

IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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

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

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PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
11	Friday, October 30, 1987	November 18, 1987
12	Friday, November 13, 1987	December 2, 1987
13	Friday, November 27, 1987	December 16, 1987

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1987, to June 30, 1988	\$146.00 plus \$5.84 sales tax
Second quarter	October 1, 1987, to June 30, 1988	\$109.50 plus \$4.38 sales tax
Third quarter	January 1, 1988, to June 30, 1988	\$ 74.00 plus \$2.96 sales tax
Fourth quarter	April 1, 1988, to June 30, 1988	\$ 37.00 plus \$1.48 sales tax

Single copies may be purchased for \$4.50 plus \$0.18 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code - \$770.00 plus \$30.80 sales tax

(Price includes Volumes I through XII, index and binder, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$3.30 plus \$0.13 tax.)

Iowa Administrative Code Supplement - \$232.00 plus \$9.28 sales tax

(Subscription expires June 30, 1988)

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

Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515) 281-8796

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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]

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
AGRICULTURAL DEVELOPMENT AUTHORITY[25] Beginning farmer loan program, amendments to ch 2 IAB 10/21/87 ARC 8037	Conference Room Second Floor North Wallace State Office Bldg. Des Moines, Iowa	November 10, 1987 10 a.m.
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[30] Continuing education for pesticide applicators, 10.22 IAB 11/4/87 ARC 8065	Conference Room First Floor Wallace State Office Bldg. Des Moines, Iowa	November 24, 1987 1 p.m.
BLIND, DIVISION FOR THE[423] Vocational rehabilitation, amendments to ch 10; Independent living rehabilitation services, ch-11 IAB 10/21/87 ARC 8041 Agency procedure for rule making, ch 3 IAB 11/4/87 ARC 8073	Conference Room First Floor 524 Fourth St. Des Moines, Iowa Conference Room First Floor 524 Fourth St. Des Moines, Iowa	November 17, 1987 1 p.m. December 1, 1987 1 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] Business incubator center, amendments to ch 52 IAB 11/4/87 ARC 8070	Main Conference Room Department of Economic Development 200 E. Grand Ave. Des Moines, Iowa	November 20, 1987 10 a.m.
EDUCATION DEPARTMENT[670] Extracurricular interscholastic competition, 9.14(1), 9.18 IAB 10/21/87 ARC 8054	Conference Room First Floor, North Half Grimes State Office Bldg. Des Moines, Iowa	November 16, 1987 9 a.m. to 12:30 p.m.
HUMAN SERVICES DEPARTMENT[441] Types of outpatient services covered by Medicaid, restrictions and limitations on covered services, amendments to chs 78 and 79 IAB 10/21/87 ARC 8062	Cedar Rapids District Office Conference Room - 6th Floor 221 4th Avenue S.E. Cedar Rapids, Iowa Council Bluffs District Office 417 E. Kanesville Boulevard, Lower Level Council Bluffs, Iowa Davenport District Office 5th Floor Conference Room 428 Western Ave. Davenport, Iowa Des Moines District Office City View Plaza Conference Room 100 1200 University Des Moines, Iowa Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, Iowa	November 12, 1987 10 a.m. November 16, 1987 10 a.m. November 13, 1987 10 a.m. November 16, 1987 1 p.m. November 16, 1987 10 a.m.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

	Ottumwa District Office 1st Floor Conference Room 226 West Main Ottumwa, Iowa	November 12, 1987 10 a.m.
	Sioux City District Office Suite 616-617 507 7th Street Sioux City, Iowa	November 12, 1987 1 p.m.
	Waterloo District Office Black Hawk County Conference Room 2nd Floor - KWWL Building 500 East 4th Waterloo, Iowa	November 12, 1987 10 a.m.
Foster care payments and training, projects grants for foster care IAB 10/21/87 ARC 8021 (See also ARC 8020)	Des Moines District Office City View Plaza Conference Room 100 1200 University Des Moines, Iowa	November 12, 1987 9 a.m.
Department policies, making exceptions, 1.8 IAB 11/4/87 ARC 8082	Cedar Rapids District Office Conference Room - 6th Floor 221 4th Avenue S.E. Cedar Rapids, Iowa	December 3, 1987 10 a.m.
	Council Bluffs District Office 417 E. Kanesville Boulevard, Lower Level Council Bluffs, Iowa	December 7, 1987 10 a.m.
	Davenport District Office 5th Floor Conference Room 428 Western Ave. Davenport, Iowa	December 2, 1987 10 a.m.
	Des Moines District Office City View Plaza Conference Room 100 1200 University Des Moines, Iowa	December 3, 1987 1 p.m.
	Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, Iowa	December 3, 1987 10 a.m.
	Ottumwa District Office 4th Floor Conference Room 226 West Main Ottumwa, Iowa	December 2, 1987 10 a.m.
	Sioux City District Office Suite 615 507 7th Street Sioux City, Iowa	December 3, 1987 9 a.m.
	Waterloo District Office Black Hawk County Conference Room 2nd Floor - KWWL Building 500 East 4th Waterloo, Iowa	December 4, 1987 10 a.m.
Standards for services to persons with mental retardation, developmental disabilities, or chronic mental illness, ch 22 IAB 11/4/87 ARC 8071	Cedar Rapids District Office Conference Room - 6th Floor 221 4th Avenue S.E. Cedar Rapids, Iowa	December 2, 1987 9 a.m.
	Council Bluffs District Office 417 E. Kanesville Boulevard, Lower Level Council Bluffs, Iowa	December 1, 1987 1:30 p.m.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

Davenport District Office 5th Floor Conference Room 428 Western Ave. Davenport, Iowa	November 30, 1987 10 a.m.
Des Moines District Office City View Plaza Conference Room 100 1200 University Des Moines, Iowa	November 30, 1987 1 p.m.
Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, Iowa	December 3, 1987 1:30 p.m.
Ottumwa District Office 4th Floor Conference Room 226 West Main Ottumwa, Iowa	December 2, 1987 1:30 p.m.
Sioux City District Office 6th Floor Conference Room 507 7th Street Sioux City, Iowa	December 3, 1987 1:30 p.m.
Waterloo District Office Black Hawk County Conference Room 2nd Floor - KWWL Building 500 East 4th Waterloo, Iowa	December 2, 1987 10 a.m.

NATURAL RESOURCE COMMISSION[571]

Wildlife refuges, 52.1(1)
IAB 11/4/87 ARC 8069
(See also ARC 8068 herein)

Commercial fishing,
82.2(1)
IAB 11/4/87 ARC 8094

Conference Room 4th Floor East Wallace State Office Bldg. Des Moines, Iowa	November 24, 1987 10 a.m.
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PROFESSIONAL LICENSURE[645]

Barber examiners, 20.2(4)
IAB 11/4/87 ARC 8083

Conference Room 1 Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	November 24, 1987 9 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Newborn screening policy, 4.1
IAB 10/21/87 ARC 8048

Conference Room 1 Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	November 10, 1987 1 p.m.
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TRANSPORTATION DEPARTMENT[761]

Essential air service
terminal improvement, ch 715
IAB 10/21/87 ARC 8034
(See also ARC 8033)

Department of Transportation Complex 800 Lincoln Way Ames, Iowa	December 1, 1987
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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]

Agricultural Development Authority[25]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

Beef Industry Council, Iowa[101]

CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

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Banking Division[187]

Credit Union Division[189]

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Utilities Division[199]

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CULTURAL AFFAIRS DEPARTMENT[221]

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Iowa Advance Funding Authority[285]

Professional Teaching Practices Commission[287]

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Children, Youth, and Families Division[425]

Community Action Agencies Division[427]

Deaf Services, Division of[429]

Persons With Disabilities Division[431]

Spanish-Speaking People Division[433]

Status of Women Division[435]

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PUBLIC HEALTH DEPARTMENT[641]

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Pharmacy Examiners[657]

PUBLIC SAFETY DEPARTMENT[661]

REGENTS BOARD[681]

REVENUE AND FINANCE DEPARTMENT[701]

Lottery Division[705]

SECRETARY OF STATE[721]

Sheep and Wool Promotion Board, Iowa [741]

TRANSPORTATION DEPARTMENT[761]

Railway Finance Authority, Iowa[765]

TREASURER OF STATE[781]

ARC 8066

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[30]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 17A.3, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 4, "Multiflora Rose Eradication Program for Cost Reimbursement," Iowa Administrative Code.

The Iowa General Assembly has annually appropriated funds to assist county government and individual landowners or tenants to eradicate the multiflora rose. The purpose of these amendments is to clarify and expedite the eradication programs.

The purpose of this Notice of Intended Action is to solicit public comment on the proposed amendments. Any interested party may make written suggestions or comments on the proposed amendments prior to November 24, 1987. Such written materials should be directed to Dale M. Cochran, Secretary of Agriculture, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

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

The following amendments are hereby proposed:

ITEM 1. Rescind rule 30—4.1(70GA, HF2520) and insert in lieu thereof the following:

30—4.1(72GA, SF511) Definitions. Where used in these rules:

"Agriculture land" means privately owned land used in "farming" as defined in Iowa Code section 175.1(9).

"Partial cost reimbursement" from state-appropriated funds means one-fourth of the cost of a "label approved" herbicide for use in the control of multiflora rose. State funds must be matched by at least an equal amount of county funds.

ITEM 2. Rescind rule 30—4.2(70GA, HF2520) and insert in lieu thereof the following:

30—4.2(72GA, SF511) Form and information requirements. A county board of supervisors, desiring a share of the appropriation from the general fund of the state, to be used for the purpose of partially reimbursing county agricultural landowners or tenants for the costs of herbicides for controlling or eradicating the multiflora rose, shall submit to the secretary of agriculture a plan of eradication and application for funds after June 1 and before July 15. The form, MFR-1, "County Plan and Application for Multiflora Rose Eradication Cost Reimbursement," is available at the office of the Secretary of Agriculture, Henry A. Wallace Building, Des Moines, Iowa 50319, and can be obtained upon request. A share of the appropriation shall not be granted to any county that does not have an approved plan of eradication.

ARC 8065

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[30]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in 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 159.5(11), 189.2(2) and 206.19, the Iowa Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 10, "Pesticides," Iowa Administrative Code.

These amendments revise the rules relating to continuing education training requirements for commercial and public pesticide applicators. The rules are being revised to address legislative amendments to Iowa Code chapter 206 adopted in 1987 Iowa Acts, House File 631.

Any interested person may make written suggestions or comments on these proposed rules prior to November 24, 1987. Such written materials should be directed to Dale M. Cochran, Secretary of Agriculture, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319. There will be a public hearing on November 24, 1987, at 1 p.m. in the First Floor Conference Room of the Henry A. Wallace Building, East Ninth and Grand Avenue, Des Moines, Iowa. Persons may present their views at this hearing either orally or in writing.

These proposed rules are intended to implement Iowa Code sections 206.4 to 206.7 and 1987 Iowa Acts, House File 631.

The following rules are proposed:

Rescind subrules 10.22(5), 10.22(6) and 10.22(7) and insert the following:

10.22(5) Continuing education requirements. Beginning January 1, 1988, each person licensed as a commercial applicator in this state shall provide, during each calendar year, a minimum of six hours of continuing education, approved by the secretary, for all personnel that apply pesticides. Compliance with this requirement is a prerequisite for license and certification renewal.

10.22(6) Report of licensee. Each licensee shall file with the license renewal application a certificate of personnel attendance form furnished by the department and validated by the educational institution or organization sponsoring the continuing education program.

10.22(7) Approval of sponsors, programs and activities. A continuing education activity shall be qualified for approval if the secretary determines that it constitutes an organized program of learning which contributes directly to the professional competency of the licensee.

Topics to be covered in approved training shall include, but are not limited to, pest recognition, biology and habits; alternative, nonchemical controls; pesticide formulation and application equipment and technique; environmental safety and protection; applicator safety and protection; customer safety; poisoning prevention, symptoms and first aid; and pesticide laws and regulations. Sources of training may include state and national trade associations, supplier or distributor sem-

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[30] (cont'd)

inars, pest control company formal training programs, and pesticide applicator training meetings.

Sponsors of approved training programs shall require participants to complete a program evaluation form, provided by the department, at the conclusion of the training program. The evaluation forms shall be forwarded to the pesticide bureau within ten days following the date the program was completed.

These rules are intended to implement Iowa Code sections 206.4 to 206.7 and 1987 Iowa Acts, House File 631.

ARC 8073**BLIND, DIVISION FOR THE[423]****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 601K.122 and 601K.126, the Commission for the Blind of the Department of Human Rights hereby gives Notice of Intended Action to adopt Chapter 3, "Agency Procedure for Rule Making," Iowa Administrative Code.

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

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

These proposed rules adopt the uniform rules recommended by the task force with the following exceptions:

1. Iowa Code section 601K.126 grants the power to adopt rules to the Commission for the Blind. Therefore, all references to adoption of rules by the agency have been changed to "Commission."
2. The definition of an "anticipated" rule-making proceeding was revised to provide that it is "anticipated" from the time the administrator or the agency administrative rules coordinator distributes it for discussion within the agency or from the time of announcement at a meeting of the Commission.
3. To facilitate translation into the alternative media of braille, cassette tape and large type format, the procedures for publication of notices have been changed to provide for publication of the entire text of the proposed rule in the Notice of Intended Action whenever possible.
4. A subrule has been added to assure that mailed copies of Notices of Intended Action may be obtained in the alternative media of braille, cassette tape or large type format.
5. A provision was added that the agency may waive technical compliance with the oral proceeding procedures to avoid the possibility of having to deny a request because a person neglects to include an address or telephone number.
6. The rule on the presiding officer was revised to provide that the administrator, agency administrative rules coordinator or a program manager of the agency,

as designated by the administrator, will preside at the oral proceeding and will present a prepared statement on the substance of the rule.

7. Rules which are mandated by federal law or regulation are exempted from the usual public notice and public participation requirements in any situation where the Commission has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules.

8. The requirement to keep copies of publications from the Iowa Administrative Bulletin (IAB) in the rule-making record was changed to require a reference to all publications in the IAB since all of the Bulletins are located in the same area as the rule-making records and can be easily copied if needed. The requirement to put copies of the docket in the rule-making record was similarly revised. Since the docket will be updated on a continual basis, it would be difficult to make certain that a copy was made for each rule-making record every time a change was made in the docket.

9. The rule relating to general statements of policy was deleted. The agency can only do what is required by the Iowa Code. The manuals and rules of the agency are public record and available for inspection, but the agency does not have administrative staff available to do other indexing.

Any interested person may make written suggestions or comments on these proposed rules prior to December 1, 1987. Written responses should be directed to R. Creig Slayton, Administrator, Commission for the Blind, 524 Fourth Street, Des Moines, Iowa 50309.

Persons who wish to convey their views orally may do so at a public hearing to be held at 1 p.m. on Tuesday, December 1, 1987, in the first floor conference room of the offices of the Commission for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. Either written or oral statements may be submitted for the public hearing.

Persons who wish to make oral presentations at the public hearing should contact the office of the Administrator at 515/281-7986 or 1-800-362-2587 at least one day prior to the date of the public hearing.

This Notice of Intended Action was adopted by the Commission for the Blind at its September 26, 1987 meeting.

These rules are intended to implement Iowa Code chapter 17A.

Add Chapter 3 as follows:

CHAPTER 3**AGENCY PROCEDURE FOR RULE MAKING**

423—3.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the commission are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

423—3.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action as provided in Iowa Code section 17A.4(1) "a," solicit comments from the public on a subject matter of possible rule making by causing notice to be published in the administrative bulletin of the subject matter and indicating where, when and how persons may comment.

423—3.3(17A) Public rule-making docket.

3.3(1) Docket maintained. The agency shall maintain a current public rule-making docket.

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3.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the agency or from the time of announcement at a meeting of the commission. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the commission for subsequent proposal under the provisions of Iowa Code section 17A.4(1)"a," the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

3.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, pursuant to Iowa Code section 17A.4(1)"a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory flexibility analysis, an economic impact statement, or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal note has been issued, and where any such written request, analysis, statement or note may be inspected;
- g. The current status of the proposed rule and any agency determinations with respect thereto;
- h. Any known timetable for agency decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The date of the rule's filing, indexing and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

423—3.4(17A) Notice of proposed rule making.

3.4(1) Contents. At least 35 days before the adoption of a rule, the agency shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when and how persons may present their views on the proposed rule; and

e. Where, when and how persons may demand an oral proceeding on the proposed rule, if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

To facilitate transcription into the alternative media of braille, cassette tape or large type format, the complete text of the proposed rule shall be published in the Notice of Intended Action whenever possible.

3.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to incorporation by reference of other materials in an adopted rule that are contained in subrule 3.12(2) of this chapter.

3.4(3) Notices mailed. Persons desiring to receive mailed copies of future Notices of Intended Action by subscription must file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail a copy of that notice to subscribers who have filed such a written request with the agency for mailed Notices of Intended Action. The written request shall be accompanied by payment of a subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

3.4(4) Provision in alternative media. Mailed copies of Notices of Intended Action shall be provided in standard print format, unless an individual shall request provision of the Notices in the alternative medium of braille, cassette tape or large type format. Notices in the alternative media shall be provided in a timely manner.

423—3.5(17A) Public participation.

3.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Administrative Rules Coordinator, Commission for the Blind, 524 Fourth Street, Des Moines, Iowa 50309 or the person designated in the Notice of Intended Action.

3.5(2) Oral proceedings. The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. The request must also contain the following information:

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1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

The agency may waive technical compliance with these procedures.

3.5(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)"b" or subrule 3.6(6).

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. The notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The administrator, the agency administrative rules coordinator or a program manager of the agency, as designated by the administrator, shall preside at the oral proceeding on the proposed rule. If the administrator does not preside, the presiding officer shall prepare a memorandum for consideration by the administrator summarizing the contents of the presentations made at the oral proceeding unless the administrator determines that a memorandum is unnecessary because the administrator will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

3.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

423—3.6(17A) Regulatory flexibility analysis.

3.6(1) Definition of small business. For purposes of this rule, "small business" shall have the same definition as in Iowa Code section 17A.31.

3.6(2) Notice in Iowa Administrative Bulletin. If the agency proposes a rule which may have an impact on small business, the Notice of Intended Action published in the Iowa Administrative Bulletin, according to the requirements of Iowa Code section 17A.4(1)"a," shall expressly recite this possibility and describe the procedure to be followed for making a timely request of the agency for the issuance of a regulatory flexibility analysis.

3.6(3) Mailing list. Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application to the agency administrative rules coordinator. The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an

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organization of 25 or more small businesses. The agency will periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization of small businesses wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

3.6(4) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business, adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

3.6(5) Requests for analysis. A request for a regulatory flexibility analysis that is calculated to reduce the impact of a rule on small business may be made within 20 days after the publication of the Notice of Intended Action. A request is made when mailed or delivered to the agency and must be in writing and must identify the proposed rule for which the analysis is requested by ARC number and by Iowa Administrative Bulletin citation, if known. The request must also indicate whether the analysis is desired for the entire rule or only for specified portions of the rule. Such a request may be accompanied by a brief or other information relevant to the contents of the requested regulatory flexibility analysis. The agency shall issue a regulatory flexibility analysis that conforms to the requirements of Iowa Code section 17A.31(4) after a proper request from:

- a. The governor;
- b. The administrative rules review committee;
- c. A political subdivision of the state;
- d. Twenty-five or more persons who sign the request, provided that each represents a different small business;
- e. An organization of at least 25 small businesses that is registered on the agency's small business impact list. That organization shall list the name, address, and phone number of not less than 25 small businesses it represents.

3.6(6) Analysis: publication and comments. When the agency is required to issue a regulatory flexibility analysis for a proposed rule, the agency shall cause to be published in the Iowa Administrative Bulletin a concise summary of the regulatory flexibility analysis at least 20 days prior to the adoption of the proposed rule. In the case of a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2), the agency shall cause the summary to be published within 90 days after publication of the adopted rule. The published summary shall state how interested persons may obtain a copy of the full text of the regulatory flexibility analysis for the cost of its reproduction. The published summary shall also establish a time and place for oral proceedings in which interested persons may make oral presentations on the analysis.

3.6(7) Agency initiated analysis. The agency may also prepare a regulatory flexibility analysis in advance of the publication of the Notice of Intended Action or at

any other time. The agency may publish a summary of such an analysis with the Notice of Intended Action and provide the opportunity for oral presentation and submission of comments on the analysis simultaneously with those provided for in the Notice of Intended Action.

423—3.7(17A) Economic impact statement and fiscal note.

3.7(1) Issuance of impact statement. Upon written request of two or more members of the administrative rules review committee or the administrative rules coordinator, the agency shall issue a statement indicating its estimate of the economic impact of a proposed rule or a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2), or made effective in reliance upon Iowa Code section 17A.5(2)"b," on all persons affected by it and upon the agency itself, or a statement indicating that such an estimate cannot be formulated and reasons for this conclusion. The agency may also issue an economic impact statement for a proposed or adopted rule on its own motion.

3.7(2) Impact statement contents. When an economic impact statement is issued in response to a written request from two or more members of the administrative rules review committee or the administrative rules coordinator, the impact statement shall conform to all lawful and feasible requirements for that impact statement imposed by the requester. An economic impact statement may contain one or more of the following:

- a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- b. A description of the probable quantitative and qualitative impact of the proposed rule upon affected classes of persons;
- c. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- d. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;
- e. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- f. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- g. An indication of both the short-term and long-term consequences of the proposed rule;
- h. An indication of the precise methodology used to reach its estimates and the particular data, if any, used to formulate its estimates and their source; and
- i. Quantification of the data relied upon to formulate any estimate contained in that impact statement.

3.7(3) Publication and notice of impact statement. The economic impact statement or statement indicating the reasons why such an estimate is impossible shall be published in the Iowa Administrative Bulletin at least 15 days in advance of adoption of the rule, if it is requested for a proposed rule, or within 45 days of the time it is requested, if it is requested for a rule adopted in reliance upon the first sentence of Iowa Code section 17A.4(2) or made effective in reliance upon Iowa Code section 17A.5(2)"b."

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3.7(4) Fiscal note. If a proposed rule is likely to necessitate additional expenditures by political subdivisions or agencies and entities that contract with a political subdivision to provide services which are beyond the expenditures explicitly provided by state law, a fiscal note estimating those costs shall be formulated by the agency. In addition to that estimate, the fiscal note shall indicate the precise methodology used to reach the estimate and data, if any, used to formulate the estimate and its source. The agency shall indicate in its Notice of Intended Action where and how persons may obtain copies of the fiscal note prepared for that proposed rule, which shall, if feasible, be available by the date the Notice of Intended Action is published in the Iowa Administrative Bulletin. If the agency determines at the time it adopts a rule that the fiscal note issued in the proceeding upon which the rule is based contains errors, the agency shall, at the time, issue a corrected fiscal note.

423—3.8(17A) Time and manner of rule adoption.

3.8(1) Time of adoption. The commission shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the commission shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

3.8(2) Consideration of public comment. Before the adoption of a rule, the commission shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding, any memorandum summarizing such oral submissions, and any regulatory flexibility analysis, economic impact statement, and fiscal note issued in that rule-making proceeding.

3.8(3) Reliance on agency expertise. Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

423—3.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

3.9(1) The commission shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of the Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

3.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of the rule-making proceeding could be the rule in question, the agency shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from

the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

3.9(3) The agency shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make the rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the administrative rules coordinator and the administrative rules review committee within three days of its issuance.

3.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

423—3.10(17A) Exemptions from public rule-making procedures.

3.10(1) Omission of notice and comment. To the extent the commission, for good cause, finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the commission may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.10(2) Categories exempt. The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

Rules which are mandated by federal law or regulation are exempted from the usual public notice and public participation requirements in any situation where the commission has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules.

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

3.10(3) Public proceedings on rules adopted without them. The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule adopted in reliance upon subrule 3.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 3.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that

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rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding is commenced pursuant to this subrule, the commission may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 3.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

423—3.11(17A) Concise statement of reasons.

3.11(1) General. When requested by a person, either prior to adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and must be delivered to the Administrative Rules Coordinator, Commission for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

3.11(2) Contents. The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the reasons for overruling the arguments made against the rule.

3.11(3) Time of issuance. After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or 45 days after receipt of the request. A copy of the concise statement of reasons shall be mailed to the requesting party within two working days of the date it is issued.

423—3.12(17A) Contents, style, and form of rule.

3.12(1) Contents. Each rule adopted by the commission shall contain the text of the rule and, in addition:

- a. The date the commission adopted the rule;
- b. A statement of the purpose of the rule;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule; and
- f. The effective date of the rule.

3.12(2) Incorporation by reference. The agency may incorporate, by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the proposed or adopted rule would be unduly cumbersome, expensive or otherwise inexpedient. The reference in the proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such matter by reference in a proposed or adopted rule only if the agency, organization, association

or other persons originally issuing that matter make copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association or persons originally issuing the matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

3.12(3) References to materials not published in full. When the Code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive or otherwise inexpedient, the agency shall prepare and submit to the Code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of the full text at actual cost upon request.

At the request of the Code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive or otherwise inexpedient.

To facilitate transcription into the alternative media of braille, cassette tape or large type format, the complete text of the proposed rule shall be published in the Notice of Intended Action whenever possible.

3.12(4) Style and form. In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

423—3.13(17A) Agency rule-making record.

3.13(1) Requirement. The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

3.13(2) Contents. The agency rule-making record shall contain:

a. Reference to all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Reference to any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests and submissions received by the agency, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the administrator or the commission in formulation, proposal or adoption of the rule or the proceeding upon which the rule is based, except to the extent the agency

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is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based, or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by the presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory flexibility analysis, economic impact statement, or fiscal note prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for exceptions to, amendments of, or repeal or suspension of, the rule;

h. A copy of any objection to issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection; and

j. A copy of any executive order concerning the rule.

3.13(3) Effect of record. Except as otherwise required by provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on the rule.

3.13(4) Maintenance of record. The agency shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

423—3.14(17A) Filing of rules. The agency shall file each rule adopted by the commission in the office of the administrative rules coordinator. The filing must be executed as soon after adoption as is practicable. At the time of filing, each rule must have attached to it any fiscal note and any concise statement of reasons that were issued with respect to that rule. If a fiscal note or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

423—3.15(17A) Effectiveness of rules prior to publication.

3.15(1) Grounds. The commission may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The agency shall incorporate the required findings and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.15(2) Special notice. When the commission makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section

17A.5(2)"b"(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of rules prior to their indexing and publication include, but are not limited to, any one or more of the following: radio, newspaper, television, signs, mail, telephone or personal notice.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3), shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 3.15(2).

423—3.16(17A) Review by agency of rules. At least every five years, the agency shall review all of its rules and decisions of particular applicability to determine whether any new rule should be proposed or any existing rule should be amended or repealed. In conducting that review, the agency shall prepare a written report summarizing its findings, its supporting reasons, and any proposed course of action. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A.

ARC 8076

COLLEGE AID COMMISSION[245]

Notice of Intended Action

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

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

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

The proposed amendments specify lender incentives which are prohibited in the Guaranteed Student Loan, Iowa PLUS Loan, Supplemental Loans for Students, and Consolidation Loan Programs. The rules also allow a lender to round the borrower's payments to the next highest whole dollar in multiples of five.

Interested persons may submit comments orally or in writing to the Executive Director, Iowa College Aid

COLLEGE AID COMMISSION[245] (cont'd)

Commission, 201 Jewett Building, Des Moines, Iowa 50309 (515/281-3501) on or before December 15, 1987.

These rules are published herein as emergency adopted and implemented, **ARC 8075**, and the contents of that filing is incorporated here by reference.

These rules are intended to implement Iowa Code section 261.37.

ARC 8104**COMMUNITY ACTION AGENCIES
DIVISION[427]****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 601K.92, the Division of Community Action Agencies rescinds subrules 10.3(7) through 10.3(9), and adopts a new subrule regarding Low-Income Home Energy Assistance Program Crisis Program, 10.3(7), Iowa Administrative Code.

The Low-Income Home Energy Assistance Program begins October 1 of each year. Often Congress has not authorized an appropriation to fund the program by this date. Planning that takes place months before the program begins must be based on anticipated funding levels. Because of the federal government's deficit reduction efforts, the funding that had been expected for the Energy Assistance Program in Iowa will most likely be significantly reduced, from \$33.9 million for FY 87 to an anticipated \$20 million for FY 88.

The Low-Income Home Energy Assistance Program had sought to expand benefits available to eligible clients through its crisis assistance program by means of increased benefit levels, crisis weatherization eligibility, and supplemental benefit awards to those eligible clients who could demonstrate an inordinate heating cost burden.

However, federal funding will almost certainly not be available to finance this program for FY 88 as had been anticipated. The loss to Iowa of more than \$10 million in funding for this program, which serves approximately 115,000 low-income Iowans, means retrenchment to former levels of service in the crisis components of the program as well as across-the-board reductions in benefit levels for every eligible client.

