters 107 and 110.

The following amendments are proposed:

ITEM 1. Amend subrule 22.4(2) by amending paragraphs "c," "e," and "f," and adding a new paragraph "g" as follows:

c. If contributed funds exceed the department funds allocated to a county, the group contributing money may choose to fund more than half of a project, transfer funds to another county, or have funds returned, or allow funds to remain in the department's trust fund for use in subsequent years.

e. Agreements will be in the form of a contract between the contributing group and the department, specifying the maximum amount contributed, the county county(ies) in which funds are to be spent and the number and type of projects to be cost-shared (shelterbelts or winter habitat demonstration areas).

f. Contributed funds Agreements with contributing groups must be received by the department by the time cost assistance contracts are signed with individual landowners, and are considered to be a commitment to provide funds.

g. Contributing groups will be billed by the department annually, based on the terms of the agreement and after final inspection of the habitat demonstration plots and shelterbelts by the wildlife biologists.

ITEM 2. Amend subrule 22.5(1), introductory paragraph, as follows:

22.5(1) Eligibility. To concentrate the effects of this program in regions where winter food and shelter are most needed, only counties or portions of counties north of located north of, or bisected by U.S. Highway 30 in Iowa will be eligible.

ITEM 3. Amend subrule 22.5(2), paragraph "b," as follows:

b. In 1986, applications and contracts must be submitted by September 30. In succeeding years, applications and contracts must be received by April 15 to provide adequate time for site inspection and plot design. *The application period may be extended indefinitely, or until all available funds have been committed.* Landowners will be contacted within 30 days as to their acceptance or rejection.

ITEM 4. Amend subrule 22.5(6), introductory paragraph, as follows:

22.5(6) Cost-share rates. The department will provide cost-sharing assistance for winter habitat blocks at the following rates, *except when a lesser amount is negotiated with a landowner:*

ITEM 5. Amend subrule 22.6(2), paragraph "b," as follows:

b. Applications must be submitted by February 15. *The application period may be extended until all available funds have been committed.*

**ARC 7655****NATURAL RESOURCE  
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 107.24, 109.5, and 109.6, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 52, "Wildlife Refuges," Iowa Administrative Code.

This rule lists wildlife refuges where posted and regulations concerning public use on these areas.

Any interested person may make written suggestions or comments on these proposed rules prior to July 15, 1987. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. Persons who wish to convey their views orally should contact the Wildlife Section at 515/281-6156 or at the Wildlife offices on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on July 15, 1987, at 11 a.m. in the auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing.

NATURAL RESOURCE COMMISSION[571] (cont'd)

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.

These rules are intended to implement the provisions of Iowa Code sections 109.5, 109.6, and 109.8.

The following amendments are proposed:

ITEM 1. Amend subrule 52.1(2), paragraph "a," by striking "Louisville Bend" and replacing it with "Badger Lake."

ITEM 2. Amend subrule 52.1(3) as follows:

52.1(3) Open water refuges. Hunting on the following natural lakes is restricted to a zone extending 50 yards into the lake from the ordinary high-water mark; or continuous rooted emergent vegetation; or islands unless posted otherwise. Beyond this zone is a wildlife refuge.

Area	County
Storm Lake	Buena Vista
North Twin Lake	Calhoun
Clear Lake	Cerro Gordo
East Okoboji, Minnewashta, and Upper and Lower Gar Lakes	Dickinson
Spirit Lake	Dickinson
West Okoboji Lake	Dickinson
Silver Lake	Dickinson
High Lake	Emmet
Ingham Lake	Emmet
Tuttle Lake	Emmet
Lost Island Lake	Palo Alto
Silver Lake	Palo Alto
Virgin Lake	Palo Alto
Lake Manawa	Pottawattamie
Black Hawk Lake	Sac

hearing, persons will be asked to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code sections 109.5 and 109.6.

The following amendments are proposed:

ITEM 1. Amend 66.1(109,111) by adding the following paragraph:

4. All federally owned land and land under flowage easement on the west side of the Des Moines River from the south right-of-way boundary of N.W. 66th Avenue south to the north right-of-way boundary of Interstates 35-80.

ITEM 2. Amend 66.2(107,109) by adding the following paragraph:

3. All federally owned land and land under flowage easement on the west side of the Des Moines River from the south right-of-way boundary of N.W. 66th Avenue south to the north right-of-way boundary of Interstates 35-80.

ARC 7636

PHARMACY EXAMINERS,  
BOARD OF[620]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 1, "Licensure," Iowa Administrative Code. The proposed amendment was approved during the May 5, 1987, meeting of the Iowa Board of Pharmacy Examiners.

The proposed amendment establishes administrative fees for candidates who fail an examination for licensure and are required to retake the exam(s).

Any interested person may submit data, views, or written comments on or before June 23, 1987, to Norman C. Johnson, Executive Secretary, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 147.94.

Amend rule 620—1.5(147) to read as follows:

**620—1.5(147) Reexamination applications and fees.** Each applicant for reexamination shall make a request for such reexamination on proper forms, to be provided by the board, and the request for such reexamination shall become a part of the official files. Administration fees of \$40 and \$20 will be charged to take the National Association of Boards of Pharmacy Licensure Exam (NABPLEX) and the Federal Drug Law Exam (FDLE), respectively. In addition, candidates will be required to pay an examination material fee. Payment of administration fees and examination material fees shall be as described in rule 620—1.2(147).

ARC 7656

NATURAL RESOURCE  
COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 107.24 and 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 66, "Saylorville Multiuse Trail," Iowa Administrative Code.

The rule being amended establishes the boundaries of the area covered by the rules and the regulations to be followed regarding area use.

Any interested person may make written suggestions or comments on this rule prior to June 23, 1987. Such written materials should be directed to the Director, Department of Natural Resources, 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 June 23, 1987, at 10 a.m. At the



**ARC 7637****PHARMACY EXAMINERS,  
BOARD OF[620]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 204.301, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Controlled Substances," Iowa Administrative Code. The proposed amendment was approved during the May 5, 1987, meeting of the Iowa Board of Pharmacy Examiners.

The proposed amendment to subrule 8.13(9) provides that prescribers may authorize additional refills of previously issued prescriptions for schedules III, IV and V controlled substances through an oral authorization without requiring the pharmacist to treat the additional refills as new and separate prescriptions. This amendment will make Iowa rules on the refilling of prescriptions for schedules III, IV and V controlled substances identical to Federal Drug Enforcement Administration (DEA) regulations.

Any interested person may submit data, views, or written comments on or before June 23, 1987, to Norman C. Johnson, Executive Secretary, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 204.308.

Rescind subrule 8.13(9) and insert in lieu thereof the following:

**8.13(9) Refilling of prescriptions.** No prescription for a controlled substance listed in schedule III, IV or V shall be filled or refilled more than six months after the date on which such prescription was issued nor be refilled more than five times. Each refilling of a prescription shall be entered on the back of the prescription or on another appropriate document. If entered on another document, such as a medication record, the document must be uniformly maintained and readily retrievable. The following information must be retrievable by the prescription number: the name and dosage form of the controlled substance, the date filled or refilled, the quantity dispensed, initials of the dispensing pharmacist for each refill, and the total number of refills for that prescription. If the pharmacist merely initials and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed. The prescribing practitioner may authorize additional refills of schedule III, IV or V controlled substances on the original prescription through an oral refill authorization transmitted to the pharmacist, provided the following conditions are met:

a. The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issue of the original prescription.

b. The pharmacist who obtains the oral authorization records on the reverse of the original prescription the

date, quantity of refill, number of additional refills authorized, and initials the prescription showing who received the authorization from the prescribing practitioner who issued the original prescription.

c. The quantity of each additional refill authorized is equal to or less than the quantity authorized for the initial filling of the original prescription.

d. The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five refill, six-month limitation.

**ARC 7638****PUBLIC HEALTH  
DEPARTMENT [470]****Notice Of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §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 135.11, the Department of Public Health hereby gives Notice of Intended Action to create a new Chapter 76, "Maternal and Child Health Program," Iowa Administrative Code.

The proposed rules define the well-child and prenatal services funded with Maternal and Child Health block grant funds and establish rules covering contracts for services.

Any interested person may attend a public hearing to be conducted on June 25, 1987, at 10 a.m. in the Grimes State Office Building, first floor conference room, Des Moines, Iowa, or make written comments concerning the proposed rules not later than June 25, 1987, addressed to Joyce Borgmeyer, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 135.11 and Public Law 97-35.

The following new chapter is proposed:

**CHAPTER 76****MATERNAL AND CHILD HEALTH PROGRAM**

**470-76.1(135,PL97-35) Program explanation.** The maternal and child health (MCH) programs are operated by the Iowa department of public health as the designated state agency pursuant to an agreement with the federal government. The majority of the funding available is from the maternal and child health block grant, administered by the United States Department of Health and Human Services.

The purpose of the program is to promote the health of mothers and children by providing preventative, well-child care services to low-income children and prenatal and postpartum care for low-income women.

The department of public health, bureau of maternal and child health, enters into contracts with selected local agencies on an annual basis for the provision of prenatal and well-child services to eligible participants.

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

**470—76.2(135,PL97-35) Adoption by reference.** Federal requirements contained in the Omnibus Reconciliation Act of 1981 (P.L. 97-35), title V - maternal and child health services block grant shall be the rules governing the Iowa MCH program and are incorporated by reference herein.

The Iowa department of public health finds that certain rules should be exempted from notice and public participation as being a very narrowly tailored category of rules for which notice and public participation are unnecessary as provided in Iowa Code section 17A.4(2). Such rules shall be those that are mandated by federal law governing the Iowa MCH program where the department has no option but to adopt such rules as specified and where federal funding for the MCH programs is contingent upon the adoption of the rules.

Copies of the federal legislation adopted by reference are available from: Bureau Chief, Iowa MCH Bureau, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319, (515) 281-4911.

**470—76.3(135,PL97-35) Rule coverage.** These rules cover only the prenatal and well-child portions of the block grant. Other programs funded by the Iowa legislature from the maternal and child health block grant are not included in these rules.

**470—76.4(135,PL97-35) Covered services.** The following services may be provided by contracting agencies:

**76.4(1) Well-child services.**

- a. Routine, ambulatory well-child care
- b. Nutrition counseling
- c. Dental health education
- d. Psychosocial counseling
- e. Parenting education
- f. Diagnosis and treatment for limited procedures and populations, as defined annually in the report of intended expenditures
- g. Dental treatment for limited populations, as defined annually in the report of intended expenditures.

**76.4(2) Prenatal.**

- a. Routine, ambulatory prenatal care
- b. Postpartum exams
- c. Nutrition counseling
- d. Dental health education
- e. Psychosocial counseling
- f. Parenting education
- g. Diagnosis and treatment for limited procedures and populations, as defined annually in the report of intended expenditures
- h. Dental treatment for limited populations, as defined annually in the report of intended expenditures.

**470—76.5(135,PL97-35) Eligibility criteria.** The certification process to determine eligibility for services under the program will include the following requirements:

**76.5(1) Age.**

- a. Prenatal program — no age restrictions
- b. Well-child — birth through 20 years of age.

**76.5(2) Income.**

- a. Income guidelines will be set at 150 percent of the poverty income guidelines published by the U.S. Department of Health and Human Services (DHHS). State income guidelines will be adjusted following any change in the Department of Health and Human Services guidelines.

b. Income information will be provided by the applicant, who will attest in writing to the accuracy of the information contained in the application.

c. All earned and unearned income of family members as defined by DHHS poverty guidelines will be used in calculating the applicant's gross income for purposes of determining initial and continued eligibility.

d. Income will be estimated as follows:

(1) Annual income will be estimated based on the applicant's income for the past three months unless the applicant's income will be changing or has changed, or

(2) In the case of self-employed families the past year's income tax return (adjusted gross) will be used in estimating annual income unless a substantial change has occurred.

(3) Terminated income will not be considered.

e. An applicant whose income falls between 150 percent and 250 percent will qualify for services on a sliding fee scale. An applicant whose income falls over 250 percent will qualify for services at full fee.

f. Income determinations must be done at least once annually. Should substantial changes in the applicant's income occur, income determinations shall be completed more frequently.

g. Title XIX recipients are eligible for the program.

**76.5(3) Residency.** Applicant must be currently residing in Iowa to be eligible.

**470—76.6(135,PL97-35) Application procedures.**

**76.6(1)** A person desiring services under this program, or the parent or guardian of a minor desiring such care, may apply to the contract agency approved to cover the person's county of residence.

**76.6(2)** The applicant will provide the following information to be considered for eligibility under this program:

a. Income information

b. Title XIX eligibility, if applicant is covered by Title XIX.

**76.6(3)** The approved contract agency will determine the eligibility of the applicant and what percent of the cost of the care the applicant is responsible for. The applicant will be informed in writing of eligibility status prior to incurring costs for care.

**76.6(4)** After an applicant has been determined to be eligible, the applicant will report any changes in eligibility to the approved contract agency within 30 days from the date the change occurred.

**470—76.7(135,PL97-35) Grant application procedures for local agencies.** Local agencies wishing to provide maternal or child health services shall make application to the Iowa department of public health not less than 120 days prior to the beginning of the contract period. Agencies shall apply to administer MCH programs on an annual basis. The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are public records.

Contract agencies are selected on the basis of the grant application submitted to the Iowa department of public health. In the case of competing applications, the contract will be awarded to the agency that scores the highest number of points in the review. Copies of review criteria are available from: Bureau Chief, Iowa Maternal/Child Health Bureau, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319, (515) 281-4911.



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

**470—76.8(135,PL97-35) Funding levels.** The amount of funds granted to each contract agency on an annual basis shall be determined by the Iowa department of public health using a methodology based upon dollars available, numbers of clients, and selected performance criteria.

**470—76.9(135,PL97-35) Agency performance.** Contract agencies are required to provide services in accordance with these rules and the standards as provided for in the MCH program manuals. The state agency shall review local agency operations through use of reports and documents submitted, state-generated data reports, on-site visits for evaluation and technical assistance.

**470—76.10(135,PL97-35) Reporting.** Completion of grant applications, budgets, expenditure reports, and computer forms shall be done by local agencies in compliance with the formats and procedures outlined by the Iowa department of public health in the MCH manuals.

**470—76.11(135,PL97-35) Fiscal management.** All contract agencies are required to meet certain fiscal management policies.

**76.11(1) Last pay.** MCH grant funds are considered last pay. Title XIX or other third party payers are to be billed first if the client is covered by those sources.

**76.11(2) Program income.** Program income means gross income earned by the contractor from activities, part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost toward meeting a cost-sharing or matching requirements of the grant. It includes but is not limited to income in the form of fees for services, third-party reimbursements, proceeds from sales of tangible, personal or real property.

Program income may be used for allowable costs of the project. The amount of this income is deducted from the total project costs to determine the net costs of the contract. Program income shall be used for current costs unless the Iowa department of public health authorizes in writing deferral to a future contract period.

**470—76.12(135,PL97-35) Audits.** Each local agency shall ensure an audit of the MCH program within their agency at least every two years, to be conducted by a private certified public accountant or in accord with applicable OMB circulars. Each audit shall cover all unaudited periods through the end of the previous grant year. The department of public health's audit guide shall be followed to ensure an audit which meets federal and state requirements.

**470—76.13(135,PL97-35) Denial, suspension, revocation or reduction of contracts with local agencies.** The department may deny, suspend, revoke or reduce contracts with local agencies in accord with applicable federal regulations or contractual relationships. Notice of such action shall be in writing.

**470—76.14(135,PL97-35) Right to appeal.** Agencies may appeal denial of a contract or the suspension, revocation or reduction of an existing contract. Participants may appeal a denial of service.

**76.14(1) Appeal.** The appeal shall be made in writing to the Iowa department of public health within 30 days of

receipt of notification of the adverse action. Notice is to be addressed to the Division Director, Family and Community Health Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

**76.14(2) Contested case.** Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

**76.14(3) Hearing.** The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—chapter 4, Iowa Administrative Code.

**76.14(4) Decision of hearing officer.** When the hearing officer makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director of public health is taken as provided in subrule 76.14(5).

**76.14(5) Appeal to the director of public health.** Any appeal to the director of public health for review of the proposed decision and order of the hearing officer shall be filed in writing and mailed to the director of public health by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the hearing officer's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the hearing officer. Any request for an appeal shall state the reason for appeal.

