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CONTENTS IN THIS ISSUE

Pages 2040 to 2094 include ARC 8666 to ARC 8688 and ARC 8690 to ARC 8702

AGENDA

Administrative rules review committee2033

ALL AGENCIES

Agency identification numbers2038

APPEAL BOARD, STATE[543]

MANAGEMENT DEPARTMENT[541] "umbrella"

Filed Emergency, Amend and transfer 60—chs 1 to 5 to 543—chs 1 to 5 ARC 87002058

ATTORNEY GENERAL

Opinions summarized2097

BANKING DIVISION

Notice—Agricultural credit corporation maximum loan rate2040

BLIND DIVISION[423]

HUMAN RIGHTS DEPARTMENT[421] "umbrella"

Filed, Public records and fair information practices, 2.1, 2.2, ch 13 ARC 87022063

CITY FINANCE COMMITTEE[545]

MANAGEMENT DEPARTMENT[541] "umbrella"

Notice, Rescind 230—chs 1 to 6; adopt 545—chs 1 to 9 ARC 86912040

COLLEGE AID COMMISSION[283]

Notice, Iowa guaranteed student loan program, 245—10.79, 10.79(2) ARC 86712044

Filed, Iowa guaranteed student loan program, Amendments to 245—ch 10 ARC 86722069

COUNTY FINANCE COMMITTEE[547]

MANAGEMENT DEPARTMENT[541] "umbrella"

Filed Emergency, Amend and transfer 292—chs 1 to 5 to 547—chs 1 to 5; Petitions for rule making, declaratory rulings, agency procedure for rule making, chs 6, 7, 8 ARC 86902058

DELAYS

Education Department[281]
Education standards, ch 42095

Transportation Department[761]
Delay lifted, 602.112095

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"

Filed, Fees, 320—15.2(1), 15.2(2), 15.3(1), 15.3(2) ARC 86782070

EDUCATION DEPARTMENT[281]

Filed, Rehabilitation division, fair information practices, 670—35.23 ARC 86882070

EMPLOYMENT APPEAL BOARD[486]

INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"

Notice, Public records and fair information practices, ch 8 ARC 86702044

EMPLOYMENT SERVICES DEPARTMENT[341]

Filed, Public records and fair information practices, ch 2 ARC 86792074

HUMAN SERVICES DEPARTMENT[441]

Notice, Granting assistance, medically needy, 41.7(2)"1," 41.8(2), 86.12(1) ARC 87012046

Notice, ADC eligibility under SEID project, work and training programs, 48.3(3), 55.2(1)"a" ARC 86762047

Notice, Gamblers assistance program, 162.1, 162.3(1), 162.4(3) ARC 86772048

INSURANCE DIVISION

Notice, Hearing — workers' compensation insurance ... 2048

Notice of published monthly average for interest rates on life insurance policy loans, effective 5/1/88, 6/1/882048

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"

Filed, Public records and fair information practices, ch 8 ARC 86802078

LOTTERY DIVISION[705]

REVENUE AND FINANCE DEPARTMENT[701] "umbrella"

Notice, Pull-tab general rules, 11.3 ARC 86852049

Notice, Lotto America, 12.7(4) ARC 86832049

Filed, Licensing, operation of the lottery, 3.19, 4.18 ARC 86862082

Filed Emergency, Pull-tab general rules, 11.3 ARC 86842059

Filed Emergency, Lotto America, 12.7(4) ARC 8682 ... 2059

MANAGEMENT DEPARTMENT[541]

Notice, Personnel management information system board, 1.8(1) ARC 86982049

Filed Emergency, Rescind 270—ch 5 ARC 86992059

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"

Filed Emergency, Amend and transfer 470—chs 135, 136 to 653—chs 1 to 25 ARC 86922060

NATURAL RESOURCES DEPARTMENT[561]

Notice, Groundwater protection program evaluation, ch 15 ARC 86942049

Continued on page 2031

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
24	Friday, April 29, 1988	May 18, 1988
25	Friday, May 13, 1988	June 1, 1988
26	Friday, May 27, 1988	June 15, 1988

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

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Fourth quarter	April 1, 1988, to June 30, 1988	\$ 37.00 plus \$1.48 sales tax

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

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"	
Filed, Manufacturer's certificate of origin, ch 20	
ARC 8693	2082