This rule returns the crisis program to the eligibility and payment levels that had been in place for the past four years, as required by the loss to Iowa of federal funding for this program.

Any interested person may make written suggestions or comments on these rules prior to November 24, 1987. Written response should be directed to Sue Downey, Department of Human Rights, Division of Community Action Agencies, Lucas State Office Building, Des Moines, Iowa 50319.

These rules are also being published herein as emergency adopted and implemented rules, **ARC 8103**.

Rule 10.3(72GA,SF513,PL97-35,PL98-558) is amended by rescinding subrules 10.3(7) through 10.3(9) and inserting in lieu thereof the following:

10.3(7) Energy crisis payments not to exceed \$150 per household may be authorized by the local administering agency where necessary to prevent an immediate threat to life or health as specified in the procedures manual referred to in 10.6(72GA,SF513,PL97-35,PL98-558). Applications for crisis assistance will be accepted from the first working day in November until the last working day of March. Crisis payments are dependent on the availability of federal funds.

10.3(8) and 10.3(9) Reserved.

ARC 8080**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 8, "Self-Employment Loan Program," Iowa Administrative Code.

The proposed amendments clarify the definition of "local sponsor," delete certain eligibility requirements (insufficient access to funds, lack of adequate personal financial resources, \$3000 personal debt level), add three considerations to the evaluation process, and describe loan default procedures.

Any interested person may offer written comments on the proposed rules to: SELP, Division of Job Training, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Written comments must be received by 4:30 p.m. on November 28, 1987.

These rules are intended to implement Iowa Code section 15.241.

The following amendments are proposed:

ITEM 1. Amend rule 261—8.2(15), definition of "local sponsor," as follows:

"Local sponsor" means a representative from a local organization willing to offer assistance and guidance to applicants. Appropriate local sponsors will be identified in the application materials provided by the IDIED and may include the SBDC, JTPA, or local chamber of commerce, or other organizations approved by IDIED.

ITEM 2. Amend rule 261—8.3(15) by rescinding subrules 8.3(5), 8.3(6) and 8.3(7) and renumbering the remaining subrules:

ITEM 3. Amend subrule 8.4(3) as follows:

8.4(3) Evaluation factors. In scoring applications, the following factors to be considered include but are not limited to: budget factors, business design, demonstrated

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

need of applicant, feasibility of plan, creditworthiness, and previous business experience. *In addition, the review committee will take into consideration an applicant's inability to secure a loan from conventional sources (e.g., bank, savings and loan) for the business venture; personal debt level; and lack of personal financial resources to adequately finance the business venture.*

ITEM 4. Amend Chapter 8 by adding the following new rule:

261—8.7(15) Default procedures.

8.7(1) Delinquency on a loan begins on the tenth day after the due date of the first missed payment not later made. A loan is in default when a borrower exceeds 90 days of delinquency.

8.7(2) If a payment is not made in a timely manner, the department will send written notices of delinquency or collection letters to the last known address of the borrower. The notice will notify the borrower of the amount past due and request prompt payment of that amount.

8.7(3) If there is no response to written notices of delinquency or collection letters or if payment is not made, the department will send a Notice to Cure to the borrower. The Notice to Cure identifies the terms and conditions necessary to cure the delinquency and allows 20 days for the account to be resolved. The notice will notify the borrower that if the delinquency is not cured and results in default, the department may report the default to a credit reporting bureau and may bring suit against the borrower to compel repayment of the loan.

8.7(4) In the event the borrower does not comply with the Notice to Cure, a Final Demand letter will be sent to the borrower and a separate Final Demand letter will be sent to the cosigner.

8.7(5) Once a loan is in default and an account remains unsolved after the time period stated in the Final Demand letter, the department will refer the matter to the Iowa attorney general's office for appropriate action.

ARC 8070**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development (IDED) gives Notice of Intended Action to amend Chapter 52, "Business Incubator Center Program," Iowa Administrative Code.

The proposed amendments reflect a change in Iowa Code section 99E.31(3)"e"(1) as amended by 1987 Iowa Acts, Senate File 515, section 7"d"(5). The proposed amendments allow for an annual grant application cycle, as required by the recent amendment, as well as allow the Department to make grants at any time during the

year if funding is available. It also makes an administrative change regarding where to file the application for funding.

Any interested person may make written suggestions or comments on the proposed amendments by November 24, 1987, at 4:30 p.m. Written comments should be addressed to Diane L. Foss, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

A public hearing regarding these rules will be held at 10 a.m. on November 24, 1987, in the Main Conference Room at the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa. At this time persons may present their views either orally or in writing to the Department. Contact Diane Foss by November 20, 1987, to be placed on the hearing agenda.

These proposed amendments are intended to implement Iowa Code section 99E.31(3)"e"(1) as amended by 1987 Iowa Acts, Senate File 515, section 7"d"(5).

The following amendments are proposed:

ITEM 1. Amend rule **261—52.2(71GA, ch 33)**, definition of "Act," to read as follows:

"Act" means ~~1985 Iowa Acts, chapter 33, section 301.~~ Iowa Code section 99E.31(3)"e"(1) as amended by 1987 Iowa Acts, Senate File 515, section 7"d"(5).

ITEM 2. Amend rule **261—52.7(71GA, ch 33)**, introductory paragraph, to read as follows:

261—52.7(71GA, ch 33 72GA, SF 515) Timing and submission of grant proposals. Grant proposals will be accepted twice annually, *if funds are available for this purpose.* Grant proposals must be received by the administering agency on or before February 1 and August 1. Awards will be made twice during the year: on May 1 for the February 1 proposal deadline and on November 1 for the August 1 proposal deadline. The director may waive the submission and announcement date if special conditions can be shown to exist.

ITEM 3. Amend subrule **52.7(1)**, paragraph "a," to read as follows:

a. Six copies of each proposal shall be forwarded to: Bureau Chief, Bureau of Technology and Innovation, Division Administrator, Division for Community Progress, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

ARC 8082**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 1, "Departmental Organization and Procedures," appearing in the Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

This amendment explains the process for seeking an exception to Department policy and the criteria to be used for making exceptions.

Policies cannot be written to cover all factual circumstances for every situation which may arise particularly in light of cost-savings efforts in the administration of the public assistance programs. By making exceptions the agency can sensibly decide the public interest with respect to extraordinary situations.

Occasionally, practices which are not generally cost effective and, therefore, are not agency policy will prove to be less costly than an approved practice. One recent example is the Katy Beckett case in which the United States Department of Health and Human Services authorized an exception to income deeming rules to permit a disabled child to receive home care at President Reagan's request.

The Department has from time to time granted exceptions in individual cases upon the Commissioner's own initiative or upon request from an individual. If exceptions to policy are being made, there needs to be an organized practice and criteria for granting exceptions to avoid the increased chance of arbitrary decisions, and the public needs to be made aware of the Department's policies and procedures regarding the granting of exceptions.

It is anticipated this amendment will increase the requests for exceptions, but it should also increase the Department's awareness of gaps in policy and generate ideas for innovation of policy alternatives.

Consideration will be given to all written data, views, or arguments thereto received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before November 25, 1987.

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

Cedar Rapids - December 3, 1987 10 a.m.
Cedar Rapids District Office
Conference Room - 6th Floor
221 4th Avenue, S.E.
Cedar Rapids, Iowa 52401

Council Bluffs - December 7, 1987 10 a.m.
Council Bluffs District Office
417 E. Kanesville Boulevard, Lower Level
Council Bluffs, Iowa 51501

Davenport - December 2, 1987 10 a.m.
Davenport District Office
5th Floor Conference Room
428 Western Avenue
Davenport, Iowa 52801

Des Moines - December 3, 1987 1 p.m.
Des Moines District Office
City View Plaza, Conference Room 100
1200 University
Des Moines, Iowa 50306

Mason City - December 3, 1987 10 a.m.
Mason City District Office
Mohawk Square
22 North Georgia Avenue
Mason City, Iowa 50401

Ottumwa - December 2, 1987 10 a.m.
Ottumwa District Office
4th Floor Conference Room
226 West Main
Ottumwa, Iowa 52501

Sioux City - December 3, 1987 9 a.m.
Sioux City District Office
Suite 615
507 7th Street
Sioux City, Iowa 51102

Waterloo - December 4, 1987 10 a.m.
Waterloo District Office
Black Hawk County Conference Room
2nd Floor - KWWL Building
500 East 4th
Waterloo, Iowa 50703

This rule is intended to implement Iowa Code section 217.6.

Amend 441—Chapter 1 by adding the following new rule:

441—1.8(217) Exceptions. Exceptions to the department's rules may be granted in individual cases upon the commissioner's own initiative or upon request.

1.8(1) Procedures for requests.

a. Requests for exceptions must be submitted in writing to the Commissioner of the Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

b. A request for an exception is independent from a departmental appeal under 441—Chapter 7. However, a request for an exception may be combined with an appeal of a proposed decision to the commissioner under 441—Chapter 7. A request for an exception made prior to an appeal under 441—Chapter 7 may be denied pending an appeal where factual matters need to be developed.

c. A request for an exception should include the following information where applicable and known to the requestor:

(1) The name, address, and case number or state identification number of the person for whom an exception is being requested and the person requesting the exception, if different from the person for whom an exception is being requested.

(2) The specific rule to which an exception is requested or the substance thereof.

(3) The specific exception requested.

(4) Facts relevant to the factors listed in subrule 1.8(2).

(5) A history of the department's action on the case.

(6) Any information known to the requestor regarding the department's treatment of similar cases.

(7) The name, address, and phone number of any person inside or outside the department with knowledge of the matter with respect to which the exception is requested.

(8) Releases of information authorizing persons with knowledge regarding the request to furnish the department information pertaining to the request.

d. All requests for exceptions shall be responded to in writing within 120 days of receipt.

e. A denial of a request for an exception is absolutely final and is not appealable under 441—Chapter 7.

f. A request for an exception does not delay the time to request an appeal under 441—Chapter 7 or for filing a petition for judicial review of a final decision in a contested case under Iowa Code section 17A.19.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

g. A request for an exception is not required to exhaust administrative remedies before judicial review of department action under Iowa Code section 17A.19.

1.8(2) Policy. Exceptions are granted at the complete discretion of the commissioner after consideration of all relevant factors, including but not limited to the following:

a. The need of the person or entity directly affected for the exception. Exceptions will be granted only in cases of extreme need.

b. Whether there are exceptional circumstances justifying an exception to the general rule applicable in otherwise similar circumstances.

c. Whether granting the exception would result in net savings to the state or promote efficiency in the administration of programs or service delivery. Net savings or efficiency will make an exception more likely.

d. In the case of services, assistance, or grants, whether other possible sources have been exhausted. Exceptions will not generally be granted if other sources are available.

e. The cost of the exception to the state and the availability of funds in the department's budget.

trative Bulletins dated December 31, 1986, and July 27, 1987, respectively.) These rules are similar to those which were previously Noticed and terminated, but they no longer create entitlements to services.

Iowa Code section 225C.27 does not give the Department the authority to require other state agencies to adopt rules which comply with these guidelines. However, according to the provisions of Iowa Code section 225C.29, persons may initiate compliance review proceedings with the Division of Mental Health, Mental Retardation, and Developmental Disabilities. If the Division finds that services have not been delivered in accordance with the guidelines, either the Division or a party in interest may apply to the district court for an order to enforce the decision.

The Department will be placing rules under Notice at a later date regarding the procedures for compliance review.

Consideration will be given to all written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before November 25, 1987.

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

ARC 8071

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 225C.6(1)"b" and 225C.27, the Department of Human Services proposes to adopt Chapter 22, "Standards for Services to Persons with Mental Retardation, Developmental Disabilities, or Chronic Mental Illness," Iowa Administrative Code.

The Seventy-first General Assembly in 1985 Iowa Acts, chapter 249, established a Bill of Rights for persons with mental retardation, developmental disabilities, or chronic mental illness. Iowa Code section 225C.27 mandates that the Division of Mental Health, Mental Retardation and Developmental Disabilities, in coordination with appropriate agencies, adopt rules to implement the purposes of the Bill of Rights.

Iowa Code section 225C.28 grants to every person with mental retardation, developmental disabilities, or chronic mental illness the right to needed services. The effective date of this section was July 1, 1987, dependent upon enactment of a fair and equitable funding formula. This section of the Bill of Rights has not gone into effect.

The Department had previously Noticed and then terminated rules identifying and defining services and establishing guidelines for the delivery of those services. (See ARC 7263 and ARC 7783 in the Iowa Adminis-

Cedar Rapids - December 2, 1987 9 a.m.
Cedar Rapids District Office
Iowa Building, 6th Floor Conference Room
221 4th Ave., S.E.
Cedar Rapids, Iowa 52401

Council Bluffs - December 1, 1987 1:30 p.m.
Council Bluffs District Office
Basement Level Conference Room
417 East Kanesville Boulevard
Council Bluffs, Iowa 51501

Davenport - November 30, 1987 10 a.m.
Davenport District Office
5th Floor Conference Room
428 Western Avenue
Davenport, Iowa 52801

Des Moines - November 30, 1987 1 p.m.
Des Moines District Office
City View Plaza, Conference Room 100
1200 University
Des Moines, Iowa 50314

Mason City - December 3, 1987 1:30 p.m.
Mason City District Office
Mohawk Square
22 North Georgia Avenue
Mason City, Iowa 50401

Ottumwa - December 2, 1987 1:30 p.m.
Ottumwa District Office
4th Floor Conference Room
226 West Main
Ottumwa, Iowa 52501

Sioux City - December 3, 1987 1:30 p.m.
Sioux City District Office
6th Floor Conference Room
507 7th Street
Sioux City, Iowa 51101

HUMAN SERVICES DEPARTMENT[441] (cont'd)

Waterloo - December 2, 1987 10 a.m.
 Waterloo District Office
 Black Hawk County Conference Room
 2nd Floor - KWWL Building
 500 East 4th
 Waterloo, Iowa 50701

These rules are intended to implement Iowa Code section 225C.27.

ITEM 1. Include Chapters 22 through 27 in Title III, Mental Health.

ITEM 2. Adopt the following new chapter:

CHAPTER 22
 STANDARDS FOR SERVICES TO PERSONS WITH
 MENTAL RETARDATION, DEVELOPMENTAL
 DISABILITIES, OR CHRONIC MENTAL ILLNESS
 PREAMBLE

Iowa Code section 225C.27 requires the division of mental health, mental retardation, and developmental disabilities to adopt rules to implement the purposes of Iowa Code sections 225C.25 to 225C.28. Those purposes include:

1. Promoting human dignity and protecting the constitutional and statutory rights of persons with mental retardation, developmental disabilities, or chronic mental illness.
2. Encouraging the development of the ability and potential of each person with mental retardation, developmental disabilities, or chronic mental illness in the state to the fullest extent possible.
3. Ensuring that the recipients of services shall not be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the state of Iowa or the Constitution of the United States solely on account of the receipt of the services.

The standards are divided into the following sections.

1. Definitions.
2. Identification of principles which serve as a guide to the provision of services in accordance with the concept of normalization which encompasses the concepts of least restrictive environment and age-appropriate services.
3. The establishment of guidelines related to the delivery of services, including guidelines for personnel providing services, confidentiality, and informed consent.
4. The identification and definition of services which may be utilized to meet the needs of persons with mental retardation, developmental disabilities, or chronic mental illness. These standards include guidelines for the delivery of those services.

The standards represent what the commission believes the service system should strive to achieve. In addition to the concepts contained in the standards, it is the hope of the commission that the service system can be developed in such a way that:

1. People with mental retardation, a developmental disability, or chronic mental illness can be served in their home communities or as near as possible if they so desire.
2. People with disabilities and their families can be involved in the development, operation, and monitoring of community programs.
3. Community living arrangements can be located in residential neighborhoods where the majority of people are nonhandicapped and the arrangements are similar in size and appearance to other residences in the neighborhood.

4. Services foster relationships with others in the community and support people in regular homes, jobs, and recreational and educational activities.

441—22.1(225C) Definitions.

"Age-appropriate" refers to activities, settings, personal appearance and possessions commensurate with the person's chronological age.

"Individualization" means promoting self-expression and differentiation from others.

"Individual program plan" means a written plan for the provision of services to the person and, when appropriate, to the person's family, that is developed and implemented, using an interdisciplinary process, and which identifies a person's and, when appropriate, the person's family's functional status, strengths and needs, and service activities designed to enable a person to maintain or move toward independent functioning. The plan identifies a continuum of development and outlines progressive steps and anticipated outcomes for services.

"Informed consent" means an agreement by a person, or by the person's legally authorized representative, to participate in an activity based upon an understanding of:

1. A full explanation of the procedures to be followed, including an identification of those that are experimental.
2. A description of the attendant discomforts and risks.
3. A description of the benefits to be expected.
4. A disclosure of appropriate alternative procedures that would be advantageous for the person.

"Interdisciplinary process" means an approach to assessment, individual program planning, and service implementation in which planning participants function as a team. Each participant, utilizing the skills, competencies, insights, and perspectives provided by the participant's training and experience, focuses on identifying the service needs of the person and the person's family. The purpose of the process is for participants to review and discuss, face-to-face, all information and recommendations and to reach decisions as a team. Participants share all information and recommendations, and develop as a team, a single integrated individual program plan to meet the person's and, when appropriate, the person's family's needs.

"Interdisciplinary team" means the group of persons who develop a single, integrated individual program plan to meet the person's needs for services.

"Least restrictive environment" means the environment in which the interventions in the lives of people with mental retardation, developmental disabilities, or chronic mental illness can be carried out with a minimum of limitation, intrusion, disruption, and departure from commonly accepted patterns of living.

It is the environment which allows persons to participate to the maximum extent possible in everyday life and to have control over the decisions that affect them. It is the environment that provides needed supports in such a way that they do not unduly interfere with personal liberty and do not interfere with a person's access to the normal events of life.

"Level of functioning" means a person's current physiological and psychological status and current academic, community living, self-care, and vocational skills.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

"Mental health problem" means an emotional symptom, situational reaction or problem in living. These are difficulties in adjusting to stress or new situations.

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

"Normalization" means a process of helping persons, in accordance with their needs and preferences, to achieve a life-style that is consistent with the norms and patterns of general society and in ways which incorporate the principles of age-appropriate services and least restrictive environment.

"Personnel training" means an organized program to prepare all personnel to perform assigned duties competently and maintain and improve the competencies of all personnel.

"Persons with chronic mental illness" means persons 18 and over, with a persistent mental or emotional disorder that seriously impairs their functioning relative to such primary aspects of daily living as personal relations, living arrangements, or employment.

Persons with chronic mental illness typically meet at least one of the following criteria:

1. Have undergone psychiatric treatment more intensive than outpatient care more than once in a lifetime (e.g., emergency services, alternative home care, partial hospitalization or inpatient hospitalization).

2. Have experienced at least one episode of continuous, structured supportive residential care other than hospitalization.

In addition, these persons typically meet at least two of the following criteria, on a continuing or intermittent basis for at least two years:

1. Are unemployed, or employed in a sheltered setting, or have markedly limited skills and a poor work history.

2. Require financial assistance for out-of-hospital maintenance and may be unable to procure this assistance without help.

3. Show severe inability to establish or maintain a personal social support system.

4. Require help in basic living skills.

5. Exhibit inappropriate social behavior which results in demand for intervention by the mental health or judicial system.

In atypical instances, a person may vary from the above criteria and could still be considered to be a person with chronic mental illness.

"Persons with developmental disabilities" means persons with a severe, chronic disability which:

1. Is attributable to mental or physical impairment or a combination of mental and physical impairments.

2. Is manifested before the person attains the age of 22.

3. Is likely to continue indefinitely.

4. Results in substantial functional limitations in three or more of the following areas of life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

5. Reflects the person's need for a combination and sequence of services which are of lifelong or extended duration.

"Persons with mental retardation" means persons with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, manifested during the developmental period.

1. General intellectual functioning is defined as the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

2. Significantly subaverage functioning is defined as approximately 70 intelligence quotient (IQ) or below.

3. Adaptive behavior is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for age and cultural group.

4. Developmental period is defined as the period of time between conception and the eighteenth birthday.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals and objectives for any of the following:

1. Target populations.

2. The population of specified geographic area(s).

3. A specified purpose.

4. A person.

"Service coordinator" (case manager) means the person responsible for ensuring the development and monitoring of the implementation of the person's individual program plan.

"Work" means any activity that provides goods or services for wages.

441—22.2(225C) Principles. The following are principles identified by the mental health and mental retardation commission to serve as a guide to the delivery of services in accordance with the principle of normalization. It is the belief of the commission that, if services are provided in accordance with these principles, those services will be age-appropriate and delivered in the least restrictive environment. These principles should be implemented in accordance with the person's strengths, needs and preferences.

22.2(1) Services and settings facilitate physical and social integration with the general society. Factors which may be considered to facilitate integration include, but need not be limited to, access to, use of, and interaction with community professional, social and recreational resources, businesses and public services.

22.2(2) Services and settings promote personal appearance, daily routines and rhythms, forms of address, and rights and privileges consistent with the person's chronological age and cultural environment. Factors which may be considered in determining age and cultural appropriateness include, but need not be limited to, typical schedules for work or school, mealtimes, leisure activities; freedom of choice and movement; typical dress, personal appearance, and personal possessions; and social and sexual behavior.

22.2(3) Services and settings provide opportunities for interaction in groups of size, composition, and nature which are typical for groups in the community. Factors which may be considered in implementation of this requirement include, but need not be limited to, the number of people in a group, the likelihood of the group's being seen by the community as different or negative,

HUMAN SERVICES DEPARTMENT[441] (cont'd)

and appropriate grouping of individuals by age and areas of interest.

22.2(4) Services and settings ensure that the physical and social environments provide expectations, experiences, and challenges appropriate to the person's developmental level and chronological age and provide the opportunity for personal growth and development. Factors which may be considered in implementing this requirement include, but need not be limited to, availability of learning opportunities which allow the person to face risks which are a typical part of normal growth and development; use of electrical appliances, cleaning supplies and cooking facilities; use of public transportation; freedom to come and go without supervision; self-administration of medication; and appropriate use of protective devices such as temperature controls on water and alarms and security systems.

22.2(5) Services and settings promote individualization. Factors which may be considered in implementing this requirement include, but need not be limited to, use of personal belongings; provisions for privacy; allowance for variance in routines and activities; and opportunities for being related to as an individual as opposed to a member of a group.

441—22.3(225C) General guidelines for service delivery. The following are conditions which should be met whenever services are delivered to persons with mental retardation, developmental disabilities, or chronic mental illness.

22.3(1) Services are provided by appropriately and adequately trained personnel.

a. There is a sufficient number of adequately trained and qualified personnel to meet the person's needs and provide services that meet the requirements of these standards.

b. There are ongoing training opportunities for all persons providing services.

c. Each agency or organization ensures that all personnel receive ongoing training.

d. In addition to the training in the skills and knowledge needed to meet specific service responsibilities, all personnel receive training on the concepts and principles identified in Iowa Code sections 225C.25 to 225C.28 and set forth in this chapter.

22.3(2) Personally identifying information is kept confidential. Information is released or disclosed only in accordance with existing federal and state laws and regulations.

a. When consent of the person or the person's legally authorized representative is required, a release of information form is used which specifies to whom the information shall be released, what is to be released, the reason for the release and how the information is to be used, and the period of time for which the release is in effect. The form is signed and dated by the person or the person's legal guardian.

b. Exceptions to obtaining a signed release of information are permitted only for disclosures permitted or required by law; bona fide medical and psychological emergencies; and provider approval, certification, or licensure purposes. When information is released without a signed consent, there is documentation of what information was released, to whom the information was released, and circumstances prompting the release.

c. Services are not contingent upon the person's decision concerning authorization of release of informa-

tion unless the information is essential to the provision of services in accordance with the provider's professional code of ethics.

d. All recipients of services or their legal representatives have access to the person's record upon request unless otherwise determined by law.

22.3(3) All persons have the right to informed consent. There is documentation that the person has given informed consent.

441—22.4(225C) Services. The following subrules identify, define, and establish guidelines for the delivery of the services which the commission believes should be available within the service system. Academic, community living skills training, legal, self-care training, support, transportation, treatment, and vocational services should be made available to a person based on needs identified through a comprehensive evaluation and diagnosis and in accordance with the person's individual program plan.

22.4(1) Academic services are activities provided to assist the person to acquire general information and skills which establish the basis for subsequent acquisition and application of knowledge. Services are provided under the auspices of an accredited or approved educational institution or under the direction of a certified teacher.

22.4(2) Community living skills training services are activities provided to assist the person to acquire or sustain the knowledge and skills essential to the person's independent functioning in the physical and social environment, and which focus on the following areas:

a. Independent living skills, which are those skills necessary to sustain oneself in the physical environment and are essential to the management of one's personal business and property. This includes self-advocacy skills.

b. Socialization skills, which include self-awareness and self-control, social responsiveness, group participation, social amenities, and interpersonal skills.

c. Communication skills, which include expressive and receptive skills in verbal and nonverbal language, including reading and writing.

d. Leisure time and recreational skills, which include use of leisure time in a manner which is satisfying and constructive to the person.

e. Parenting skills, which are those skills necessary to meet the needs of the person's child. This service is designed to assist the person with disabilities to acquire or sustain the skills necessary for parenting.

22.4(3) Consultation services are activities designed to provide professional assistance and information to individuals, groups, and organizations concerning mental retardation, developmental disabilities, mental health, and mental illness in order to increase the providers' effectiveness in carrying out their responsibilities for providing services.

a. The services include the following:

(1) Case consultation, which means advisory activities directed to a service provider to assist the provider in delivering services to a specific person. Caretakers, e.g., family members, may be considered to be service providers, and consultation activities may include assisting the caretaker to develop skills necessary to provide specialized care to a person with mental retardation, a developmental disability, or chronic mental illness.

(2) Program consultation, which means advisory activities directed to a service provider to assist the

HUMAN SERVICES DEPARTMENT[441] (cont'd)

provider in planning, developing, or implementing programs or in solving problems or addressing concerns in the provider's own organization.

(3) Community consultation, which means advisory activities directed to community organizations, planning organizations, and citizens' groups to assist them in the planning and development of services.

b. Consultation services are provided to a range of individuals and groups which may include but need not be limited to health professionals, schools, courts, public welfare agencies, clergy, and parents.

22.4(4) Evaluation services are activities designed to identify the person's current level of functioning and those barriers to maintaining or achieving a higher level of functioning. These activities provide sufficient information to identify appropriate services, service settings, and living arrangements necessary to assist the person to maintain the current level or achieve a higher level of functioning.

a. These services focus on the following:

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

(2) Diagnosis, which is the investigation and analysis of the cause or nature of a person's condition, situation, or problem.

(3) Evaluation, which is the determination of the effects of a condition, situation, or problem on a person's level of functioning and the provision of sufficient information to identify the appropriate services, service settings, and living arrangements to assist the person to maintain or achieve a higher level of functioning.

b. Diagnostic and evaluation activities are performed under the direction of a person with at least a master's degree and two years of post-master's degree experience in evaluation and treatment in the appropriate field and licensed or certified when required by Iowa law. All activities are performed by persons with training and skills in the appropriate fields.

c. There is a written summary of all screening, diagnosis, and evaluation activities and findings. The summary includes a description of procedures and tests completed and actions taken on completion of the screening, diagnosis, and evaluation activities.

22.4(5) Information and referral services. Information and referral services are activities designed to provide facts about resources which are available and to assist the person to access those resources.

a. The service is clearly identifiable and accessible.

b. There is a process for informing consumers where information may be obtained regarding whether or not the resources available meet applicable federal, state, and local standards and regulations.

22.4(6) Legal services are activities designed to assist the person in exercising constitutional and legislatively enacted rights and which are provided by or under the supervision of a person currently licensed to practice law in the state of Iowa.

22.4(7) Public education services are activities provided to persons to increase awareness and understanding of the causes and nature of conditions, situations, or problems which interfere with the functioning in society of persons with mental retardation, developmental disabilities, or mental illness.

a. Services are designed to promote prevention of mental retardation, developmental disabilities, and

chronic mental illness and to promote services to persons with those conditions.

b. Services focus on the following:

(1) Prevention activities, which are activities designed to convey information about the causes of conditions, situations, or problems that interfere with a person's functioning or convey ways in which the knowledge acquired can be used to prevent their occurrence or reduce their effect.

(2) Public awareness activities, which are activities designed to convey information about the causes and nature of conditions, situations, or problems which interfere with a person's functioning and the consequence of service provision for the person and the ultimate impact on society. Activities should include educational and informational techniques which promote acceptance of the person as an integral part of society and the elimination of social and legal barriers to that acceptance.

22.4(8) Self-care training services are activities provided to assist the person to acquire or sustain knowledge, habits, and skills essential to the daily needs of the person. The activities focus on personal hygiene, general health maintenance, mobility skills, and other activities of daily living.