**76.14(6) Record of hearing.** Upon receipt of an appeal request, the hearing officer shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the hearing officer.

**76.14(7) Decision of director of public health.** The decision and order of the director of public health becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

**76.14(8) Exhausting administrative remedies.** It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director of public health or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

**ARC 7648****PUBLIC SAFETY  
DEPARTMENT[680]****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 103A.7, the Building Code Commissioner with the approval of the Building Code Advisory Council hereby gives Notice of Intended Action to amend and revise Chapter 16 of the Department of Public Safety [680], Iowa Administrative Code.

These amendments and revisions are to update Division II Electrical Rules and Regulations to the most recent edition of the National Electrical Code.

Any interested person may make oral or written comments on these proposed rules not later than 4:30 p.m., June 23, 1987. Such written materials shall be directed to the State Building Code Commissioner, Department of Public Safety, Des Moines, Iowa 50319. Public hearings will be held for purpose of oral presentation at 1 p.m. on June 24, 1987, and at 9 a.m. on June 25, 1987, in the Second Floor Conference Room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa. Persons who want to convey their views may contact the Commissioner's office at 515/281-8622 prior to the public hearing or be at the public hearing.

This rule is intended to implement Iowa Code sections 103A.7 and 103A.8.

Rescind rule 680—16.200(103A) and insert in lieu thereof the following:

**680—16.200(103A) Electrical rules and regulations—adoption.** The National Electrical Code, 1987 Edition, NFPA 70-1987, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269 is hereby adopted by reference as the electrical rules and regulations, division II.

**NOTICE — USURY**

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

August 1, 1985 - August 31, 1985	12.25%
September 1, 1985 - September 30, 1985	12.25%
October 1, 1985 - October 31, 1985	12.25%
November 1, 1985 - November 30, 1985	12.25%
December 1, 1985 - December 31, 1985	12.25%
January 1, 1986 - January 31, 1986	11.75%
February 1, 1986 - February 28, 1986	11.25%
March 1, 1986 - March 31, 1986	11.25%
April 1, 1986 - April 30, 1986	10.75%
May 1, 1986 - May 31, 1986	9.75%
June 1, 1986 - June 30, 1986	9.25%
July 1, 1986 - July 31, 1986	9.75%
August 1, 1986 - August 31, 1986	9.75%
September 1, 1986 - September 30, 1986	9.25%
October 1, 1986 - October 31, 1986	9.25%
November 1, 1986 - November 30, 1986	9.50%
December 1, 1986 - December 31, 1986	9.50%
January 1, 1987 - January 31, 1987	9.25%
February 1, 1987 - February 28, 1987	9.00%
March 1, 1987 - March 31, 1987	9.00%
April 1, 1987 - April 30, 1987	9.25%
May 1, 1987 - May 31, 1987	9.25%
June 1, 1987 - June 30, 1987	10.00%

**ARC 7658****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[30]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3, 163.1, and 164.4, the Department of Agriculture and Land Stewardship hereby emergency adopts and implements an amendment to 30—Chapter 17, "Livestock Importation," Iowa Administrative Code.

The emergency rule, published in the Iowa Administrative Bulletin April 22, 1987, as ARC 7545, is being rescinded effective July 1, 1987, and the former language is being reinstated, due to objections noted with the Department regarding an adverse economic impact on those affected.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are impracticable or contrary to the public interest.

In accordance with Iowa Code section 17A.5(2)"b"(2), the Department also finds that the usual effective date of this rule, 35 days after publication, should be waived and the rule become effective on July 1, 1987. This rule confers a benefit on the Iowa livestock industry and the public health, safety and welfare.

The following rule is adopted:

Subrule 17.5(2), paragraph "b," is amended by rescinding numbered paragraph "3," and inserting in lieu thereof:

3. Originate from a Class "A" state with a negative brucellosis test for the animal conducted within 30 days of entry.

This rule is intended to implement Iowa Code section 163.11, and will become effective July 1, 1987.

[Filed emergency 5/15/87, effective 7/1/87]  
[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

**ARC 7641****LABOR SERVICES DIVISION[347]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 88.5, rule 347—10.20(88) appearing in Iowa Administrative Code relating to occupational safety and health standards for general industry is hereby amended.

This emergency rule is filed under Iowa Code section 17A.4(2) and 17A.5(2). Pursuant to Iowa Code section 17A.4(2) notice and public participation regarding this amendment are not necessary. The adoption of federal occupational safety and health standards adopted as permanent standards by the U.S. Secretary of Labor are required to be adopted by the Labor Commissioner pursuant to Iowa Code section 88.5.

Notice of Intended Action regarding the adoption of this rule is being published herein as ARC 7642. A public hearing will be held on June 24, 1987, to solicit public comment. This rule makes minor corrections to existing rules relating to hazardous waste operations and emergency response.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of this amendment 35 days after publication should be waived and the rule be made effective upon May 14, 1987.

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

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

52 Fed. Reg. 16241 (May 4, 1987)

This rule is intended to implement Iowa Code section 88.5.

[Filed emergency 5/14/87, effective 5/14/87]  
[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

**ARC 7634****LABOR SERVICES DIVISION[347]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 88.5, rule 347—28.1(88) appearing in Iowa Administrative Code relating to Occupational Safety and Health Standards for Agriculture is hereby amended.

This emergency rule is filed under Iowa Code sections 17A.4(2) and 17A.5(2). Pursuant to Iowa Code section 17A.4(2) notice and public participation regarding this amendment are not necessary. The adoption of federal occupational safety and health standards adopted as permanent standards by the U.S. Secretary of Labor are required to be adopted by the Labor Commissioner pursuant to Iowa Code section 88.5.

Notice of Intended Action regarding the adoption of this rule is being published herein as ARC 7635. A public hearing will be held on June 24, 1987, to solicit public comment. This rule relates to general environmental controls, specifically field sanitation.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of this amendment 35 days after publication should be waived and the rule be made effective on May 14, 1987.

This filing of the emergency rule permits Iowa employers and employees to be governed by the same provisions relative to general environment controls, specifically field sanitation, as those similarly located

## LABOR SERVICES DIVISION[347] (cont'd)

in other states. Because the Labor Commissioner has no option in the adoption of the rule, public participation is not required and is not necessary.

Pursuant to the authority of Iowa Code section 88.5, rule 347—28.1(88) is amended by adding at the end thereof the words:

52 Fed. Reg. 16095 (May 1, 1987)

This rule is intended to implement Iowa Code section 88.5.

[Filed emergency 5/12/87, effective 5/14/87]

[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

**ARC 7645****PUBLIC HEALTH  
DEPARTMENT[470]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby adopts amendments to 470—Chapter 15, "Swimming Pools."

These amendments were adopted by the Department on May 13, 1987. Notice of Intended Action was published on March 25, 1987, as **ARC 7476**. A public hearing was held April 14, 1987.

The Department finds pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the rules thirty-five days after publication should be waived and the rules made effective immediately upon filing with the Administrative Rules Coordinator on May 15, 1987. This finding is made because it removes a restriction on owners and operators of regulated swimming pools. The current language requiring analysis for fecal coliform bacteria by a "state certified laboratory" would be difficult or impossible to comply with because laboratories are certified for total (rather than fecal) coliform analysis. Emergency implementation of this rule change will correct this language and allow pool operators to be in compliance with water sampling requirements by the normal swimming pool opening date of the Memorial Day weekend.

The amendments also make editorial changes to correct agency references as a result of reorganization. These amendments change two references to the former Department of Water, Air and Waste Management to the Environmental Protection Division of the Department of Natural Resources.

These amendments are identical to the Notice of Intended Action and became effective May 15, 1987.

This rule is intended to implement Iowa Code section 135.11.

ITEM 1. In subrule 15.4(3), paragraph "c," subparagraph (1), change the words "Iowa state department of

water, air and waste management" to "environmental protection division, Iowa department of natural resources".

ITEM 2. In subrule 15.4(3), paragraph "d," subparagraph (1), change the words "department of water, air and waste management" to "environmental protection division, Iowa department of natural resources".

ITEM 3. Rescind subrule 15.4(4), paragraph "c," in its entirety and insert in lieu thereof the following:

c. Bacteriological quality.

(1) A sample of water must be collected from a swimming pool and analyzed for total coliform bacteria at least once during each month that the swimming pool is open for use. The analysis must be performed by a laboratory certified by the University of Iowa Hygienic Laboratory for the determination of total coliform bacteria in drinking water.

(2) If any sample is positive for total coliform bacteria, immediate action must be taken to evaluate the cause and to assure compliance with the water quality standards.

1. Superchlorinate the swimming pool water to the level of 10 mg/l.

2. The action taken must include steps to correct any deficiencies relative to:

Chlorine residual

Water clarity

Filter backwashing or cleaning

Swimming pool cleanliness

Swimmer adherence to adequate showering.

3. Submit recheck samples collected at the time the swimming pool disinfectant level is at or below 3 milligrams per liter (mg/l).

4. If the recheck sample is positive for total coliform, the swimming pool must be closed and not reopened until appropriate corrective measures are taken which restore water quality to the acceptable level.

5. All findings and corrective actions must be recorded.

[Filed emergency after Notice 5/15/87, effective 5/15/87]

[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

**EXECUTIVE DEPARTMENT****STATE EMERGENCY RESPONSE COMMISSION**

EDITOR'S NOTE: State Emergency Response Commission rules, Chapter 1, "Operation of Commission," published in Iowa Administrative Bulletin, May 20, 1987, **ARC 7616**, has been codified as Chapter 100 in the National Resources Department[561], Iowa Administrative Code, June 3, 1987.

## ARC 7622

ENERGY AND GEOLOGICAL  
RESOURCES[565]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 93.7(10), the Department of Natural Resources adopts amendments to Chapter 7 entitled "Energy Measures and Energy Audits Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin on March 25, 1987, as ARC 7488.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective July 8, 1987.

These rules are intended to implement Iowa Code chapter 93.

The following amendments are adopted:

ITEM 1. Amend subrule 7.1(1) as follows:

7.1(1) Purpose and scope. This chapter establishes requirements for the conduct of preliminary energy audits and energy audits, the qualifications of persons conducting them and allowable costs of energy audits. Preliminary energy audits and energy audits are required in the program of financial assistance for schools and hospitals and the program of financial assistance for units of local government and public care institutions, as provided under subpart B, part 455, chapter II of Title 10, Code of Federal Regulations.(1985).

ITEM 2. Amend subrule 7.1(2), Definitions, as follows:

"School" means a public or nonprofit institution which:

1. (No change)
2. (No change)
3. Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in subdivisions (a), (b) and (c) of subparagraph "12" above or;
4. (No change)

ITEM 3. Amend subrule 7.5(3) as follows:

7.5(3) Qualifications of energy auditors.

a. All Iowa registered architects, Iowa registered engineers, ~~Class A energy auditors, associate Class A energy auditors~~ and department approved energy management technicians are qualified as energy auditors for this program.

b. ~~Persons who are certified by the designated course instructor as having attended all phases of the energy audit workshop will be qualified as energy auditors for the building type workshop they attended.~~

(1) ~~Persons who attended the schools workshop are qualified to do energy audits for schools and local governments, and~~

(2) ~~Persons who have attended the hospitals workshop are qualified to do energy audits for hospitals and public care facilities.~~

b. *A person who wishes to be approved as an energy auditor by the department should send credentials for review by the engineering staff. The minimum qualifications for approval are completion of a two-year training program at a technical school or four years' experience.*

c. (No change)

d. (No change)

e. (No change)

[Filed 5/11/87, effective 7/8/87]

[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

## ARC 7623

ENERGY AND GEOLOGICAL  
RESOURCES[565]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 93.7(10), the Department of Natural Resources adopts amendments to Chapter 8 entitled "Technical Assistance and Energy Conservation: Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin on March 25, 1987, as ARC 7489.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective July 8, 1987.

These rules are intended to implement Iowa Code chapter 93.

The following amendments are adopted:

ITEM 1. Amend rule 565—8.1(93) as follows:

565—8.1(93) General. The technical assistance and energy conservation measures programs are steps two and three of the three-step energy audit and conservation program that is partially funded by the United States Department of Energy. The department rules for step one of this program are in chapter 7. The federal regulations for this program are in 10 C.F.R. 455 and 450: (1985).

ITEM 2. Amend subrule 8.2(2), paragraph "c," as follows:

c. All applications will use the following conversion factors when calculating Btu content of fuels:

Natural gas	<del>1,000</del> 1,000 Btu's per cubic foot;
Distillate fuel oil	<del>138,690</del> 130,000 Btu's per gallon;
Residual fuel oil	<del>149,690</del> 150,000 Btu's per gallon;
Coal	<del>20,000,000</del> 22,000,000 Btu's per standard short ton;

LP gases	95,475 95,000 Btu's per gallon;
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Steam	<del>1,060</del> 1,000 Btu's per pound;
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Electricity	3,413 Btu's per kilowatt-hour.
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ITEM 3. Amend subrule 8.3(1), paragraph "f," as follows:

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

ITEM 4. Amend rule 565—8.4(93) as follows:

565—8.4(93) Grant application submittals. All applications for grants must be completed with assist-

## ENERGY AND GEOLOGICAL RESOURCES[565] (cont'd)

ance of energy bureau staff. *Within 30 days of the department's recommendation to the U. S. Department of Energy, the applicant must remit to the department a processing fee of 5 percent of the federal grant's share of the application. If the applicant does not receive a grant, the fee will be returned.*

ITEM 5. Amend subrules 8.6(3), 8.6(4), and 8.6(7) as follows:

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

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

$$(EUI/10) \times 4 \text{ points, } EUI \times 0.40 \text{ points,}$$

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

b. to g. (No change)

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

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

$$(12 - ASPP) \times 3 \text{ points,}$$

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

b. For renewable and coal conversions, estimated energy cost savings will be based on the fuel replaced, according to the formula:

$$SI/2,$$

where SI is the percentage of total renewable annual energy displaced (BTU) by the renewable project related to the existing annual energy consumption (BTU).

$$SI = \text{renewable savings} : \text{annual consumption}$$

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

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

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

where SI is the percentage of total annual energy costs that will be saved by conversion. The upper limit for SI is ninety-six percent (96%).

c. The annual nonrenewable energy savings, according to the formula:

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

where QSI is the percentage of annual energy requirements (in BTUs) estimated to be saved from all ECMs combined, related to the existing annual energy consumption (BTU), multiplied by 10. When the percentage is greater than or equal to 50 60 percent, the value used for QSI will be 50 60 percent. The maximum point range for this factor is then 0-20 30.

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

$$\text{Oil} \quad R \times 20 \text{ points}$$

$$\text{Gas} \quad R \times 15 \text{ points}$$

$$\text{LPG} \quad R \times 15 \text{ points}$$

$$\text{Electricity} \quad R \times 15 \text{ points}$$

$$\text{Other} \quad R \times 10 \text{ points}$$

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

e. Technical assistance quality will be measured for a maximum of 5 8 points using the following criteria as follows:

(1) All forms are complete and correct (technical assistance report, building energy use worksheet) = 1-6 points.

(2) A minimum of 12 operation and maintenance procedures are addressed/discussed = 1-7 points.

(3) A minimum of 8 energy conservation measures are listed = 1-7 points.

The point range is 0 to 5 points:

(1) General 0.8 points

(2) Descriptions 5.1 points

(3) Analysis 1.9 points

(4) Report format 0.2 points

8.0 Total

Complete written details may be obtained by contacting the department.

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

**8.6(7)** State recommendations. The department will recommend to the U. S. Department of Energy the amount of the grant moneys which an applicant for technical assistance or energy conservation measures should receive. *Within 30 days of the department's recommendation to U. S. Department of Energy, the applicant must remit to the department a processing fee of 5 percent of the federal grant's share of the application. If the applicant does not receive a grant, the fee will be returned.*

a. (No change)

b. (No change)

ITEM 6. Amend subrule 8.7(1), paragraph "a," as follows:

a. ECM applications will have a funding limit if the grant requested is in excess of \$50,000. This limit is seven 15 percent of the total allocation to the state for the application cycle.

ITEM 7. Amend rule 565—8.8(93) as follows:

**565—8.8(93)** Technical assistance analysts. In order to qualify for a technical assistance analyst, a person must:

1. Be a certified Class A energy auditor as prescribed in chapter 6 of these rules; or

2. Be a registered engineer, as defined in Iowa Code chapter 114, Code of Iowa or in the case of an architect, be registered in accordance with Iowa Code chapter 118, Code of Iowa and be a part of an architect-engineer team; and be knowledgeable and experienced in energy conservation matters.