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"	
Filed, Nursing education, 2.1, 2.3(2)"d," 2.6(1)"a,"	
2.6(2)"c" ARC 8696	2083
Filed Emergency After Notice, Licensure to	
practice — RN/LPN, 3.1 ARC 8695	2061

OBJECTION

Civil Rights Commission[161]	
Defining "retirement plans" and "injury to	
employees," 2.1(8); defining "reasonable	
accommodation," 8.27(6)"a"(2), 8.27(6)"b"	2096

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"	
Filed, Rescind 1.1(9) and adopt Public information	
and inspection of records, ch 14 ARC 8669	2085

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"	
Notice, Board of speech pathology and audiology	
examiners, 470—155.5, 155.7(8) ARC 8697	2051

PUBLIC BROADCASTING DIVISION[225]

CULTURAL AFFAIRS DEPARTMENT[221] "umbrella"	
Notice, Fair information practices, ch 3 ARC 8666	2051

PUBLIC HEALTH DEPARTMENT[641]

Filed, Fair information practices and public	
records, ch 175 ARC 8681	2089

PUBLIC HEARINGS

Summarized list	2036
-----------------	------

RACING AND GAMING DIVISION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"	
Filed Emergency After Notice, Mutuel rules,	
8.2(4)"l" ARC 8667	2061
Filed, Mutuel rules, 8.2(4)"l" ARC 8668	2093

REVENUE AND FINANCE DEPARTMENT[701]

Notice, Forms — substitution of official Iowa tax	
returns, 8.25 to 8.35 ARC 8673	2052
Notice, Assessment practices and equalization,	
71.12(2)"c," 71.12(3)"c" ARC 8674	2053
Filed, Amendments to chs 12, 30, 38, 43, 51, 52, 54,	
55, 57, 60 ARC 8675	2094

SUPREME COURT

Decisions summarized	2100
----------------------	------

USURY

Notice	2057
--------	------

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181] "umbrella"	
Notice, Disconnection rules, 19.4(15), 19.4(15)"c,"	
19.4(15)"d," 20.4(15), 20.4(15)"c," 20.4(15)"d"	
ARC 8687	2056

Schedule for Rule Making 1988

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. 8	Jan. 27	Feb. 16	Mar. 2	Mar. 23	Apr. 27	July 25
Jan. 22	Feb. 10	Mar. 1	Mar. 16	Apr. 6	May 11	Aug. 8
Feb. 5	Feb. 24	Mar. 15	Mar. 30	Apr. 20	May 25	Aug. 22
Feb. 19	Mar. 9	Mar. 29	Apr. 13	May 4	June 8	Sep. 5
Mar. 4	Mar. 23	Apr. 12	Apr. 27	May 18	June 22	Sep. 19
Mar. 18	Apr. 6	Apr. 26	May 11	Junè 1	July 6	Oct. 3
Apr. 1	Apr. 20	May 10	May 25	June 15	July 20	Oct. 17
Apr. 15	May 4	May 24	June 8	June 29	Aug. 3	Oct. 31
Apr. 29	May 18	June 7	June 22	July 13	Aug. 17	Nov. 14
May 13	June 1	June 21	July 6	July 27	Aug. 31	Nov. 28
May 27	June 15	July 5	July 20	Aug. 10	Sep. 14	Dec. 12
June 10	June 29	July 19	Aug. 3	Aug. 24	Sep. 28	Dec. 26
June 24	July 13	Aug. 2	Aug. 17	Sep. 7	Oct. 12	Jan. 9 '89
July 8	July 27	Aug. 16	Aug. 31	Sep. 21	Oct. 26	Jan. 23 '89
July 22	Aug. 10	Aug. 30	Sep. 14	Oct. 5	Nov. 9	Feb. 6 '89
Aug. 5	Aug. 24	Sep. 13	Sep. 28	Oct. 19	Nov. 23	Feb. 20 '89
Aug. 19	Sep. 7	Sep. 27	Oct. 12	Nov. 2	Dec. 7	Mar. 6 '89
Sep. 2	Sep. 21	Oct. 11	Oct. 26	Nov. 16	Dec. 21	Mar. 20 '89
Sep. 16	Oct. 5	Oct. 25	Nov. 9	Nov. 30	Jan. 4 '89	Apr. 3 '89
Sep. 30	Oct. 19	Nov. 8	Nov. 23	Dec. 14	Jan. 18 '89	Apr. 17 '89
Oct. 14	Nov. 2	Nov. 22	Dec. 7	Dec. 28	Feb. 1 '89	May 1 '89
Oct. 28	Nov. 16	Dec. 6	Dec. 21	Jan. 11 '89	Feb 15 '89	May 15 '89
Nov. 11	Nov. 30	Dec. 20	Jan. 4 '89	Jan. 25 '89	Mar. 1 '89	May 29 '89
Nov. 25	Dec. 14	Jan. 3 '89	Jan. 18 '89	Feb. 8 '89	Mar. 15 '89	June 12 '89
Dec. 9	Dec. 28	Jan. 17 '89	Feb. 1 '89	Feb. 22 '89	Mar. 29 '89	June 26 '89
Dec. 23	Jan. 11 '89	Jan. 31 '89	Feb. 15 '89	Mar. 8 '89	Apr. 12 '89	July 10 '89