22.4(9) Service coordination services are activities provided to ensure that the person has received a comprehensive evaluation and diagnosis, to give assistance to the person in obtaining appropriate services and living arrangements, to coordinate the delivery of services, and to provide monitoring to ensure the continued appropriate provision of services and the appropriateness of the living arrangement. Service coordination is provided in accordance with the following guidelines:

a. Service coordination services are available regardless of whether or not the person is eligible for or receiving other services.

b. Service coordination services include personal advocacy activities which assist the person to exercise the rights to which the person is entitled and remove barriers to meeting the person's needs.

c. Service coordination services include outreach, which is a process of systematically reaching into a service area to provide all persons in need information about services available and how to access them.

d. Minimal qualifications of a person providing service coordination services include a bachelor's degree from an accredited college or university in the behavioral sciences, education, health care, human service administration or the social sciences, and one year of post-degree experience in the delivery, planning, coordination or administration of human services; or a high school diploma (or its equivalent) and five years of postdegree experience in the delivery, planning, coordination or administration of human services; or a combination of post-high school experience in the delivery, planning, coordination or administration of human services and post-high school education in the social or behavioral sciences which totals five years. One of the five years must be experience.

Services are delivered under the immediate supervision of a person who has at least a bachelor's degree in the behavioral sciences, education, health care, human service administration, or the social sciences and a minimum of three years of experience in the administration or delivery of human services.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

e. One service coordinator is assigned to each person receiving service coordination services.

f. The service coordinator assists the person in obtaining a comprehensive evaluation and diagnosis which meets the following requirements:

(1) Is adapted to the cultural background, primary language, and ethnic origin of the person.

(2) Meets the definitions of diagnosis and evaluation contained in the standard for evaluation services and meets all the requirements of the standard.

(3) Identifies the person's level of functioning and provides information necessary to determine the need for services in each of the following areas: academic, community living, self-care, treatment, and vocational.

(4) Is completed by persons with education and experience in the area of functioning which is being evaluated.

g. The service coordinator ensures that there is a social history completed which meets the following requirements:

(1) Assesses the social, cultural, and other factors which may affect the person's ability to maintain the current level of functioning or achieve a higher level of functioning. Factors to be assessed include the history of previous living arrangements and services received, relationships with family and other support systems, cultural and ethnic background and religious affiliation, and the person's preferences regarding vocational opportunities and use of leisure time.

(2) Is reviewed annually and updated as necessary.

h. The service coordinator coordinates the development of an individual program plan (IPP) which meets the following requirements:

(1) The IPP is developed using an interdisciplinary process. An interdisciplinary team is identified for each person with the composition determined in coordination with the person or the person's legal guardian. The interdisciplinary team includes:

1. The person, the person's legal guardian and the person's family unless the family's participation is contrary to the wishes of the adult person who has not been legally determined to be incompetent;

2. The service coordinator;

3. All current service providers;

4. Other persons whose appropriateness may be identified through the comprehensive evaluation and diagnosis or current reevaluation.

(2) The person or the person's legal guardian has the ultimate authority to accept or reject the plan unless otherwise determined by a court.

(3) The IPP is based on the findings of the comprehensive evaluation and diagnosis or current annual reevaluation.

(4) The IPP is in permanent written form dated and signed by the interdisciplinary team members.

(5) The IPP is available to the person and all providers of services.

(6) The IPP identifies the following:

1. Individualized goals which are general statements of expected accomplishments to be achieved in meeting the needs identified in the comprehensive evaluation and diagnosis or reevaluation.

2. Objectives, which may be prioritized and which are specific, measurable and time limited statements of outcome or accomplishments which are necessary for progress toward each goal.

3. The specific service(s) or service activities to be provided to achieve the objectives.

4. The person(s) or agency(ies) responsible for providing the service(s).

5. The date of initiation and anticipated duration of services. The IPP includes identification of the method by which persons or agencies furnishing the service provide to the service coordinator written documentation of the services provided and the person's response to those services.

6. The least restrictive living arrangement and service setting to meet the person's needs, rationale for the determination, and the rationale for any variation from use of the least restrictive environment.

7. The person legally authorized to act on behalf of the person receiving services, when applicable.

8. Services which are needed but not currently available.

(7) The IPP includes recommendations for guardianship or conservatorship, if applicable.

i. The service coordinator determines if service activities identified in the IPP are provided by persons who are appropriately qualified and licensed or certified, when applicable, for the provision of those services. If providers do not meet established qualifications, the service coordinator documents the rationale given for using those providers.

j. The service coordinator identifies the appropriate composition of the interdisciplinary team.

k. The service coordinator develops a process for assessing, no less than quarterly, the person's progress toward achieving the goals and objectives identified in the IPP.

l. The service coordinator consults with the interdisciplinary team if a need to revise the IPP is identified prior to the annual review, to determine the need for further action.

m. The service coordinator coordinates a periodic, but at least annual reevaluation and review of the IPP to measure progress and to modify the plan as necessary. The reevaluation and review should meet the following requirements:

(1) The reevaluation includes an assessment of the person's current level of functioning and need for services in the following areas: academic, community living, self-care, treatment and vocational; and is conducted by persons with training and skills in the areas being assessed.

(2) The interdisciplinary team reviews the current IPP and the findings of the reevaluation.

(3) There is a written report of the review which includes, but need not be limited to, a summary of the results of the reevaluation and the person's progress toward the objectives in the IPP; the need for continued services, any recommendations concerning alternative services or living arrangements; and any recommended change in guardianship or conservatorship status, if applicable.

(4) The written report reflects those involved in the review and is made available to the person or the person's legal guardian.

22.4(10) Support services are activities provided to or on behalf of a person in the areas of personal care and assistance and property maintenance in order to allow the person to live in the least restrictive environment.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

22.4(11) Transportation services are activities designed to assist the person to travel from one place to another to obtain services or carry out life's activities and which meet the requirements of Iowa Code chapter 601J, where applicable.

22.4(12) Treatment services are activities designed to assist the person to maintain or improve physical, emotional and behavioral functioning and to prevent conditions that would present barriers to a person's functioning. Treatment services include physical or physiological treatment and psychotherapeutic treatment.

a. Physical or physiological treatment means activities designed to prevent, halt, control, relieve, or reverse symptoms or conditions which interfere with the physical or physiological functioning of the human body. The activities are provided by or under the supervision of a licensed health care professional.

b. Psychotherapeutic treatment means activities provided to assist a person in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the person's functioning in response to the physical, emotional, and social environment. The activities are provided by or under the supervision of a person who holds a current license when required by Iowa licensure law and who is one of the following:

(1) A psychiatrist, which means a doctor of medicine or osteopathic medicine and surgery who is certified or eligible for certification by the American Board of Psychiatry and Neurology and who is fully licensed to practice medicine in the state of Iowa.

(2) A psychologist, which means a person who is licensed or eligible for licensure to practice psychology in the state of Iowa or who is certified by the Iowa department of education as a school psychologist, or who meets the requirements for eligibility for a license to practice psychology in the state of Iowa that were effective prior to July 1, 1985.

(3) A social worker, which means a person who is licensed or eligible for licensure as a social worker in the state of Iowa.

(4) A psychiatric nurse, which means a person who is certified or eligible for certification as a psychiatric mental health nurse practitioner pursuant to the board of nursing rules, 655—Chapter 7.

(5) A mental health counselor, which means a person who is certified or eligible for certification as a mental health counselor by the National Academy of Certified Clinical Mental Health Counselors.

(6) A doctor of medicine or osteopathic medicine or a person with at least a master's degree or its equivalent with course work focusing on treatment of mental health problems and mental illness, who has two years of supervised experience in providing mental health services.

(7) A person who has less than a master's degree but at least a bachelor's degree and who has sufficient documented training and experience in treatment of persons with mental health problems and mental illness.

22.4(13) Vocational services are activities designed to familiarize the person with production requirements and to maintain or develop the person's ability to function in a work setting. Vocational services are provided in accordance with the following guidelines:

a. This service includes activities which allow or promote the development of skills, attitudes, and personal attributes appropriate to the work setting and contribute to the person's independence and employment potential.

b. All applicable wage and hour regulations are met.

c. A person with mental retardation, developmental disabilities, or chronic mental illness engaged in work programs is paid wages commensurate with the going rate for comparable work and productivity.

ARC 8085

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 505.8 and 507B.12, the Iowa Division of Insurance hereby gives Notice of Intended Action to amend Chapter 10, "Agents' Licensing Rules," Iowa Administrative Code.

Any person may make written comments not later than November 24, 1987, to Kevin Howe, Iowa Division of Insurance, Lucas State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 522.1.

Amend rule 191—10.7(522) as follows:

191—10.7(522) Types and classifications of licenses. An agent satisfying the prerequisite examination and application requirements may qualify for one or more of the licenses categorized below:

Classification	Type of License
1	Fire only
2	Casualty only
4	Hail only
5	Surety only
6	Accident and health only
7	Life only
8 or M	County mutual
9	Variable contracts
PL (14)	Personal lines - fire, casualty, auto, and hail sold to individuals or families only
COM (17)	Commercial lines - fire, casualty, auto and hail sold to individuals, families or businesses. (includes PL above)
CRDT (18)	Credit accident and health and credit life
10	Excess and surplus lines
19	Legal expense

This rule is intended to implement Iowa Code section 522.1.

ARC 8087**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 505.8 and 507B.12, the Iowa Division of Insurance hereby gives Notice of Intended Action to amend Chapter 10, "Agents' Licensing Rules," Iowa Administrative Code.

These changes are being made in order to allow insurance agents to sell insurance before they have received a company appointment.

Any person may make written comments not later than November 24, 1987, to Tony Schrader, Iowa Division of Insurance, Lucas State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 522.1.

Amend subrule 10.8(2) as follows:

10.8(2) An agent may not solicit insurance until such agent possesses a license, and has been appointed with at least one (1) company for which the agent intends to solicit insurance. Once so qualified, the agent may not receive commissions for insurance written with any other a company until that agent has been appointed with such company. Nothing herein is intended to alter the requirements of Iowa Code section 522.4.

This rule is intended to implement Iowa Code section 522.1.

ARC 8086**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 505.8 and 507B.12, the Iowa Division of Insurance hereby gives Notice of Intended Action to amend Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

This rule prohibits licensed insurance agents from accepting installment payments or other credit terms in the sale of bail bonds.

Any person may make written comments not later than November 24, 1987, to Tony Schrader, Iowa Division of Insurance, Lucas State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 507B.12.

Amend rule 191—15.2(508,515) by adding the following new subrule:

15.2(3) No installment payments or other credit terms may be accepted by licensed insurance agents in the sale of bail bonds.

This subrule is intended to implement Iowa Code section 507B.12.

ARC 8084**INSURANCE DIVISION[191]****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 321I.7, the Iowa Division of Insurance hereby gives Notice of Intended Action to adopt the following new Chapter 23, "Motor Vehicle Service Contracts," Iowa Administrative Code.

Changes are being made in order to set forth the procedures for the filing of motor vehicle service contracts with the Commissioner of Insurance.

Any person may make written comments not later than November 24, 1987, to Kevin F. Howe, Insurance Division of Iowa, Lucas State Office Building, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 321I.7.

The following new chapter is proposed:

CHAPTER 23**MOTOR VEHICLE SERVICE CONTRACTS**

191—23.1(321I) Purpose. The purpose of this chapter is to set forth rules and procedural requirements which the commissioner of insurance deems necessary to carry out the provisions of Iowa Code chapter 321I. The information called for by these rules is hereby declared to be necessary and appropriate in the public interest and for the protection of policyholders in this state.

191—23.2(321I) Applicability and scope. This chapter shall apply to all providers of motor vehicle service contracts issued, sold, or offered for sale in this state. This chapter also applies to all motor vehicle service contract reimbursement insurance policies issued by an insurer authorized to do business in this state.

191—23.3(321I) Filing procedures.

23.3(1) All filings submitted to the Iowa division of insurance must be accompanied by a prepaid self-addressed envelope large enough to contain the issued certificate and all copies of file-stamped material requested to be returned.

23.3(2) All filings must be accompanied by a cover letter in duplicate which gives the form numbers, titles, effective date of the filing, and a brief identifying

INSURANCE DIVISION[191] (cont'd)

description of the forms submitted. This cover letter shall include the name and address of a contact person for the purpose of responding to consumer complaints received by the Iowa division of insurance. If the filing amends or changes a prior filing, the previous provisions and new provisions should be described in the cover letter with an explanation for the changes.

23.3(3) All filings shall be accompanied by a certification of the general counsel or an officer of the submitting company or other business entity that the provider of the service contract is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state and that to the best of their knowledge and belief the policy is in compliance with the insurance laws of Iowa and these rules.

23.3(4) The annual date for filing shall be the first day of December. If the first day of December falls on a weekend or a holiday, the date for filing shall be the next business day.

23.3(5) All filings shall be accompanied by an annual filing fee of \$100.

All copies not filed by the first of December each year shall be accompanied by a late filing fee of \$100.

191—23.4(321I) Service of process. The commissioner shall be the agent for service of process upon any provider of motor vehicle service contracts and the providers of the reimbursement policies.

191—23.5(321I) License requirement. All sales of motor vehicle service contracts shall be through a licensed insurance agent authorized to sell in personnel lines.

191—23.6(321I) Violations. All violations of these rules shall be considered violations of Iowa Code chapter 321I and, therefore, subject to the provisions of Iowa Code section 321I.6.

191—23.7(321I) Unfair or deceptive trade practices. The provisions of Iowa Code chapter 507B shall apply to the sale of motor vehicle service contracts.

These rules are intended to implement Iowa Code section 321I.7.

NOTICE — INSURANCE

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

Pursuant to Iowa Code section 511.36, notice is hereby given that the Commissioner of Insurance has determined that "published monthly average" for August of 1987 is 10.14%. This rate corresponds to Moody's corporate bond yield average—monthly average corporates as published in Moody's Investors Services, Inc. This rate was effective November 1, 1987.

NOTICE — INSURANCE

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

Pursuant to Iowa Code section 511.36, notice is hereby given that the Commissioner of Insurance has determined that "published monthly average" for September of 1987 is 10.67%. This rate corresponds to Moody's corporate bond yield average—monthly average corporates as published in Moody's Investors Services, Inc. This rate will be effective December 1, 1987.

ARC 8069

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 109.39, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 52, "Wildlife Refuges," Iowa Administrative Code.

Chapter 52 implements the establishment of wildlife refuges or sanctuaries on state-owned lands and waters under the jurisdiction of the Department of Natural Resources for the purpose of preserving the biological balance and for the protection of public parks, public health, safety and welfare, and to effect sound wildlife management. The purpose of the amendment is to bring 571—Chapter 52 into compliance with the articles of dedication, rules of management, and any stipulations on deed transfers for the below-listed state preserves.

Any interested person may make written comments or suggestions on this rule prior to November 24, 1987. Such written materials should be directed to the Bureau Chief, Preserves and Ecological Services Bureau, 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 East Conference Room, on November 24, 1987, at 10 a.m. At the hearing, persons will be asked to confine their remarks to the subject of the rule.

This rule is intended to implement Iowa Code section 109.39.

Amend subrule 52.1(1) to delete Gitchie Manitou, add the following and alphabetize the entire list by area.

Cameron Woods	Scott
Fallen Rock	Hardin
Frank Pellett Memorial Woods	Cass
Hardin City Woodland	Hardin
Kish-Ke-Kosh Prairie	Jasper
Little Maquoketa Mounds	Dubuque
Malchow Mounds	Des Moines
Merritt Forest	Clayton
Nestor Stiles Prairie	Cherokee
Pecan Grove	Muscatine
Pilot Grove	Iowa
Starr's Cave	Des Moines
Strasser Woods	Polk

ARC 8094**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, 109.38, 109.39 and 109B.1, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 82, "Commercial Fishing," Iowa Administrative Code.

These rules establish areas, methods, species, length limits and catch report requirements for commercial fishing on the Mississippi and Missouri Rivers and provide a procedure for contract commercial fishing on inland waters.

Any interested person may make written suggestions or comments on these proposed rules prior to November 25, 1987. Such written materials should be directed to the Bureau of Fisheries, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. Persons who wish to convey their views orally should contact the Bureau of Fisheries at 515/281-5208 or at the fisheries offices on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on November 24, 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 the provisions of Iowa Code sections 109.38, 109.39 and 109B.1.

The following amendments are proposed:

ITEM 1. Strike "(71GA, ch 1141)" wherever it appears and insert in lieu thereof "(109B)".

ITEM 2. Amend 82.2(1) as follows:

82.2(1) Permissive catch. It shall be lawful to take with licensed commercial fishing gear the following species: carp, smallmouth buffalo, largemouth buffalo, black buffalo, channel catfish, flathead catfish, black bullhead, yellow bullhead, brown bullhead, freshwater drum, northern redhorse, silver redhorse, spotted sucker, white sucker, river carpsucker, quillback, highfin carpsucker, white amur, shovelnose sturgeon, longnose gar, shortnose gar, bowfin, gizzard shad, goldeye and mooneye.

ITEM 3. Amend the implementation clause at the end of the chapter as follows:

These rules are intended to implement Iowa Code sections 109.38, and 109.39, and Iowa Acts, chapter 1141, sections 1, 3, 5, and 14 109B.1, 109B.3, 109B.5, and 109B.14.

ARC 8099**PHARMACY EXAMINERS
BOARD[620]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 155.19, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to rescind Chapter 3 and to adopt a new Chapter 3, "Minimum Standards for Evaluating Practical Experience," Iowa Administrative Code.

The proposed rules were approved during the October 13, 1987, meeting of the Iowa Board of Pharmacy Examiners.

The proposed rules establish pharmacy intern registration standards, fees, internship goals and objectives, and preceptor requirements.

Any interested person may submit data, views, and written comments on the proposed rules on or before November 24, 1987, to Norman C. Johnson, Executive Secretary, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

These rules are intended to implement 1987 Iowa Acts, House File 594, section 6.

Rescind 620—Chapter 3 and insert the following new chapter in lieu thereof:

**CHAPTER 3
MINIMUM STANDARDS FOR EVALUATING
PRACTICAL EXPERIENCE**

620—3.1(72GA, HF594) Definitions.

"Pharmacist-intern" means a person registered with the Iowa board of pharmacy examiners for the purpose of obtaining instruction in the practice of pharmacy from a preceptor pursuant to the requirements of 1987 Iowa Acts, House File 594, section 6. Registration is required of all students enrolled in Iowa colleges of pharmacy after they have successfully completed two years of full-time college enrollment, one year of which must be in the college of pharmacy.

"Pharmacist preceptor" or "preceptor" means a pharmacist licensed to practice pharmacy in Iowa. Preceptors shall meet the conditions and requirements of rule 3.9(72GA, HF594). No pharmacist shall serve as a preceptor if their license to practice pharmacy has been the subject of an order of the board imposing any penalty set out in 620—Chapter 10 during the time the pharmacist is serving as preceptor or within the three-year period immediately preceding application for approval as a preceptor. Provided, however, a pharmacist who has been the subject of such an order may petition the board in writing for approval to act as preceptor.

620—3.2(72GA, HF594) Goal and objectives of internship.

3.2(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, responsibilities,

PHARMACY EXAMINERS BOARD[620] (cont'd)

and ability to safely, efficiently, and effectively practice pharmacy under the laws and rules of the state of Iowa.

3.2(2) The objectives of internship are as follows:

a. Receiving and interpreting the prescription or medication order competency. The pharmacist-intern shall acquire the knowledge and ability to determine if the prescription or medication order is complete in terms of the pharmacist's ability to fill the prescription or medication order accurately and in conformance with ethical and legal requirements.

b. Prescription or medication order compounding competency. The pharmacist-intern shall acquire the ability to safely and accurately prepare prescription drugs requiring extemporaneous or bulk compounding including sterile and nonsterile dosage forms.

c. Prescription or medication order dispensing competency. The pharmacist-intern shall acquire the ability to properly interpret prescription or medication orders accurately and to select, identify, package, and label drug products to be dispensed or distributed.

d. Patient medication profile competency. The pharmacist-intern shall be familiar with the necessary components of a patient medication profile and be able to obtain and transcribe the information necessary for the establishment and maintenance of the profile. The pharmacist-intern shall also be able to monitor drug utilization, note drug interactions, allergies and sensitivities, and to take appropriate action to correct drug related problems.

e. Communication and consultation competency. The pharmacist-intern shall be able to furnish timely and factual information concerning the proper use and storage of drugs, their potential side effects, and adverse drug reactions. The pharmacist-intern shall also be able to effectively communicate with the other health professionals through the use of available resource materials in order to clarify, correct, inform, and alter a patient's therapeutic plan.

f. Drug information competency. The pharmacist-intern shall be able to identify, locate, evaluate, utilize, and interpret pharmaceutical and medical literature.

g. Ethical standards competency. The pharmacist-intern is required to comply with legal requirements and professional standards relating to the practice of pharmacy and the operation of the pharmacy.

h. Pharmacy management competency. The pharmacist-intern shall develop a general understanding of the business procedures of a pharmacy and develop knowledge concerning the employment and supervision of pharmacy employees.

620—3.3(72GA,HF594) 1500-hour requirements. Internship shall consist of a minimum of 1500 hours, 1000 hours of which may be a college-based clinical program approved or accepted by the board. Such programs shall be structured to provide experience in community, institutional, and clinical pharmacy practices. The remaining 500 hours shall be acquired in a licensed pharmacy or other board-approved location. These 500 hours can only be obtained after internship registration, at a rate of no more than 48 hours per week. Internship credit toward the stipulated 500 hours will not be allowed if it is acquired concurrent with academic training. "Concurrent time" means internship experience acquired while the person is a full-time student carrying, in a given school term, at least 75 percent of the average number of credit hours per term needed

to graduate and receive an entry level degree in pharmacy. Credit towards the 500 hours will be granted for experience gained during recognized holiday periods, such as spring break and Christmas break. The competencies in subrule 3.2(2) shall not apply to college-based clinical programs.

620—3.4(72GA,HF594) Iowa college of pharmacy internship programs The board shall review Iowa colleges of pharmacy internship programs for approval on or before October 1 of each fiscal year. The board reserves the right to set conditions relating to the approval of such programs.

620—3.5(72GA,HF594) Requirements for internships obtained under other state programs. Graduates from out-of-state colleges of pharmacy will be deemed to have met Iowa internship requirements upon presentation of documents attesting to completion of their state internship requirements. Graduates of colleges of pharmacy in states which have no internship requirements must meet the requirements established for Iowa college of pharmacy graduates.

620—3.6(72GA,HF594) Registration and reporting.

3.6(1) Every person shall register before beginning their internship experience. Registration shall remain in effect during successive training periods if records, forms, affidavits, and other materials required by the board are maintained and executed promptly at the beginning and ending of such training periods, and if the board is satisfied that the intern is pursuing a degree in pharmacy in good faith and with reasonable diligence.

3.6(2) Credit for internship time will not be granted unless registration and other required records and affidavits are completed.

a. The pharmacist-intern shall be so designated in all relationships with the public and health professionals. The intern shall wear a badge or name tag with their name and designation, pharmacist-intern, clearly and visibly imprinted thereon.

b. Registered interns shall notify the board office immediately upon a change of employment or residence.

c. Notarized affidavits of experience in noncollege-sponsored programs must be filed with the board office within 90 days after the last day of the internship period. These affidavits must certify only the number of hours and dates of training which are nonconcurrent with college of pharmacy enrollment.

3.6(3) Credit will not be given for internship experience obtained prior to registration as a pharmacist-intern.

620—3.7(72GA,HF594) Foreign pharmacy graduates. Foreign pharmacy graduates who are candidates for licensure in Iowa will be required to obtain a minimum of 1500 hours of internship in a licensed pharmacy or other board-approved location. These candidates must register with the board as per rule 3.6(72GA,HF594). Internship credit will not be granted until the candidate has been issued an intern registration card. Applications for registration must be accompanied by documentation that the foreign pharmacy graduate has passed the Foreign Pharmacy Graduate Equivalency Exam (FPGEE) and the Test of English as a Foreign Language (TOEFL). The board may waive any or all of the 1500 hours if they determine that the candidate's experience as a practicing pharmacist in the foreign

PHARMACY EXAMINERS BOARD[620] (cont'd)

country meets the goals and objectives established in rule 3.2(72GA, HF594).

620—3.8(72GA, HF594) Fees. The fee for registration as an intern is \$10 payable with the application.

620—3.9(72GA, HF594) Preceptor requirements.

3.9(1) A preceptor shall be a licensed pharmacist in good standing with the board.

3.9(2) Preceptors are required to be approved and certified by the board.

3.9(3) A preceptor may supervise only one pharmacist-intern at any given time.

These rules implement 1987 Iowa Acts, House File 594, section 6.

ARC 8089

PHARMACY EXAMINERS BOARD[620]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 155.19 the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 6, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code. The proposed amendments were approved during the October 13, 1987, meeting of the Iowa Board of Pharmacy Examiners.

The proposed rule 6.16(72GA, HF594) establishes prescription label requirements to clarify 1987 Iowa Acts, House File 594, section 28. Rule 6.17(72GA, HF594) establishes the recording procedures to be followed when a pharmacist exercises drug product selection under the authority of 1987 Iowa Acts, House File 594, section 32. Rule 6.18(72GA, HF594) establishes the procedures to be followed in the development and maintenance of patient medication records as required by 1987 Iowa Acts, House File 594, section 35.

Any interested person may submit data, views, and written comments on the proposed amendments on or before November 24, 1987, to Norman C. Johnson, Executive Secretary, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

These rules are intended to implement 1987 Iowa Acts, House File 594, sections 28, 32, and 35.

ITEM 1. Amend 620—Chapter 6 by adding the following:

620—6.16(72GA, HF594) Prescription label requirements.

6.16(1) The label affixed to or on the dispensing container of any prescription dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:

- a. Serial number (a unique identification number of the prescription);
- b. The name and address of the pharmacy;
- c. The name of the patient, or if such a drug is prescribed for an animal, the species of the animal and the name of its owner;
- d. The name of the prescribing practitioner;
- e. The date the prescription is dispensed;
- f. The directions or instructions for use, including precautions to be observed;

g. Unless otherwise directed by the prescriber, the label shall bear the brand name, or if there is no brand name, the generic name of the drug dispensed, the strength of the drug, and the quantity dispensed. Under no circumstances shall the label bear the name of any product other than the one dispensed.

6.16(2) The requirements of subrule 6.16(1) do not apply to unit dose dispensing systems (rule 6.11(155,203A)), IV infusion products (rule 6.14(155,203A)), and patient med paks (rule 6.15(155,203A)).

ARC 8090

PHARMACY EXAMINERS BOARD[620]

Notice Terminated

Pursuant to the authority of Iowa Code section 147.53, the Iowa Board of Pharmacy Examiners terminates the proposed adoption of rule 5.4(147), affecting Chapter 5, "Licensure by Reciprocity," Iowa Administrative Code. This rule was intended to eliminate a double standard between pharmacists who become licensed by examination in Iowa and pharmacists who obtain a license in another state and reciprocate that license to Iowa. The proposed rule is terminated in order that the Board can give further study on the matter.

The Notice of Intended Action was published on May 6, 1987, in the Iowa Administrative Bulletin, as ARC 7590.

ARC 8091

PHARMACY EXAMINERS BOARD[620]

Notice Terminated

Pursuant to the authority of Iowa Code section 155.19 and 1987 Iowa Acts, House File 594, section 28, the Iowa Board of Pharmacy Examiners hereby terminates the proposed adoption of rule 6.16(155), affecting Chapter 6, "Minimum Standards for the Practice of Pharmacy." This rule was proposed prior to the enactment into law of 1987 Iowa Acts, House File 594, which repealed Iowa Code chapter 155. This rule clarifies the requirements regarding name and strength of drug on prescription labels. The Board has filed under Notice of Intended Action a new rule which deals with the subject matter of the rule being terminated.

The Notice of Intended Action was published on May 6, 1987, in the Iowa Administrative Bulletin, as ARC 7589.

PHARMACY EXAMINERS BOARD[620] (cont'd)

620—6.17(72GA, HF594) Records.

6.17(1) When a pharmacist exercises the drug product selection prerogative pursuant to 1987 Iowa Acts, House File 594, section 32, the following information shall be noted:

a. Dispensing instructions by the prescriber or prescriber's agent shall be noted on the file copy of a prescription drug order which is orally communicated to the pharmacist.

b. The name, strength, and manufacturer's or distributor's name of the actual drug product dispensed shall be placed on the file copy of the prescription drug order whether it is issued orally or in writing by the prescriber. This information shall also be indicated on the prescription in those instances where a generically equivalent drug is dispensed from a different manufacturer or distributor than was previously dispensed. This information may be placed upon patient medication records if such records are used to record refill information.

6.17(2) The National Drug Code (NDC) of a drug or any other code may be indicated on the prescription at the discretion of the pharmacist, but such codes shall not be used to meet the requirements of this section.

620—6.18(72GA, HF594) Patient medication record system.