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

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

[Filed 5/11/87, effective 7/8/87]

[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

**ARC 7633****LABOR SERVICES DIVISION[347]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts an amendment to rule 347—10.20(88), Iowa Administrative Code, relating to occupational safety and health rules for general industry.

The amendment relates to occupational exposure to cotton dust (corrections and information collection requirements approval), occupational exposure to ethylene oxide, and commercial diving.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on October 22, 1986, as **ARC 7042**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was held on November 12, 1986. No comments were received.

This rule shall become effective July 8, 1987, and the rule adopted under emergency rule-making procedures as **ARC 7041** is to be rescinded July 8, 1987.

Rule **347—10.20(88)** is amended by striking the words:

51 Fed. Reg. 224325 (July 3, 1986)

51 Fed. Reg. 25053 (July 10, 1986)

51 Fed. Reg. 33033 (September 18, 1986)

and inserting the words:

51 Fed. Reg. 24325 (July 3, 1986)

51 Fed. Reg. 25053 (July 10, 1986)

51 Fed. Reg. 33033 (September 18, 1986)

This rule is intended to implement Iowa Code section, 88.5.

[Filed 5/12/87, effective 7/8/87]

[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

**ARC 7653****NATURAL RESOURCE  
COMMISSION[571]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 107.24, 109.38, and 109.39, the Natural Resource Commission on May 7, 1987, adopted amendments to Chapter 99, "Wild Turkey Fall Hunting," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 11, 1987, as **ARC 7453**.

These rules give the regulations for hunting wild turkeys during the fall and include season dates, license quotas, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation tag requirements.

There are no changes from the Notice of Intended Action.

These rules are intended to implement Iowa Code sections 109.38 and 109.39 and shall become effective July 8, 1987.

The following amendments are adopted:

ITEM 1. Rule 571—99.1(109) is amended to read as follows:

**571—99.1(109) General.** Wild turkey may be taken during the ~~1986~~ 1987 fall season subject to the following regulations:

**99.1(1) License.** All hunters must have in possession a valid ~~1986~~ 1987 fall wild turkey hunting license when hunting wild turkey. Licenses will be issued by zone and period and will be valid in the designated zone and for the designated period only. *Except as provided in 99.4(1),* No person shall obtain more than one fall wild turkey gun hunting license and one fall wild turkey bow hunting license each year.

**99.1(2) Seasons.** Wild turkey of any age or sex may be taken only by the use of shotguns, muzzleloading shotguns, and bow and arrow during specified periods as follows:

a. Shotgun and muzzleloading shotgun. The open fall season for hunting wild turkey with shotguns and muzzleloading shotguns shall be October ~~14~~ 12 through ~~October 26~~ November 8, ~~1986~~ 1987.

b. Bow and arrow. The open fall season for hunting wild turkey with bow and arrow shall be October ~~11~~ 1 through December ~~5~~ 4, ~~1986~~ 1987, and December 21, 1987, through January 10, 1988.

**99.1(3) Daily, possession, and season limits.** The daily bag limit is one wild turkey; the possession limit is one wild turkey per license; the season limit is one wild turkey per license.

**99.1(4) Shooting hours.** Shooting hours shall be from one-half hour before sunrise to sunset each day.

This rule is intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

ITEM 2. Rule 571—99.2(109) is amended to read as follows:

**571—99.2(109) Areas open to hunting.** Wild turkey, according to the type of license issued, may be taken in specific areas only.

**99.2(1) Shotgun and muzzleloading shotgun.** Wild turkey, in accordance with the zone designated on the license issued, may be taken with gun in one of ~~six~~ seven zones described as follows:

a. Zone 1. Zone 1 is an area of Iowa described as follows: Beginning where State Highway 92 crosses the Mississippi River; thence west on State Highway 92 to Interstate 35; thence north on Interstate Highway 35 to Interstate Highway 80; thence west on Interstate Highway 80 to State Highway 25; thence south on State Highway 25 to State Highway 2; thence south on State Highway 2 to Taylor County Road P14; thence south on Taylor County Road P14 to the Iowa-Missouri state line; thence east along the Iowa-Missouri state line to the Iowa-Illinois state line; thence north along the Iowa-Illinois state line to the point of beginning *with the exception of those areas described as Zone 5 and Zone 6.*

b. (No change.)

c. Zone 3. Zone 3 is an area described as follows: Beginning where U.S. Highway 52 crosses the Iowa-Minnesota border; thence south on U.S. Highway 52 to State Highway 150; thence south on State Highway 150 to State Highway 3; thence east on State Highway 3 to State Highway 13; thence south on State Highway 13 to U.S. Highway 30; thence east on U.S. Highway 30 to the Iowa-Illinois border; thence north along the Iowa-Illinois border to the Iowa-Wisconsin border; thence



## NATURAL RESOURCE COMMISSION[571] (cont'd)

along the Iowa-Wisconsin border to the Iowa-Minnesota border; thence west along the Iowa-Minnesota border to the point of beginning with the exception of the area described as Zone 7.

d. (No change.)

e. (No change.)

f. (No change.)

g. Zone 7. Zone 7 is the Yellow River State Forest in Allamakee County only.

99.2(2) Exceptions. Licenses issued for Zone 5 and Zone 6 shall be valid in Zone 1; and licenses issued for Zone 7 shall also be valid in Zone 3.

99.2(23) Bow and arrow. Wild turkey may be taken with bow and arrow statewide.

This rule is intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

ITEM 3. Rule 571—99.4(109) is amended to read as follows:

**571—99.4(109) Application procedure.** All applications for wild turkey hunting licenses for the ~~1986~~ 1987-88 fall wild turkey hunting season must be made on forms provided by the department of natural resources and returned to the Department of Natural Resources, Des Moines, Iowa 50319, with a remittance of \$20. Individual applications only will be accepted. Application periods for the two types of licenses will differ.

99.4(1) Applications for shotgun and muzzleloading shotgun licenses. Applications for ~~1986~~ 1987 fall wild turkey gun hunting licenses shall be received and accepted from July 7 6 to August 20 19, ~~1986~~ 1987, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. No person shall submit more than one application. At the end of the period, if applications have been received in excess of the license quota for any hunting zone, the department of natural resources shall conduct a drawing to determine which applicants shall receive licenses. Incomplete or improperly completed applications, applications not meeting the above conditions, or applications received prior to or after the application period shall not be considered valid applications for the drawing. If the quota for any hunting period or zone has not been filled by applications received during the application period, licenses shall then be issued in the order in which applications are received thereafter and shall continue to be issued until the quota has been met or until September 30 26, ~~1986~~ 1987, whichever first occurs. Persons who have obtained one gun license during either of the earlier application periods may obtain one additional gun license beginning September 22, 1987, if licenses are still available. No more than 2,000 3,000 gun licenses will be issued for Zone 1; no more than 500 gun licenses will be issued for Zone 2; no more than 1,000 2,000 gun licenses will be issued for Zone 3; no more than 60 100 gun licenses will be issued for Zone 4; no more than 100 gun licenses will be issued for Zone 5; and no more than 200 gun licenses will be issued for Zone 6; and no more than 100 gun licenses will be issued for Zone 7.

99.4(2) Applications for bow and arrow licenses. Applications for ~~1986~~ 1987 fall wild turkey bow hunting licenses will be accepted at any time after July 7 6, ~~1986~~ 1987. The number of bow licenses will not be restricted.

99.4(3) Applications for special turkey hunting licenses, as provided for in Iowa Code section 109.38, subsection 3, shall be on forms furnished by the com-

mission, and shall be received at the commission offices no later than September 12 11, ~~1986~~ 1987.

These rules are intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

[Filed 5/15/87, effective 7/8/87]

[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

**ARC 7639**

**PUBLIC HEALTH  
DEPARTMENT[470]**

BOARD OF COSMETOLOGY EXAMINERS

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 157.14, the Board of Cosmetology Examiners hereby adopts amendments to Chapter 150 of the Iowa Administrative Code, "Sanitary Conditions for Beauty Salons and Schools of Cosmetology."

These amendments were adopted by the Board of Cosmetology Examiners on May 3, 1987, and by the Board of Health on March 11, 1987.

Notice of Intended Action was published on December 3, 1986, as **ARC 7158**.

These amendments require posting of the most recent inspection report in cosmetology establishments, allow more flexibility in the posting of cosmetologists' licenses, require sanitation of tools, instruments, and equipment which come into contact with a patron's nails, and prohibit the use of nail buffers and neck dusters.

The adopted rules are identical to those published under Notice.

These rules are intended to implement Iowa Code section 157.6 and will become effective July 8, 1987.

ITEM 1. Amend rule 150.1(157) to read as follows:

**470—150.1(157) Rules and inspection report posted.** The owner or manager of every cosmetology establishment shall keep a copy of the rules of sanitation adopted by the Iowa department of public health and the most recent inspection report posted in a conspicuous place in each cosmetology establishment, for the information and guidance of all persons employed or studying therein and the public generally.

ITEM 2. Amend rule 150.2(157) to read as follows:

**470—150.2(157) License.** Each cosmetologist Cosmetologists shall visibly display at their work cabinet the original license and the annual renewal certifying the practitioner is a licensed cosmetologist. Beauty salon licenses shall be posted visible to the public therein.

ITEM 3. Amend rule 150.9(157) Sanitation.—by adding "nails," after the words "with a patron's hair" in the third line of the first sentence.

ITEM 4. Add a new subrule 150.10(3) to read as follows:  
**150.10(3)** The use of nail buffers or neck dusters is strictly prohibited.

[Filed 5/12/87, effective 7/8/87]

[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.



**ARC 7644****PUBLIC HEALTH  
DEPARTMENT [470]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.72, the Department of Public Health, hereby amends 470—Chapter 203, "Standards for Certificate of Need Review," Iowa Administrative Code. This rule was adopted by the Board of Health on May 13, 1987.

Notice of Intended Action was published on March 11, 1987, as **ARC 7432**.

The rule provides standards for the implementation of criteria to be applied by the Health Facilities Council to projects involving long-term care facilities.

There are no changes from the Noticed rules.

This rule is intended to implement Iowa Code section 135.64.

This rule will become effective July 8, 1987.

Rescind rule 203.5(135) in its entirety and insert in lieu thereof the following:

**470—203.5(135) Long-term care.****203.5(1) Purpose and scope.**

a. These standards are measures of criteria found in Iowa Code section 135.64(1) "a" to "g." Criteria which are measured by a standard are cited in parentheses following each standard.

b. Certificate of need applications which are to be evaluated against these standards include applications to:

(1) Construct, develop, offer new, modernize, replace, renovate, or relocate intermediate care or skilled nursing care beds in nursing homes or hospitals.

(2) Expand bed capacity in intermediate care or skilled nursing care facilities or designated units in hospitals.

**203.5(2) Definitions.**

"Intermediate care facility" (ICF) means any institution, place, building, or agency providing for a period exceeding 24 consecutive hours accommodation, board, and nursing services, the need for which is certified by a physician, to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity require nursing services which can be provided only under the direction of a registered nurse or a licensed practical nurse.

"Rural counties" means all counties not designated by the U.S. Census as SMA (Standard Metropolitan Area) counties.

"Skilled nursing facility" (SNF) means any institution, place, building, or agency providing for a period exceeding 24 consecutive hours accommodation, board, and nursing services, the need for which is certified by a physician, to three or more individuals not related to the administrator or owner thereof within the third degree of consanguinity who by reason of illness, disease, or physical or mental infirmity require continuous nursing care services and related medical services, but do not require hospital care. The nursing care services provided must be under the direction of a registered nurse on a 24-hour-per-day basis.

"Urban counties" means those counties designated by the U.S. Census as SMA (Standard Metropolitan Area) counties.

**203.5(3) Availability and need** (Iowa Code section 135.64(1) "c," "d," "e," "g," "h").

a. The following formula shall be used as a means of projecting the approximate number of intermediate and skilled nursing care beds needed to serve the projected population five years into the future:

(1) Rural counties:

$[(.09(65 + \text{population}) + .0015(64 - \text{population})) \times 110\%]$  equals total long-term care bed need

Combined SNF and ICF bed need equals 2/3 (total long-term care bed need)

Assumed RCF bed need equals 1/3 (total long-term care bed need).

(2) Urban counties:

$[(.07(65 + \text{population}) + .0015(64 - \text{population})) \times 110\%]$  equals total long-term care bed need

Combined SNF and ICF bed need equals 2/3 (total long-term care bed need)

Assumed RCF bed need equals 1/3 (total long-term care bed need).

(3) Department of economic development population projections are adopted for use in the determination of long-term care bed need.

(4) The department of public health will calculate long-term care bed need figures annually, using population projections five years into the future.

b. For purposes of comparing "need" to "existing" beds in a given county, the following shall be considered in the calculation of "existing" beds:

(1) ICF and SNF beds licensed at freestanding facilities in the county.

(2) Additional ICF and SNF beds previously approved through certificate of need but not yet licensed.

(3) ICF and SNF beds in designated units in hospitals in the county.

c. The statistical calculation of bed need shall serve as a guideline for the health facilities council in reviewing need for the proposed long-term care beds. Other factors which may be considered by the council include, but are not limited to:

(1) The availability and utilization of other ICF and SNF services in the county, or within the applicant's service area.

(2) The availability and utilization of other long-term care services in nearby hospitals, such as skilled care available through the swing bed program.

(3) The availability of supportive living arrangements which may or may not be licensed as residential care facilities (RCF).

(4) The availability of home health and other in-home services.

(5) The availability of other services to the elderly.

(6) The availability of ICF and SNF services in neighboring counties.

(7) Utilization by out-of-state residents of facilities in counties bordering other states, where the applicant provides evidence that in-migration of long-term care patients exceeds out-migration to the bordering state.

(8) Programs and services directed at special populations whose needs cannot otherwise be met, or whose needs cannot be met cost-effectively at other facilities.

d. In documenting need for a project, the applicant shall identify the service area and target population, including a description of the methodology used by the applicant in determining need for the requested beds and the expected sources of referrals. The applicant shall document that the number of beds requested is appropriate to address the identified need. The applicant shall also identify how the target population is currently

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

being cared for, and what hardship is being experienced by the absence of the proposed beds.

**203.5(4) Quality** (Iowa Code section 135.64(1) "i," "k"). The applicant shall document that the applicant has contacted the health facilities division of the department of inspections and appeals to conform with physical standards, staffing requirements, and other licensing requirements to assess the potential for provision of quality care at the facility. When necessary, the applicant shall attempt to arrange an on-site visit to the facility to determine compliance with physical requirements, and shall provide documentation of this site visit or attempts to arrange such a site visit.

**203.5(5) Continuity** (Iowa Code section 135.64(1) "g," "h," "k").

a. The applicant shall document the relationship of the facility's proposed services to other health and long-term care services in the community such as physician and hospital services, habilitation, rehabilitation, transportation, or other services. The facility should be capable of providing or arranging for the provision of a continuum of long-term care services.

b. The facility should be capable of providing or arranging for the provision of a comprehensive program of coordinated patient services. The applicant shall provide evidence of contracts for services, appropriate staffing patterns and ratios, and licensure of personnel as necessary.

**203.5(6) Accessibility and acceptability** (Iowa Code section 135.64 (1) "c" and "d").

a. Population subgroups which have traditionally been underserved, such as adolescents, the elderly, women, racial minorities, mentally ill, mentally retarded, and developmentally disabled should be considered when planning for or reviewing long-term care facilities.

b. The applicant shall document to what extent Medicaid patients will be served by the proposed beds, using past Medicaid utilization as an indicator or, in the case of a new facility, projecting anticipated Medicaid utilization.

**203.5(7) Costs and financial feasibility** (Iowa Code section 135.64 (1) "e," "f," "i," "p").

a. The applicant shall identify capital and operating costs associated with the project, identify sources of funding to cover those costs, and demonstrate that the project is financially feasible.

b. Construction costs shall be in line with construction costs of other similar projects.

c. The applicant shall provide budgets for the first three years of operation, including documentation of all assumptions used. The budget shall include anticipated sources of revenue, including the percentage of revenue from private pay, Medicaid, Medicare and other patient revenues.

d. Proposed charges per patient day should be justifiable when compared to current charges of other similarly licensed facilities in the applicant's service area, or other similar facilities elsewhere in the state. If charges are significantly higher or lower, the applicant shall provide a description of proposed programs or services which explain the difference in charges.

[Filed 5/15/87, effective 7/8/87]

[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

**ARC 7626**

**RAILWAY FINANCE  
AUTHORITY[765]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 307B.7(2), the Iowa Railway Finance Authority Board, on April 23, 1987, adopted amendments to 695—Chapter 1, "Organization and Operation," 695—Chapter 3, "Financial Assistance," and 695—Chapter 4, "Projects."

A Notice of Intended Action for these amendments was published in the March 11, 1987, Iowa Administrative Bulletin as **ARC 7426**.

Item 1 amends one definition to specify the Department of Transportation, adds a definition for the IRFA abbreviation, updates a publication, and removes the thirty-minute restriction for the public forum.

Item 2 amends a rule number, corrects an Iowa Code citation, and rescinds an outdated sentence.

Item 3 changes one method of project analysis to a cash-flow analysis because it is a more valuable predictor of a project's financial viability and reflects the actual questions which the Board and staff attempt to answer in reviewing project applications.

Item 4 is an amendment that extends the time between filing of a complete application and the required IRFA Board meeting to ninety days to permit consideration at a quarterly Board meeting, instead of requiring a costly special meeting.

Item 5 renumbers all of the rules in compliance with 1986 Iowa Acts, chapter 1245.

These amendments are identical to the ones published under Notice.

These amendments are intended to implement Iowa Code chapter 307B.

These rules are to be published as adopted in the June 3, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 8, 1987.

Pursuant to the authority of Iowa Code subsection 307B.7(2), the administrative rules in 695—Chapters 1 to 4 are hereby amended.

**ITEM 1. Amend Chapter 1, "Organization and Operation," as follows:**

1. In subrule 1.1(7) add the words "of transportation" after the word "department."

2. In rule 1.1(307B) delete the subrule numbers and add the following definition in proper alphabetical order:  
IRFA. The Iowa railway finance authority.

3. Amend subrule 1.4(7) by rescinding the words "Robert's Rules of Order (1970 edition)" and inserting in lieu thereof "Robert's Rules of Order Newly Revised (1981 edition)".

4. Amend subrule 1.5(4) by rescinding the words "thirty-minute" in the first sentence.

**ITEM 2. Amend Chapter 3, "Financial Assistance," as follows:**

1. In rule 3.1(307B,70GA,ch198) delete "70GA, ch198" from the rule number.

2. In paragraph 3.1(1) "e," change "Iowa Code subsection 422.32(4)" to "Iowa Code subsection 422.3(5)."

3. In subrule 3.1(4), rescind the last sentence.

4. Rescind the implementation clause for rule 3.1(307B,70GA,ch198) and insert in lieu thereof the following:

## RAILWAY FINANCE AUTHORITY[765] (cont'd)

This rule is intended to implement Iowa Code chapter 307B.

ITEM 3. In Chapter 4, "Projects," rescind subrule 4.3(2) and insert in lieu thereof the following:

4.3(2) Financial analysis. The financial analysis shall be based upon, but not limited to, an examination of the projected cash flow of the project and the variable factors which may affect the cash flow. The analysis shall address the following questions:

a. What are the factors (e.g., number of carloads, interest rates, amount of equity to be invested) which may vary significantly enough to affect the cash flow and viability of the project, and what may be the projected effect upon cash flow of these variations?

b. Can the project reasonably be expected to generate enough cash flow to repay a commercial loan, in which case financing by IRFA may not be necessary?

c. Can the project reasonably be expected to generate enough cash flow to cover all operating expenses, including an allocation for maintenance-of-way sufficient to maintain the property, where applicable?

d. Can the project reasonably be expected to generate enough cash flow above and beyond operating expenses to repay an IRFA loan?

e. If the project cannot reasonably be expected to be able to repay a loan, would the project be financially viable with an IRFA grant?

f. If a project is found to have a reasonable chance of being financially viable with IRFA assistance, how much of that assistance is necessary and what financing terms are necessary to achieve viability?

ITEM 4. Amend subrule 4.4(1) by changing the word "sixty" to "ninety".

ITEM 5. Renumber all rules to show the change in agency number from Railway Finance Authority [695] to Iowa Railway Finance Authority [765], under the "umbrella" of the Department of Transportation.

[Filed 5/11/87, effective 7/8/87]  
[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective July 8, 1987, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 421.

The following amendments are adopted:

ITEM 1. Amend subrule 71.12(1), paragraph "a," subparagraph (1), next to last paragraph, to read as follows:

Determine the 5-year average ~~diverted~~ *acres participating in applicable government programs*. Obtain data from the U.S. Agricultural Stabilization and Conservation Service, including *but not limited to* acreage devoted to the Payment-In-Kind (PIK), *diverted and deficiency* programs.

ITEM 2. Amend subrule 71.12(1), paragraph "a," subparagraph (2), last paragraph, to read as follows:

Hay yield in tons: Number of tons per acre harvested. ~~In the absence of specific number of tons per acre harvested as reported by the Iowa Crop and Livestock Reporting Service, number of tons per acre shall be determined in accordance with hay-corn yield correlations developed by Iowa State University.~~

ITEM 3. Amend subrule 71.12(1), paragraph "a," subparagraph (3), by striking unnumbered paragraphs 6 and 7 beginning with "Diverted acreage program" and "Payment-In-Kind (PIK) Program," respectively, and inserting in lieu thereof the following new unnumbered paragraph:

Government programs: Gross income shall be one-half of the 5-year average amount of cash payments or equivalent (such as PIK bushels) including but not limited to diverted, deficiency and PIK programs as reported by the U.S. Agricultural Stabilization and Conservation Service.

ITEM 4. Amend subrule 71.12(1), paragraph "a," subparagraph (3), last paragraph, to read as follows:

Other acres: Income shall be the product of the number of other acres times ~~one-half~~ *17 percent* of the net income per acre for all other land uses.

ITEM 5. Amend subrule 71.12(1), paragraph "a," subparagraph (4), by striking the paragraph "Facilities costs." and numbered paragraphs "1" and "2" and inserting in lieu thereof the following unnumbered paragraph:

Production cost adjustment. The production costs for corn, soybeans, oats, and hay are adjusted for each county by multiplying the difference between the 5-year state average yield per acre and the 5-year county average yield per acre by the 5-year average facilities costs. If a county's yield exceeds the state yield, production costs are increased by this amount. If a county's yield is less than the state yield, production costs are reduced by this amount.

ITEM 6. Amend subrule 71.12(1), paragraph "a," subparagraph (7), to read as follows:

(7) Computation of county tax adjustment. Subtract the 5-year average per acre real estate taxes levied for land and structures *including drainage and levee district taxes* but excluding those levied against agricultural dwellings. Taxes shall be the tax levied for collection during the 5-year period as reported by county auditors,

## ARC 7643

### REVENUE AND FINANCE DEPARTMENT[701]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 71, "Assessment Practices and Equalization," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 25, 1987, as ARC 7490.

These amendments are being made to clarify the procedures used in determining productivity and net earning capacity for agricultural realty.

## REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

and reduced by the amount of the agricultural land tax credit as reported by the state comptroller.

[Filed 5/15/87, effective 7/8/87]  
[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

**ARC 7625****TRANSPORTATION  
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on April 28, 1987, adopted miscellaneous amendments to its rules, including the renumbering of all rules under new agency number 761.

A Notice of Intended Action for these amendments was published in the March 11, 1987, Iowa Administrative Bulletin as **ARC 7430**.

These amendments are to be published as adopted in the June 3, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 8, 1987.

These amendments are identical to the ones published under Notice except for the following changes to Items 3 and 19:

Item 3 amends (01,B) Chapter 3, "Contested Cases." Subrules 3.3(1) and 3.3(2) both contained the phrase "when permitted by statute". This phrase has been changed in both subrules to "unless prohibited by statute". In subrule 3.4(3), two clauses in the second sentence have been reversed for easier reading. Subrule 3.12(2) has been reworded as follows: "Mailed notices, communications and decisions regarding the contested case shall be sent by first-class or certified mail to the latest address which each party has provided to the department."

Item 19 amends (07,C) Chapter 13, "Driver Licenses." In subrule 13.9(1), the word "and" has been inserted between the words "license" and "who".

The final item of these amendments renumbers all Department of Transportation rules to remove the current bracketed numbering system and to incorporate the new agency number 761. The preceding amendments show the old rule numbers to lessen confusion. The only exceptions to this are as follows: When another rule is cross-referenced within a rule, the new rule number is being used for the cross-reference. Also, when an entire chapter is being added or rewritten, the new rule numbers are being used.

Because all the Department's rules will be republished, the Department decided it was a good opportunity to review the rules for organization, accuracy, validity, clarity, consistency, redundancy, and agreement with the Iowa Code. As a result of this review, several amendments are being made. The highlights of these amendments are as follows:

A new chapter containing definitions is being added so that widely used terms don't have to be repeatedly defined in every chapter of rules.

(01,B) Chapter 3, "Contested Cases," is being amended to clarify departmental involvement in contested cases due to state government reorganization. The procedures for motion for review, as outlined in Iowa Code section 17A.15, are being more fully explained. The retention of contested case files (other than transcripts) is being reduced from five to three years. The method of mailing notices and decisions is being added to allow either first-class or certified mail. A new rule is being added to outline the procedures that apply when the Department must administer a controversy to which it is not a party.

(03,E) Chapter 1, "Records Management," is being rescinded because the chapter as written is obsolete.

Rules in Division 04, Aeronautics, are being amended to correct a division name and address.

Several rules in Division 06, Highways, are being amended to insert the proper title and rule cross-reference for the "Manual on Uniform Traffic Control Devices for Streets and Highways." Each rule which mentions the manual will cross-reference the rule that actually adopts the manual.

(06,C) Chapter 1, "Primary Road Access Control," is being amended to correct office and bureau names.

(06,F) Chapter 7, "Junkyard Control," is being amended to update an agency name and to cross-reference the proper rule for hearings and appeals.

Rules in Article K, Traffic Engineering, of Division 06, Highways, are being amended to update a reference to the state transportation map, to update agency names, to delete a reference to the state board of health, and to clarify wording. Also, a requirement that certain campgrounds be licensed by the state Department of Public Health is being deleted. The state Department of Public Health no longer issues these licenses. Even though there is no state licensing, there may still be general state or local standards for health and sanitation. The campground will be required to meet these standards. The Department will assume that a campground meets these standards unless it is notified otherwise.

(06,L) Chapter 1, "Improvements and Maintenance on Primary Road Extensions," is being amended to delete a cross-reference to a rule that is being rescinded.

(06,P) Chapter 3, "General Requirements for the Preparation and Submittal of Street System Maps by Cities for Road Use Tax Allocation," is being rescinded because the requirement was repealed by the Sixty-seventh General Assembly and is no longer valid.

(06,Q) Chapter 7, "To Define the Actions Needed to Propose, Prepare and Consummate an Agreement to Transfer Highway Jurisdictions between the State and a County," is being rescinded because it duplicates Iowa Code section 313.2 and is therefore unnecessary.

(06,Q) Chapter 9, "To Define Those Activities Performed for and Supplies Furnished to Counties by the Department for Which Reimbursement Will Be Required," is being retitled "Reimbursable Services and Supplies" in the interest of brevity.

(06,Q) Chapter 13, "General Requirements for Implementing the Pavement Marking Demonstration Program," is being rescinded. The pavement marking demonstration program was first authorized by the Federal Aid Highway Act of 1973. The program was designed to increase highway safety by improving markings on highways other than interstates. Funds for the program were authorized through 1981 but have not

## TRANSPORTATION DEPARTMENT[761] (cont'd)

been continued. All funds available to the Department under this program have been expended, and the program is no longer in existence.

(07,C) Chapter 6, "Denials, Cancellations, Suspensions and Revocations," is being amended to delete hearing procedures which are covered by other rules or are no longer applicable. Also, two requirements have been added: a specific time period for requesting an informal settlement or hearing, and the inclusion of the person's date of birth and driver license or permit number with a request or appeal so that the person's record can be readily identified.

(07,C) Chapter 12, "Nonoperator's Identification," is being rewritten to simplify language and to add a provision regarding an adhesive strip for a change of address.

(07,C) Chapter 13, "Driver Licenses," is being amended to update rules in compliance with statutes; to delete obsolete requirements, terminology, references, repetitions, and internal procedures; to correct form numbers and names; to add relevant cross-references and implementation clauses; and to simplify language. Subrule 13.13(1) which implements Iowa Code subsection 321.210(1) is being deleted because it violates the Constitutional due process requirement.

(07,C) Chapter 14, "Financial Responsibility," is being amended to correct Code citations, office and form titles, to delete obsolete requirements, and to simplify language.

(07,C) Chapter 15, "Drivers' Licenses Records," is being amended to correct or delete obsolete provisions.

(07,D) Chapter 1, "Handicapped Identification Devices," is being amended to correct a committee title, addresses, a cross-reference and the procedures for handicapped devices pursuant to 1986 Iowa Acts, chapter 1225.

(07,D) Chapter 6, "Vehicle Recyclers," is being amended by adding a reference to the contested case rules.

(07,D) Chapter 7, "Mobile Home Dealers, Manufacturers, and Distributors," is being amended by rescinding obsolete mobile home registration requirements.

(07,D) Chapter 9, "Motor Vehicle Leasing Licenses," is being amended by deleting a rule not in logical sequence.

(07,D) Chapter 10, "Motor Vehicle Dealers, Manufacturers and Distributors," is being amended to update references to contested case rules and delete gender pronouns.

(07,D) Chapter 12, "Release of Information," is being rescinded because the service is now provided by a private business.

(07,E) Chapter 1, "Motor Vehicle Equipment," is being amended to update names and addresses and to delete redundant wording.

(07,E) Chapter 2 pertaining to emergency vehicle permits is being rewritten to delete obsolete forms and to delete provisions which duplicate the Iowa Code.

Rules in Article F, Operating Authority, of Division 07, Motor Vehicles, are being amended to change references to transportation regulation board or authority, or to the office of operating authority, to the office of motor carrier services; to correct rules that have errors in wording; and to delete superfluous or obsolete rules. (07,F) Chapter 4 on motor carriers and charter carriers is also being amended to conform to 1986 Iowa Acts, chapter 1161, which reduced regulatory require-

ments for regular route passenger carriers and charter carriers.

(08,G) Chapter 1, "Highway Project Planning," is being amended to delete superfluous or redundant rules.

(09,A) Chapter 2, "Coordination of Public Transit Services," is being amended to update the number of public transit systems, to clarify the fact that certain emergency services are not subject to the chapter, and to delete hearing procedures which are covered by other rules or are no longer applicable.

(09,B) Chapter 5, "Energy Conservation Trust Fund Appropriation," is being amended to correct awkward wording.

Rules in Division 10, Railroads, are being amended to update references to the Code of Federal Regulations, to update a reference to the AAR Signal Manual, to update hearing procedures, to correct office names, and to state that railroad companies whose accounts are not regulated by the Interstate Commerce Commission shall maintain accounts using generally accepted accounting principles. Also, the annual report requirements have been updated to reflect procedures transferred from the transportation regulation authority.