6.18(1) After January 1, 1988, a patient medication record system shall be maintained in all pharmacies. The record system shall be devised to contain the information which the pharmacist in charge believes necessary to give the patient the best professional advice and drug information. The pharmacist must attempt to determine, through examination of the record and other information the patient may contribute prior to dispensing of a prescription, the possibility of a harmful drug interaction or other problems caused or influenced by a prescription presented for dispensing.

6.18(2) Information in the patient medication record shall be deemed to be confidential and may be released to other than the patient or prescriber only on written release of the patient. If, in the judgment of the pharmacist, the prescription presented for dispensing is determined to cause a serious potential drug interaction or reaction, or other problem due to a drug treatment previously prescribed by another practitioner, the pharmacist shall communicate this information to the prescribers.

These rules implement 1987 Iowa Acts, House File 594, sections 28, 32, and 35.

ITEM 2. Amend 6.11(3)"b"(3) to read as follows:

(3) Unit of issue packages dispensed to patients on an outpatient basis or in a noninstitutional setting shall be considered prescription containers and shall be labeled in accordance with federal Food and Drug Administration (FDA) requirements and, where applicable, the requirements set forth in Iowa Code sections 155.35; 203A.10(12)"b"; and board subrules 8.13(7) and 8.13(11); board subrule 6.16(1).

ITEM 3. Amend 6.11(4)"c" to read as follows:

c. Those drugs not dispensed under a unit dose dispensing system shall be dispensed in accordance with the packaging and labeling requirements of the federal Food and Drug Administration (FDA) and, where applicable, the labeling requirements set forth in Iowa Code sections 155.35; 203A.10(12)"b"; and board subrules 8.13(7) and 8.13(11); of board subrule 6.16(1).

ITEM 4. Amend 6.15(3)"b" to read as follows:

b. Patient med paks dispensed to patients shall be considered prescription containers and shall be labeled in accordance with the federal Food and Drug Administration (FDA) requirements and, where applicable, the requirements set forth in Iowa Code sections 155.35; 203A.10(12)"b"; and board subrules 8.13(7) and 8.13(11); board subrule 6.16(1).

ARC 8083**PROFESSIONAL LICENSURE
DIVISION[645]****BARBER EXAMINERS BOARD****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 158.15, the Board of Barber Examiners hereby gives Notice of Intended Action to amend Chapter 20, "Barber Examiners," Iowa Administrative Code.

The proposed rule is a definition of a demonstrator in a barber school in the state of Iowa. It clarifies the difference between a licensed instructor and a demonstrator.

Any interested person may attend a public hearing to be conducted on November 24, 1987, at 9 a.m. in conference room 1, fourth floor in the Lucas State Office Building, Des Moines, Iowa, or make written comments concerning the proposed rule not later than November 24, 1987, addressed to Keith Rankin, Barber Board Administrator, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

This rule is intended to implement Iowa Code section 158.7.

Amend rule 20.2(158) by adding a new subrule 20.2(4) as follows:

20.2(4) Lectures or demonstrations by persons not licensed as Iowa instructors. A barber college may engage any one of the following persons, who are not licensed Iowa barber instructors, to lecture or demonstrate under the supervision of the barber college:

a. A physician and surgeon to lecture on or demonstrate sanitation, sterilization, skin, or scalp diseases.

b. A person whose experience or education qualifies that person to lecture on phases of subjects applicable to the barber business, such as business administration, economics, bookkeeping and taxes.

c. A manufacturer of barbering products or the manufacturer's representative to demonstrate products used in the practice of barbering.

d. A hairstylist licensed in this state or in any other state or country to practice barbering to lecture on or demonstrate any phase of hairstyling.

PROFESSIONAL LICENSURE DIVISION[645] (cont'd)

e. An organizer or officer of a barber organization to lecture on a subject affecting the welfare of the barber business.

No person engaged by a barber college or barber school, pursuant to this rule, shall be engaged for more than five hours per week.

ARC 8095**REVENUE AND FINANCE
DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in 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 421.14, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, and Exceptions to Penalty," Iowa Administrative Code.

The amendments are proposed in order to implement Iowa Code section 421.7. This Code section requires the Director of Revenue and Finance to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes arising under Iowa Code Title XVI shall be 8 percent for the calendar year 1988. The interest rate is the average prime rate charged by banks on short-term business loans as published in the Federal Reserve Bulletin for the 12-month period ending September 30, 1987. For the past 12 months, the average prime rate was 8 percent.

The 8 percent annual rate is equivalent to an interest rate of 0.7 percent per month on all outstanding taxes. The rate will be applied to all taxes owing or becoming payable on or after January 1, 1988. Under Iowa law, each fraction of a month is considered a whole month when interest is computed. When required to pay interest on taxpayers' refunds, the Department will also pay interest at the 8 percent rate on refunds owing or becoming payable on or after January 1, 1988.

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

The Department has determined that this proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than November 24, 1987, to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 27, 1987. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by November 20, 1987.

The amendments are intended to implement Iowa Code chapter 421.

The following amendments are proposed:

ITEM 1. Amend rule 701-10.2(421) by adding the following new subrule:

10.2(7) Calendar year 1988. The interest upon all unpaid taxes which are due as of January 1, 1988, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1988. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless whether the tax to be refunded is due before, on, or after January 1, 1988. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1988.

ITEM 2. Amend the implementation clause of rule 701-10.2(421) to read as follows:

This rule is intended to implement Iowa Code section 421.7 as amended by 1986 Iowa Acts, House File 764, section 46.

ARC 8078**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

The Iowa State Utilities Board (Board) hereby gives Notice that on October 15, 1987, the Board issued an order in Docket No. RMU-87-18, In Re: Pay Telephone Access Lines, "Order Commencing Rule Making," pursuant to the authority of Iowa Code sections 476.1, 476.2, and 17A.4 to consider the adoption of amendments to 199-subrules 22.1(3) and 22.3(6). The amendments are intended to prevent local exchange utilities from discouraging market entry by competitors into the pay telephone business by establishing special requirements for access lines to pay telephones. The proposed rule requires each rate-regulated local telephone utility to provide interconnection of pay telephone equipment on

UTILITIES DIVISION[199] (cont'd)

the same basis as business service. A separate access line cannot be required for pay telephone equipment. The amendment also provides a definition for the term "business service."

Under Iowa Code sections 17A.4(1) "a" and "b," all interested persons may file written comments on the proposed rules no later than November 24, 1987, by filing an original and ten copies of the comments substantially complying with the form provided in 199—subrule 2.2(2), Iowa Administrative Code. All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 1. Amend subrule 22.1(3) by adding in alphabetical sequence the following definition:

"Business service" means the service furnished to customers where the use is substantially of a business, professional, institutional, or occupational nature, rather than a social and domestic nature.

ITEM 2. Amend subrule 22.3(6) as follows:

22.3(6) Pay telephone services and facilities. All telephone utilities shall make available to customers provisions for the interconnection of pay telephone equipment: *on the same basis as business service. A separate access line shall not be required for pay telephone equipment.*

ARC 8077

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

The Iowa State Utilities Board (Board) hereby gives Notice that on October 15, 1987, the Board issued an order in Docket No. RMU-87-17, In Re: Low-Income Telephone Connection Assistance Program, "Order Commencing Rule Making," pursuant to the authority of Iowa Code sections 476.1, 476.2, 476.8, and 17A.4 to consider the adoption of a new rule, 199—22.18(476). The rule is necessary for Iowa local exchange utilities to participate in a program of federal assistance to low-income households to help defray the one-time charges for commencement of telephone service. The assistance program was established in a "Report and Order" adopted by the Federal Communications Commission on April 16, 1987, in Docket Nos. 78-72 and 80-286 and designated as the "Link Up America" program.

The proposed rule requires local exchange utilities to file tariffs offering a low-income telephone connection assistance program. The rule establishes the effect of the program on rates and deferred payments; qualification standards for applicants; the form of the application for assistance; verification and data collection requirements; a National Exchange Carrier Association reimbursement provision; and notification requirements.

Under Iowa Code sections 17A.4(1)"a" and "b," all interested persons may file written comments on the proposed rule no later than November 24, 1987, by filing an original and ten copies of the comments substantially complying with the form provided in subrule 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

Adopt the following new rule:

199—22.18(476) Low-income connection assistance program.

22.18(1) Filing of tariffs. Every local exchange utility shall file with the board tariffs offering low-income connection assistance to qualified applicants for a single telephone line at the applicant's principal place of residence.

22.18(2) Connection assistance rates. The reduced rates shall include all charges for installing service. The utility shall offer to qualified applicants:

a. A reduction of 50 percent of all such charges or \$30 whichever is less, and

b. A deferred schedule of not less than 4 months nor more than 12 months for payment of charges of \$10 or more, including any security deposit assessed for commencing service. The local exchange utility shall not charge interest on these deferred charges.

22.18(3) Qualified applicants. To be eligible for assistance, an applicant must:

a. Have lived at an address where there has been no telephone service for at least three months immediately prior to the date of the application;

b. Not have received connection assistance within the last two years, measured from the date of initiation of the telephone service for which assistance was provided;

c. Not be a dependent for federal income tax purposes as defined in 26 U.S.C. 152 (1986) unless the subscriber is more than 60 years of age;

d. The applicant must be currently eligible (though it is not necessary to be participating) for public assistance under one of the following programs:

- (1) Aid to families with dependent children;
- (2) Food stamps;
- (3) Supplemental security income;
- (4) Title XIX/Medical;
- (5) Low-income energy assistance program;
- (6) State supplementary assistance; but

e. In lieu of "d" above, the applicant will be eligible if the applicant's total household income from all sources meets the eligibility requirements for the low-income home energy assistance program established in 427—10.1(72GA,SF513,PL97-35,PL98-558) or any successor income eligibility rule.

22.18(4) Application and self-certification. Application and self-certification shall be upon a form as set forth below supplied to the applicant by the local exchange utility.

UTILITIES DIVISION[199] (cont'd)

APPLICATION FOR TELEPHONE CONNECTION ASSISTANCE

Name _____
Address _____ Soc Sec _____City _____ State _____ Zip _____
Phone No. (____) _____ where you may be reached
or receive messages
(____) _____ last telephone no. where you
had service.

Prior address(es) and phone number(s) (for last 2 yrs.):

(____) _____ (____) _____

(____) _____ (____) _____

Please answer the following questions:

1. Are you participating or are you eligible to participate in any of the following programs:
(Indicate with a check mark)
☐ Aid to Families with Dependent Children (AFDC)
☐ Supplemental Security Income (SSI)
☐ Low-Income Home Energy Assistance (LHEAP)
☐ Food Stamps
☐ Medicaid
☐ State Supplementary Assistance
2. If you are not participating or are not eligible to participate in any of the above programs, provide the following household income information:
 Household Income From all Sources _____
 Number of Persons in Your Household _____
3. Have you received Connection Assistance in the last 2 years? ☐ yes ☐ no
4. Are you listed as a dependent on some other person's income tax return? ☐ yes ☐ no
5. Are you under 60 years of age? ☐ yes ☐ no
6. Have you received telephone service at any address where you lived during the last three months? ☐ yes ☐ no

By filling out this application I (as the applicant) request low-income telephone connection assistance and permit the telephone company to verify addresses and prior telephone service (if applicable). I understand that completion of this application does not constitute immediate acceptance into this program.

I further understand that if I qualify, the utility company will reduce the Service Connection Fee by 50% or \$30.00, whichever is less. And, the utility company will provide a deferred payment schedule of not less than 4 months nor greater than 12 months covering all other charges for commencing service.

I certify that the above information is true. I have read the information on this application and understand that I must meet the above qualifications to receive assistance from this program.

SIGNATURE _____ Date _____

22.18(5) Verification.

a. The company will verify that applicants meet the eligibility criteria set out in 22.18(3)"a" and "b," unless the information is unavailable. If the criteria in 22.18(3)"a" and "b," cannot be verified, then the applicant shall provide verification to the local exchange utility that the applicant is participating or is eligible to participate in one of the programs listed in 22.18(3)"d"; or applicant's household income does not exceed the amounts provided in 22.18(3)"e."

b. Reserved.

22.18(6) Data collection. The local exchange utility shall keep records of the number of subscribers receiving low-income connection assistance.

22.18(7) Reimbursement through an interstate expense adjustment. The local exchange utility shall file with the National Exchange Carrier Association the information and expense adjustment calculation required to receive reimbursement.

22.18(8) Notification of the low-income connection assistance program.

a. The local exchange utility is required to explain the low-income connection assistance program when a subscriber orders new service.

b. The local exchange utility shall provide informational brochures and self-certification forms to the county offices of the Iowa department of human services, division of economic assistance, for the counties served and to the regional community action office of the department of human rights for the region served. In counties or regions served by more than one local exchange utility, the utilities are encouraged to cooperate in providing the brochures and forms jointly.

c. The local exchange utility shall post in its office in a place accessible to the public an informative notice of the low-income connection assistance program.

22.18(9) Definition.

"Household income," as used in 22.18(3)"b," refers to total annual cash receipts before taxes from all sources for all individuals residing at the applicant's address. Income includes money, wages, and salaries before any deductions. Income also includes net receipts from nonfarm or farm self-employment (receipts from a person's own business or farm after deductions for business or farm expenses; depreciation allowance is a business or farm expense; capital gains and losses are disregarded). Income includes regular payments from Social Security, railroad retirement, unemployment compensation, workers' compensation, strike benefits from union funds, veterans benefits, public assistance (including aid to families with dependent children, supplemental security income, and general assistance money payments), training stipends, alimony, child support, and military family member allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rent, royalties, or periodic receipts from estates or trusts.

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:

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%
July 1, 1987 - July 31, 1987	10.50%
August 1, 1987 - August 31, 1987	10.50%
September 1, 1987 - September 30, 1987	10.50%
October 1, 1987 - October 31, 1987	10.75%
November 1, 1987 - November 30, 1987	11.50%

ARC 8075

COLLEGE AID COMMISSION[245]

Adopted and Filed Emergency

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

The amendments specify lender incentives which are prohibited in the Guaranteed Student Loan, Iowa PLUS Loan, Supplemental Loans for Students, and Consolidation Loan Programs. The rules also allow a lender to round the borrower's payments to the next highest whole dollar in multiples of five.

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

The Commission finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rule, 35 days after publication, should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on October 16, 1987, as it confers a benefit upon the public to ensure speedy implementation of the rule.

The Commission adopted these rules at its October 13, 1987, meeting.

These rules are intended to implement Iowa Code section 261.37.

These rules are also submitted as a Notice of Intended Action, **ARC 8076**, to solicit public comment.

ITEM 1. Amend rule 245—10.27(261), unnumbered paragraph 1, to read as follows:

A borrower must pay at least \$30 per month (\$360 per year) on a GSL disbursed before October 1, 1981. A borrower must pay at least \$50 per month (\$600 per year) on a GSL disbursed on or after October 1, 1981. *If the amount of a borrower's monthly payment is not a multiple of \$5, the lender may round the borrower's required payment to the next highest whole dollar amount that is a multiple of \$5.*

ITEM 2. Amend rule 245—10.77(261) to read as follows:

245—10.77(261) Purpose and scope. Reference: Code of Federal Regulations, Title 34, Section 682.401(c)(2)(ii).

These are the rules and procedures whereby the participation of an otherwise eligible school or lender in the Iowa Guaranteed Student Loan (GSL), and the Iowa PLUS, Supplemental Loans for Students (SLS), and Consolidated Loan programs may be limited, suspended, or terminated. Action taken under these regulations affects the participation of the school or lender in both the GSL, and PLUS, SLS, and Consolidated Loan programs unless otherwise ordered or agreed.

"The ICAC program," as used in this section, refers to both the GSL, and PLUS, SLS, and Consolidated Loan programs.

Action may be initiated under these regulations if the ICAC receives or obtains information it deems to be reliable that a school or lender has been or may be in violation of any provision of Title IV, Part B of the Higher Education Act of 1965 as amended; Iowa Code chapter

261 as amended; the Agreement to Guarantee Loans, and the Agreement to Guarantee Parental Loans, and the Consolidated Loan Agreement; any rules and regulations governing the ICAC program; or any school or lender limitation agreement. Action may also be initiated if the ICAC determines the policies and procedures of a school or lender may have an adverse effect on the ICAC program or may result in high program costs.

Action under these regulations does not affect a school's or lender's responsibilities to fulfill requirements and regulations with respect to outstanding loans guaranteed by the ICAC, or rights to benefits and claim payments based on prior participation in the ICAC program, except as it affects loans not yet disbursed.

Whenever any of the preconditions required under the GSL, and PLUS, SLS, and Consolidated Loan programs for eligibility of a school or lender ceases to be met, or whenever the eligibility of a school or lender to participate in the programs is terminated by the U.S. Department of Education, the hearing provisions of these regulations will not apply, and the ICAC may terminate the participation of the school or lender immediately, without notice. Whenever the eligibility of a school or lender to participate in any other Title IV program is terminated by the Department, the ICAC may terminate the participation of that school or lender immediately, by sending notice of termination by certified mail (return receipt requested). The termination will take effect on the date the notice is received. If the Department suspends or limits the eligibility of a school or lender to participate in the ICAC program or any other Title IV program, the ICAC may suspend sending notice of suspension by certified mail, and may, if the circumstances warrant, initiate limitation or termination proceedings.

ITEM 3. Amend subrule 10.79(2), paragraph 8, and add new paragraphs, to read as follows:

8. Any form of fraud, abuse, or misrepresentation perpetrated by a lender or its agents or employees in connection with the ICAC program or other student financial aid programs, including fraudulent and misleading advertising.

A lender will be disqualified from participation in the GSL, SLS, PLUS and Consolidated Loan programs if the Secretary determines, after notice and opportunity for a hearing, that the lender after October 17, 1987:

1. *Offered, directly or indirectly, points, premiums, payments, or other inducements to any educational institution or individual in order to secure applicants for loans;*

2. *Conducted unsolicited mailings to potential borrowers of student loan application forms, except to individuals who have previously borrowed from that lender; or*

3. *Offered, directly or indirectly, loans under the GSL, PLUS, SLS, or Consolidated Loan programs as an inducement to a prospective borrower to purchase an insurance policy or other product.*

This rule is intended to implement Iowa Code section 261.37.

[Filed emergency 10/15/87, effective 10/16/87]

[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8103**COMMUNITY ACTION AGENCIES
DIVISION[427]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 601K.92, the Division of Community Action Agencies rescinds subrules 10.3(7) through 10.3(9), and adopts a new subrule regarding the Low-Income Home Energy Assistance Program Crisis Program, Iowa Administrative Code.

The Low-Income Home Energy Assistance Program begins October 1 of each year. Often Congress has not authorized an appropriation to fund the program by this date. Planning that takes place months before the program begins must be based on anticipated funding levels. Because of the federal government's deficit reduction efforts, the funding that had been expected for the Energy Assistance Program in Iowa will most likely be significantly reduced, from \$33.9 million for FY 87 to an anticipated \$23 million for FY 88. Accordingly, the Administrator finds that public notice and public participation are unnecessary or impracticable under Iowa Code section 17A.4(2), since federal funding will most likely not be available to fund the program as anticipated.

The Administrator also finds pursuant to Iowa Code section 17A.5(2)"b"(3) that the normal effective date of this rule 35 days after publication should be waived and the rule be made effective immediately upon filing with the Administrative Rules Coordinator on October 16, 1987. This is necessary because without this rule change there would be an imminent peril to the public welfare because the Administrator would have to divert funds from the Energy Assistance Program which serves all eligible clients to fund the crisis program, which would serve relatively few.

The Low-Income Home Energy Assistance Program has sought to expand benefits available to eligible clients through its crisis assistance program by means of increased benefit levels, crisis weatherization eligibility, and supplemental benefit awards to those eligible clients who could demonstrate an inordinate heating cost burden.

However, federal funding will almost certainly not be available to finance this program for FY 88 as had been anticipated. The loss to Iowa of more than \$10 million in funding for this program, which serves approximately 115,000 low-income Iowans, means retrenchment to former levels of service in the crisis components of the program as well as across-the-board reductions in benefit levels for every eligible client.

This rule returns the crisis program to the eligibility and payment levels that had been in place for the past four years, as required by the loss to Iowa of federal funding for this program.

The Administrator adopted this rule October 12, 1987. This rule implements 72 GA, SF 513, PL 97-35, PL 98-558.

These rules are also filed as Notice of Intended Action, **ARC 8104**, to solicit public comment.

Rule 10.3(72GA, SF 513, PL 97-35, PL 98-558) is amended by rescinding subrules 10.3(7) through 10.3(9) and inserting in lieu thereof the following:

10.3(7) Energy crisis payments not to exceed \$150 per household may be authorized by the local administering agency where necessary to prevent an immediate threat

to life or health as specified in the procedures manual referred to in 10.6(72GA, SF 513, PL 97-35, PL 98-558). Applications for crisis assistance will be accepted from the first working day in November until the last working day of March. Crisis payments are dependent on the availability of federal funds.

10.3(8) and 10.3(9) Reserved.

[Filed emergency 10/16/87, effective 10/16/87]
[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8068**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 109.39, the Natural Resource Commission hereby adopts and implements by emergency filing the following amendment to Chapter 52, "Wildlife Refuges," Iowa Administrative Code.

In accordance with Iowa Code section 17A.4(2), the Natural Resource Commission finds that public notice and participation are unnecessary, impracticable and contrary to the public interest. This rule provides for the establishment of wildlife refuges and sanctuaries on state-owned lands and waters under the jurisdiction of the Department of Natural Resources for the purpose of preserving the biological balance and for the protection of public parks, public health, safety and welfare, and to effect sound wildlife management. The present rule is in conflict with a deed restriction on Mericle Woods State Preserve. The deed requires that the property be listed as a wildlife refuge. It would be contrary to the public interest not to list the property as a wildlife refuge as the property was donated to the state with the deed restriction. Noncompliance with stipulations in the deed may result in the property's reverting to the donor. It is unnecessary to have public participation as the Natural Resource Commission accepted the donation with this deed restriction.

In accordance with Iowa Code section 17A.5(2)"b"(2), the Natural Resource Commission also finds that the usual effective date of this amendment, 35 days after publication, should be waived and the rule made effective on October 9, 1987, upon filing with the Administrative Rules Coordinator. This finding is made because: (1) the property confers a benefit on the public by maintaining a natural plant and animal community, and (2) this amendment facilitates compliance with the deed restriction attached to the property when it was donated to the state of Iowa.

This rule is intended to implement Iowa Code section 109.39.

Amend subrule **52.1(1)** by adding the following in alphabetical sequence:

Mericle Woods. . . . Tama

[Filed emergency 10/8/87, effective 10/9/87]
[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8067

ARCHITECTURAL EXAMINING
BOARD[80]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 118 as amended by 1987 Iowa Acts, House File 587, the Architectural Examining Board hereby adopts amendments to Chapter 2, "Registration," and Chapter 4, "Rules of Conduct," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 15, 1987, as ARC 7751. A public hearing was held on August 11, 1987. There were no scheduled speakers. The proposed amendments were adopted with minor revisions by the Board on September 24, 1987.

A change to rule 80—2.4(118,17A) is the addition of a seismic structural examination fee. In subrule 4.1(6), paragraph "h" has been deleted because the wording is in Iowa Code chapter 118 as amended by 1987 Iowa Acts, House File 587. All other changes from the Notice are to remove unnecessary words or improve clarity.

These rules are intended to implement Iowa Code sections 118.5 and 118.11 and Iowa Code chapter 258A and 1987 Iowa Acts, House File 587, sections 10 and 12.

These rules shall become effective December 9, 1987.

ITEM 1. Amend rule 2.1(118,17A) by adding the following new subrule:

2.1(3) Practice by business entities.

a. Before engaging in the practice of architecture in this state, a corporation, partnership, or sole proprietorship shall acquire an "Authorization to Practice Architecture as a Business Entity" from the board as provided in 1987 Iowa Acts, House File 587, section 10. Application for the authorization shall be made to the board on forms prescribed by the board.

b. The application shall include but not be limited to the following:

- (1) Name and address of the business entity;
- (2) Form of the business entity;
- (3) Names, addresses, and titles of the registered agent if a corporation, and of all officers, directors, partners, beneficial owners, or other principals of the business entity, or of the sole proprietor;
- (4) Name and address of each registered architect in responsible charge of the practice of architecture in the state of Iowa.

(5) Signature of an officer of a corporation, a partner of a partnership, or the sole proprietor.

c. In addition to the information listed in 2.1(3)"b," a corporation or professional corporation shall submit to the board the following:

- (1) If a foreign (non-Iowa) corporation, a copy of the Certificate of Authority to Transact Business in Iowa issued by the Iowa secretary of state.
- (2) If a domestic (Iowa) corporation, a copy of the Certificate of Incorporation issued by the Iowa secretary of state.
- (3) If either a domestic or foreign corporation, a copy of the Articles of Incorporation showing the purpose for which the corporation was organized, with amendments, if any.

d. The original "Authorization to Practice Architecture as a Business Entity" will expire June 30 immediately following the date of issue. Renewal application forms will be provided by the board. The form will request information substantially similar to the information requested in subrule 2.1(3)"b." Renewals will be for a period of one year ending June 30. An expired authorization may be renewed without penalty if the completed renewal application and fee are received by July 31 following the expiration. After July 31, the application will be deemed to be an original application and an original application fee will be required.

ITEM 2. Amend rule 80—2.4(118,17A) as follows:

80—2.4(118,17A) Fee schedule. Under the authority provided in Iowa Code chapter 118, the following fees are hereby adopted:

Examination fees:

Entire ARE examination:	\$250.00	\$325
Division A	37.00	40
Division B	37.00	70
Division C	62.00	85
Division D	19.00	17
Division E	15.00	14
Division F	10.00	14
Division G	19.00	25
Division H	24.00	25
Division I	27.00	35
Seismic Structural		175

Registration fee	30.00	
(plus \$2.50 per month until renewal date)		
Registration fee		30
(plus \$6 per month until renewal date)		
Application fee (reciprocal)	20.00	
Reciprocal Application and Registration fee		140
Biennial Renewal fee	90.00	140
Reinstatement fee	100.00	100
Duplicate Certificate fee	20.00	20
Roster fee	25.00	50
(except to registered architects and governmental agencies)		
Authorization to Practice Architecture as a Business Entity		50
Renewal for Authorization to Practice Architecture as a Business Entity		20

ITEM 3. Amend rule 4.1(118,17A) by adding the following new subrule:

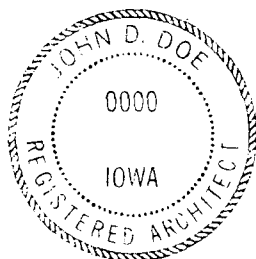
4.1(6) Seal and certificate of responsibility.

a. Each architect shall procure a seal with which to identify all technical submissions issued by the architect for use in Iowa as provided in 1987 Iowa Acts, House File 587, section 12.

b. Description of seal: The diameter of the outside circle shall be approximately 1¼ inches. Between the outside circle and an inner concentric circle shall be the name of the registered architect and the words "Registered Architect". Inside the inner circle shall be the registrant's

ARCHITECTURAL EXAMINING BOARD[80] (cont'd)

Iowa registration number and the word "Iowa". The seal shall substantially conform to the sample shown below:



c. A legible rubber stamp or other facsimile of the seal may be used.

d. Each technical submission shall contain an information block for the architect in responsible charge and an information block for each professional consultant contributing to the technical submission. Each information block shall display the seal of the individual responsible for that portion of the technical submission. The information block will substantially conform to the sample shown below:

S E A L	I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly registered architect under the laws of the state of Iowa.
	Printed or typed name _____
	Signature _____
	Pages or sheets covered by this seal: _____
	Date Issued: _____

e. The information requested in each information block must be typed or legibly printed in permanent black ink except the signature shall be an original signature in permanent black ink. The seal implies responsibility for the entire technical submission unless the area of responsibility is clearly identified in the information accompanying the seal.

f. It shall be the responsibility of the architect who signed the original submission to forward copies of all changes and amendments to the public official charged with the enforcement of the state, county, or municipal building code.

g. An architect is responsible for the custody and proper use of the seal. Improper use of the seal shall be grounds for disciplinary action.

[Filed 10/8/87, effective 12/9/87]

[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8081

ATTORNEY GENERAL[61]

DEPARTMENT OF JUSTICE

Adopted and Filed

Pursuant to the authority of Iowa Code section 537.6117 and 1987 Iowa Acts, House File 585, sections 5 and 6, the Administrator of the Iowa Consumer Credit Code, as designee of the Attorney General, hereby adopts Chapter 19, "Consumer Rental Purchase Agreements Forms," Iowa Administrative Code.

The new Chapter 19 contains a rule providing for model forms for consumer rental purchase agreements. The rule, in particular, provides for the order, conspicuousness, and initialing of the consumer rental purchase agreement disclosures required by 1987 Iowa Acts, House File 585, section 5.

The Administrator has the general authority to promulgate rules deemed reasonably necessary for the enforcement of the Iowa Consumer Credit Code, Iowa Code chapter 537, and the specific authority to adopt rules concerning the form of consumer rental purchase agreements or contracts. The Administrator will find rental purchase agreements using the model form to be in compliance with 1987 Iowa Acts, House File 585, sections 5 and 6.