When the rules are renumbered, and the amendments in this and the other ARC filings in this Bulletin are published in the Iowa Administrative Code, rules of the Department of Transportation will be organized and numbered as follows:

<u>New chapter number</u>	<u>Chapter title</u>	<u>Former chapter number or comment</u>
<u>0-99 GENERAL</u>		
1	Organization of the Department of Transportation	(01,A)ch 1
2	Provisions Applicable to All Rules	New
10	Administrative Rules and Declaratory Rulings	(01,B)ch 1
13	Contested Cases	(01,B)ch 3
20	Procurement of Equipment, Materials, Supplies and Services	(01,B)ch 2
<u>100-199 HIGHWAYS</u>		
100	Functional Classification of Highways	(08,C)ch 3
Right of Way and Environment		
110	Highway Project Planning	(08,G)ch 1
111	Real Property Acquisition and Relocation Assistance	New; replaces (06,F)ch 8
112	Primary Road Access Control	(06,C)ch 1
115	Utilities within the Right-of-Way	(06,D)ch 1
116	Junkyard Control	(06,F)ch 7
117	Outdoor Advertising	(06,O)ch 5
118	Logo Signing	New
119	Tourist Oriented Signing	New
120	Private Directional Signing	New
Construction		
125	General Requirements and Covenants for Highway and Bridge Construction	(06,G)ch 1
126	Contracts Set Aside for Disadvantaged Business Enterprises	(06,G)ch 2
127	Bikeways and Walkways	(06,A)ch 2
Traffic Operations		
130	Signing Manual	(06,K)ch 2
131	Signing on Primary Roads	(06,K)ch 3
136	Lighting	(06,K)ch 4
140	Traffic Signals, School Signals and Beacons on Primary Roads	(06,K)ch 5
141	Traffic and Engineering Investigations on Secondary Roads	(06,K)ch 6;
142	Speed Zoning on Primary Highways	(06,K)ch 7
Primary Road Extensions		
150	Improvements and Maintenance on Primary Road Extensions	(06,L)ch 1
151	City Requests for Closure of Primary Road Extensions	(06,L)ch 2
Special Programs		
160	Special Great River Road Fund	(08,E)ch 2
161	Federal-Aid Highway Bridge Replacement and Rehabilitation Program	(06,Q)ch 8
163	RISE Program	(06,Q)ch 4
Local Systems		
170	Allocation of Farm-to-Market Road Funds	(06,Q)ch 16
172	Availability of Instructional Memorandums to County Engineers	(06,Q)ch 1
173	Preparation of Secondary Road Construction Programs, Budgets, and County Engineers' Annual Reports	(06,Q)ch 2
174	Reimbursable Services and Supplies	(06,Q)ch 9;
180	Federal-Aid Urban Systems	retitled (06,Q)ch 10
<u>200-399 Reserved</u>		

TRANSPORTATION DEPARTMENT[761] (cont'd)

400-499 VEHICLES

400	Vehicle Registration and Certificate of Title	(07,D)ch 11
411	Handicapped Identification Devices	(07,D)ch 1
420	Motor Vehicle Dealers, Manufacturers and Distributors	(07,D)ch 9
421	Mobile Home Dealers, Manufacturers and Distributors	(07,D)ch 7
422	Travel Trailer Dealers, Manufacturers and Distributors	(07,D)ch 8
424	Transporter Plates	(07,D)ch 5
430	Motor Vehicle Leasing Licenses	(07,D)ch 9
431	Vehicle Recyclers	(07,D)ch 6
450	Motor Vehicle Equipment	(07,E)ch 1
451	Emergency Vehicle Permits	New; replaces (07,E)ch 2
452	Flashing Lights and Warning Devices on Slow-Moving Vehicles	(07,E)ch 2
453	Weight Equalizing Hitch and Sway Control Devices for Trailers	(07,E)ch 4
480	Abandoned Vehicles	(07,D)ch 2

500-599 MOTOR CARRIERS

500	Interstate Registration and Operation of Vehicles	(07,F)ch 1
505	Interstate Motor Vehicle Fuel Permits	(07,F)ch 7
510	Designated Highway System	(07,A)ch 1
511	Special Permits For Operation and Movement of Vehicles and Loads of Excess Size and Weight	(07,F)ch 2
513	Compacted Rubbish Vehicle Permits	(07,F)ch 6
520	Regulations Applicable to Carriers	(07,F)ch 8
523	Truck Operators and Contract Carriers	(07,F)ch 3
525	Motor Carriers and Charter Carriers	(07,F)ch 4
528	Liquid Transport Carriers	(07,F)ch 13
529	Interstate Commerce Commission Authority of Motor Carriers	(07,F)ch 5

600-699 DRIVER LICENSES

600	Driver Licenses	(07,C)ch 13
604	License Examination	New (07,C)ch 15; retitled (07,C)ch 6
610	Driver License Records	(07,C)ch 11
615	Denials, Cancellations, Suspensions and Revocations	(07,C)ch 12
620	OWI and Implied Consent	(07,C)ch 12
630	Nonoperator's Identification	(07,C)ch 14
640	Financial Responsibility	(07,C)ch 14

700-799 AERONAUTICS

710	Airport Development Program	(04,B)ch 1
720	Iowa Airport Registration	(04,C)ch 1
750	Aircraft Registration	(04,C)ch 2

800-899 RAILROADS

800	Items of General Application	(10,A)ch 1
801	Relationship with Iowa Railway Finance Authority	(10,C)ch 2
802	Reporting of Railroad Accidents/Incidents	(10,B)ch 6
810	Railroad Track Safety Standards	(10,B)ch 1
811	Railroad-Highway Grade Crossing Warning Devices	(10,B)ch 2
812	Guidelines for Safety Evaluation of Rural Railroad-Highway Grade Crossings	(10,B)ch 3
820	Highway Grade Crossing Safety Fund	(10,B)ch 4
821	Highway-Railroad Grade Crossing Surface Repair Fund	(10,B)ch 5
830	Rail Assistance Program	(10,C)ch 1

900-999 PUBLIC TRANSIT

900	Contracts Set Aside for Disadvantaged Business Enterprises	(09,A)ch 1
910	Coordination of Public Transit Services	(09,A)ch 2
920	State Transit Assistance	(09,B)ch 1
921	Advanced Allocations of State Transit Assistance Funding	(09,B)ch 2
922	Federal Transit Assistance	(09,B)ch 3
923	Capital Match Revolving Loan Fund	(09,B)ch 4
924	Energy Conservation Trust Fund Appropriation	(09,B)ch 5

Federal projects must be in compliance with 49 C.F.R. Part 25: These regulations implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

The Department has a duty, under Iowa Code sections 316.9 and 316.10, to adopt rules that:

1. Comply with this Act.
2. Shall be used for state projects.
3. May be used for local projects.

To ensure that persons are treated fairly and equitably regardless of project funding, the Department has adopted the federal regulations. A revised appeal procedure, which implements 49 C.F.R. section 25.10 and Iowa Code section 316.9, is also included in the adopted rules.

These rules are identical to the ones published under Notice except that the February 27, 1986, Federal Register reference has been changed to the October 1, 1986, edition of the Code of Federal Regulations. This is a nonsubstantive change.

These rules are intended to implement Iowa Code chapter 316.

These rules are to be published as adopted in the June 3, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 8, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules [761—Chapter 111] is being omitted. With the exception of the nonsubstantive change noted above, these rules are identical to those published under Notice as ARC 7412, IAB 3/11/87.

[Filed 5/11/87, effective 7/8/87] [Published 6/3/87]

[For replacement pages for IAC, see IAC Supplement, 6/3/87.]

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules [amend, renumber, and transfer all rules from agency number 820 to 761] is being omitted. With the exception of Items 3 and 19, these rules are identical to those published under Notice as ARC 7430, IAB 3/11/87.

[Filed 5/11/87, effective 7/8/87] [Published 6/3/87]

[For replacement pages for IAC, see IAC Supplement, 6/3/87.]

ARC 7624

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on April 28, 1987, rescinded 820—[06,F] Chapter 8, "Relocation Assistance," and adopted in lieu thereof 761—Chapter 111, "Real Property Acquisition and Relocation Assistance," Iowa Administrative Code.

A Notice of Intended Action for these rules was published in the March 11, 1987, Iowa Administrative Bulletin as ARC 7412.

ARC 7629

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 306C.11, 307.12, and 307A.2, the Department of Transportation, on April 28, 1987, adopted amendments to 820—[06,O] Chapter 5, "Outdoor Advertising," and adopted new rules 761—Chapter 118, "Logo Signing," Iowa Administrative Code.

A Notice of Intended Action for these rules was published in the March 11, 1987, Iowa Administrative Bulletin as ARC 7413.

Logo-signing provisions are being moved from the "Outdoor Advertising" chapter to a new chapter. The following changes are also being made.

1. Several standards are being replaced by a reference to the "Manual on Uniform Traffic Control Devices for Streets and Highways."

2. The spacing requirements between specific service signs have been reduced from 1000 to 800 feet.

## TRANSPORTATION DEPARTMENT[761] (cont'd)

3. If there are more qualified applicants than available spaces on a specific service sign, a drawing will be held to allocate space among the applicants.

4. The requirement that business signs be placed on a specific service sign in a particular order has been dropped.

5. The maximum distance that a business installation can be located from the main traveled way to qualify for a business sign has been increased. The new rules provide that the distance shall be in three-mile increments up to a maximum of fifteen miles.

6. The hours requirement for "gas" has been reduced from sixteen to twelve hours. Also, a requirement has been added stating that gas stations provide free air for tire inflation, as required by Iowa Code section 306C.11.

7. The hours requirement for "food" has been eliminated. However, the business must still be open seven days a week and serve three meals a day.

8. The fee structure for business signs has been updated to comply with Iowa Code section 306C.11.

9. Reflectorization of business signs has been made optional. Previously, a business sign could be reflectorized only when the service was available twenty-four hours a day, seven days a week.

The changes in vendor qualifications will allow more businesses to participate in the logo-signing program.

These rules are identical to the ones published under Notice and are intended to implement Iowa Code chapter 306C.

These rules are to be published as adopted in the June 3, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 8, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules [820—(06,O)5.1(5), 5.1(6), 5.4(5), 5.7(306C), 5.7(2), Figures 1 to 10 at the end of ch 5; new 761—Chapter 118] is being omitted. These rules are identical to those published under Notice as ARC 7413, IAB 3/11/87.

[Filed 5/11/87, effective 7/8/87]  
[Published 6/3/87]

[For replacement pages for IAC, see IAC Supplement, 6/3/87.]

## ARC 7632

TRANSPORTATION  
DEPARTMENT[761]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 306C.11, 307.12, and 307A.2, the Department of Transportation, on April 28, 1987, adopted amendments to 820—[06,O] Chapter 5, "Outdoor Advertising," and adopted new rules 761—Chapter 120, "Private Directional Signing," Iowa Administrative Code.

A Notice of Intended Action for these rules was published in the March 11, 1987, Iowa Administrative Bulletin as ARC 7425.

The new chapter establishes the criteria for private directional signing. Private directional signing is located on private property but is visible from an interstate, a freeway primary, or a primary highway. It gives directional information about certain activities or sites of interest to the traveling public.

These rules are identical to the ones published under Notice.

These rules are intended to implement Iowa Code chapter 306C.

These rules are to be published as adopted in the June 3, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 8, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules [(06,O), 5.1(11), (06,O)5.7(1), and new 761—Chapter 120] is being omitted. These rules are identical to those published under Notice as ARC 7425, IAB 3/11/87.

[Filed 5/11/87, effective 7/8/87]  
[Published 6/3/87]

[For replacement pages for IAC, see IAC Supplement, 6/3/87.]

## ARC 7631

TRANSPORTATION  
DEPARTMENT[761]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on April 28, 1987, adopted amendments to 820—[06,Q] Chapter 10, "Federal-Aid Urban Systems," Iowa Administrative Code.

A Notice of Intended Action for these amendments was published in the March 11, 1987, Iowa Administrative Bulletin as ARC 7414.

This chapter is being amended to require the city to assign a full-time, publicly employed engineer to have overall responsibility for an FAUS project and to require the city to accommodate utilities for an FAUS project. Also, the Department will let all FAUS projects for cities.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 307.

These amendments are to be published as adopted in the June 3, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 8, 1987.

Rule-making actions:

ITEM 1. Amend paragraph 10.3(3)"b" as follows:

b. A waiver of the ~~above~~ *withdrawal of excess funds* shall be considered for approval by the highway division upon submittal of an appropriate application by the city or, in an urbanized area, by the MPO. Applications shall be in the form of a resolution and shall specifically identify proposed projects and schedules for obligating the fund balance.



## TRANSPORTATION DEPARTMENT[761] (cont'd)

ITEM 2. Rescind subparagraphs 10.5(4)"b"(3) and (4) and insert in lieu thereof the following:

(3) A registered professional engineer is designated as being in day-to-day charge of the project, including job site supervision.

(4) A full-time, publicly employed engineer is assigned to have overall responsibility for the project.

ITEM 3. Amend paragraph 10.5(6)"a" by renumbering subparagraphs (3) and (4) as (4) and (5), respectively, and inserting the following new subparagraph (3):

(3) The city shall accommodate utilities in accordance with the department's policy for accommodating utilities on county federal-aid secondary (FAS) and city FAUS routes. The city's costs for certain project-related utility relocation, alteration, adjustment or removal may be eligible for federal-aid reimbursement in accordance with the federal highway administration policy applicable to the type of utility involved and Iowa Code chapter 306A.

ITEM 4. Rescind the introductory paragraph of paragraph 10.5(6)"d" and insert in lieu thereof the following:

d. Project letting and contract award. The department shall let projects for the city. The nomenclature of bid items shall conform to the department's bid item descriptions.

ITEM 5. Rescind subparagraph 10.5(6)"d"(1).

ITEM 6. Amend subparagraph 10.5(6)"d"(2) as follows:

(2) If the department holds the project letting, the (1) The department shall follow normal project letting procedures. After bids are received and opened, the department shall furnish the city with a tabulation of all bid proposals. The department shall formally approve the letting and, concurrently, the city, by council resolution, shall act on the bids received. The city shall furnish the department with a copy of the resolution. The department shall forward the required documents to the federal highway administration for concurrence.

ITEM 7. Renumber subparagraph 10.5(6)"d"(3) as subparagraph (2).

ITEM 8. Rescind subparagraph 10.5(6)"f"(3) and insert in lieu thereof the following:

(3) After a highway division audit of quantities and materials, the city shall make final acceptance of the project, make final payment to the contractor, and forward all necessary forms to the highway division.

[Filed 5/11/87, effective 7/8/87]

[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

## ARC 7627

### TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on April 28, 1987, adopted 761—Chapter 604, "License Examination," and amendments to 820—[07,C] Chapter 13, "Driver Licenses." Iowa Administrative Code.

A Notice of Intended Action for these amendments was published in the March 11, 1987, Iowa Administrative Bulletin as ARC 7415.

The rules describing the examination required to qualify for a motor vehicle license have been rewritten as a separate chapter to explain the procedures in a more understandable and detailed format. The new chapter describes the motor vehicle license examination procedure by explaining the required vision, knowledge, and driving tests, which applicants are required to take them, what happens if the applicant fails, and the license reinstatement procedure. There are only two substantive changes from current rules — the addition of peripheral vision standards in subrule 604.11(2) and an optional review procedure in subrule 604.13(4).

The American Association of Motor Vehicle Administrators has long recognized peripheral vision as equal in importance to visual acuity in determining a person's capability to operate motor vehicles safely upon the highways. The technology for practical testing of peripheral vision in field locations is now available and similar testing has been adopted by at least seventeen states. The proposed standards have been reviewed and approved by the Safe Transportation Committee of the Iowa Medical Society. The adoption of these standards is also supported by the Iowa Optometric Association and other vision specialists.

The optional review procedure is available to a person who cannot meet the visual standards. It provides the person with recourse to a driver improvement officer who may reassess the relevant information and who has discretionary authority to issue a license with restrictions appropriate to the specific circumstances.

The Department has prepared its renumbering plan for administrative rules, as required by statute. Therefore, in this chapter of rules when another rule is cross-referenced, the new numbering plan is used; i.e., rule 761—615.37(321) is currently 820—[07,C]6.37(321), rule 761—615.38(321) is currently 820—[07,C]6.38(321), and rule 761—600.2(321) is currently 820—[07,C]13.2(321).

These amendments are intended to implement Iowa Code chapter 321.

These amendments are identical to the ones published under Notice except for the deletion of a brand name in rule 761—604.10(321) and a grammatical change from "best eye" to "better eye" in rule 761—604.11(321).

These amendments are to be published as adopted in the June 3, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 8, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules [761—Chapter 604; 820—(07,C)13.3(321), 13.17(321), 13.5(321), 13.7(3)] is being omitted. With the exception of the deletion of a brand name in 761—604.10(321) and a grammatical correction in 761—604.11(321), these rules are identical to those published under Notice as ARC 7415, IAB 3/11/87.

[Filed 5/11/87, effective 7/8/87]

[Published 6/3/87]

[For replacement pages for IAC, see IAC Supplement, 6/3/87.]



**ARC 7628****TRANSPORTATION  
DEPARTMENT [761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on April 28, 1987, adopted amendments to 820—[07,D] Chapter 11, "Vehicle Registration and Certificate of Title," Iowa Administrative Code.

A Notice of Intended Action for these amendments was published in the March 11, 1987, Iowa Administrative Bulletin as **ARC 7429**.

Item 1 implements 1985 Iowa Acts, chapter 209, section 4, by deleting a noncompliant sentence.

Item 2 deletes a sentence that conflicts with the new rule in Item 5; adds a subparagraph to implement 1985 Iowa Acts, chapter 87, section 3, which allows credit for the registration fee when a vehicle is transferred between specified relatives; and updates the implementation clause.

Item 4 concerns documents needed to obtain a certificate of title for used vehicles from outside the state. One amendment clarifies that the bill of sale requirement applies only to trailers under 2000 lbs.; and a new paragraph specifies that an ownership document in a foreign language must be accompanied by a certified English translation.

Item 5 rescinds a rule about the special fuel user identification sticker because the exact wording is being added to rule 11.53(321) in Item 26.

Item 6 combines the substance of two rules and two subrules into one rule about ownership terms and power of attorney used in procedures for transferring vehicle ownership.

Item 7 is an editorial revision to compensate for the removal of the two subrules.

Item 8 updates a reference to federal regulations.

Item 9 amends the catchwords to agree with the substance of the rule.

Item 10 implements Iowa Code section 321.47 which allows a new title and registration to be issued in the transferee's county of residence instead of in the county where the vehicle was previously registered.

Item 11 implements 1985 Iowa Acts, chapter 209, section 3, which permits issuance of a certificate of title for a vehicle when a junking certificate has been issued in error. This new rule defines the specific conditions considered errors.

Item 12 implements 1985 Iowa Acts, chapter 209, section 4, by rescinding a rule on registration penalties. The substance of the rule is added to rule 11.44(321) in Item 21.

Item 14 deletes a sentence not in compliance with 1985 Iowa Acts, chapter 209, section 4, which states that registration fees are delinquent 30 days after a vehicle is brought into Iowa.

Item 15 deletes a repetitious subrule and simplifies wording in another.

Item 16 implements 1985 Iowa Acts, chapter 98, by describing the procedure for issuing a motor vehicle certificate of title to a mobile home which has been converted from real property by the addition of a vehicular frame.

Item 19 provides for the issuance and redemption of a gift certificate for personalized plates and clarifies

terminology pursuant to an attorney general's opinion, OAG #85-8-1(L).

Item 21 is amended to comply with 1985 Iowa Acts, chapter 209, section 4, by including the new provisions about registration penalties.

Item 25 implements 1985 Iowa Acts, chapter 87, section 5, by providing a procedure for refund of unexpired registration fees and surrender of plates when an owner sells or junks a vehicle within 30 days after a replacement has been purchased.

Item 26 combines two rules concerning stickers and specifies that validation stickers be placed on rear plates.

Item 28 rescinds the rule on informal settlements and hearings and inserts a rule referencing the chapter on contested case procedures.

Item 29 deletes a reference to an unnecessary and unused federal regulation.

Item 30 implements 1985 Iowa Acts, chapter 87, section 1, by providing a procedure for reassignment of registration plates when a vehicle is transferred between specified relatives.

Item 32 updates implementation clauses.

Items 3, 13, 17, 23, 24, and 31 are revisions for editorial simplification only.

Items 22 and 27 correct addresses.

Items 18 and 20 are amendments to comply with 1986 Iowa Acts, chapter 1225, concerning the physician's statement required for obtaining handicapped devices and plates.

Cross-references in these rules refer to renumbered Department of Transportation rules, as published in **ARC 7625** in this Bulletin.

These amendments are identical to the ones published under Notice.

These rule amendments are intended to implement Iowa Code chapter 321.

These amendments are to be published as adopted in the June 3, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 8, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules [amendments to 820—(07,D)chapter 11] is being omitted. These rules are identical to those published under Notice as **ARC 7429**, IAB 3/11/87.

[Filed 5/11/87, effective 7/8/87]

[Published 6/3/87]

[For replacement pages for IAC, see IAC Supplement, 6/3/87.]

**ARC 7640****TRANSPORTATION  
DEPARTMENT [761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.12, 307A.2, and 321E.15, the Department of Transportation, on May 12, 1987, adopted amendments to rules 820—(07,F) Chapter 2, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

## TRANSPORTATION DEPARTMENT[761] (cont'd)

A Notice of Intended Action for these amendments was published in the March 25, 1987, Iowa Administrative Bulletin as ARC 7478.

The Notice of Intended Action amended this chapter to standardize the axle weight restrictions for single-trip movements of vehicles and loads in excess of 80,000 pounds. The current chapter has one set of restrictions for vehicles and loads in excess of 80,000 pounds but not in excess of 100,000 pounds, and another set for vehicles and loads in excess of 100,000 pounds. The revised language stated that no axle shall exceed 20,000 pounds for vehicles and loads in excess of 80,000 pounds.

This chapter has been further amended as follows:

1. The standardization for single-trip movements has been broadened to include movements of 80,000 pounds or less.

2. The language of the current rules limits several types of single-trip movements to 80,000 pounds. This language does not agree with Iowa Code chapter 321E and has been deleted.

These changes were discussed with the Administrative Rules Review Committee at their April 13 meeting.

These amendments are intended to implement Iowa Code chapter 321E.

These amendments are to be published as adopted in the June 3, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 8, 1987.

Rule-making actions:

ITEM 1. Strike paragraphs 2.7(1)"d," 2.7(2)"d," 2.7(3)"d," 2.7(4)"d," and 2.7(5)"d" and insert in lieu thereof the following identical wording for each paragraph:

d. Weight. See rule 2.9(321E).

ITEM 2. Strike paragraphs 2.8(1)"d," 2.8(2)"d," 2.8(3)"d," and 2.8(4)"d" and insert in lieu thereof the following identical wording for each paragraph:

d. Weight. See rule 2.9(321E).

ITEM 3. Strike subrules 2.9(1), 2.9(2) and 2.9(3) and insert in lieu thereof the following:

2.9(1) Annual permits. For a movement under an annual permit, the axle weights and combined gross weight shall not exceed the limits found in Iowa Code section 321.463, except as provided in subrule 2.9(4) for construction machinery.

2.9(2) Single-trip permits.

a. For a movement under a single-trip permit, the gross weight on any axle shall not exceed 20,000 pounds.

b. If the combined gross weight exceeds 100,000 pounds, a single-trip permit may be issued for the movement only if the permit issuing authority determines that a special or emergency situation warrants its issuance.

c. See subrule 2.9(4) for exceptions for construction machinery.

2.9(3) Reserved.

ITEM 4. Amend subrule 2.9(4) by adding the catchwords "Construction machinery."

ITEM 5. Rescind rule 2.10(321E) and reserve for future use.

ITEM 6. Amend subrule 2.11(1) as follows:

2.11(1) Vehicles with divisible loads exceeding statutory size or weight limits may be moved *under a single-trip permit* if the permit issuing authority determines that a special or emergency situation warrants the *its* issuance of a permit.

[Filed 5/13/87, effective 7/8/87]

[Published 6/3/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/3/87.

## ARC 7630

TRANSPORTATION  
DEPARTMENT[761]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on April 28, 1987, adopted 761—Chapter 119, "Tourist-Oriented Signing," Iowa Administrative Code.

A Notice of Intended Action for these rules was published in the March 11, 1987, Iowa Administrative Bulletin as ARC 7424.

This new chapter establishes the criteria for tourist-oriented signing. A tourist-oriented sign is official signing that is located within the primary highway right-of-way. It gives information about certain activities or sites of interest to the traveling public. It does not pertain to signing along interstate or freeway primary routes.

These rules are identical to the ones published under Notice.

These rules are intended to implement Iowa Code section 321.252.

These rules are to be published as adopted in the June 3, 1987, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 8, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules [761—Chapter 119] is being omitted. These rules are identical to those published under Notice as ARC 7424, IAB 3/11/87.

[Filed 5/11/87, effective 7/8/87]


[Published 6/3/87]

[For replacement pages for IAC, see IAC Supplement, 6/3/87.]

## EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
Natural Resource Commission[571]	24.1,24.4(1),24.4(3),24.5(4), 24.6(1),24.6(2),24.6(5),24.6(6), 24.7(1),24.7(3)"f,"24.8,24.9, 24.10,24.11,24.12(1),24.12(3), 24.15(1),24.15(4),24.15(5), 24.15(6),24.16,24.17(1),24.18, 24.20(1),24.20(2),24.20(3) [IAB 2/25/87, ARC 7402]	Seventy-day delay of effective date (April 1, 1987) on these rules, with the exception of rule 24.8, was lifted by the Administrative Rules Review Committee at its May 20, 1987, meeting.
Nursing Board [590]	Chapter 2 [IAB 3/11/87, ARC 7409]	Effective date (4/15/87) delayed until the adjournment of the 1988 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its May 20, 1987, meeting.



State of Iowa  
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF STATE OF EMERGENCY

- WHEREAS, a severe storm system, with heavy rainfall, passed through Iowa May 25th and 26th, 1987, causing significant flooding at Red Oak in Montgomery County and Malvern, Emerson, and Hastings in Mills County.
- WHEREAS, the affect of these storms is flood damage to private property including residences, agriculture land, businesses, and to public property; and
- WHEREAS, conditions exist which threaten the public peace, health and safety of the citizens in Montgomery and Mills counties;
- WHEREAS, reports from the local officials have been verified by the Office of Disaster Services and other State agencies;
- NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Montgomery and Mills Counties to be in a state of emergency and call upon the citizens and agencies of local and state government to render good and sufficient aid to assist these stricken areas in their time of need.



Attest

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines, this 26th day of May in the year of our Lord one thousand nine hundred eighty-seven.

*Terry E. Branstad*  
GOVERNOR

*Elaine Baxter*  
SECRETARY OF STATE

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL  
THOMAS J. MILLER  
April 1987

CITIES

Counties; Criminal Law: Parking Ticket Enforcement. Iowa Const. art. I, § 11; Iowa Code §§ 321.236(1) and 805.6(1) (1987); 1986 Iowa Acts, ch. 1238, §§ 14 and 31; Iowa Code §§ 331.655(1)(b), 602.8105(1), 602.8106(5), 602.8109(6), 805.12, and 815.13 (1987). Responsibility for a municipal parking meter or overtime parking violation alleged by simple notice of fine is "denied" when the specified fine remains unpaid after the due date on the parking ticket. Regardless of whether responsibility for the ticket is actively challenged or the ticket is merely ignored, prosecution can be commenced only by filing of a sworn charging instrument. In overtime parking prosecutions the clerk cannot tax against the defendant the costs of service of process on the defendant; in other cases the clerk must tax against the defendant the costs of serving process on the defendant when they are shown in the clerk's file. The prosecuting governmental body is not entitled to reimbursement of costs until they have been paid by the defendant to the clerk. (Smith to Metcalf, Black Hawk County Attorney, 4-29-87) #87-4-5(L)

CONSERVATION

Fishing Laws. Iowa Code §§ 109.38, 109.39, 109.64, 109.67, 109.78, 110.1, 110.24 (1987). An Iowa fishing license is required to fish in all waters in the State. The license exemption for tenants who fish on their own lands is applicable to the lessee of camping space at a commercial campground who fishes in a private lake at the campground if the lease confers an exclusive right to fish in common with rights of the owner and other tenants. Neither the owner nor any tenant is exempt from the duty to abide by catch limits, possession limits, size restrictions and closed seasons. The Natural Resource Commission could establish appropriate exemptions by administrative rule. (Smith to Angrick, Citizens' Aide/Ombudsman, 4-13-87) #87-4-1

COUNTIES AND COUNTY OFFICERS

Recorder And Auditor: Name Changes. Iowa Code Supp. §§ 674.14, 331.507(2)(b) and 331.602(42) (1985); Iowa Code § 331.604 (1985). A name-change decree transmitted to the county recorder by a district court clerk should be indexed and recorded in the same manner as a deed except that indexing notations should identify the instrument as a change of name. (Smith to Murphy, Kossuth County Attorney, 4-13-87) #87-4-2(L)

GENERAL SERVICES, DEPARTMENT OF

Racing Commission: Location Of Racing Commission Offices. Iowa Code § 99D.6 (1987). The Department of General Services must provide the Gaming Division of the Iowa Department of Commerce office space for its headquarters within the corporate limits of the City of Des Moines. (Hayward to Ketterer, 4-23-87) #87-4-3(L)

HOSPITALS

County. Iowa Code §§ 347A.1, 347A.3 (1987). A depreciation fund to cover expenses which need not be paid the same year cannot be established through a tax levy for chapter 347A county hospitals. (McGuire to Murphy, Kossuth County Attorney, 4-30-87) #87-4-6(L)

MUNICIPALITIES

Utility Boards; Elections; Appointment Of Officers. Iowa Code §§ 63.1, 63.7, 69.1, 388.3 (1987). A city utility board member may hold over following the expiration of a statutory term until the confirmed appointment of a successor and is entitled to fully participate in those affairs of the board. (Dorff to Poncy, State Representative, 4-23-87) #87-4-4(L)

STATUTES CONSTRUED1987 CODEOPINION

63.1	87-4-4(L)
63.7	87-4-4(L)
69.1	87-4-4(L)
99D.6	87-4-3(L)
109.38	87-4-1
109.39	87-4-1
109.64	87-4-1
109.67	87-4-1
109.78	87-4-1
110.1	87-4-1
110.24	87-4-1
321.236(1)	87-4-5(L)
331.507(2)(b)	87-4-2(L)
331.602(42)	87-4-2(L)
331.604	87-4-2(L)
331.655(1)(b)	87-4-5(L)
347A.1	87-4-6(L)
347A.3	87-4-6(L)
388.3	87-4-4(L)
602.8105(1)	87-4-5(L)
602.8106(5)	87-4-5(L)
602.8109(6)	87-4-5(L)
674.14	87-4-2(L)
805.6(1)	87-4-5(L)
805.12	87-4-5(L)
815.13	87-4-5(L)

1986 IOWA ACTSOPINION

Ch. 1238, §§ 14 and 31	87-4-5(L)
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IOWA CONSTITUTIONOPINION

Article I, § 11	87-4-5(L)
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SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED - May 13, 1987

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

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No. 86-99. BARNHOUSE v. HAWKEYE STATE BANK.

Appeal from the Iowa District Court for Johnson County, August F. Honsell, Jr., Judge. Affirmed in part, reversed in part, and remanded. Considered by Reynoldson, C.J., and McGiverin, Larson, Lavorato, and Neuman, JJ. Opinion by Reynoldson, C.J. (19 pages \$7.60)

Defendant bank appeals award of actual and punitive damages as well as adverse declaratory judgment entered in favor of plaintiffs in this tort action based on the bank's activities surrounding the seizure of plaintiffs' car parts in which the bank held a security interest. OPINION HOLDS: I. The jurors could not have been misled when they were instructed to determine reasonable market value at the relevant times "as shown by the evidence." The trial court did not err in rejecting the defendant's exception to the instruction regarding the measure of compensatory damages. II. The jury's award of punitive damages is supported by substantial evidence which shows the bank seized the plaintiffs' inventory while they were on vacation and made no reasonable attempt to protect it. III. Because the underlying purposes of Iowa Code section 554.9504(3) were not frustrated by the sale of a small portion of the collateral without notice to the plaintiffs as required by the statute, we are not inclined to apply the absolute bar against the full satisfaction of the plaintiffs' debt. The only penalty, if any, that should be suffered by the bank is with respect to collateral that in fact was sold without notice. IV. The trial court abused its discretion in denying the bank's motion to amend its pleading to conform to the proof adduced at trial regarding a counterclaim for equitable set-off, premised upon judgments already rendered against the plaintiffs. After allowing opportunity for the notice and sale procedure outlined in division III, unless the plaintiffs waive it, trial court shall offset the unsatisfied portion of the bank's judgments against the plaintiffs' judgment affirmed in this opinion.

No. 85-1460. EQUILEASE CORP. v. SMITH.