Because the Administrator has concluded that the rule may have an impact on small business, the Administrator pursuant to Iowa Code section 17A.31 has considered the impact of the rule on small business.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 1987, as ARC 7869. Public comments were solicited on or before September 16, 1987, and a hearing was held on September 17, 1987. Oral and written comments were received and several persons appeared for the hearing providing additional comments orally and in writing. The rule is not identical to the form of the rule as published in ARC 7869; however, the substance and purpose of the rule remain unchanged. The changes in the rule are primarily in response to the comments received from interested parties. All of the changes are intended to make the model form for agreements more clear and concise.

This rule is intended to implement 1987 Iowa Acts, House File 585, sections 5 and 6.

This rule was adopted October 16, 1987. The rule will become effective December 9, 1987.

The following Chapter 19 is adopted:

CHAPTER 19

CONSUMER RENTAL PURCHASE AGREEMENTS FORMS

61—19.1(537) Agreement forms. Pursuant to Iowa Code section 537.6117 and 1987 Iowa Acts, House File 585, sections 5 and 6, the administrator of the consumer credit code finds that consumer rental purchase agreements must be substantially in the form of the model agreement contained in this rule.

The "Rental Purchase Disclosures" numbered 1 to 5 and the "Notice to Lessee" must appear on the face of the agreement. The heading or caption of each of the

ATTORNEY GENERAL[61] (cont'd)

disclosures numbered 1, 4 and 5 must be in at least uppercase 10-point type. The headings for disclosures 2 and 3 (Cash Price and Total of Scheduled Payments) must be 10-point uppercase boldface type. All other material must be in at least 8-point type except for the "Notice to Lessee" which must be in at least 10-point uppercase boldface type.

Additional terms of the consumer rental purchase agreement should be printed on a separate page; however, printing the additional terms of agreement on a separate page may be satisfied by printing these terms on the rear of a one-page agreement. Any agreement which is printed on a single one-sided page must not alter any of the order, sequence, placement, initialing or type size requirements of this rule or of the Act.

All additional charges listed under "Terms of The Agreement" are made at the lessor's option, therefore, they must be included in the agreement only to the extent they are applicable. Only those additional charges actually disclosed in the agreement may be assessed. Lessors may determine the actual amounts to be disclosed and assessed for applicable additional charges so long

as the statutory maximums for each charge are not exceeded. In addition, certain charges, one of which is in lieu of the other, shall not both be assessed; (a) if a late payment fee is assessed for a particular late payment, a "payment pick up charge" may not also be assessed for that payment, and (b) if an administrative fee is assessed on the agreement, a delivery fee may not also be assessed on the agreement. A lessor's form may include additional "Terms of Agreement" not included in the model form, provided that all such terms comply with the consumer rental purchase agreement Act and any other applicable state or federal laws, and provided that they do not detract from or contradict the required disclosures and terms of the agreement. All terms must be written in clear, plain language. All items appearing under "Terms of Agreement" must be in at least 8-point type with the title of each term appearing in boldface uppercase 10-point type.

Lessors using the following model form shall be deemed to be in compliance with 1987 Iowa Acts, House File 585, sections 5 and 6.

[IOWA CONSUMER CREDIT CODE-MODEL FORM]

IOWA CONSUMER RENTAL-PURCHASE AGREEMENT--Date: _____ Agreement No. _____

Name of Lessee(s) _____ Name of Lessor _____

Address _____ Address _____

RENTAL PURCHASE DISCLOSURES

The following disclosures are required by the Iowa Rental-Purchase Act to help you understand the terms of your rental purchase agreement.

1. DESCRIPTION OF LEASED PROPERTY

<u>ITEM</u>	<u>QTY</u>	<u>MODEL #</u>	<u>SERIAL #</u>	<u>YEAR</u>	<u>NEW</u>	<u>USED</u>
					(Check one)	

2. CASH PRICE.....Lessee Initial ☐ \$ _____

This is the price at which we would sell the leased property listed above to a buyer on the date of this agreement.

3. TOTAL OF SCHEDULED PAYMENTS..... ☐ \$ _____

Lessee Initial

The total of scheduled payments means the total dollar amount of lease payments you will have to make to own the property. This total does NOT include ADDITIONAL CHARGES which might be made during the agreement such as: LATE PAYMENT CHARGES, REINSTATEMENT FEES, OPTIONAL PAYMENT PICKUP CHARGES. See the remainder of the contract for an explanation of these charges.

If you rent monthly, you will make _____ monthly payments of....\$_____ per month
 If you rent weekly, you will make _____ weekly payments of.....\$_____ per week
 Payments will begin on the _____ of _____, 19__ and each renewal will be due on the _____ of each _____.

ATTORNEY GENERAL[61] (cont'd)

4. INITIAL PAYMENTS

- A. Administrative fee [if applicable].....\$ _____
- B. Delivery charge [if applicable].....\$ _____
- C. Security Deposit [if applicable].....\$ _____

Deposit will be returned under these conditions: _____

- D. Taxes or Official Fees (Itemize).....\$ _____
5. OWNERSHIP AND LIABILITY FOR DAMAGE OR LOSS: You will not own the property until you have made all of the payments above (unless you choose to "buy-out" early as explained below). If the property is lost, stolen, damaged or destroyed, you will be responsible for the fair market value of the property at the time of the loss or damage.

NOTICE TO LESSEE - READ BEFORE SIGNING:

1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE OR ON ADDITIONAL PAGES, EVEN IF OTHERWISE ADVISED.
2. DO NOT SIGN THIS IF IT HAS ANY BLANK SPACES.
3. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
4. ANYTIME AFTER YOU HAVE MADE YOUR FIRST WEEKLY/MONTHLY PAYMENT YOU HAVE THE RIGHT TO EXERCISE AN "EARLY BUY-OUT" OPTION AS PROVIDED IN THIS AGREEMENT. IF YOU CHOOSE THE EARLY BUY-OUT THIS OPTION MAY RESULT IN A REDUCTION OF YOUR TOTAL COST TO ACQUIRE OWNERSHIP. IF YOU BUY-OUT EARLY YOU WILL PAY: ("TOTAL OF SCHEDULED PAYMENTS") minus (AMOUNT YOU HAVE PAID ALREADY) multiplied by % [creditors insert their own formula which must use a multiplier of 55% or less] (equals) = Early buy out option price.
5. IF YOU CHOOSE TO MAKE WEEKLY RATHER THAN MONTHLY PAYMENTS AND YOU USE YOUR EARLY BUY-OUT OPTION, YOU MAY PAY MORE FOR THE LEASED PROPERTY.

Lessee:(Sign) _____ Lessor:(Sign) _____

Lessee:(Sign) _____ Date: _____

[Bracketed material is explanatory and is not printed on lessor's agreement.]

TERMS OF AGREEMENT

1. ADDITIONAL CHARGES: [Charges referred to below are maximums. Lessors may insert a different amount if it is less than the maximums. Lessors need to print only those charges and terms which apply to their agreement.]

LATE PAYMENT CHARGES: A [up to \$5.00] charge for monthly payments not made within five (5) business days of the date payment is due, or [up to \$3.00] charge for weekly payments not made within three (3) business days of the date when payment is due. This charge may only be made when no "payment pick-up charge" has been made.

REINSTATEMENT FEES: A [up to \$5.00] fee for the right to reinstate the Agreement after failing to make a timely rental payment and if the conditions governing reinstatement are met.

DELIVERY FEES: A \$10.00 fee for up to five (5) items and \$25.00 for delivery of more than five (5) items.

ADMINISTRATIVE FEES: An initial fee of [up to \$10.00] to cover administrative costs of the Agreement. [But ONLY if there is no delivery charge.]

ATTORNEY GENERAL[61] (cont'd)

OPTIONAL IN HOME PICK UP OF RENTAL PAYMENTS: For a charge of [\$7.00 maximum] per payment, we can pick up the payment at your home. In no event will this charge be assessed in excess of three (3) times in any three (3) month period if the agreement is weekly or three (3) times in any six (6) month period if the agreement is monthly.

OPTIONAL PROPERTY INSURANCE: You do not have to carry insurance on the property. If you want property insurance to cover the property you may buy it from us or from someone else.

2. YOUR REINSTATEMENT RIGHT: If you fail to make a renewal rental payment you may have the right to reinstate this agreement by paying all rental payments past due, all applicable late charges, reinstatement fees and redelivery fees provided: 1) You voluntarily returned the property to us, if requested and 2) Not more than sixty (60) days have passed since you have returned the property.

3. YOUR TERMINATION RIGHT: You may terminate this agreement at any time without paying any charges other than those previously due. The property must be returned in its present condition, fair wear and tear excepted.

4. OUR TERMINATION RIGHT: We may terminate this agreement for a default in payment or breach of any other material term of this Agreement. If termination occurs we shall be entitled to all rental payments and other charges due up to the date of termination as well as the reasonable expenses of repossession of the property if you fail to surrender the property to us.

5. WARRANTY: [if applicable]

[Filed 10/16/87, effective 12/9/87]

[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8074

COLLEGE AID COMMISSION [245]

Adopted and Filed

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

The amendments incorporate variable interest rate specifications for PLUS Loans.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 12, 1987, as ARC 7815. These rules also were emergency adopted and implemented as ARC 7818. The Commission also hereby rescinds ARC 7818 on the date this rule becomes effective, December 9, 1987.

This rule is intended to implement Iowa Code section 261.37.

Amend rule 245—10.59(261), first six paragraphs, to read as follows:

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

PLUS Loans disbursed on or after July 1, 1987, are made at twelve percent shall be simple interest loans made at a variable interest rate, not to exceed 12 percent. Iowa PLUS Loans disbursed before November 1, 1982, are shall be 14 percent loans. PLUS Loans disbursed from November 1, 1982, through June 30, 1987, shall be 12 percent loans.

A borrower is responsible for payment of shall pay all interest on a PLUS Loan for the life of the loan, including authorized deferment periods. No interest is shall be paid by the federal government.

The ICAC shall indicate the applicable interest rate for a loan at the time an application is processed and shall prints the interest rate on the Notice of Loan Guarantee. The rate is shall be determined by the anticipated disbursement date for the loan and the prevailing PLUS interest rate on that date. Interest on the unpaid principal balance may not exceed the rate disclosed on the borrower's Notice of Loan Guarantee.

Federal regulations shall provide for annual adjustment of the interest rates. of twelve and fourteen percent only. The rate of interest on PLUS Loans is shall be set according to the average bond equivalent rates of 91 day the 52-week Treasury Bills auctioned on the date most

COLLEGE AID COMMISSION[245] (cont'd)

immediately preceding June 1 of each year, plus 3.25 percent, and shall be effective for the subsequent 12-month period beginning July 1, over a twelve month period beginning on or after the date of a change in the interest rate. If the average remains equal to or less than fourteen percent, the PLUS interest rate remains twelve percent. If the average exceeds fourteen percent, the PLUS interest rate changes to fourteen percent effective for loans disbursed on or after the first day of the first month beginning after the date the new rate is published.

A borrower may have both twelve and fourteen percent loans. The interest rate of a loan is determined by the disbursement date, regardless of the rate of any other PLUS Loans the borrower may have.

These rules are intended to implement Iowa Code section 261.37.

[Filed 10/15/87, effective 12/9/87]

[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8072

INSPECTIONS AND APPEALS
DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.104, the Iowa Department of Inspections and Appeals adopts Chapter 40, "Foster Care Facility Inspection," Iowa Administrative Code and rescinds rules 481-7.2(71GA, ch1245) and 481-7.3(71GA, ch1245).

These rules explain action taken by Department staff relative to foster care inspections. Standards for these inspections are found in Human Services Department rules.

The rules in Chapter 7, "Investigations," are rescinded because foster care rules are properly the province of the Inspections Division.

These rules are identical to those published in the Iowa Administrative Bulletin July 15, 1987, as **ARC 7755**.

These rules are intended to implement Iowa Code sections 10A.502(5), 17A.3(1)"b," and 22.11.

These rules are effective December 9, 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 [ch 40, rescind 7.2 and 7.3] is being omitted. These rules are identical to those published under Notice as **ARC 7755**, IAB 7/15/87.

[Filed 10/14/87, effective 12/9/87]

[Published 11/4/87]

[For replacement pages for IAC, see IAC Supplement, 11/4/87.]

ARC 8088

INSURANCE DIVISION [191]

Adopted and Filed

Pursuant to the authority of 1987 Iowa Acts, House File 614, section 16, the Insurance Division of Iowa hereby adopts a new Chapter 19, "Prearranged Funeral Contracts," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 1987, as **ARC 7875**.

The Division received comments concerning the rules and many changes have been made in response to those comments.

Some nonsubstantive changes involving grammar and organization have been made throughout the rules. Also, in rule 19.2, language was added to the definition of "Prearranged funeral contract" to clarify that the statute and rules would apply even if the agreement does not involve a written contract.

Rule 19.4, entitled "Scope" was amended by adding a new paragraph to clarify which transactions would be subject to the Act and the rules.

Rule 19.13 was amended to more closely conform to the provisions of Iowa Code chapter 22.

In response to numerous comments objecting to the fee structure, rule 19.16 was amended by deleting the minimum and maximum fees but maintaining a fee of \$10 per contract. Also, the provision charging a fee for Interpretative Opinions was deleted.

Rule 19.21 was modified by the addition of a sentence to clarify that a separate sales permit must be held for each establishment for which the salesperson works.

At the suggestion of ARRC counsel, rule 19.22 was modified by the addition of a new paragraph cross-referencing to the Insurance Division's general administrative regulations on practice and procedure.

Changes in the text and organization of rule 19.31, including a provision in 19.31(4), will allow a possible release from the two-year record retention period.

Finally, rule 19.40 was amended by adding a new subrule to cover the second time period described in the statute for trusting funds.

The rules implement the changes in the regulatory and reporting provisions of the Iowa Prearranged Funeral Contracts Act adopted by 1987 Iowa Acts, House File 614. House File 614 establishes two types of permits: establishment permits and sales permits. Prior to July 1, 1987, the reports were filed with the applicable County Recorder. After July 1, 1987, reports will be filed with the Securities Bureau of the Iowa Insurance Division.

These rules shall become effective December 9, 1987.

The following new chapter is adopted:

CHAPTER 19

PREARRANGED FUNERAL CONTRACTS

191-19.1 (523A) Purpose. The following chapter is promulgated for the purpose of administering the provisions of 1987 Iowa Acts, House File 614, the Iowa prearranged funeral contracts Act, relating to sales of funeral services, funeral merchandise, or a combination of funeral services and merchandise, pursuant to a prearranged funeral contract.

191-19.2 (523A) Definitions. As used in the Act and this chapter, unless the context otherwise requires:

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"Act" means 1987 Iowa Acts, House File 614, the Iowa prearranged funeral contracts Act.

"Beneficiary" means any natural person specified or included in a prearranged funeral contract, upon whose death funeral services, funeral merchandise, or a combination of funeral services and merchandise shall be performed, provided, or delivered.

"Commissioner" means the commissioner of insurance for the state of Iowa.

"Financial institution" means a state or federally insured bank, savings and loan association, or credit union authorized to do business in the state of Iowa.

"Funds" means money paid pursuant to a prearranged funeral contract.

"Funeral merchandise" means one or more types of personal property to be used at the time of the final disposition of a dead body, including but not limited to clothing, caskets, vaults, and interment receptacles.

"Funeral services" means one or more services to be provided at the time of the final disposition of a dead human body, including but not limited to services necessarily or customarily provided in connection with a funeral, or services necessarily or customarily provided in connection with the interment, entombment, or cremation of a dead human body, or a combination of services.

"Insolvent" means the inability to pay debts, as they become due, in the usual course of business.

"Interest or income" shall mean, for the purpose of determining pursuant to Iowa Code section 523A.1, as amended by 1987 Iowa Acts, House File 614, the amount of interest or income earned on amounts deposited in trust, the aggregate of any payments received by the trust for the use of its money (interest earned on loans, bank deposits, etc.) and any income realized with respect to trust assets (gains from the sale of stock, dividends, etc.) net of losses and expenses and shall not include any appreciation or depreciation in the value of assets which does not affect the trust's current tax liability, which are commonly known as "paper" gains or losses.

"Person" means an individual, corporation, trust, partnership or association, or any other legal entity.

"Prearranged funeral contract" means an oral or written agreement to furnish, upon the future death of a person named or implied in the agreement, funeral services, funeral merchandise, or a combination of funeral services and merchandise.

"Purchaser" means any person (the person may or may not be a beneficiary) who purchases funeral services, funeral merchandise, or a combination of funeral services and merchandise, on a preneed basis.

"Seller" means any person residing in or doing business in the state of Iowa (which includes issuing or performing wholly or in part in the state of Iowa any incident of a prearranged funeral contract), who sells, promotes or offers funeral services, funeral merchandise, or a combination of funeral services and merchandise on a preneed basis.

"Trustee" means any state or federally insured bank, savings and loan, credit union, or trust department thereof, to the extent that the financial institution has been granted trust powers under the laws of this state or the United States, who holds funds pursuant to a trust agreement. The term "trustee" shall not include:

1. A seller; or

2. Anyone employed by or directly involved with the seller in the seller's business of selling prearranged funeral plans.

"Trust funds" means funds deposited by a seller in a financial institution.

"Trust instrument" means the document(s) pursuant to which a trustee receives, holds, invests, and disburses trust funds.

191—19.3 (523A) Title. The Act may be cited as the "Iowa prearranged funeral contracts Act."

191—19.4 (523A) Scope.

19.4(1) This chapter shall apply to any agreement, oral or written, made by any person to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise.

19.4(2) This chapter shall apply when an agreement is made in this state or an offer to sell a prearranged funeral contract is made or accepted in this state. An offer to sell is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state.

191—19.5 (523A) Exemptions. For purposes of the Act and this chapter:

19.5(1) "Funeral services" does not include perpetual care or maintenance.

19.5(2) "Merchandise" does not include real property, and does not include grave markers, tombstones, ornamental merchandise, and monuments.

19.6 to 19.9 Reserved.

191—19.10 (523A) Administration.

19.10(1) The Act shall be administered by the commissioner of insurance of the state of Iowa. As deputy administrator, the Iowa superintendent of securities shall be the principal operations officer responsible to the commissioner for the routine administration of the Act and management of the administrative staff of the Iowa securities bureau.

19.10(2) In the absence of the commissioner, whether because of vacancy in the office, by reason of absence, physical disability or other cause, the superintendent of securities shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the superintendent of securities any or all of the functions assigned to the commissioner in the Act.

19.10(3) The superintendent of securities shall employ officers, attorneys, accountants, investigators, and other employees as shall be needed for the administration of the Act.

19.10(4) Upon request the commissioner may honor requests from interested persons for interpretative opinions.

191—19.11 (523A) Misrepresentations of government approval. It is unlawful for any permit holder under the Act to represent or imply in any manner that the permit holder has been sponsored, recommended, or approved or that the permit holder's abilities or qualifications have in any respect been passed upon by the Iowa securities bureau, the Iowa insurance division or the state of Iowa.

191—19.12 (523A) Public access to hearings. Every hearing in an administrative proceeding shall be open to the public.

191—19.13 (523A) Public access to records.

19.13(1) The commissioner shall keep a register of all applications for permits which are or have been

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effective under the Act and all denial, suspension, or revocation orders which have been entered under the Act. The register shall be open for public inspection.

19.13(2) Upon request and for reasonable charges the commissioner shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document which is a matter of public record. In any administrative proceeding or prosecution under the Act, any copy so certified is prima facie evidence of the contents of the entry or document certified.

19.13(3) All records maintained by the commissioner pursuant to Iowa Code subsection 523A.2(1), as amended by 1987 Iowa Acts, House File 614, shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

19.13(4) The commissioner and the attorney general may keep confidential certain information obtained in the course of an investigation or audit pursuant to Iowa Code chapter 22 as follows:

a. Information consisting of records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body;

b. Information consisting of a peace officer's investigative report; provided, however, that the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual; or

c. Information consisting of a report to a governmental agency which, if released, would give advantage to competitors and serve no public purpose.

d. Information consisting of communications not required by law, rule, or procedure that are made to the insurance division or to any of its employees by identified persons outside of government, to the extent that the division could reasonably believe that those persons would be discouraged from making them if they were available for general public examination. Notwithstanding this provision:

(1) The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

(2) Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

(3) Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the insurance division to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the insurance division to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

19.13(5) If the commissioner or the attorney general determines that it is necessary or appropriate, in the public interest, the commissioner or the attorney general may share information with other administrators, regulatory authorities, or governmental agencies or may publish information concerning a violation of the Act, this chapter, or an order issued pursuant to the Act or this chapter.

191—19.14 (523A) Procedure for public complaints.

19.14(1) The Iowa attorney general may receive and process each complaint made against any permit holder, or any unlicensed individual or entity, which alleges certain acts or practices which may constitute one or more violations of the provisions of Iowa Code chapter 523A as amended by 1987 Iowa Acts, House File 614, the Iowa prearranged funeral contracts Act. Any member of the public or the profession, or any federal, state, or local officials, may make and file a complaint with the attorney general. Complaints may be received from sources outside the state of Iowa and processed in the same manner as those originating in Iowa.

19.14(2) Complaints may be mailed or delivered to the following address: Department of Justice, Consumer Protection Division, Hoover Building, Second Floor, 1300 East Walnut, Des Moines, Iowa 50319.

19.14(3) All complaints shall be made in writing and shall fully identify the complainant by name and address. If required by the consumer protection division, complaints shall be made on forms prescribed and provided by that division.

19.14(4) Oral or telephone communications will not be considered or processed as complaints. However, any member of the administrative staff of the Iowa attorney general may make and file a complaint based upon information and belief, in reliance upon oral, telephone, or written communications received by the office of the Iowa attorney general.

191—19.15 (523A) Compliance with other laws.

19.15(1) All prearranged funeral contracts must conform to Iowa Code chapter 82, the door-to-door sales Act, as follows:

a. Contract. Every seller shall furnish the buyer with a fully completed receipt or copy of any contract pertaining to the sale of funeral merchandise or services at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer and in boldface type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

b. Cancellation. Every seller shall furnish each buyer, at the time the buyer signs the contract or otherwise agrees to buy services or merchandise from the seller, a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten-point boldface type the following information and statements in the same language as that used in the contract:

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NOTICE OF CANCELLATION

(Enter date of transaction)
(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to _____

(Name of seller)

at _____ not later

(Address of seller's place of business)

than midnight of _____

(Date)

I hereby cancel this transaction. _____

(Date)

(Buyer's signature)

c. Duties of seller. A seller shall:

(1) Furnish two copies of the notice of cancellation to the buyer, and complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(2) Not include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically the right to cancel the sale in accordance with the provisions of this chapter.

(3) Inform each buyer orally, at the time the buyer signs the contract or purchases the services or merchandise, of the buyer's right to cancel.

(4) Not misrepresent in any manner the buyer's right to cancel.

(5) Honor any valid notice of cancellation by a buyer and within ten business days after the receipt of notice shall refund all payments made under the contract or sale, return any goods or property traded in, in substantially as good condition as when received by the seller, and cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(6) Not negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the seventh

business day following the day the contract was signed or the goods or services were purchased.

(7) Within ten business days of receipt of the buyer's notice of cancellation notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

d. Effect on indebtedness. Rescission of any contract pursuant to this chapter or the failure to provide a copy of the contract to the buyer as required by this chapter shall void any contract, note, instrument, or other evidence of indebtedness executed or entered into in connection with the contract and shall constitute a complete defense in any action based on the contract, note, instrument, or other evidence of indebtedness brought by the seller, the successors or assigns unless a successor or assignee of the seller after the seventh business day following the day the contract was signed has detrimentally relied upon a representation of the buyer that the contract has not been rescinded. This section shall not affect the rights of the holders in due course of checks made by the buyer.

19.15(2) In the event of a credit sale, a prearranged funeral contract must conform to Iowa Code chapter 537, the Iowa consumer credit code.

191—19.16 (523A) Fees. The following fees are hereby established by the commissioner:

1. Application packet\$ 5.00
2. Certification.....\$ 5.00
3. Duplicate permit fee\$ 5.00
4. Establishment permit fee.....\$ 50.00
5. Filing fee (Establishment's annual report).....\$10 per Contract
6. Filing fee (Establishment's initial report).....\$ 25.00
7. Name change\$ 10.00
8. Photocopies of records (per page)\$ 0.50
9. Printout of permit holders\$ 10.00
10. Sales permit fee.....\$ 5.00

All fees are nonrefundable.

191—19.17 (523A) Forms.

19.17(1) Content. Copies of all necessary forms and instructions may be obtained from the Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319. The list which follows describes the forms which members of the public shall use when dealing with the bureau, unless waived by the commissioner, and computer-generated information may be accepted. Each direction shall be complied with and each question in the forms shall be answered in the same manner as if the forms and instructions were embodied in these rules.

FORM NUMBER	DESCRIPTION
P-1	Application For Establishment Permit. Used by applicants when filing for an establishment permit under the Act.
P-2	Application For Sales Permit. Used by applicants when filing for a sales permit under the Act.
P-3	Establishment's Initial Report. Transitional report that must be filed before an application for an establishment permit under the Act.

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- P-4 Establishment's Annual Report. Used by Establishments when filing their annual report under the Act.
- P-5 Financial Institutions Annual Report. Used by financial institutions when filing their annual report under the Act.
- P-6 Surety Bond. Required form of surety bond that a seller may file with the commissioner in lieu of the trust fund required by Iowa Code sections 523A.1 and 523A.2 as amended by 1987 Iowa Acts, House File 614.
- P-7 Establishment Permit.
- P-8 Sales Permit.

19.17(2) Cost. The forms listed above are available upon request at reasonable charges prescribed by the commissioner. An application packet, containing one copy each of the Act, this chapter and all of the application and report forms, shall be available for a \$5 charge. Individual forms may be acquired as follows:

FORM NUMBER	QUANTITY	COST
P-1	10	\$1.00
P-2	10	\$1.00
P-3	10	\$1.00
P-4	10	\$1.00
P-5	10	\$1.00
P-6	10	\$1.00

19.18 and 19.19 Reserved.

191—19.20 (523A) Establishment permits. A person shall not engage in the business of selling, promoting, or otherwise entering into agreements to furnish, upon the future death of a person named or implied in the agreement, funeral services, property for use in funeral services, or funeral merchandise until the person has procured an establishment permit from the Iowa securities bureau. A permit must be held for each location.

191—19.21 (523A) Sales permits. An individual (including anyone selling insurance) shall not offer, advertise, sell, promote, or otherwise engage in the solicitation of an agreement to furnish, upon the future death of a person named or implied in the agreement funeral services or funeral merchandise without a sales permit from the Iowa securities bureau. If the individual is an employee or agent of more than one establishment, an additional sales permit must be acquired for each establishment unless the establishments are affiliated by direct or indirect common control.

191—19.22 (523A) Denial, suspension or revocation of permits.

19.22(1) Denial of establishment permit. The commissioner may refuse to issue an establishment permit if the commissioner finds that the applicant:

- Has been convicted of a criminal offense involving dishonesty or false statement, or
- Cannot provide the funeral services or funeral merchandise that the applicant purports to sell.

19.22(2) Revocation of sales permit. The commissioner may revoke a sales permit if the commissioner finds:

a. That the permit holder is not an employee or agent of an establishment which holds a permit pursuant to the Act.

b. That the permit holder has been convicted of a criminal offense involving dishonesty or false statement, or

c. That the establishment of which the permit holder is an employee or agent cannot provide the funeral services or merchandise the establishment purports to sell.

19.22(3) The commissioner may, pursuant to Iowa Code chapter 17A, the Iowa administrative procedure Act, suspend or revoke any permit issued pursuant to the Act if the commissioner finds any of the following:

a. The permit holder has violated any provisions of the Act or this chapter or any other state or federal law applicable to the conduct of the permit holder's business.

b. Any fact or condition exists which, if it had existed at the time of the original application for the permit, would have warranted the commissioner's refusing originally to issue the permit.

c. The permit holder is found upon investigation to be insolvent, in which case the permit shall be revoked immediately.

d. The permit holder, for the purpose of avoiding the trusting requirement for funeral services under Iowa Code section 523A.1, as amended, attributes amounts paid pursuant to the agreement to funeral merchandise that is delivered under section 523A.1, as amended, rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of funeral merchandise to be delivered pursuant to section 523A.1, as amended, than the services are regularly and customarily sold for when not sold in conjunction with funeral merchandise is evidence that the permit holder is acting with the purpose of avoiding the trusting requirement for funeral services under section 523A.1.

19.22(4) Temporary suspension. The commissioner may, on good cause shown, suspend any permit for a period not exceeding 30 days, pending investigation.

19.22(5) Procedure. Chapter 3 of the Iowa insurance division's administrative rules printed in the Iowa Administrative Code and entitled "Administrative Hearings of Contested Cases," shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, reviews and licensing.