Appeal from the Iowa District Court for Warren County, Thomas S. Bown and M.C. Herrick, Judges. Reversed and remanded on appellant's appeal; affirmed on cross-appeal. Considered by Harris, P.J., and McGiverin, Larson, Schultz, and Wolle, JJ. Opinion by Wolle, J. (14 pages \$5.60)

The plaintiff appeals and the defendant cross-appeals from trial court determination that certain consumer credit code provisions applied to transaction involving installment sale of motor vehicles. OPINION HOLDS: I. Notwithstanding the provisions of Iowa Code section 322.33 making the provisions of the Iowa Consumer Credit Code otherwise applicable to motor vehicle transactions, this transaction was not covered because the amount financed exceeded the \$35,000 limitation contained in Iowa Code section 537.1301(13) for a consumer credit sale. The partial summary judgment for defendant buyer must therefore be reversed. II. The district court should not have ruled on whether the plaintiff's automotive lease with the defendant was at retail and therefore subject to the finance charge limitations of section 322.19 without giving the parties the opportunity to present evidence bearing on this issue which was here a mixed question of fact and law. We therefore do not reach and decide the effect of chapter 322 on this transaction. III. Because the trial court submitted the issues regarding the deficiency judgment based on the plaintiff's pretrial conference agreement concerning the issues and the plaintiff did not object to the instructions which were grounded in the Iowa Uniform Commercial Code, the trial court correctly based its judgment for the defendant on the jury's special verdict finding that he was not given adequate notice of disposition of collateral. The plaintiff has not demonstrated that it did not receive a fair trial on the issues presented to the jury. IV. The trial court did not err in rejecting the proposed instruction on damages because the instruction would have been the functional equivalent of a directed verdict for the defendant on several damage issues and the evidence was in conflict and certainly not so strong as to fix as a matter of law any amounts of damages claimed. We affirm on the cross-appeal.

No. 86-1715. COMMITTEE ON PROFESSIONAL ETHICS AND  
CONDUCT v. PIAZZA.

On review of the report of the Grievance Commission.  
License Revoked. Considered by Reynoldson, C.J., and  
McGiverin, Larson, Carter, and Wolle, JJ. Opinion by  
McGiverin, J. (11 pages \$4.40)

The ethical violations with which respondent is charged arose out of his: (1) handling of law firm partnership funds; (2) handling of funds paid on retainer for an appeal for Marsha Mulligan; (3) handling of a retainer to pursue judicial review of an unemployment compensation matter for Thomas Hohenshell, when it was apparent the time for acting had already expired; and (4) failure to respond to the Committee's complaint on the Hohenshell matter. OPINION HOLDS: I. We find a convincing preponderance of the evidence supports the charges that respondent Piazza converted or misappropriated over \$10,000 of partnership funds to his own use without the knowledge or authority of his law partners. II. We find that Piazza commingled two



of his clients' funds with his personal funds in violation of: EC 1-5; DR 1-102(A)(1); DR 1-102(A)(3); DR 1-102(A)(6); EC 9-5; DR 9-102(A) and DR 9-102(B). III. We find respondent failed to cooperate with the committee's investigation regarding the Hohenshell matter. IV. We have consistently held that revocation is the appropriate sanction for commingling and converting client funds. We also take into consideration prior disciplinary sanctions against respondent. Respondent has had two prior suspensions: one for failure to meet continuing legal education requirements, Iowa Court Rule 123.5; and another for failure to file income tax returns, Committee on Professional Ethics & Conduct v. Piazza, 389 N.W.2d 382 (Iowa 1986) (twelve-month suspension). We conclude that the revocation of respondent's license to practice law is the only way to impress on him and others the seriousness of these offenses.

No. 86-578. FIRST FEDERAL SAVINGS & LOAN ASSOCIATION  
v. HANCOCK.

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge. Affirmed and remanded. Considered by McGiverin, P.J., and Larson, Carter, Wolle, and Lavorato, JJ. Per curiam. (5 pages \$2.00)

One defendant, Jane Hancock, appeals from a summary judgment for plaintiff First Federal Savings & Loan in a mortgage foreclosure action. Hancock asserts that Iowa Code section 628.28 (1985) is unconstitutional as applied to her because it impairs her rights of contract under the mortgage she executed with First Federal. First Federal requests reasonable attorney fees. OPINION HOLDS: Hancock failed to preserve error for appeal. She did not raise the constitutional issue in her answer. She did not file a resistance to the motion for summary judgment or Iowa Rule of Civil Procedure 237(e) affidavits to set forth the facts on which she based the constitutional issue. She did not file an Iowa Rule of Civil Procedure 179(b) motion to present the constitutional issue to the district court. We therefore affirm the district court judgment. We remand the case for a consideration of attorney fees allowable under the terms of the note and mortgage.

No. 85-1186. O'BRIEN v. MULLAPUDI.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Dubuque County, R.J. Curnan, Judge. Decision of court of appeals vacated; district court judgment affirmed. Considered by McGiverin, P.J., and Larson, Carter, Wolle, and Lavorato, JJ. Opinion by McGiverin, J. (14 pages \$5.60)

The question in this case is whether the district court erred in refusing to reinstate plaintiffs' lawsuit after it was dismissed for want of prosecution under Iowa Rule of Civil Procedure 215.1. Our court of appeals reversed the district court, holding reinstatement was mandatory under the circumstances of this case. The defendants have been

granted further review to challenge this ruling. OPINION HOLDS: Rule 215.1 enumerates two bases on which to reinstate a case dismissed under that rule. Mandatory reinstatement is required upon a showing that the dismissal was a result of oversight, mistake or other reasonable cause; otherwise, the district court in its discretion may reinstate the dismissed action. In the present case the plaintiffs failed to make a proper showing that their failure to seek a rule 215.1 continuance was a result of mistake, oversight or other reasonable cause and that they had exercised reasonable diligence in preparing their case for trial; therefore plaintiffs were not entitled to mandatory reinstatement of their case under rule 215.1. Moreover, the lack of activity by plaintiffs' counsel supports the district court's denial of discretionary reinstatement.

No. 86-458. STATE v. SCOTT.

Appeal from the Iowa District Court for Scott County, Edward B. de Silva, Jr., and James E. Kelley, Judges. Affirmed. Considered by McGiverin, P.J., and Larson, Carter, Wolle, and Lavorato, JJ. Opinion by Wolle, J.  
(10 pages \$4.00)

The defendant appeals from convictions and sentences for second-degree burglary, second-degree theft, and carrying a dangerous weapon in violation of Iowa Code §§ 713.5, 714.2, 724.4 (1985). I. We conclude that the trial court's refusal to suppress a knife seized from Scott's person was proper since the police officers had reasonable cause for a lawful investigatory stop and frisk. II. We disagree with the defendant's theory that the legislature changed the language of section 714.3 to give finders of fact more leeway in determining the value of stolen property as an element of the crime of theft. The changed language reflects instead a legislative intent to restrict the fact finder by instructing that the appropriate measure of value is the "highest value by any reasonable standard." The trial court certainly did not abuse its discretion in upholding the prosecution's relevancy objection to the proffered testimony concerning the general, wide fluctuation in markup of the wholesale cost of jewelry.

NO. 85-1863. PERKINS v. WALKER.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, Peter Van Metre, Judge. Decision of court of appeals vacated; district court judgment affirmed. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Neuman, JJ. Opinion by Schultz, J.  
(9 pages \$3.60)

In this medical malpractice case, the jury returned a verdict for the defendant doctor. The plaintiffs appealed from the resulting judgment. The court of appeals reversed the judgment, and the defendant doctor has applied for further review. OPINION HOLDS: The trial court instructed

the jury that an error in diagnosis and treatment would not by itself constitute negligence, and that negligence could be found only upon a showing that the doctor's diagnosis and treatment had failed to follow the customary practice and procedure of doctors in the relevant specialty. The use of such an instruction does not constitute error where, as here, the facts indicate the physician is confronted with a judgment call. We caution trial courts to exercise restraint in giving this instruction, however, and to give it only when the exercise of the physician's judgment is clearly put in issue by the parties.

NO. 86-506. VENNBERG FARMS, INC. v. IGF INSURANCE COMPANY.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Lavorato, and Neuman, JJ. Opinion by Neuman, J. (12 pages \$4.80)

Surety on a grain dealer's bond appeals from a judgment entered in favor of a claimant, asserting the untimeliness of the claim under Iowa Code section 542.12 (1983). OPINION HOLDS: We conclude that the district court correctly determined that for purposes of determining the claims limitation period of Iowa Code section 542.12, the effective date of revocation of the licenses of Stennett Elevator was December 23, 1983, the date the Commerce Commission affirmed the November 23, 1983 proposed order revoking the licenses. Since the claim against the bond was filed within 120 days of December 23, 1983, it was timely under section 542.12.

NO. 86-1274. STATE v. WEAVER.

Appeal from the Iowa District Court for Cerro Gordo County, L. L. Boomhower, District Associate Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Neuman, JJ. Opinion by Neuman, J. (9 pages \$3.60)

The defendant appeals from judgment and sentencing following his conviction of the crime of operating while intoxicated, second offense, in violation of Iowa Code section 321.181 (1985). OPINION HOLDS: I. We find substantial evidence in the record from which a reasonable jury could infer that the defendant, seated behind the steering wheel of his pickup in the middle of the roadway, with engine running and lights on, was in actual physical control of a fully operational motor vehicle when stopped by the police. Accordingly, the district court correctly overruled defendant's motions for judgment of acquittal and properly submitted the case to the jury for a decision. II. We also reject defendant's argument that the trial court should have modified a uniform jury instruction to require the term "operating" to include a requirement that the operating mechanisms of the motor vehicle be capable of causing it to move in a lateral direction. The instruction as given accords with the statutory definition of "operate" and prior case law.

NO. 86-663. GRANDIA v. CITY OF OSKALOOSA.

Appeal from the Iowa District Court for Mahaska County, Dan F. Morrison, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Neuman, JJ. Opinion by Schultz, J. (7 pages \$2.80)

Plaintiff was employed by the city as a firefighter for five years. Upon the termination of his employment, plaintiff requested a refund of his pension fund contributions. The city refused to refund the money, relying on Iowa Code section 411.6(1)(b), which requires fifteen years of membership in the retirement system before an employee becomes eligible to receive pension benefits. OPINION HOLDS: We believe the history indicates a legislative intent that pension contributions be nonrefundable when a member is terminated prior to vesting. The legislature's failure to provide in the revised statute for a refund of contributions to the pension accumulation fund indicates it did not intend to allow a refund, as was allowed under section 411.6(10) (1977) for annuity fund contributions. Courts have held that such a refusal to refund is not a deprivation of property without due process, and thus is not unconstitutional. We hold there was no constitutional violation in the city's refusal to refund plaintiff's contributions to the pension fund.

NO. 86-459. FARMERS & MERCHANTS SAVINGS BANK vs. FARM BUREAU MUTUAL INSURANCE CO.

Appeal from the Iowa District Court for Delaware County, James L. Beeghly, Judge. Reversed and remanded. Considered by McGiverin, P.J., and Larson, Carter, Wolle, and Lavorato, JJ. Opinion by Lavorato, J. (15 pages \$6.00)

In February 1979 the Shearers sold their farm on contract to Elgin and Sands. E&S Farms and James A. Elgin procured the required insurance from Farm Bureau. The policy contained a mortgage loss payable clause that named only George Shearer as payee. In December 1981 a fire destroyed a building on the farm. The building was insured under the policy for \$75,000 which was at least its value at the time of the fire. During Farm Bureau's investigation of the claim of E&S Farms and Elgin, Shearer notified a representative of Farm Bureau that he was contemplating a forfeiture of the real estate contract with Elgin and Sands who had missed their yearly payment due in March. The representative warned Shearer and later his attorney that the forfeiture might seriously affect Shearer's insurance claim with Farm Bureau. Ignoring the warning, Shearer completed the forfeiture and sold the farm on contract to the bank for \$426,146. The Shearers assigned their interest in the claim for the \$75,000 loss against Farm Bureau to the bank. Subsequently, Farm Bureau refused to pay the \$75,000 claim to the bank, asserting that Shearer's post-fire forfeiture destroyed his insurable interest and Farm Bureau's subrogation rights. The district court held that the language in the loss payable clause of the policy authorized Shearer to forfeit the contract without affecting

his insurable interest. OPINION HOLDS: The policy in question contains a New York standard mortgage loss payable clause. Although the clause refers only to a mortgagee, we have said that where a contract vendor is listed as a loss payee, the vendor is considered the same as a mortgagee. Moreover, the bank, as assignee, has whatever rights under the policy as Shearer had. When Shearer forfeited the contract, he took back the property in satisfaction of the outstanding contract debt. The result was the same as in the foreclosure of a mortgage where the full amount of the debt is bid in: the debt was extinguished. Because a vendor's interest in insurance proceeds is measured by the unpaid purchase price, Shearer's insurance interest was destroyed by the satisfaction of the contract debt. By destroying his insurable interest, Shearer lost all rights under the policy. As assignee of the Shearers, the bank acquires no greater rights in the insurance proceeds than the Shearers have. We reverse the judgment of the district court and remand with directions for entry of a declaratory judgment in favor of Farm Bureau.

NO. 85-804. CLINTON LAND COMPANY v. FIRST NATIONAL BANK.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. Considered en banc. Per curiam. (3 pages \$1.20)

The opinion in this case filed on February 18, 1987, is withdrawn and this opinion substituted therefor. The Clinton Land Company, a partnership, purchased a motel from the defendant, First National Bank, in 1975 and operated it until it was sold again in 1979. The partnership sued the bank and two of its officers in connection with the purchase. The trial court dismissed the case against the individual bank officers, and the jury returned a verdict for the defendant bank. On appeal, the court of appeals reversed and remanded for trial. While there are several issues raised on further review, we discuss only one: whether the dismissal as to the individual bank officers was harmless error. OPINION HOLDS: Because the only way the corporate employer could be found liable would be by finding the acts of the employees to be fraudulent, the jury's finding of no liability on the part of the bank was an implicit finding that its employees had not committed fraud. We conclude that the error in dismissing the bank officers was harmless. Accordingly, we vacate the court of appeals decision and affirm the district court.

No. 86-646. STATE v. HENNESSEY.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Neuman, JJ. Opinion by Harris, J. (8 pages \$3.20)

The defendant appeals following his conviction of operating a motor vehicle while under the influence of alcohol. Iowa Code § 321.281 (1985). OPINION HOLDS: I.

We conclude that it was not error to admit evidence of Hennessey's refusal to submit to a breath test in absence of a foundational showing by the State that the test results would have been admissible. While it is true that, in order to render the evidence admissible the State must convince the court that the testing requirements have been met, there is no similar requirement that the accused must likewise be convinced at the time the procedure is invoked. II. The trial court did not abuse its discretion in refusing to grant a mistrial based upon a police officer's mention of a work permit on direct examination. III. We also find no abuse of discretion where the trial court allowed a sheriff's deputy to relate an obscene remark made by Hennessey on the night of his arrest. IV. We believe that a juror's failure to disclose during voir dire that he had been charged with operating while intoxicated did not entitle Hennessey to a new trial.

NO. 86-421. LONDON v. MAPCO, INC.

Appeal from the Iowa District Court for Jefferson County, Dan F. Morrison, Judge. Affirmed. Considered by McGiverin, P.J., and Larson, Carter, Wolle, and Lavorato, JJ. Opinion by Carter, J. (11 pages \$4.40)

Defendant, Mapco, Inc., has appealed from a judgment for plaintiff, Bonnie Landon, in her action to recover for (1) breach of contract for the sale of liquified petroleum gas, (2) alleged consumer credit violations under Iowa Code chapter 537 (1985) (Iowa Consumer Credit Code), and (3) trespass. Plaintiff has cross appealed. OPINION HOLDS: I. The sale of fuel here was a consumer credit transaction under Iowa Code section 537.1301(11) and (12) (1985). The additional charge defendant imposed on plaintiff was a finance charge under Iowa Code section 537.1301(19)(b)(1) (1985), not a default charge for an unanticipated late payment. II. The evidence of defendant's actions, viewed in the light most favorable to plaintiff, shows a "breach of contract amounting to or accompanied by an independent tort" permitting an award of punitive damages under the criteria established in Pogge v. Fullerton Lumber Co., 277 N.W.2d 916, 919 (Iowa 1979). III. The district court erred in excluding plaintiff's proffered deposition testimony of defendant's managing agent on the ground plaintiff had failed to inquire of the agent on the issue when he testified at trial. The deposition testimony qualifies as vicarious admissions under Iowa Rule of Evidence 801(d)(2)(D). Plaintiff should have been allowed to read statements from the deposition into evidence under Iowa Rule of Civil Procedure 144(b) without regard to the agent's availability at trial. However, we do not believe this error requires a new trial; we are not convinced the excluded testimony would have resulted in higher punitive damages. IV. The statutory penalty the district court imposed for the Iowa Consumer Credit Code violations was well within the range provided by law. The district court properly allowed plaintiff to recover attorney fees only for those services allocated to the Iowa Consumer Credit Code portion of the case.

NO. 85-1800. WOODRUFF CONSTRUCTION COMPANY v. BARRICK  
ROOFERS, INC.

Appeal from the Iowa District Court for Polk County,  
Joel D. Novak, Judge. Affirmed. Considered by Reynoldson,  
C.J., and McGiverin, Larson, Lavorato, and Neuman, JJ.  
Opinion by Larson, J. (12 pages \$4.80)

Craig West, an employee of Barrick Roofers, Inc., was seriously injured when he fell through the roof of a gymnasium being repaired by Barrick under a subcontract with Woodruff Construction Company, the general contractor. West collected workers' compensation from Barrick and also brought a negligence suit against Woodruff. Woodruff settled with West and then brought the present action for indemnity against West's employer, Barrick. The district court held that Barrick had no implied duty to indemnify Woodruff for the breach of its duty to perform the roofing subcontract with due care. Woodruff has appealed. OPINION HOLDS: When an employer is the proposed indemnitor, the question whether an indemnity agreement will be implied under the circumstances of a particular case is a complex one, and its resolution turns on application of diverse and often competing, interests including public policy, simplicity of administration, fairness, and the underlying philosophy of workers' compensation law. In the present case, Woodruff does not contend the parties actually intended to provide for indemnity; the issue was apparently never considered by either of them. The question then becomes whether the law, for policy or other reasons, should impose such a duty on Barrick to indemnify Woodruff regardless of the circumstances, including Woodruff's own negligence. We hold that, in this case, where the proposed indemnitee (Woodruff) aided in the creation of the hazard, the law should not imply a right to indemnity from the employer. We do not believe a contrary result is required by Blackford v. Sioux City Dressed Pork, Inc., 254 Iowa 845, 118 N.W.2d 559 (1962). In any event, to the extent Blackford may be read as holding that an implied agreement to indemnify will be read into all service contracts, regardless of the circumstances, and without regard to the fault of the proposed indemnitee, it is hereby expressly overruled.

NO. 87-142. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v.  
McDERMOTT.

On review of the report of the Grievance Commission.  
License suspended. Considered by McGiverin, P.J., and  
Larson, Carter, Wolle, and Lavorato, JJ. Opinion by Larson,  
J. (4 pages \$1.60)

OPINION HOLDS: We agree with the findings of the grievance commission that the respondent, Daniel J. McDermott, failed to file his state and federal income tax returns for 1981, 1982, 1983 and 1984 and that he falsely stated his compliances with the tax filing requirements in his annual Combined Statement and Questionnaire to the Client Security and Disciplinary Commission in 1983, 1984, and 1985. We agree that the respondent's license should be

suspended in this case, but we do not agree that it should commence as of the date of his voluntary cessation of practice. In the case of a voluntary cessation of practice, there is no procedure for verification and therefore no means of determining that the discontinuation of practice was complete and continuous. We order that the respondent's license to practice law shall be suspended indefinitely with no possibility of reinstatement for a period of fifteen months from the filing of this opinion.

NO. 85-1801. WOODRUFF CONSTRUCTION COMPANY v. MAINS.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and McGiverin, Larson, Lavorato, and Neuman, JJ. Opinion by Larson, J. (11 pages \$4.40)

Craig West, an employee of Barrick Roofers, Inc., fell through a hole on a roofing project. Woodruff Construction Company was the general contractor and carpenter on the job, and Barrick was the roofing subcontractor. Dale Mains, another Barrick employee, was Craig West's supervisor and the working foreman on the job. West received workers' compensation benefits from Barrick pursuant to Iowa Code chapter 85. He also brought an action against Woodruff. Woodruff settled with Craig West for \$468,496.80 and then filed the present action against Dale Mains seeking contribution. The jury found that Mains was grossly negligent and Woodruff was negligent, attributing Woodruff's ordinary negligence as sixty percent of the cause of the fall and Mains' gross negligence as forty percent. The court entered judgment against Mains for forty percent of Woodruff's claim, and Mains has appealed. OPINION HOLDS: The evidence was not sufficient to permit a jury to find that Mains had committed gross negligence. Therefore, the district court should have sustained Mains' motions for directed verdict and for judgment notwithstanding the verdict.

NO. 85-1287. WORLD TEACHER SEMINAR, INC. V. IOWA DISTRICT COURT.

Certiorari to the Iowa District Court for Jefferson County, Dan F. Morrison, Judge. Writ sustained in part and annulled in part. Considered en banc. Opinion by Carter, J. Special Concurrence by Wolle, J. Dissent by Reynoldson, C.J. (22 pages \$8.80)

The plaintiff brings this original certiorari action to challenge an order requiring it to indemnify Maharishi International University for attorney fees of \$62,090 allegedly incurred in curbing violations by plaintiff of a consent decree entered in prior litigation between the parties. The consent decree was entered pursuant to a stipulation agreed to by the plaintiff; the stipulation contemplated that the district court (1) would proffer questions to the Maharishi concerning which party better represented his teachings, and (2) would enter a consent



decree in favor of whichever party the court believed the Maharishi's answers favored. The court interpreted the Maharishi's answers as favorable to MIU, and therefore the court entered a consent decree which enjoined the plaintiff from acts interfering with the activities of Maharishi International and indemnified the University for attorney fees incurred as a result of having to enforce the decree.

OPINION HOLDS: I. Although we do not approve the district court's action in agreeing to interpret the Maharishi's answers to the proffered questions, the decree itself is not violative of public policy in the manner in which it disposes of the controverted issues within the litigation. The district court did not act illegally or beyond its jurisdiction in enforcing the decree according to its terms over plaintiff's objections on public policy grounds. II. For purposes of enforcing the indemnification provisions of the consent decree, its proscriptive provisions are deemed to relate back to the time of its rendition on July 16, 1983. In so holding, we in no way give approval to the procedure employed by the parties in the present case withholding the decree from the public record for nearly four months. Such action is in contravention of established rules of procedure and should not have been approved by the district court. III. The district court correctly interpreted its own decree in allowing the University to file its application for indemnification in the original action, and the plaintiff was not entitled to a jury trial. IV. We cannot interpret the indemnification portions of the consent decree as permitting indemnification for the attorney fees which the University sustained in defending against an attack on the decree's validity under Iowa Rule of Civil Procedure 252. Consequently, the district court's order for reimbursement of attorney fees included some items not properly recoverable. For this reason, we sustain the writ of certiorari only so far as the district court's order has been demonstrated to include improper items of litigation expense. We annul the writ with respect to all other contentions. SPECIAL CONCURRENCE ASSERTS: I concur in the majority opinion which holds the plaintiff to the agreements it made, but only to the extent public policy was not violated. DISSENT ASSERTS: I would sustain the writ on the ground the underlying "consent decree," which was never intended to be filed and entered of record by the clerk of court as provided by Iowa Rules of Civil Procedure 226 and 227, is void for gross violation of public policy and Iowa law. Therefore, in my view, trial court had no jurisdiction to impose punishment for violation of its terms, nor award attorney fees to enforce it.

NO. 86-781. STATE v. WILSON.

Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh and Phillip S. Dandos, Judges. Affirmed. Considered by McGiverin, P.J., and Larson, Carter, Wolle, and Lavorato, JJ. Opinion by Lavorato, J. (23 pages \$9.20)

The defendant appeals from convictions and subsequent sentence for the crimes of first-degree murder in violation of Iowa Code sections 707.1 and 707.2(1) or 707.2(2) (1983); first-degree robbery in violation of Iowa Code sections 711.1 and 711.2 (1983); and second-degree theft in violation of Iowa Code sections 714.1(1) and 714.2(2) (1983). OPINION HOLDS: I. Based upon our independent evaluation of the record, we conclude that the district court did not abuse its discretion in overruling defendant's motion for change of venue. Although some of the publicity is inflammatory and contains prejudicial material, the defendant failed to show that such degree of prejudice existed in Woodbury County that he could not receive a fair and impartial trial. II. We hold that the district court did not abuse its discretion in excluding evidence of the victim's large child pornography collection because it was not relevant to any issue in the case and its prejudicial effect outweighed any probative value it may have had. III. On rare occasions, physically restraining a defendant during trial may be justified despite the fact that the practice is inherently prejudicial. The State bears the burden of demonstrating the necessity for physical restraints. The district court is to be commended for minimizing the prejudice to the defendant by allowing his hands to remain free and having him brought into the courtroom before the jury entered and taken out after the jury left. The district court placed in the record in the presence of the defendant the reasons for shackling and heard objections. The court also instructed the jury against bias before the commencement of the trial. We believe all courts that employ inherently prejudicial security measures should follow this procedure. We find no abuse of discretion by the court in its decision to require the security measures it deemed appropriate under the circumstances.

No. 84-1313. STATE v. HILDEBRANT.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire and James R. Havercamp, Judges. Affirmed. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Neuman, JJ. Opinion by Reynoldson, C.J. (6 pages \$2.40)

Appellant challenges his conviction for violating Iowa Code section 709.12(1) (1983), indecent contact with a child. OPINION HOLDS: Despite the district court's clear and correct statement of the law regarding the need to file a motion in arrest of judgment in order to challenge alleged defects in the guilty plea proceeding, Hildebrant filed no motion raising the issues he now asserts on appeal. We are convinced the record is sufficiently developed to consider Hildebrant's ineffective assistance claim on direct appeal.

The record contains uncontradicted information that the victim was not Hildebrant's spouse. We therefore reject Hildebrant's ineffective assistance claim because his trial counsel's failure to raise the nonspousal issue by motion to arrest was reasonable and in no way prejudicial to his case. We conclude that Hildebrant's substantive claims are barred due to his failure to file a motion in arrest of judgment.

Nos. 86-1706 & 87-322. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSOCIATION v. SYTSMA.

On review of the report of the Grievance Commission. License suspended. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Neuman, JJ. Opinion by Harris, J. (6 pages \$2.40)

These two attorney disciplinary proceedings were consolidated upon submission for our review. One proceeding grows out of the respondent's failure to file federal or state income tax returns for two years and his failure to cooperate with an investigation into his failure to file. The other proceeding arises from respondent's inattention to a probate matter, followed by his obdurate refusal to cooperate with the committee's inquiry into the matter. OPINION HOLDS: We suspend the respondent's license to practice with no possibility of reinstatement for one year. Upon any application for reinstatement Sytsma must establish that he has complied with the requirements of our rules pertaining to suspended attorneys. He must also establish that he has solved the personal problems which led to his inability to attend to his professional responsibilities.

NO. 86-1012. SEARLS v. IOWA DEPARTMENT OF TRANSPORTATION.

Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge. Reversed. Considered by Reynoldson, C.J., and McGiverin, Larson, Lavorato, and Neuman, JJ. Opinion by Neuman, J. (6 pages \$2.40)

The plaintiff was arrested for OWI. In accordance with former Iowa Code chapter 321B, the plaintiff submitted to chemical testing, the results of which indicated an alcohol concentration of ten hundredths or more; the plaintiff's driving privileges were therefore revoked as required by former section 321B.16. The plaintiff then requested a hearing before the Iowa Department of Transportation to request a work permit during the pendency of the revocation. Because the plaintiff's driver's license had previously been revoked for OWI, the agency invoked former section 321B.13, which limited the DOT's discretion to consider a work permit for persons whose license has been previously revoked until 360 days of the current revocation period has expired. The plaintiff sought judicial review of the agency's ruling; the district court reversed the DOT's action, and the DOT has appealed. OPINION HOLDS: The court perceives the statutory scheme in former Iowa Code section 321B.13 as an effort by the legislature to enhance the penalties for drunk driving not only by distinguishing between test refusers and

flunkers, but also by devising harsher penalties for those persons previously revoked for the same offense, whether or not they willingly submit to chemical testing in a subsequent arrest. The court holds that the work permit restrictions of section 321B.13 applied with equal force to persons with prior revocations under chapter 321B, whether those revocations were based on a test refusal or a test failure.

NO. 86-255. RICE v. IOWA DEPARTMENT OF HUMAN SERVICES.

Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge. Affirmed. Considered by Reynoldson, C.J., and Larson, Schultz, Carter, and Wolle, JJ. Per curiam. (3 pages \$1.20)

The plaintiff, an AFDC recipient, received \$2000 in settlement of a personal injury claim. The Department of Human Services treated this settlement as "income," rather than as a "resource," for the purpose of determining continued eligibility for AFDC payments. Since the settlement was treated as "income," it was subject to the "lump sum rule" imposed by the Omnibus Budget Reconciliation Act of 1981. The "lump sum rule" required the plaintiff to budget out over several months the \$2000 personal injury settlement; during those months his family was ineligible or partially ineligible to receive AFDC benefits. The plaintiff challenged the agency action determining that the personal injury settlement was "income" and was therefore subject to the "lump sum rule." The district court upheld the agency's determination, and the plaintiff has appealed. OPINION HOLDS: The United States Supreme Court recently rejected the plaintiff's arguments in Lukhard v. Reed, \_\_\_ U.S. \_\_\_, \_\_\_ S. Ct. \_\_\_, \_\_\_ L. Ed. 2d \_\_\_, 55 U.S.L.W. 4561 (U.S. Apr. 22, 1987) (No. 85-1358), holding that the Virginia Department of Social Services policy of treating personal injury awards as income was reasonable and not inconsistent with the AFDC statute or federal regulations. \_\_\_ U.S. at \_\_\_, \_\_\_ S. Ct. at \_\_\_, \_\_\_ L. Ed. 2d at \_\_\_, 55 U.S.L.W. at 4565-65. In light of this holding, we affirm the decision of the trial court.

No. 85-1253. GOETZ v. WELLS FORD MERCURY, INC.

Appeal from the Iowa District Court for Kossuth County, Murray S. Underwood, Judge. Affirmed in part, reversed in part, and remanded. Considered by Reynoldson, C.J., and Harris, Schultz, Carter, and Neuman, JJ. Opinion by Harris, J. (5 pages \$2.00)

At issue in this interlocutory appeal from an adjudication of law points is the applicability of Minnesota statutes governing the transfer of automobiles. A vehicle sold in Minnesota by Wells Ford to defendant Linda Weringa was later involved in an accident in Iowa. Plaintiffs were walking along the side of the street in Ledyard, Iowa, when defendant Weringa struck them. This suit for personal injuries resulted. The claim against Wells Ford is based on a theory of vicarious liability. It is alleged that Wells

Ford failed to comply with certain Minnesota statutory requirements for the transfer of automobiles and hence remained responsible as owner at the time of the accident. OPINION HOLDS: I. We agree with the trial court in believing that three of the four cited Minnesota statutes would be inapplicable in any event. II. Minnesota's only relationship with the matter at hand is that the sale of the vehicle occurred there. All other points involved have to do with Iowa. Wells Ford cannot be responsible by reason of its failure to comply with the transfer of motor vehicle statutes in Minnesota.

No. 86-70. LAKE v. SCHAFFNIT.

Appeal from the Iowa District Court for Black Hawk County, George Stigler, Judge. Affirmed. Considered by Harris, P.J., and Schultz, Carter, Wolle, and Lavorato, JJ. Opinion by Wolle, J. (12 pages \$4.80)

The defendant's vehicle struck a child who was in the street comforting an injured pet. The child and her mother sued the defendant and recovered a judgment. The defendant has appealed. OPINION HOLDS: I. The district court did not err by instructing the jury that failure to use adequate headlights could be negligence. This specification of negligence was adequately pleaded, and the instruction was warranted by the evidence. II. The district court correctly instructed the jury that the mother's recovery, if any, should not be reduced by the proportion of fault attributed to the child. This case was tried under pure comparative negligence principles outlined in Goetzman v. Wichern, 327 N.W.2d 742 (Iowa 1982); those principles did not affect the independent character of a parent's claim under Iowa R. Civ. P. 8 or the rule that a child's negligence, not the sole proximate cause of its injury, is not a defense to the parent's claim. III. The district court did not abuse its discretion by denying the defendant permission to amend his pleadings to seek contribution from the child toward the claim of the mother. We do not address the question whether an action may exist for contribution against a child for its parent's rule 8 damages; we simply hold the district court acted within its discretion in concluding that the proposed amendment would have changed the issues and unfairly prejudiced the parties. IV. The district court did not err by refusing to submit the defendant's requested instruction on the duties of a pedestrian. V. The district court did not abuse its discretion in taxing all court costs to the defendant.





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