191—19.23 (523A) Permits not transferable.

- Permits shall not be transferable.
- An establishment permit holder selling a business shall cancel the permit, and the purchaser of the business shall apply for a new permit in the purchaser's own name.

19.24 to 19.29 Reserved.

191—19.30 (523A) Termination of business—records. An establishment permit holder discontinuing business shall maintain records for a period of five years from the date of discontinuing the business, unless a release from this provision is given by the commissioner.

191—19.31 (523A) Records.

19.31(1) All establishments and trustees shall keep accurate accounts, books, and records concerning transactions regulated under the Act.

19.31(2) An establishment's accounts, books, and records shall include:

- Copies of all contracts;

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- b. The name and address of each purchaser;
- c. The name of the contract beneficiary of each preneed contract;
- d. The name and address of the trustee holding the trust funds received under each contract;
- e. The dates and amounts of all receipts (including interest or earnings received or reported to the establishment) and expenditures for each purchaser; and
- f. The dates and amounts of any disbursements relating to funds held in trust.

19.31(3) A financial institution's accounts, books, and records shall include:

- a. The name of the establishment;
- b. The names of the contract beneficiaries;
- c. The amount and date of receipt of all funds received from the establishment; and
- d. A record of the amount and date of interest or amount deposited in trust and all disbursements.

19.31(4) An establishment shall retain all required accounts, books, and records pertaining to each prearranged funeral contract for at least two years after the date of performance or termination, unless a release from this provision is given by the commissioner.

19.31(5) Inspection.

a. The accounts, books, and records pertaining to a purchaser's prearranged funeral contract shall be available for inspection by purchasers during normal business hours at the establishment's place of business.

b. All establishments and trustees shall make all accounts, books, and records concerning transactions regulated under the Act available to the commissioner or the attorney general upon request, for the purpose of examination.

191—19.32 (523A) Initial reports. All establishments shall, at least 30 days prior to filing their first establishment permit application, file an initial report with the Iowa securities bureau on the form prescribed by the commissioner.

191—19.33 (523A) Annual reports.

19.33(1) All holders of an establishment permit, trustees, and financial institutions shall, no later than March 1 of each year, file an annual report with the Iowa securities bureau on the forms prescribed by the commissioner. Any person holding more than one establishment permit, as the result of multiple locations, may elect to file only one annual report.

19.33(2) Every establishment filing an annual report shall pay a filing fee of \$10 per prearranged funeral contract sold during the year covered by the report.

19.34 to 19.39 Reserved.

191—19.40 (523A) Trust funds.

19.40(1) At least 80 percent of all funds shall be deposited in trust at a financial institution within 30 days of receipt. In the event of a common trust, the deposit shall be made in the name of the depositor in trust for the contract's beneficiary.

19.40(2) At least 80 percent of all funds received when an agreement is financed with or sold to a financial institution shall be deposited in trust at a financial institution within 30 days after the close of the month in which payment is received from the financial institution.

191—19.41 (523A) Trust instruments.

19.41(1) Each trust instrument shall specify:

- a. The trustee's duties in conformance with the provisions of the Act and this chapter;

- b. The basis for determining the trustee's fee (if any); and

- c. Any other appropriate terms of trusteeship.

19.41(2) The commissioner may require alterations or additions to a trust agreement if it is not in accord with the provisions of this chapter.

191—19.42 (523A) Investment of trust funds.

19.42(1) A financial institution acting as a trustee of trust funds under this chapter shall invest the funds in accordance with applicable law. In so investing, the trustee shall exercise the judgment and care under the circumstances then prevailing, which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to the speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

19.42(2) Subject to contractual agreement between the parties, the trustee may receive a reasonable fee for services rendered as a trustee from the trust funds.

191—19.43(523A) Bond in lieu of trust fund. An establishment permit holder may, in lieu of the trust fund required by 1987 Iowa Acts, House File 614, file with the commissioner a surety bond, pursuant to section 523A.7, that is issued by a surety company authorized to do business in this state and that is conditioned on the faithful performance by the seller of agreements subject to the Act.

19.44 to 19.49 Reserved.

191—19.50 (523A) Orders. The commissioner may, by order, take actions which are necessary or appropriate for the protection of purchasers and to implement the purposes of the Act.

191—19.51 (523A) Investigations and subpoenas.

19.51(1) The commissioner or the attorney general may:

a. Make private and public investigations within or outside of this state as the commissioner or the attorney general deems necessary to determine whether a person has violated any provision of the Act or any rule or order hereunder or to aid in the enforcement of the Act;

b. Require or permit any person to file a statement, under oath or otherwise as the commissioner or the attorney general determines as to all the facts and circumstances concerning the matter to be investigated; and

c. Publish information concerning any violation of the Act or any rule or order hereunder.

19.51(2) For the purpose of any investigation or proceeding under the Act, the commissioner, the attorney general, or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

191—19.52 (523A) Audits.

19.52(1) The commissioner shall have the right to examine or cause to be examined the books, papers, records, memoranda or documents of a permit holder, trustee or financial institution for the purpose of verifying compliance with the Act and this chapter. When a permit holder fails or refuses to produce the records for examination when requested by the commis-

INSURANCE DIVISION[191] (cont'd)

sioner, the commissioner shall have the authority to require, by a subpoena, the attendance of the permit holder, or its representatives, and any other witness(es) whom the commissioner deems necessary or expedient to examine and compel the permit holder and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to compliance with the Act or this chapter.

19.52(2) Unless waived by the commissioner, the audit shall be paid for by the seller(s), and a copy of the report of audit shall be delivered to the commissioner and to the seller(s). In the event of an audit involving more than one seller the cost shall be prorated among the sellers on any reasonable basis determined by the commissioner.

[Filed 10/16/87, effective 12/9/87]

[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8101**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 107.24 and 455A.5, the Natural Resource Commission, on October 9, 1987, adopted the following amendments to Chapter 30, "Water Recreation Access Cost-Share Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 1987, as **ARC 7877**.

No written or verbal comments were received prior to September 17, 1987, and no member of the public attended the public hearing on September 17.

Besides minor editorial change, the only change made in the final rule from that which was published as a Notice of Intended Action was a provision to allow for the extension of the project completion period beyond two years with department authorization.

These rules are intended to implement Iowa Code section 324.79.

These rules shall become effective February 3, 1988.

The following amendments are adopted:

ITEM 1. Amend rule 571—30.3(324) Items "10" and "14" as follows:

10. Fencing as needed to ~~direct recreational boaters on use and regulations of access areas establish boundaries, prevent encroachments and control trespass~~ (when incorporated as part of an initial development project).

14. Maintenance projects when they ~~conform with meet~~ *all other criteria as spelled out specified* in this rule.

ITEM 2. Amend 571—30.7(324), introductory paragraph, as follows:

571—30.7(324) Establishing project priorities. The director shall appoint a six-member water access committee representing a cross section of department responsibilities for purposes of reviewing and establishing priorities for cost-sharing. The committee shall maintain a list of high priority water access projects. Twice annually (~~March February~~ and ~~September August~~), district fisheries supervisors will be responsible for making recommendations to update project priority lists for their respective districts. Primary field contact personnel are the district fishery supervisors whose addresses are as follows:

ITEM 3. Rescind 571—30.8(324) and insert the following:

571—30.8(324) Application procedures. Applications on forms provided by the agency must be received by the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, no later than 4:30 p.m. on the last working day of January or July in order to be eligible for review at the next water access committee meeting.

ITEM 4. Rescind **571—30.9(324)**, renumber 571—30.10(324) as 571—30.9(324) and renumber remaining rules accordingly.

ITEM 5. Amend renumbered 571—30.9(324) to read as follows:

571—30.9(324) Cost-sharing rates. All projects approved for assistance will be cost-shared at a 75 percent state/25 percent local ratio. Those ranked as high priority (five new access areas and five improvement projects in each of the four districts) will be eligible for engineering assistance from the department's ~~engineering section construction services bureau~~. At the agency's option, necessary engineering services for *high priority projects* may be contracted, with marine fuel tax revenues used to ~~pay for them 100 percent of approved engineering costs~~. *For all other projects, engineering services will be cost-shared at the standard 75 percent state/25 percent local ratio.*

Exceptions may occur under the following conditions:

1. Where a local public agency agrees under terms of a ~~28E long-term~~ agreement to assume maintenance and operation of a ~~state-owned department of natural resources~~ water access facility, the *approved* development or improvements needed on that facility will be funded at 100 percent. ~~prior to turning the area over to the cooperating agency for management.~~

2. Where feasible and practical, the department will provide funds to cover 100 percent of materials needed for a development project if the local subdivision agrees to provide 100 percent of the labor and equipment to complete that development.

3. When, at the discretion of the director, some alternate funding level is deemed appropriate.

ITEM 6. Amend renumbered rule 571—30.11(324) to read as follows:

571—30.11(324) Control of project site. In order for a project site to be eligible for a development grant, it must be under the physical control of the grant applicant,

NATURAL RESOURCE COMMISSION[571] (cont'd)

either by fee title, lease, management agreement, or easement. The term of a lease, management agreement, or easement must be commensurate with the life expectancy of the proposed development. ~~Twenty-five~~ years is the minimum period which will generally be acceptable.

ITEM 7. Amend renumbered subrule 30.12(1) as follows:

30.12(1) A cooperative agreement approved by the director between the department and the local grant recipient describing the work to be accomplished and specifying the amount of the grant and the project completion date will be negotiated as soon as possible after a grant has been approved. Maximum time period for project completion shall be two years for acquisition or development projects, *unless an extension approved by the director is authorized.* However, agreements covering land acquisition will be dependent upon receipt of a department-approved appraisal report since assistance will be based on the approved appraised valuation or the actual purchase price, whichever is the lesser. *Approved development projects costing over \$25,000 must have plans certified by a registered engineer before an agreement will be issued.*

[Filed 10/16/87, effective 2/3/88]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8093

NATURAL RESOURCE
COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 107.24 and 455A.5, the Natural Resource Commission, on October 9, 1987, adopted the following amendments to Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 1987, as ARC 7879.

There were no changes made in the final rule from that which was published as a Notice of Intended Action.

Four persons attended the public hearing and ten letters were received during the comment period. All comments received were objections to the elimination of the reduced camping fee for senior citizens, handicapped and blind persons.

These rules are intended to implement Iowa Code sections 111.35, 111.47 and 422.43 (2 and 11).

These rules shall become effective February 3, 1988.

ITEM 1. Amend rule 61.2(111) by deleting the definitions for the words: "Handicapped," "Blind" and "Senior citizen."

ITEM 2. Rescind subrule 61.3(1) and insert the following in lieu thereof:

61.3(1) Camping.

	Fee	Sales Tax	Total
a. Nonmodern areas	\$3.85	.15	\$4.00
b. Modern areas	5.77	.23	6.00
c. Per person over the basic unit of six	.48	.02	.50
d. Chaperoned, organized youth group per group	4.81	.19	5.00
e. Electricity	1.92	.08	2.00
This fee will be charged in addition to the camping fee on sites where electricity is available (whether it is used or not)			
f. Additional vehicle permitted under subrule 61.5(9)"c"	3.85	.15	4.00
g. Cable television hookup	.96	.04	1.00

Sales tax on the fee stated in "c" will be figured on the applicable total dollar amount collected by the person in charge of the camp area.

ITEM 3. Amend rule 61.3(2) by adding the following:

j. Wilson Island Recreation Area, Pottawattamie County	12.00	60.00
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ITEM 4. Amend subrule 61.3(3) by adding the following paragraph at the end of the subrule:

In accordance with subrule 65.4(5), persons renting and attending functions at the lodge may be furnished a special permit to be displayed on their vehicles. This permit shall have the same force and be recognized as a daily park user permit for that specific date only. The fee for this special permit shall be:

Fifty persons or less	\$20
Over fifty persons	\$30

ITEM 5. Rescind subrule 61.3(5) and insert the following in lieu thereof:

61.3(5) Miscellaneous fees.

	Maximum Fee
a. Vessel storage space (wet or dry)	
(1) Pontoon boats - six months or less	\$100
year-round	\$150
(2) Other boats - six months or less	\$ 80
year-round	\$130
b. Open shelter reservation	\$15 plus applicable tax.

ITEM 6. Amend subrule 61.4(1) by rescinding paragraph "c."

[Filed 10/16/87, effective 2/3/88]

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ARC 8100

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 107.24 and 455A.5, the Natural Resource Commission, on October 9, 1987, adopted the following amendments to Chapter 65, "State Park User Fees," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 1987, as **ARC 7876**.

Changes in the final rules include some editorial changes plus the addition of two boat access ramps to the list of exempt areas, and the removal of one area from the list of areas to be deleted from the exempt list. One comment was received during the public hearing which was an objection to the user fee, per se, rather than an objection to or comment on the rule itself.

These rules are intended to implement Iowa Code section 111.85 as amended by 1987 Iowa Acts, House File 316.

These rules shall become effective February 3, 1988.

ITEM 1. Delete all references in this chapter to the "1985 Iowa Code supplement" or "1985 Iowa Acts" and insert "Iowa Code section 111.85 as amended by 1987 Iowa Acts, House File 316". The section and subsection references are to remain the same.

ITEM 2. Amend rule **65.2(111)** by adding the following definitions in alphabetical order:

"First permit" means the annual permit sold for \$5.50.

"Household" means all persons related by any degree of affinity or consanguinity and residing together, or, a person residing with another person other than a spouse or child who resides at the same address.

"Lodge" is as defined in 571-61.2(111) Iowa Administrative Code.

"Second vehicle permit" means the annual permit issued for the payment of a \$2 fee or issued, without fee, as a replacement for a damaged permit.

ITEM 3. Amend rule **65.2(111)**, definition of "permit," to read as follows:

"Permit" means the annual decal or daily pass to be displayed in or on a vehicle as proof that the user fee required by 1985 Iowa Code supplement section 111.85 has been paid. ~~or a permit obtained under the provisions of 1985 Iowa Code supplement section 111.85, subsection 5.~~

ITEM 4. Amend rule **65.3(111)** by deleting the following areas:

Backbone State Park, Delaware County
Galland School, Lee County
Marble Beach Access Parking Area, Dickinson County
Nobles Island Access, Allamakee County

ITEM 5. Amend rule **65.3(111)** by adding the following areas in alphabetical order:

Elk Rock State Park, Marion County. Highway 14 access and access ramp adjoining park attendant's residence.

Okamanpedan State Park, Emmet County
Templar Park Area, Dickinson County
Wanata State Park, Clay County

ITEM 6. Rescind subrule 65.4(4) and insert the following in lieu thereof:

65.4(4) Replacement permits.

a. Replacement permits shall be issued only by the Iowa Department of Natural Resources, License Bureau, Wallace Office Building, Des Moines, Iowa 50319-0034 or by persons in charge of areas managed by the parks and recreation bureau of the department (park rangers).

b. Persons requesting replacement permits must surrender to the person issuing the replacement a verifiable remnant of a current year permit which includes all or a portion of the audit number; a recognizable portion of the design or logo; or any portion of a permit containing adequate printed material to be recognizable as a current permit.

c. The department shall utilize the second vehicle (\$2) permit as the replacement permit without fee.

ITEM 7. Amend rule 65.4(111) by adding the following new subrule:

65.4(5) Lodge users. Persons using the lodge may be furnished a special permit which has been marked by department personnel to distinguish it from all other daily permits. The fee for these permits shall be incorporated into the rental fee for the facility.

ITEM 8. Amend rule **65.5(3)**, third sentence, by changing the word "are" to "is".

ITEM 9. Rescind rule 65.8(111) and insert the following:
571-65.8(111) Second vehicle permit purchase procedure.

65.8(1) The department shall furnish, upon purchase of a first permit, a "proof of purchase" which specific use shall be for the purchase of a second vehicle permit as provided in 1987 Iowa Acts, House File 316. This proof of purchase shall contain a space for the name and address of the purchaser.

65.8(2) When the second vehicle permit is purchased concurrently with the first permit, the purchaser shall relinquish the proof of purchase to the seller but need not complete the name and address information.

65.8(3) When the second vehicle permit is purchased separate from the first permit, the name and address information must be completed on the first permit proof of purchase and it shall be relinquished to the seller of the second vehicle permit. The second vehicle permit purchaser must also produce evidence such as a driver's license that indicates the same address as on the first permit proof of purchase as proof of being in the same household.

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[Published 11/4/87]

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ARC 8096

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 107.24, 109.38, 109.39, 109.67 and 109.76, the Natural Resource Commission at their meeting on October 9, 1987, adopted the following amendments to Chapter 81, "Fishing Regulations," Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571] (cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin, August 26, 1987, as ARC 7878.

These rules establish season dates, territories, daily catch limits, possession limits and length limits for sport fishing.

There is one change from the Notice. A second sentence is added to subrule 81.2(8) to read, "Where length limits apply, fish less than the legal length must be immediately released into the water from which they were caught."

These rules are intended to implement Iowa Code sections 109.38, 109.39, 109.67 and 109.76.

These rules will become effective January 1, 1988.

ITEM 1. Rescind rule 571—81.1(109) and insert the following in lieu thereof:

571—81.1(109) Seasons, territories, daily catch limits, possession limits and length limits.

KIND OF FISH	INLAND WATERS OF THE STATE				BOUNDARY RIVERS
	OPEN SEASON	DAILY CATCH LIMIT	POSSESSION LIMIT	MINIMUM LENGTH LIMITS	MISSISSIPPI RIVER MISSOURI RIVER BIG SIOUX RIVER
Rock Sturgeon	Closed	0	0		Same as inland waters
Paddlefish*	Continuous	2	4	None	Same as inland waters
Yellow Perch	Continuous	25	50	None	Same as inland waters except no catch or possession limit.
Trout	Continuous	5 8 Lakes	10 30	None*	Same as inland waters
Catfish	Continuous	15 Streams		None	Same as inland waters except no catch or possession limit.
Black Bass (Largemouth Bass) (Smallmouth Bass) (Spotted Bass)	Continuous	3	6 In Aggregate	See below*	Continuous open season; aggregate daily catch limit 5, aggregate possession limit 10. See below*
Combined Walleye, Sauger, and Saugeye	Continuous*	5*	10*	None*	Continuous open season; aggregate daily catch limit 10, aggregate possession limit 20.
Northern Pike	Continuous*	3	6	None	Continuous open season; daily catch limit 5; possession limit 10.
Muskellunge or Hybrid Muskellunge	Continuous*	1	1	30"	Same as inland waters
All other fish species	Continuous	None	None	None	Same as inland waters
Frogs (except Bullfrogs)	Continuous	48	96	None	Same as inland waters
Bullfrogs (Rana Catesbeiana)	Continuous	12	12	None	Same as inland waters

*Also see 81.2(109), Exceptions

ITEM 2. Amend subrule 81.2(2) as follows:

81.2(2) Black* bass. A 15-inch minimum length limit shall apply on black bass in all public lakes except as otherwise posted. *On federal flood control reservoirs a 15-inch minimum length limit shall apply on black bass at Coralville and Rathbun and a 12-inch minimum length limit shall apply at Saylorville and Red Rock.* A 12-inch minimum length limit shall apply on black bass in all interior streams, river impoundments, border rivers, and chutes and backwaters of border rivers where intermittent or constant flow from the border river occurs, except that no length limit shall apply to that portion of the Mississippi River in Iowa which borders Wisconsin. All

black bass caught from that portion of the Middle Raccoon River, Guthrie County, extending from below Lennon Mills Dam to Panora as posted to the bridge on county blacktop P28 the following stream segments must be immediately released alive:

1. Middle Raccoon River, Guthrie County, extending from below Lennon Mills Dam at Panora as posted to the bridge on county blacktop P28.

2. Maquoketa River, Delaware County, extending from below Lake Delhi Dam as posted to the first county gravel road bridge.

ITEM 3. Rule 571—81.2(109) is amended by adopting a new subrule 81.2(8) as follows:

81.2(8) General restriction. Anglers must comply with the most restrictive set of regulations applicable to the water on which they are fishing. Where length limits apply, fish less than the legal length must be immediately released into the water from which they were caught.

These rules are intended to implement Iowa Code sections 109.38, 109.39, 109.67 and 109.76.

[Filed 10/16/87, effective 1/1/88]

[Published 11/4/87]

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ARC 8097

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage"; Chapter 26, "Sales and Use Tax on Service"; and Chapter 103, "Hotel and Motel—Administration," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 1987, as ARC 7914.

In the past the Department has taxed the rental of a mobile home which was not real property as the rental of tangible personal property. Changes in applicable statutes have removed the rental of mobile homes from the category of rental of tangible personal property and placed such rentals within the category of the rental of hotel and motel rooms, sleeping rooms and apartments. The major result of this change is that the rental of a trailer which is not real property is now exempt from tax if rented by the same person for a period of more than 31 consecutive days. This exemption was not applicable when the rental of a trailer which is not real property was classified as the rental of tangible personal property.

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

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

The amendments will become effective December 9, 1987, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The amendments are intended to implement Iowa Code sections 422.43(7), 422.43(11) and 422A.1 as amended by 1987 Iowa Acts, House File 605.

The following amendments are adopted:

ITEM 1. Amend rule 701—18.40(422,423) to read as follows:

701—18.40(422,423) Renting of rooms. The gross receipts from the renting of any and all rooms, including but not limited to sleeping rooms, banquet rooms or conference rooms in any hotel, motel, inn, public lodging house, rooming or tourist court, or in any place where sleeping accommodations are furnished to transient guests, whether with or without meals, are subject to the tax. *On and after July 1, 1987, the rental of a mobile home which is tangible personal property is treated as room rental rather than tangible personal property rental. However, the renting of all such rooms would be exempt from the tax if rented by the same person for a period of more than thirty-one (31) consecutive days.*

This rule is intended to implement Iowa Code section 422.43 as amended by 1987 Iowa Acts, House File 605.

ITEM 2. Amend subrule 26.18(2), paragraph "c," and the implementation clause following rule 701—26.18(422,423) to read as follows:

c. Rental of tangible personal property and rental of fixtures. The rental of tangible personal property which shall, prior to its use by the renter under the rental contract, become a fixture, shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property which is connected to real property in such a way that it cannot be removed without damage to itself or to the real property is a fixture, *Equitable Life Assurance Society of the United States v. Chapman*, 282 N.W.355 (Iowa 1983) and *Marty v. Champlin Refining Co.*, 36 N.W.2d 360 (Iowa 1949). *Prior to July 1, 1987, the rental of a mobile home, not sufficiently attached to realty to constitute a fixture, is the rental of tangible personal property and subject to tax, Broadway Mobil Homes Sales Corp. v. State Tax Commission*, 413 N.Y.S.2d 231 (N.Y. 1979). *For the treatment of mobile home rental on and after that date see rule 18.40(422,423).*

This rule is intended to implement Iowa Code sections ~~422.23~~ 422.43 and 423.2 as amended by 1987 Iowa Acts, Senate House File 580 605.

ITEM 3. Amend subrule 103.1(2) and the implementation clause following rule 701—103.1(422A) to read as follows:

103.1(2) Rooms. The gross receipts from the renting of any and all sleeping rooms in any hotel, motel, inn, public lodging house, rooming or tourist court, or in any place where sleeping accommodations are furnished to transient guests, whether with or without meals, except the gross receipts from the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in Iowa, are subject to tax. *On and after July 1, 1987, the rental of a mobile home which is tangible personal property rather than real property is*

subject to tax under this chapter in the same fashion as a sleeping room. However, the renting of all such sleeping rooms would be exempt from the tax if rented by the same person for a period of more than thirty-one (31) consecutive days.

This rule is intended to implement Iowa Code section 422A.1 as amended by 1987 Iowa Acts, House File 605.

[Filed 10/16/87, effective 12/9/87]

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ARC 8098

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 51, "Administration," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53, "Determination of Net Income," Chapter 54, "Allocation and Apportionment," Chapter 56, "Declaration of Estimated Tax for Corporations," Chapter 57, "Administration," Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Net Income," and Chapter 61, "Declaration of Estimated Tax for Financial Institutions," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 1987, as ARC 7916.

1987 Iowa Acts, Senate File 523, updated references to the Internal Revenue Code for corporation income and franchise tax; amendments to rules 701—51.1(422) and 701—57.1(422) implement this legislative change. This legislation also revised the corporation income and franchise tax minimum taxes from a percentage of the federal minimum tax to a state alternative minimum tax. Amendments to rules 701—52.5(422) and 701—58.5(422) implement this legislation. Amendments are made to rules 701—53.6(422) and 701—59.6(422) to implement those provisions of 1987 Iowa Acts, Senate File 523, which require the addition of income distribution from regulated investment companies which are not subject to federal income taxes in computing Iowa taxable income. Also, nonsubstantive definition changes from Internal Revenue Code of 1954 to Internal Revenue Code wherever they appear in the Iowa Administrative Code 701—Chapters 51 through 61.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective December 9, 1987, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The following amendments are adopted.

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

ITEM 1. Amend rule 701—51.1(422) by adding the following new subrule:

51.1(4) The term "Internal Revenue Code" means the Internal Revenue Code of 1954 prior to the date of its redesignation as the Internal Revenue Code of 1986 or the Internal Revenue Code of 1986, whichever is applicable.

ITEM 2. Amend subrule 52.4(5), introductory paragraph, to read as follows:

52.4(5) Research activities credit. Effective for tax years beginning on or after January 1, 1985, taxpayers are allowed a tax credit equal to six and one-half percent of the state's apportioned share of qualifying expenditures for increasing research activities. For purposes of this credit, "qualifying expenditures" means the qualifying expenditures for increasing research activities as defined for purposes of the federal credit for increasing research activities computed under section 30 41 of the Internal Revenue Code of 1954 as amended to and including January 1, 1985. The "state's apportioned share of qualifying expenditures for increasing research activities" must be the ratio of the qualified expenditures in Iowa to total qualified expenditures times total qualifying expenditures for increasing research activities.

ITEM 3. Rescind rule 701—52.5(422) and insert the following in lieu thereof:

701—52.5(422) Minimum tax.

52.5(1) Effective for tax years beginning on or after January 1, 1982, but before January 1, 1987, an Iowa minimum tax is imposed in addition to the tax computed under Iowa Code section 422.33. The Iowa minimum tax on tax preference items is a percentage of the federal minimum tax for tax preferences computed under sections 56 through 58 of the Internal Revenue Code for the tax year. For tax years beginning on or after January 1, 1986, "federal minimum tax" means the federal minimum tax for tax preferences computed under sections 56 through 58 except section 57(a)(8) of the Internal Revenue Code for the tax year.

For a corporation conducting 100 percent of its business within Iowa as defined in rule 54.1(422), the Iowa minimum tax is a percentage of the federal minimum tax. For a corporation doing business both within and without Iowa, the state's portion of the federal minimum tax shall be based upon the apportionment provisions of rule 54.5(422) through 54.8(422) unless an alternative method more accurately reflects that portion of minimum tax attributable to Iowa.

When a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, and files a separate Iowa corporation income tax return, the consolidated federal minimum tax shall be allocated to the separate corporations. The allocation of the consolidated federal minimum tax shall be determined as follows: The consolidated federal minimum tax is multiplied by a fraction, the numerator of which is the sum of the taxpayer's federal tax preference items and the denominator of which is the total of the federal tax preference items of each corporation included in the consolidated federal income tax return.

For tax years beginning on or after January 1, 1982, and prior to January 1, 1983, the Iowa minimum tax is 25 percent of the state's apportioned share of the federal minimum tax on tax preference items.

For tax years beginning on or after January 1, 1983, the Iowa minimum tax is 70 percent of the state's apportioned share of the federal minimum tax on tax preference items.

52.5(2) For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that it exceeds the taxpayer's regular tax liability computed under Iowa Code section 422.33(1). The minimum tax rate is 60 percent of the maximum corporate tax rate rounded to the nearest one-tenth of one percent or 7.2 percent. Minimum taxable income is computed as follows:

State taxable income as adjusted by Iowa Code section 422.35

Plus: Tax preference items, adjustments and losses added back

Subtotal

Times: Apportionment percentage

Result

Less: \$40,000 exemption amount

Iowa alternative tax net operating loss deduction

Equals: Iowa alternative minimum taxable income

For tax years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under section 57 except for subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable income are those adjustments required by section 56 except for subsections (a)(4) and (d) of the Internal Revenue Code used to compute federal alternative minimum taxable income. In making the adjustment under section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities net of amortization of any discount or premium shall be subtracted. Losses to be added are those losses required to be added by section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

a. Tax preference items are:

1. Intangible drilling costs;
2. Incentive stock options;
3. Reserves for losses on bad debts of financial institutions;
4. Appreciated property charitable deductions;
5. Accelerated depreciation or amortization on certain property placed in service before January 1, 1987.

b. Adjustments are:

1. Depreciation;
2. Mining exploration and development;
3. Long-term contracts;
4. Iowa alternative minimum net operating loss deduction;
5. Book income or adjusted earnings and profits.

c. Losses added back are:

1. Farm losses;
2. Passive activity losses.

Computation of Iowa alternative minimum tax net operating loss deduction.

Net operating losses computed under rule 701—53.2(422) carried forward from tax years which begin before January 1, 1987, are deductible without adjustment.

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

Net operating losses from tax years which begin after December 31, 1986, which are carried back or carried forward to the current tax year shall be reduced by the amount of tax preferences and adjustments taken into account in computing the net operating loss prior to applying rule 701—52.2(422). The deduction for a net operating loss from a tax year beginning after December 31, 1986, which is carried back or carried forward shall not exceed 90 percent of the alternative minimum taxable income computed without regard for the net operating loss deduction.

The exemption amount shall be reduced by 25 percent of the amount that the alternative minimum taxable income computed without regard to the \$40,000 exemption exceeds \$150,000. The exemption shall not be reduced below zero.

52.5(3) Penalty and interest. In computing penalty and interest for failure to file a timely return or to pay the minimum tax, refer to subrules 52.6(4) and 52.6(5). Effective for tax years beginning on or after January 1, 1986, estimate payments are required for minimum tax.

This rule is intended to implement Iowa Code section 422.33 as amended by 1987 Iowa Acts, Senate File 523.

ITEM 4. Amend rule 701—53.6(422) to read as follows:

701—53.6(422) Interest and dividends from foreign securities, and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

For tax years beginning on or after January 1, 1987, add dividends received from regulated investment companies exempt from federal income tax under section 852(b)(5) of the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

This rule is intended to implement Iowa Code section 422.35 as amended by 1987 Iowa Acts, Senate File 523.

ITEM 5. Amend subrule 53.11(4), introductory paragraph, to read as follows:

53.11(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the targeted jobs tax credit under section 4451 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

ITEM 6. Amend rule 701—57.1(422) by adding the following new subrule:

57.1(3) The term "Internal Revenue Code" means the Internal Revenue Code of 1954 prior to the date of its redesignation as the Internal Revenue Code of 1986 or the Internal Revenue Code of 1986, whichever is applicable.

ITEM 7. Rescind rule 701—58.5(422) and insert in lieu thereof the following:

701—58.5(422) Minimum tax.

58.5(1) Effective for tax years beginning on or after January 1, 1982, but before January 1, 1987, an Iowa minimum tax is imposed in addition to the tax computed under Iowa Code section 422.60. The Iowa minimum tax on tax preference items is a percentage of the federal minimum tax on tax preference items. "Federal minimum tax" means the federal minimum tax for tax preferences computed under sections 56 through 58 of the Internal Revenue Code of 1954 for the tax year.

When a financial institution joins with at least one other corporation in the filing of a consolidated federal income tax return, and files a separate Iowa franchise tax return, the consolidated federal minimum tax shall be allocated to the separate entities included in the consolidated federal return. The allocation of the consolidated federal minimum tax shall be determined as follows: The consolidated federal minimum tax is multiplied by a fraction, the numerator of which is the sum of the taxpayer's federal tax preference items and the denominator of which is the total of the federal tax preference items of each entity included in the consolidated federal income tax return.

For tax years beginning on or after January 1, 1982, and prior to January 1, 1983, the Iowa minimum tax is 25 percent of the state's apportioned share of the federal minimum tax on tax preference items.

For tax years beginning on or after January 1, 1983, the Iowa minimum tax is 70 percent of the state's apportioned share of the federal minimum tax on tax preference items.

58.5(2) For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that it exceeds the taxpayer's regular tax liability computed under Iowa Code section 422.63. The minimum tax rate is 60 percent of the maximum franchise tax rate rounded to the nearest one-tenth of one percent or three percent. Minimum taxable income is computed as follows:

	State taxable income as adjusted by Iowa Code sections 422.35 and 422.61(4)
Plus:	Tax preference items, adjustments and losses added back
	Subtotal
Times:	Apportionment percentage
	Result
Less:	\$40,000 exemption amount
	Iowa alternative tax net operating loss deduction
Equals:	Iowa alternative minimum taxable income

For taxable years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under section 57 except for subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable income are those adjustments required by section 56 except for subsections (a)(4), (c)(1), (d), (f), and (g) of the Internal Revenue Code used to compute federal alternative minimum taxable income computed without adjustments, the \$40,000 exemption and the state alternative tax net operating loss deduction shall be substituted for the amounts in sections 56(f)(1)(B) and 56(g)(1)(B) of the Internal Revenue Code. Losses to be added are those losses

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

required to be added by section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

- a. Tax preference items are:
 1. Intangible drilling costs;
 2. Incentive stock options;
 3. Reserves for losses on bad debts of financial institutions;
 4. Appreciated property charitable deductions;
 5. Accelerated depreciation or amortization on certain property placed in service before January 1, 1987.
- b. Adjustments are:
 1. Depreciation;
 2. Mining exploration and development;
 3. Long-term contracts;
 4. Iowa alternative minimum net operating loss deduction;
 5. Book income or adjusted earnings and profits.
- c. Losses added back are:
 1. Farm losses;
 2. Passive activity losses.

Computation of Iowa alternative minimum tax net operating loss deduction.

Net operating losses computed under rule 701—59.2(422) carried forward from tax years beginning before January 1, 1987, are deductible without adjustment.

Net operating losses from tax years beginning after December 31, 1986, which are carried back or carried forward to the current tax year shall be reduced by the amount of tax preferences and adjustments taken into account in computing the net operating loss prior to applying allocation and apportionment. The deduction for a net operating loss from a tax year beginning after December 31, 1986, which is carried back or carried forward shall not exceed 90 percent of the alternative minimum taxable income computed without regard for the net operating loss deduction.

The exemption amount shall be reduced by 25 percent of the amount that the alternative minimum taxable income computed without regard to the \$40,000 exemption exceeds \$150,000. The exemption shall not be reduced below zero.

58.5(3) Penalty and interest. In computing penalty and interest for failure to file a timely return or to pay the minimum tax, refer to subrules 58.6(4) and 58.6(5). Effective for tax years beginning on or after January 1, 1986, estimate payments are required for minimum tax.

This rule is intended to implement Iowa Code section 422.60 as amended by 1987 Iowa Acts, Senate File 523.

ITEM 8. Amend rule 701—59.6(422) to read as follows:

701—59.6(422) Interest and dividends from foreign securities and securities of states and other political subdivisions. Interest and dividends from foreign securities and securities of states and their political subdivisions including Iowa shall be included in taxable income for periods beginning on or after January 1, 1980.

For tax years beginning on or after January 1, 1987, add dividends received from regulated investment companies exempt from federal income tax under section 852(b)(5) of the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

This rule is intended to implement Iowa Code sections 422.35 as amended by 1987 Iowa Acts, Senate File 523, and 422.61.

ITEM 9. Amend subrule 59.8(4), introductory paragraph, to read as follows:

59.8(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the targeted jobs credit under section 44 59 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

ITEM 10. Amend rule 701—59.9(422) to read as follows:

701—59.9(422) Jobs tax credit. Where a financial institution claims the federal targeted jobs tax credit as provided in section 44B 51 of the Internal Revenue Code, the amount of credit allowable must be used to increase the federal taxable income. For tax years beginning on or after January 1, 1977, the amount of credit allowable used to increase the federal taxable income shall be deductible in determining Iowa taxable income. Iowa taxable income shall not be reduced by the amount of credit allowable used to increase the federal taxable income for the credit allowed under section 40 of the Internal Revenue Code related to the Work Incentive Programs for tax years beginning before January 1, 1979.

ITEM 11. Strike "Internal Revenue Code of 1954" and insert "Internal Revenue Code" in rules 701—51.2(1)"b," 51.3(1), 52.2(3), 52.4(5), 52.5, 53.1, 53.2(3)"b," 53.7, 53.8(1), 53.8(2)"a"(3), 53.8(2)"b," 53.8(3), 53.10, 53.16, 54.2(3), 56.3(1)"b," 57.2(1)"b," 57.3(1), 58.2(2), 58.5, 59.1, 59.2(3), 59.15, and 61.3(1)"b."

[Filed 10/16/87, effective 12/9/87]

[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8102

**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 74, "Semiannual Mobile Home Tax," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, September 9, 1987, as **ARC 7913**.

These amendments are being made to implement 1987 Iowa Acts, Senate File 101, which provides a different filing period for elderly and disabled reduced tax rate claims, allows an extension of time to file such claims, and changes the date for county treasurers to file a claim for reimbursement with the Department.

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

These rules are identical to those published under Notice of Intended Action. The amendments will become effective December 9, 1987, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 135D.

The following amendments are adopted.

ITEM 1. Rescind subrule 74.4(3) and insert in lieu thereof the following:

74.4(3) Claims. Claims for the reduced tax rate must be filed with the county treasurer on or before June 1 immediately preceding the fiscal year during which the taxes are due and must contain an affidavit that the claimant intends to occupy the mobile home for six months or more during the fiscal year. The director of revenue and finance may extend the time for filing a claim through December 31 if good cause exists. The claim forms shall be provided by the department of revenue and finance.

Transition year from semiannual to annual tax. Beginning July 1, 1988, the mobile home tax will become an annual rather than a semiannual tax. A claim for the elderly and disabled reduced tax rate filed on or after January 1, 1988, but on or before June 1, 1988, is applicable to both the semiannual tax for the period beginning January 1, 1988, and ending June 30, 1988, and the annual tax for the period beginning July 1, 1988, and ending June 30, 1989.

ITEM 2. Amend subrule 74.4(4) to read as follows:

74.4(4) Reports to department of revenue and finance. On or before ~~April fifteenth~~ *August 1* of each year, the county treasurer of each county shall report to the department of revenue and finance the amount of taxes not to be collected for the current ~~calendar~~ *fiscal* year as a result of the reduced tax rate provided in Iowa Code section 135D.22(2). All such reports shall be made on forms ~~prescribed and~~ provided by the department of revenue and finance.

Transition year from semiannual to annual tax. *The report filed on or before August 1, 1988, shall include the amount of tax which will not be collected due to the granting of reduced tax rates for both the semiannual tax period beginning January 1, 1988, and ending June 30, 1988, and the annual tax period beginning July 1, 1988, and ending June 30, 1989.*

By not later than October fifteenth of each year, each county treasurer shall submit to the department of revenue and finance a supplemental report listing any additions or deletions to the original report. The supplemental report shall be made on forms prescribed and provided by the director.

[Filed 10/16/87, effective 12/9/87]

[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8092

SECRETARY OF STATE[750]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 47.1, the Secretary of State adopts amendments to 750—Chapter 10, "Alternative Voting Systems," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, September 9, 1987, as ARC 7888.

Three minor corrections have been made: (1) In 10.4(1)"a," line 5, the word "thereafter" has been deleted; (2) In 10.4(5)"b," line 3, the word "special" has been changed to "vote"; (3) In 10.4(5)"d," line 3, the phrase "in such a manner" has been replaced with the word "so".

This rule will become effective on December 9, 1987.

This rule is intended to implement Iowa Code section 52.5.

ITEM 1. Amend rule 750—10.4(52), subrules 10.4(1) to 10.4(7), to read as follows:

750—10.4(52) Ballot cards Special paper ballots and portable vote tallying system. As an alternative to mechanical voting machines and paper ballots, the board of supervisors of any county may authorize, purchase and order the use of ~~ballot cards~~ *special paper ballots* and a portable vote tallying system for voting at any or all of the regular polling places within a county at any election.

10.4(1) Definitions. The definitions established by this rule shall apply whenever the terms defined appear in relation to a portable vote tallying system used with the type of ballot defined in this rule.

a. "System" "Portable vote tallying system" means the ~~portable vote tallying device and the ballots used therewith~~ *a system employing special paper ballots under which votes are cast by voters marking special paper ballots with a vote marking device and are counted by use of automatic tabulating equipment located in the precinct polling place.*

b. "Ballot" means all of the offices or measures to be voted upon at a single election, whether they appear on one or more ~~ballot cards~~ *special paper ballots*.

c. "Ballot card" "Special paper ballot" means ~~the~~ *a* printed card bearing some or all of the names of the candidates and measures to be voted upon at an election, and upon which voters may record their votes ~~ballot designed to be marked by a voter with a vote marking device.~~

d. "Secrecy envelope" means a reusable envelope of sufficient construction that when the ~~ballot card~~ *special paper ballot* is inserted in it, all portions indicating voting marks are hidden from view.

e. "Tabulating device" means the portable apparatus which removes the ~~ballot card~~ *special paper ballot* from the secrecy envelope, examines and counts the votes recorded on the ~~ballot card~~ *special paper ballot*, and produces a paper printout of the results of the voting.

f. "Ticket" means each list of candidates nominated by a political party or group of petitioners.

10.4(2) Ballot cards Special paper ballots. The ~~ballot cards~~ *special paper ballots* shall be printed pursuant to Iowa Code chapters 43 and 49 and by any relevant provisions of any statutes which specify the form of

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ballots for special elections, so far as possible within the constraints of the physical characteristics of the system.

a. The ~~ballot cards~~ *special paper ballots* may be printed on both sides. If both sides are used, the words "VOTE BOTH SIDES" shall be clearly printed in red on the front and back of the ~~ballot card~~ *special paper ballot*, at the bottom.

b. At the top of the ~~ballot card~~ *front side of the special paper ballot*, the name and date of the election for which the ~~ballot card~~ *special paper ballot* is intended shall be stated, and shall include the words, "Official Ballot" and a designation of the ballot rotation, if any.

c. Immediately following the names of the candidates for each office, a blank line shall be printed to accommodate a write-in vote for that office.

d. An open, rectangular shaped space (☐) shall be printed in red opposite each candidate's name and write-in line on the ~~ballot card~~ *special paper ballot*, and opposite the "yes" and "no" for each public measure.

e. Immediately preceding ~~each ticket~~ *the offices to be voted upon* on the general election ~~ballot card~~ *special paper ballot*, the names of ~~a political party~~ *political parties* or groups of petitioners having candidates on the ballot shall be printed in capital letters. An open oval shaped space (☐) shall be printed in red opposite each name of a political party or group of petitioners ~~at the head of a ticket~~ for the purpose of straight ticket voting.

f. If necessary, the names of candidates printed on the ~~ballot card~~ *special paper ballot* shall be rotated in accordance with Iowa Code sections 43.28 and 49.31.

g. For partisan primary elections, the names of candidates representing each political party shall be printed on separate ~~ballot cards~~ *special paper ballots*. A different color shall be used for the ~~ballot card~~ *special paper ballot* for each party.

h. Following the names of all candidates and all public measures to be voted upon at an election, there shall be printed a facsimile of the signature of the commissioner who has caused the ballot to be printed pursuant to Iowa Code section 49.51, and a line to accommodate the initials of the precinct election official who endorses the ballot as provided in Iowa Code sections 43.36 and 49.82.

i. *The commissioner may place a summary of a convention question, amendment or public measure on the special paper ballot if the commissioner finds that the text of the question is too long to be printed in its entirety in readable type on the special paper ballot. If a summary is used on the special paper ballot the entire convention question, amendment or public measure shall be printed and displayed prominently in at least two places within the voting precinct and on the left-hand side inside each voting booth. The printing of the complete text of the question shall be in conformity with the provisions of Iowa Code chapter 49. The public measure shall be summarized by the commissioner and in the largest type possible printed on the special paper ballots, except that:*

(1) *In the case of the question of a constitutional convention, or of an amendment or measure to be voted on in the entire state, the summary to be placed on the special paper ballots shall be worded by the state commissioner of elections as required by Iowa Code section 49.44; and*

(2) *In the case of a public question to be voted on in a political subdivision lying in more than one county, the summary shall be worded by the commissioner responsible under Iowa Code section 47.2 for conducting that election.*

10.4(3) Programming the tabulating devices.

a. All programming of tabulating devices shall be performed under the supervision of the commissioner. The devices shall be programmed so as to ensure that all votes will be counted in accordance with the laws of Iowa.

b. All tabulating devices shall be tested before each election in accordance with Iowa Code section ~~52.35~~ *52.38*. The paper printout produced in testing the tabulating device ~~immediately before the start of the official tabulation of ballots cast in the election pursuant to section 52.35(3);~~ *The Code,* shall not be detached from the device and shall remain in evidence throughout the ~~tabulating process~~ *election day*. The ~~tabulating device,~~ *including the ballot box,* shall be sealed or locked upon completion of the test by the ~~precinct election official~~ *person performing the test*.

c. The maintenance key or keys used to gain access to the internal parts of the tabulating device shall be kept in a secure place and in a secure manner, in the custody of the commissioner. The key used to obtain the paper printout shall be ~~removed before the start of the official tabulation of votes and shall be kept by the chairman~~ *chairperson* of the precinct election officials in a secure manner.

d. At least one tabulating device shall be provided at each precinct polling place for an election.

e. Each precinct shall be furnished with an emergency ballot box which is suitably equipped with a lock and key or ~~numbered, tamperproof seal~~. In the event of power failure or malfunction of the tabulating device, ballots which have been voted shall be deposited in the locked or sealed emergency ballot box. The voted ballots so deposited may be removed from the locked emergency ballot box and tabulated before the polls close whenever a properly functioning tabulating device becomes available, or the voted ballots so deposited may be removed and counted manually immediately after the polls are closed.

10.4(4) Sample ballots and instructions to voters. Sample ~~ballot cards~~ *special paper ballots* and printed instructions for casting votes on ~~ballot cards~~ *special paper ballots* shall be prominently displayed in each polling place and inside each voting booth. Each ~~ballot card~~ *special paper ballot* shall also include an example of the method of marking the ballot ~~recommended by the manufacturer of the tabulating device~~. Further instructions shall be provided to any voter who requests assistance in accordance with Iowa Code section 49.90.

10.4(5) Manner of voting. After the precinct election official has endorsed a *special paper ballot*, the *special paper ballot* shall be inserted in a secrecy envelope and given to ~~any~~ *the person who is entitled to vote;* receive the ballot in accordance with the provisions of Iowa Code section 49.77.

a. Upon receipt of the ballot in the secrecy envelope, the voter shall retire alone to a voting booth and without delay mark the ~~ballot card~~ *special paper ballot*.

b. The voter shall ~~mark vote upon the ballot card~~ *special paper ballot by filling in* marking the appropriate rectangular (☐) or oval (☐) spaces with a ~~special vote marking device or a #2 pencil in the manner described in the instructions printed on the ballot~~.

When a write-in vote has been cast, the ~~ballot card~~ *special paper ballot* must also be marked in the corresponding rectangular space (☐) in order to be

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counted. A paster or sticker may be used in lieu of writing in a name.

c. After marking the ballot, the voter shall replace it in the secrecy envelope; and leave the voting booth at once; hand the ballot in the secrecy envelope to the precinct election official without revealing any of the marks on the ballot card.

d. The precinct election official voter shall at once deposit the ballot, still enclosed in the secrecy envelope, in the tabulating device in such a manner so that the ballot card special paper ballot is automatically removed from the secrecy envelope, the votes tabulated, and the ballot card special paper ballot deposited in the ballot box.

e. If the tabulating device is not equipped with a mechanism that will not permit more than one ballot to be inserted at one time, the voter shall be required to hand the ballot in the secrecy envelope to the precinct election official without revealing any of the marks on the ballot. The precinct election official shall at once deposit the ballot in the manner described in paragraph "d."

10.4(6) Results. After the polls are closed and all of the ballot cards special paper ballots have been processed by the tabulating device, the precinct election officials shall:

a. Insert the key in *Unlock* the tabulating device and obtain a paper printout showing the votes cast for each candidate and public measure.

b. Enter the totals for each candidate and public measure on the official tally sheet.

c. Fasten the paper printout to the official tally sheet.

d. Remove *Unlock* or remove the seals on the tabulating device ballot box and manually count the valid votes on any ballot cards special paper ballots found in the front portion portion(s) of the ballot box designated for unread ballots and ballots with write-in votes, and enter the votes so counted on the official tally sheet in the proper place.

e. Seal all ballot cards special paper ballots in a transfer case to be returned to the commissioner in accordance with Iowa Code section 50.12.

10.4(7) Absentee voting. The ballots to be provided to qualified voters who request absentee ballots shall be the same as the ballot cards to be used at the precinct polling places. Printed instructions as set out in subrule 10.4(8) of this chapter shall be included with the ballot card or cards special paper ballot or ballots given to or mailed to each absentee voter.

ITEM 2. Rescind subrule 10.4(8) and insert in lieu thereof the following:

10.4(8) Absentee voting instructions. A printed copy of instructions to the voter shall be included in the materials furnished to each person to whom absentee balloting materials are sent. The instructions to the voter shall be in substantially the following form:

**ABSENTEE VOTING INSTRUCTIONS
READ ALL INSTRUCTIONS CAREFULLY
BEFORE VOTING!**

If your ballot is not properly marked, your vote cannot be counted.

DO NOT MARK, FOLD OR PUNCH YOUR BALLOT CARD EXCEPT AS OUTLINED IN THESE INSTRUCTIONS.

Your ballot packet contains:

1. Official special paper ballot or ballots.
2. Secrecy envelope for ballot.
3. Affidavit envelope.
4. Return carrier envelope.

Follow all instructions carefully. If you spoil your ballot, you may return the entire ballot packet and request a new packet.

VOTING WITH ASSISTANCE

Voters who are blind, cannot read, or because of any other physical disability, are unable to mark their own ballots may have the assistance of any person the voter chooses.

MARKING YOUR BALLOT

1. Vote in secrecy. Iowa law requires that absentee voters mark their ballots so that no other person will know how the ballot is marked.

2. Study ballot carefully. Study the ballot carefully before voting. Once you have marked your ballot, the mark cannot be erased without spoiling the ballot. After you have determined the candidates and public measures for which you wish to vote, locate the rectangle opposite the names or questions.

3. Use a #2 pencil. Using only a #2 pencil mark the appropriate rectangle following the example on the ballot. Marks made by other pens or pencils may not be readable by the machine that will tabulate your votes. To vote a straight party ticket in the general election, mark the oval (○) opposite the name of the party or group of petitioners for whom you wish to vote.

4. Write-in votes. If you wish to vote for any person whose name is not printed on the ballot, write the name of that person in the appropriate blank space and mark the rectangle opposite the name you have written. If you do not mark the rectangle opposite the name you have written on the ballot, your write-in vote cannot be detected, and, therefore, will not be counted. Marking the rectangle without writing in a name will not spoil the rest of your ballot.

5. Overvoting. If you mark rectangles next to the names of more candidates than can be elected to any single office, your vote for that office will not be counted.

6. No extra marks. Put no mark of any kind on the ballot other than voting marks inside rectangles or an oval or writing a person's name as described above.

RETURNING YOUR BALLOT

1. Affidavit. After marking your ballot, carefully read the affidavit on the back of the ballot envelope (Form No. 4-C-), fill in the information requested, and sign your name. If the ballot was folded when you received it, fold it exactly as it was folded before. Place the ballot in the secrecy envelope, insert the secrecy envelope containing the ballot(s) in the carrier envelope (Form No. 4-B-) and securely seal the envelope.

2. Postmark before election day. The carrier envelope must be postmarked no later than the day before the election and must be received by the county commissioner by 9 a.m. on the Monday following the election in order to be counted.

3. Return postage. Return postage for this ballot is _____ cents.

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IF YOUR BALLOT IS REJECTED BEFORE THE OPENING OF THE BALLOT ENVELOPE, YOU WILL BE NOTIFIED OF THE REASON FOR THE REJECTION.

THIS BALLOT MUST BE RETURNED TO THE COUNTY COMMISSIONER WHETHER VOTED OR NOT VOTED.

This rule is intended to implement Iowa Code section 52.5.

[Filed 10/16/87, effective 12/9/87]

[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

ARC 8079

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.4, the Utilities Board (Board) hereby gives Notice that on October 15, 1987, the Board issued an order in Docket No. RMU-87-9, In Re: Requests or Demands for Contested Case Proceedings, "Order Adopting Rules."

On July 29, 1987, the Board issued an order in Docket No. RMU-87-9 commencing a rule making to consider the adoption of amendments to subrule 6.5(2), rule 8.2(476), subrule 10.2(1), and rule 11.1(478).

The Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 1987, as **ARC 7854**. Written comments were filed by the Consumer Advocate Division of the Iowa Department of Justice (Consumer Advocate) and Teleconnect Company (Teleconnect).

The adopted rules amend certain sections of the Utilities Division rules to comply with 1987 Iowa Acts, House File 193. The provision applies only in those instances where a request or demand is made for a contested case proceeding.

In written comments, Teleconnect suggested the Board deem private courier delivery and FAX to be "personal service," as required by the adopted rule. Since the statute specifies delivery by U.S. Postal Service or personal service, the Board is not free to include another means of delivery. Personal service is defined as delivery "in person." Since the adopted rule states the date of the U.S. Postal Service postmark is to be considered the filing date, parties actually have more time to file the requests or demands for contested case proceedings using the U.S. Postal Service than if delivered by private courier delivery or FAX. The Board will not consider private courier delivery and FAX to be "personal service."

These amendments will become effective on December 9, 1987, pursuant to Iowa Code section 17A.5. The following amendments are adopted:

ITEM 1. Amend subrule 6.5(2) to read as follows:

6.5(2) The request for formal complaint proceedings shall be filed within 14 days after issuance of the proposed resolution or the specified date of utility action, whichever is later. *The request shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made. The request shall be in writing and must be delivered by United States Postal Service or personal service.* The request shall include the file number (C-XX-XXX) marked on the proposed resolution. It shall explain why the proposed resolution should be modified or rejected and propose an alternate resolution, including any temporary relief desired. Copies of the request shall be mailed to the consumer advocate and the parties.

ITEM 2. Amend 199—8.2(476), introductory paragraph, to read as follows:

199—8.2(476) Procedure. A request for imposition of civil penalties must be made within 180 days of the date the party filing the request knew or should have known of the alleged violation. *The request shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made. The request shall be in writing and must be delivered by United States Postal Service or personal service.* The 180-day limit is tolled by commencing an informal complaint proceeding in accordance with Iowa Administrative Code 199—Chapter 6.

ITEM 3. Amend subrule 10.2(1), introductory paragraph, to read as follows:

10.2(1) Petition for permit shall be made to this board upon the form prescribed. *The petition shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made. The petition must be delivered by United States Postal Service or personal service.* A typical set of exhibits to such petition, which exhibits are labeled "A," "B," "C," "D" and "E" are described below:

ITEM 4. Amend 199—11.1(478) by adding a new subrule as follows:

11.1(4) Date of service. A petition for franchise shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made. The petition must be delivered by United States Postal Service or personal service.

[Filed 10/16/87, effective 12/9/87]

[Published 11/4/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/4/87.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
General Services Department[450]	1.6(5) [IAB 9/9/87, ARC 7924]	Effective date (10/14/87) 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 October 13, 1987 meeting.
Economic Development, Iowa Department of[261]	5.3(3) [IAB 9/9/87, ARC 7885]	Effective date (10/14/87) 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 October 13, 1987 meeting.

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED - October 21, 1987

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

No. 87-740. COMMITTEE ON PROFESSIONAL ETHICS & CONDUCT
v. DAVISON.

On review of the report of the Grievance Commission.
License suspended. Considered en banc. Opinion by
McGiverin, C.J. (8 pages \$3.20)

The commission found that the respondent knowingly and willfully failed to timely file both state and federal income tax returns for the years 1981, 1982, and 1984. Additionally, the commission found that he falsely certified compliance with state and federal income tax filing requirements in his 1983, 1984, and 1986 Iowa client security questionnaires. See Iowa Sup. Ct. R. 121.4. OPINION HOLDS: I. We reject Davison's request to perform public service as an alternative to suspension. II. Taking into account Davison's past unblemished record, the commission recommended a six-month suspension. Its recommendation in this case, however, is not commensurate with our past decisions. We suspend respondent's license to practice law in the courts of this state indefinitely without possibility of reinstatement for a period of one year from the date of filing of this opinion and until this court has approved a written application for reinstatement. Any application for reinstatement shall be governed by Iowa Supreme Court rule 118.13. Costs are taxed to Davison pursuant to Iowa Supreme Court Rule 118.22.

NO. 86-1746. KULOW v. STATE.

Appeal from the Iowa District Court for Jones County,
Larry J. Conney, Judge. Affirmed. Considered en banc.
Per Curiam. (4 pages \$1.60)

The petitioner challenges the denial of his application for postconviction relief, claiming his prison disciplinary case was not heard by independent hearing officers as required by Iowa Code section 903A.1 (1985). OPINION HOLDS: The petitioner's issue was not preserved for appellate review.

No. 85-1438. SINNARD v. ROACH.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Dubuque County, William G. Klotzbach, Judge. Decision of court of appeals vacated in part and affirmed in part; district court judgment affirmed in part and reversed in part. Considered en banc. Opinion by McGiverin, C.J. (21 pages \$8.40)

The defendants appeal from adverse rulings on separate motions for judgment notwithstanding the verdict. OPINION HOLDS: I. We agree with the defendants that the transactions between bank president Jack Roach and plaintiff Linda Walsh never reached the point where a legal duty arose on the part of Roach to protect Linda from either her husband's or her own folly. We therefore conclude that substantial evidence did not support plaintiff's claim for fraudulent misrepresentation against defendants Roach and the Key City Bank. These defendants' motion for directed verdict should have been sustained. II. The trial court sitting as a court of equity, simultaneously with the law action, entered an order cancelling the mortgage and assignment of equity on plaintiff's home on the basis it had been obtained by the bank through fraudulent misrepresentations. Because we have concluded there was no fraud established as against the bank, that basis for cancellation of the mortgage and assignment of equity no longer exists. Since we find that the mortgage and assignment of equity were procured for adequate consideration and without fraud, we conclude that it was error to order those instruments cancelled. This action by the court in equity is reversed. The case is remanded for entry of appropriate judgment on the note with interest and foreclosure of the mortgage. III. Upon review of the record, we are satisfied with the conclusion of the court of appeals that, while Iowa Rule of Civil Procedure 203 may have been technically violated, the trial judge's reception of the verdict did not result in any prejudice to defendant John Walsh. IV. We agree with the court of appeals that Instruction No. 22 fairly informed the jury as to plaintiff's duties regarding reliance and duty to investigate. V. The trial record is replete with examples of Walsh's behavior that the jury could reasonably conclude showed reckless disregard for Linda's rights. We agree with the court of appeals that substantial evidence supported the submission of, and the jury verdict for, punitive damages against defendant Walsh. Trial court did not err in entering judgment thereon. VI. We conclude there were no reversible errors leading to the judgment against defendant Walsh.

No. 86-1833. STATE v. DUNCAN.

Appeal from the Iowa District Court for Scott County, Margaret S. Briles, Judge. Reversed and remanded. Considered en banc. Opinion by McGiverin, C.J.

(14 pages \$5.60)

Defendants Bryan Lee Duncan and Marlene Marie Duncan were charged by trial information in four counts with delivery of an imitation controlled substance and with advertisement to promote distribution of an imitation controlled substance in violation of Iowa Code sections 204A.4(1), (2) and (3)(1985). Defendants moved to dismiss the trial information on the ground, inter alia, that Iowa Code chapter 204A is unconstitutionally vague in violation of their right to due process of law under the fourteenth amendment to the United States Constitution. After hearing, the trial court sustained their motion, finding chapter 204A unconstitutionally vague on its face, and dismissed the trial information. The State appeals from this ruling.

OPINION HOLDS: I. We believe the defendants' knowing possession of an imitation controlled substance is an imputed element of the offense in chapter 204A. II. The available legislative history indicates that Iowa's act is aimed at controlling different conduct than the statutes enacted by other states. We believe the legislature intended that chapter 204A should proscribe "play drugs" that encourage the practice of controlled substance use. III. Defendants do not claim, nor did the trial court conclude, that the statute is impermissibly vague in its specific application to their arrest. Rather, the defendants argued, and the court held, that chapter 204A was too vague to be constitutionally applied in any case. Assuming a challenged statute implicates no constitutionally protected conduct, a court examining a vagueness challenge of that statute should uphold the challenge only if the statute is impermissibly vague in all its applications. In this case, the defendants did not assert, nor did the trial court rule, that chapter 204A inhibits first amendment freedoms. We therefore examine the defendants' alleged conduct before analyzing other hypothetical applications of the law. We conclude that defendants have not carried the heavy burden of rebutting the presumed constitutionality of chapter 204A. As applied to defendants, the chapter satisfies the two requirements of giving a person of ordinary intelligence fair notice of what is prohibited, and providing an explicit standard for those who apply it. Chapter 204A as applied to defendants is not violative of defendants' due process rights because of vagueness. We therefore reverse the ruling of the trial court on defendants' motion to dismiss and remand the case for further appropriate proceedings.

NO. 86-1278. BECHTEL CORP. v. WESTERN CONTRACTING CORP.
Appeal from the Iowa District Court for Woodbury County,
Dewie J. Gaul, Judge. Reversed. Considered by Harris,
P.J., and Larson, Schultz, Carter, and Lavorato, JJ.
Opinion by Schultz, J. (9 pages \$3.60)

Judgment creditors appeal from the district court's refusal to permit registration of a federal district court judgment in an Iowa district court pursuant to Iowa Code chapter 626A. OPINION HOLDS: I. A judgment in an out-of-state federal district court may be registered as a "foreign judgment" in an Iowa district court under Iowa Code chapter 626A (1985) (the Uniform Enforcement of Foreign Judgments Act), which provides for registration of "foreign judgment[s]" which may then be enforced in the same manner as Iowa judgments. II. The uniform act is not preempted by 28 U.S.C. section 1963, which allows a judgment creditor to register a federal trial court judgment in another federal district court but does not allow enforcement until the judgment is final.

NO. 86-1297. STATE v. NEWSOM.
Appeal from the Iowa District Court for Clinton County,
C. H. Pelton, Judge. Affirmed. Considered by Harris, P.J.,
and Larson, Schultz, Carter, and Lavorato, J. Opinion by
Schultz, J. (12 pages \$4.80)

The State was granted discretionary review from an order suppressing statements made by the defendant to peace officers. OPINION HOLDS: I. From our de novo review of the record, we find the State has failed to meet its heavy burden of proving that defendant initiated the further interrogation. Rather, the evidence shows that agent Sywassink initiated it. II. We conclude that the State's initiation of further interrogation of the defendant, when he was represented by counsel, affirmatively circumvented defendant's sixth amendment rights. The police-initiated interrogation of defendant nullifies any waiver that defendant may have made. III. Independent of our sixth amendment analysis, we find defendant's right to counsel under the Iowa Constitution, article I, section 10 was also violated. In so doing, we rely upon our own interpretation of our state constitution. We hold that our constitution prohibits agents of the State from initiating any conversations or dealings with an accused concerning the criminal charge on which representation of counsel has been sought. A violation of this prohibition by the State shall preclude any waiver, by an accused, of the right to counsel.

NO. 86-1056. STATE v. HATTER.

Appeal from the Iowa District Court for Linn County,
Lynne E. Brady, Judge. Affirmed. Considered en banc.
Opinion by Schultz, J. (14 pages \$5.60)

The defendant appeals from his conviction and sentence for the crime of kidnapping in the first degree in violation of Iowa Code section 710.2 (1981). OPINION HOLDS: I. We find no merit in the defendant's argument that the trial court's instruction on the confinement or removal element of kidnapping misstated the law or undercut his theory of defense. The instruction, as given, aptly conveys the message that the confinement or removal must exceed that which is inherent in the crime of sexual abuse. While we approve the instruction as given, we do not depart from past suggestions that trial courts should generally adhere to the uniform instructions. II. We reject defendant's contention that neither the instruction given nor the uniform instruction incorporates the requirement of State v. Rich, 305 N.W.2d 742, 745 (Iowa 1981), namely, that the confinement or removal "definitely" exceed that which is incidental to the commission of sexual abuse. When we used the word "definitely" in Rich we did not intend that its use would elevate the quantity or quality of proof required in a criminal case. III. We hold that the trial court properly refused defendant's proposed instruction that the State must prove that he had the specific intent to confine or remove the victim in a manner exceeding that which is incident to sexual abuse. We conclude that Iowa Code sections 710.1 and 710.2 contain no such requirement. IV. We reject defendant's argument that the trial court's refusal to instruct the jury on the penalties for kidnapping in the first degree and the lesser included offense of sexual abuse denied him due process and equal protection of the law. V. We hold that the evidence was sufficient to sustain proof of the confinement or removal element of kidnapping. VI. In our de novo review we find that defendant's inculpatory statements were voluntarily given to the officers. Allowing evidence of these statements for impeachment purposes did not infringe on defendant's right to testify or deny elements of the offense. VII. We again reject defendant's contention that sections 710.1 and 710.2 are unconstitutionally vague. VIII. We also reject defendant's argument that life imprisonment without parole for first degree kidnapping is cruel and unusual punishment per se and as applied. IX. We reject all of defendant's claims of error whether we have specifically addressed them or not.

NO. 87-721. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT
OF THE IOWA STATE BAR ASSOCIATION v. GARDALEN.

On review of the report of the Grievance Commission.
License suspended. Considered en banc. Opinion by
Lavorato, J. (15 pages \$6.00)

Two of the three counts in the complaint deal with Gardalen's conduct in mishandling two lawsuits for his client Burns; the third count deals with Gardalen's failure to respond to the committee's inquiries concerning Burns' complaint. In both Burns' cases Gardalen neglected matters entrusted to him. In one suit, Gardalen allowed a 215.1 dismissal to be entered. In another, he allowed a default judgment to be entered against his client. In both cases, Gardalen met his client's numerous inquiries about the status of the cases with false assurances that the problems would be corrected. He took no corrective actions. OPINION HOLDS: I. Gardalen's inaction in both cases, as described above, easily demonstrates a conscious disregard of responsibilities assumed by Gardalen once he undertook representation. We agree with the commission that Gardalen violated numerous provisions of the Iowa Code of Professional Responsibility for Lawyers. II. Gardalen ignored two letters from the committee requesting a response to his client's complaint concerning the two lawsuits. Although he admitted receiving the letters, Gardalen could give no appropriate reasons for not responding other than he "developed some sort of mental block towards this case." Since we first said so in Committee on Professional Ethics & Conduct v. Horn, 379 N.W.2d 6, 7-9 (Iowa 1985), we have repeatedly held in twelve different cases that a lawyer commits a separate ethical violation when the lawyer ignores the committee's request for a reply to its disciplinary complaint. Because a lawyer's cooperation with the committee's investigative requests is so important to the integrity of the investigative process as well as to the public's confidence in our profession, we recognize that any failure to cooperate with the committee should be met with severe sanctions. By the same token, in meting out discipline, we have given much weight to a lawyer's voluntary cooperation. III. We agree with the commission's recommendation that Gardalen's license to practice law in this state should be suspended indefinitely, with no possibility of reinstatement for a period of six months from the date of this opinion. Gardalen must include in his application for reinstatement an assurance that he will not handle matters which may involve state court litigation unless he either (1) associates with a lawyer experienced in that type of practice or (2) secures our permission upon a showing of acquired proficiency in the relevant area of the law. Costs are assessed to Gardalen pursuant to Iowa Supreme Court Rule 118.22.

NO. 86-574. BEHR v. MEREDITH CORPORATION

Appeal from the Iowa District Court for Kossuth County, J. H. Andreasen, Judge. Reversed and remanded with directions. Considered en banc. Opinion by Lavorato, J. (13 pages \$5.20)

In this defamation action the defendant publisher moved for summary judgment, asserting among other things that there is no genuine issue of material fact because the published statements were substantially true, an absolute defense to a defamation action. The district court denied the motion for summary judgment, and we have permitted the defendant to challenge this ruling by the present interlocutory appeal. OPINION HOLDS: We recently recognized substantial truth as a defense in a defamation action. Thus it is no longer necessary for a libel defendant to establish the literal truth of the publication in every detail as long as the "sting" or "gist" of the defamatory charge is substantially true. In the present case it is undisputed that the defendant's publication accurately reported the plaintiff's conviction for filing false claims with a federal crop insurance agency. The publication's only inaccuracy came in suggesting that the plaintiff had received money from the false claims, where in fact the indemnity payments he sought had been withheld due to the agency's suspicion of fraud. Whether the plaintiff actually received any money is immaterial to the truth of the gist or sting that he was convicted of fraud, the heart of the matter in question. We conclude the publication about the plaintiff is substantially true as a matter of law. Because the substantial truth defense to a defamation action is established as a matter of law, there is no genuine issue of material fact permitting recovery by the plaintiff for defamation. We reverse and remand the case to the district court for entry of an order granting the defendant's motion for summary judgment.

NO. 86-1121. RICHARDS v. IOWA DEPARTMENT OF REVENUE.

Appeal from the Iowa District Court for Story County, Paul E. Hellwege, Senior Judge. Affirmed. Considered by Harris, P.J., and Larson, Schultz, Carter, and Lavorato, JJ. Opinion by Lavorato, J. (26 pages \$10.40)

A taxpayer, R. K. Richards, brought an administrative action to challenge a charitable-status property tax exemption granted to Northcrest, Inc., the operator of a nonprofit community for elderly people. The department of revenue upheld the exemptions granted to Northcrest, and Richards sought judicial review. The district court upheld the decision of the department of revenue, and Richards has appealed. OPINION HOLDS: I. The department did not preserve error on its contention that Richards lacks standing to bring this judicial review action. Questions of standing, unlike issues of subject matter jurisdiction, must be raised from the outset in order to preserve error. II. There was substantial evidence to support the agency's decision that Northcrest is a charitable institution and is therefore entitled to a property tax exemption. III. Costs on appeal are taxed to Richards.

NO. 86-749. STATE v. WEIR.

Appeal from the Iowa District Court for Warren County, Richard D. Morr, Judge. Affirmed. Considered en banc. Opinion by Neuman, J. (15 pages \$6.00)

Defendant Milton Weir appeals from the judgment and sentence imposed upon his conviction, following jury trial, of three counts of murder in the first degree and one count of robbery in the first degree, in violation of Iowa Code sections 707.2 and 711.2 (1985). The sole question presented for our review is whether the district court properly overruled defendant's pretrial motion to suppress incriminating evidence seized pursuant to a warrant allegedly issued without probable cause and in violation of Iowa Code section 808.3 (Supp. 1985). OPINION HOLDS: I. We are satisfied that the information furnished by DCI special agent David Fees' application established the requisite nexus between the crime and its fruits. II. Although Fees' affidavit and the magistrate's endorsement are devoid of any specific reference to informant Betsy Douglas' reliability or the credibility of the information she furnished, we believe that the "specified reasons" requirement of section 808.3 was intended by the legislature to apply only when the informant is not named in the application and accompanying affidavits. III. Even though the magistrate need not make express findings of credibility when a search warrant affidavit relies on hearsay from a named informant, factors such as the veracity and basis of knowledge of such an informant are still relevant, if not controlling, when a reviewing court assesses the totality of the circumstances. Under the circumstances, we think that Douglas' information would not merit the presumptive reliability of a citizen informant. We conclude, however, that the warrant application and its attachments sufficiently demonstrated the credibility of Douglas and her information. IV. The defendant failed to present any evidence establishing that Fees' failure to inform the magistrate that Douglas had demanded money in exchange for her information was knowing and intentional or done with a reckless disregard for the truth. He has therefore failed to carry his burden on the issue. V. We therefore conclude that the search warrant at issue withstands both statutory and constitutional scrutiny.

NOS. 87-278 & 86-1565. KELLY-SPRINGFIELD TIRE CO. v. IOWA STATE BOARD OF TAX REVIEW/SHELL OIL CO. v. IOWA DEPARTMENT OF REVENUE.

Appeals from the Iowa District Court for Polk County, J. P. Denato and Joel D. Novak, Judges. (No. 87-278) reversed and remanded; (No. 86-1565) affirmed in part, reversed in part and remanded. Considered en banc. Opinion by Carter, J. (18 pages \$7.20)

These consolidated appeals raise two legal issues in regard to income tax assessments by the Iowa Department of Revenue (IDOR) against Kelly-Springfield Tire Co. in No. 87-278 and Shell Oil Company in No. 86-1565. OPINION HOLDS:

NOS. 87-278 & 86-1565. KELLY-SPRINGFIELD v. BOARD OF TAX REVIEW (Cont'd).

I. The assessment of additional corporate income taxes by IDOR against Kelly-Springfield and against Shell were initiated more than three years after those taxpayers had filed corporate income tax returns for the years in question. The additional assessments were made within six months of receipt by IDOR of notice of the final disposition of the federal audit for the particular tax year. However, the additional assessment of Iowa income taxes was unrelated to the audit of the taxpayers' federal income tax liabilities. The federal audit exception to the three-year limitation in Iowa Code section 422.25(1) is available to IDOR only if adjustments made by the internal revenue service create a change of circumstances affecting the taxpayer's Iowa tax liability. We hold that any adjustment by IDOR to the taxpayers' liability in the present cases which was not initiated within three years following the filing of returns was untimely and invalid except as it may have related to changes required by the federal audit. II. The next issue concerns an alleged limitation on the power of the states to tax activities carried out on outer continental shelf (OCS) lands which Shell suggests is contained in the Outer Continental Shelf Lands Act, 43 U.S.C. section 1333(a). During the years at issue, certain of Shell's gross revenues were derived from sale of products extracted from OCS lands. In accordance with Iowa Code section 422.33(2)(b)(4), Shell's Iowa net income was derived by application of an apportionment formula wherein "the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales." In reviewing the legislative history of the OCSLA, we are convinced that the language restricting the application of state taxation laws to the OCS and denying to the state any interest in the natural resources or revenues from the seabed and subsoil of the OCS was intended as a limitation on the authority of states adjacent to OCS lands to extend legislative jurisdiction to the OCS. Iowa's imposition of the challenged corporation income taxes on Shell for the years 1975-80, inclusive, is in no way dependent upon the exercise of legislative jurisdiction on OCS lands. The inclusion of OCS revenues in gross sales for purposes of applying the statutory apportionment formula contained in Iowa Code section 422.33(2)(b)(4) apparently aids in obtaining an accurate measure of the tax to be imposed as a result of Shell's Iowa activities. We conclude that the district court properly rejected Shell's petition for judicial review on this issue.

NO. 86-445. HOME-CREST CORPORATION v. ALBRIGHT.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Luther T. Glanton, Judge. Decision of court of appeals vacated; district court judgment affirmed in part, reversed in part, and remanded. Considered en banc. Opinion by Larson, J. (7 pages \$2.80)

The plaintiff, Home-Crest Corporation, a cabinet manufacturer, sued the defendants, Albrights, on an open account for merchandise furnished to them. Albrights counterclaimed for breach of an alleged franchise agreement, fraud, and detrimental reliance. The jury returned a verdict in favor of Albrights on their counterclaim but did not return a verdict either way on Home-Crest's suit on the open account. The plaintiff's posttrial motions were denied, and they appealed. The court of appeals held there was no appellate jurisdiction because the district court had no authority to extend the time for appeal, and that the order of this court allowing a late appeal under Iowa Rule of Appellate Procedure 20(b) was ineffective. OPINION HOLDS: I. The district court did not have jurisdiction to order the extension of time. A timely notice of appeal is jurisdictional, and only this court, acting under rule of appellate procedure 20(b) may extend that time. The order of this court authorizing the late appeal was effective. It was not necessary for Home-Crest to refile the notice of appeal; the order of this court had the effect of ratifying the notice of appeal previously filed. II. We cannot conclude that the jury's verdict on the open account necessarily is subsumed in its verdict on the counterclaim. The two issues are entirely separate. We hold that a retrial of the Home-Crest claim should be held, but that the verdict rendered on behalf of Albrights against Home-Crest should remain intact.

NO. 86-1171. UNERTL v. BEZANSON.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge. Affirmed. Considered en banc. Opinion by Larson, J. (14 pages \$5.60)

The plaintiffs lost the savings deposits they had made in a corporation called Morris Plan Company of Iowa, an "industrial loan company" under Iowa Code chapter 536A. The plaintiffs claim the loss was largely the result of imprudent loans made by Morris Plan of Iowa to two related corporations, Morris Plan Company and MorAmerica Financial Corporation. The plaintiffs sued the Morris Plan Company and its officers and directors, as well as the officers and directors of Morris Plan of Iowa and MorAmerica, asserting claims of negligence, breach of fiduciary duty, gross negligence, and breach of implied contract. The district court dismissed the petition, relying in part on a conclusion that the petition failed to state a claim on which any relief could be granted because the defendants had no legal duty to the plaintiffs on any of the bases alleged. The plaintiffs have appealed from the dismissal. OPINION HOLDS: I. A creditor of a corporation may not maintain a personal action at law against the corporation's officers or

NO. 86-1171. UNERTL v. BEZANSON (Cont'd).

directors who have, by their mismanagement or negligence, committed a wrong against the corporation to the consequent damage of the creditor. The directors' duty to exercise diligence and care is a duty owed to the corporation, not to creditors of the corporation. Here the plaintiff depositors are creditors seeking to recover for breach of a duty to the corporation itself. Since such recovery is not permitted under our law, the plaintiffs' petition fails to state a claim upon which relief may be granted. II. There is no merit to the plaintiffs' contention that an administrative rule concerning the regulation of industrial loan companies creates an independent duty of care running from the officers and directors to the depositors. The administrative rule is devoid of any suggestion that it was intended to create a private remedy. III. The petition does not state a claim for breach of a fiduciary duty because there is no claim that any of the defendants occupied a position of trust in receiving the plaintiffs' deposits, or that the plaintiffs relied on the defendants in placing their deposits in the company. The complaint is that the defendants dissipated the money after it was received from the plaintiffs. IV. The petition does not state a claim for gross negligence because gross negligence is not a distinct cause of action but rather a measure of negligence.

NO. 87-643. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSOCIATION v. SHIRLEY G. STEELE.

On grant of discretionary appeal. License Suspended. Considered en banc. Opinion by Neuman, J. (13 pages \$5.20)

Complainant seeks review of the Grievance Commission's dismissal of the complaint filed in an attorney disciplinary action. The complaint charged that Steele misused and mishandled client funds. A division of the Grievance Commission dismissed the complaint, concluding that the committee failed to meet its burden of proving the charges by a convincing preponderance of the evidence. In accordance with Iowa Supreme Court Rule 118.11, we granted the committee permission to appeal. OPINION HOLDS: In the case before us, we are unable to reconcile dismissal by the Grievance Commission with persuasive record evidence of ethical violations, including Steele's own admission of misconduct. Her misconduct relates to the serious matter of a lawyer's duty to protect and preserve the property of a client. Steele cashed her client's settlement check without authorization, commingling those funds with attorney funds. We suspend Steele's license to practice law for not less than three years. Before we shall consider her reinstatement, Steele must prove that within thirty days from the filing of this opinion, she reimbursed her client for the funds to which he is entitled and that her trust accounting procedures adhere to the requirements of DR 9-102(A) and (B). Costs of this action shall be assessed against Steele in accordance with Iowa Supreme Court Rule 118.22.

NO. 86-597. STATE v. MANNION.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Woodbury County, Richard J. Vipond, Judge. Decision of court of appeals vacated; district court judgment affirmed. Considered en banc. Opinion by Harris, J. (7 pages \$2.80)

The defendant appeals from his conviction of operating a motor vehicle while intoxicated in violation of Iowa Code section 321.281 (1985). The defendant contends it was error to allow a police officer to testify of his refusal of an offer to take sobriety tests and to allow the jury to view the videotape of that refusal with the sound turned off. He thinks the result amounted to indirect testimony of his refusal to take sobriety tests in violation of his right to counsel under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). He also claims a violation of his privilege against self-incrimination. OPINION HOLDS: I. Defendant's claim that his right to counsel under the sixth amendment to the United States Constitution was violated is without merit. Because judicial proceedings had not been initiated at the time Mannion appeared on videotape, he was not yet entitled to counsel under the sixth amendment. II. Standing alone, in the absence of any evidence of Mannion's refusal, the videotape was admissible as physical, rather than testimonial, evidence. It does not violate the fifth amendment to compel physical, or real, evidence from an accused. Because an officer may testify of his observations of a suspect's movements, we think a videotape of those movements is also admissible. III. We need not decide the defendant's contention that the addition of the officer's testimony shifts the nature of the videotape from physical evidence to communicative evidence. Even if we accept this contention, there was still no fifth amendment violation because the evidence was not improperly compelled. IV. We also find no violation of the defendant's right to counsel under Miranda. We find no reason to hold a request to perform sobriety tests is any more of an interrogation than a request to submit to blood tests. Asking a person arrested for driving while intoxicated to perform field sobriety tests is "normally attendant" to such an arrest, similar to a request to submit to fingerprinting or photographing.

NO. 87-32. TYRRELL v. IOWA DISTRICT COURT.

Certiorari to the Iowa District Court for Johnson County, Van D. Zimmer, Judge. Writ annulled. Considered en banc. Opinion by Larson, J. (6 pages \$2.40)

Timothy Thomas Tyrrell was charged with assault causing bodily injury under Iowa Code section 708.2 (1985), an indictable misdemeanor. After trial to a jury, Tyrrell was found guilty of simple-misdemeanor assault, an included offense. The district associate judge sentenced Tyrrell to thirty days in jail and advised him that he had a right of appeal to the district court. Tyrrell filed a notice of appeal to district court the same day. The State moved to dismiss the appeal on the ground that the district court had

NO. 87-32. TYRRELL v. IOWA DISTRICT COURT (Cont'd).

no jurisdiction to hear an appeal in a case tried as an indictable offense, even though the actual conviction was for a simple misdemeanor. The district court ruled that it lacked jurisdiction and dismissed Tyrrell's appeal. Tyrrell obtained a writ of certiorari to challenge that ruling. OPINION HOLDS: We do not believe that it was the intent of the legislature that a person actually convicted of a simple misdemeanor under district court procedures should have an appeal as a matter of right. Appeals from judgments of a district associate judge are determined by the manner in which the case was tried. In the present case, however, the district associate judge misinformed Tyrrell as to the procedure to be followed in perfecting an appeal. By the time he became aware of the problem, it was too late to apply to this court for a delayed discretionary review. We believe under these circumstances that Tyrrell should be given an opportunity to make an application for discretionary review. We therefore affirm the district court's dismissal of Tyrrell's attempted appeal without prejudice to his right to make such an application.

NO. 86-1772. HAJEK v. IOWA STATE BOARD OF PAROLE.

Appeal from the Iowa District Court for Polk County, Richard D. Morr, Judge. Reversed. Considered en banc. Opinion by Harris, J. (6 pages \$2.40)

Defendant Hajek was charged with a robbery which took place in Cedar Rapids on April 21, 1985. While the charge was pending he was released on bond. On August 29th he pled guilty to second-degree robbery, a forcible felony. Sentencing was set for a later date. On August 30th, while still free on bond, Hajek committed a burglary. On October 16, 1985, he was sentenced to a ten-year indeterminate sentence for the April 21st robbery. On April 4, 1986, Hajek was convicted of second-degree burglary for the August 30th offense. He was given a ten-year indeterminate term with credit for time served, the sentence to run concurrently with the robbery sentence. When he applied for parole Hajek was advised by the board of parole that his robbery conviction had been construed by the board as a prior conviction for a forcible felony, thus invoking the mandatory minimum term provided by Iowa Code section 906.5. Hajek unsuccessfully challenged this interpretation by an administrative appeal and then brought this petition for judicial review. The district court affirmed the agency action and Hajek has appealed to us. OPINION HOLDS: The term "prior conviction" has been the subject of interpretation in a number of our cases under the recidivism statute (now Iowa Code section 902.8 (1987)). The term also appears in Iowa Code section 906.5 (1985) which limits parole possibilities for persons serving a criminal sentence. We think the legislature intended for the term to be interpreted the same in both statutes. We therefore conclude that the term "prior convictions," used in section 906.5, does not refer to charges in which judgment had not yet been pronounced.

NO. 86-1248. IN THE INTEREST OF J.L.L.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Clay County, Emery H. Emerson, Jr., Juvenile Court Referee. Decision of court of appeals and judgment of district court affirmed. Considered by Harris, P.J., Larson, Schultz, Carter, and Lavorato, JJ. Opinion by Harris, J. (10 pages \$4.00)

The natural mother of a three-year-old child challenges a juvenile court order terminating her parental rights pursuant to Iowa Code chapter 600A. OPINION HOLDS: I. Unlike adversarial proceedings under chapter 232, a termination of parental rights under chapter 600A where the parent has consented to termination does not automatically carry with it a right to counsel at public expense for an indigent parent. We believe it was appropriate for the legislature to distinguish between voluntary and involuntary terminations and to provide counsel at public expense only for the latter. II. In the present case, we do not believe the mother had a right to counsel at public expense. The mother concedes that she initially consented to the chapter 600A termination proceeding, but she argues that she withdrew that consent before the hearing and thereby transformed the case into an involuntary proceeding carrying with it the right to counsel at public expense. We do not agree that the proceeding was transformed into an involuntary one by the mother's unsuccessful request for a continuance to permit her to seek counsel. The mere desire for counsel could be motivated by matters other than withdrawal of consent to the termination. The record does not include any clear withdrawal of the consent which was unequivocally given at the beginning of the proceeding. III. The juvenile court did not abuse its discretion by denying the mother's request for a continuance to permit her to seek counsel. The proposed adoptive parents had driven to Iowa from Texas in the good faith expectation that the hearing would be held on the scheduled date, and the mother had been aware of the hearing for two months and had ample time to obtain counsel. Under these circumstances, the denial was not unreasonable. IV. The parties at the hearing, who included the natural father but not the mother, waived their right to a record or transcript of the hearing. The mother now contends the absence of a record without an express waiver from her requires a reversal of the termination as to her. We do not agree. We are not convinced the legislature intended to require a recording or transcript whenever a parent chooses not to appear. At any rate, even if we were to assume error, we do not believe this mother was prejudiced by the absence of a record or transcript.

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