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

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]

The Administrative Rules Review Committee will hold its regular statutory meeting Tuesday, May 10, 1988, 10 a.m. and Wednesday, May 11, 1988, 9 a.m. in Committee Room 24, State Capitol. The following rules will be reviewed:

DIVISION I
Rules under Notice and Filed Emergency Rules

Bulletin

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181] "umbrella"

Public records and fair information practices, ch 16 ARC 8635 4/20/88

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Infectious and contagious diseases (Aujeszky's disease segment), 30—16.147 to 16.153 ARC 8648..... 4/20/88

APPEAL BOARD, STATE[543]

MANAGEMENT DEPARTMENT[541] "umbrella"

Amend and transfer 60—chs 1 to 5 to 543—chs 1 to 5, filed emergency ARC 8700 5/4/88

ARCHAEOLOGIST[685]

REGENTS BOARD[681] "umbrella"

Confidentiality of archaeological site information, ch 14 ARC 8645..... 4/20/88

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181] "umbrella"

Public records and fair information practices, ch 6 ARC 8636 4/20/88

CITY FINANCE COMMITTEE[545]

MANAGEMENT DEPARTMENT[541] "umbrella"

Rescind 230—chs 1 to 6; adopt 545—chs 1 to 9 ARC 8691 5/4/88

COLLEGE AID COMMISSION[283]

EDUCATION DEPARTMENT[281] "umbrella"

Iowa guaranteed student loan program, 245—10.79 "1," 10.79(2)"1" ARC 8671 5/4/88

COUNTY FINANCE COMMITTEE[547]

MANAGEMENT DEPARTMENT[541] "umbrella"

Amend and transfer 292—chs 1 to 5 to 547—chs 1 to 5; petition for rule making, declaratory rulings, agency procedure for rule making, chs 6, 7, 8, filed emergency ARC 8690 5/4/88

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Public records and fair information practices, ch 100 ARC 8631 4/20/88

EMPLOYMENT APPEAL BOARD[486]

INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"

Public records and fair information practices, ch 8 ARC 8670 5/4/88

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561] "umbrella"

Rules of practice in contested cases, ch 7, rescind 900—ch 7 ARC 8657 4/20/88

Requirements for properly plugging abandoned wells, ch 39 ARC 8658 4/20/88

Permits, 102.14(3)"a" notice ARC 8210 terminated ARC 8656 4/20/88

HUMAN SERVICES DEPARTMENT[441]

Granting assistance, medically needy, 41.7(2)"1"(1),(2), 41.8(2), 86.12(1) ARC 8701 5/4/88

ADC eligibility under the SEID project, work and training programs, 48.3(3), 55.2(1)"a" ARC 8676 5/4/88

Administration, 65.4(1), 65.19(6)"c"(5) ARC 8640 4/20/88

Conditions of eligibility, application and investigation, 75.1(11)"b" to "g," 75.1(14)"a" to "f," 75.1(15), 75.1(15)"a," 75.1(15)"a"(3),(6), 75.1(15)"e," 75.1(20), 75.3(1) to 75.3(4), 75.13, 75.25, 76.1, 76.1(2), 76.1(4) to 76.1(6), 76.2(1), 76.2(2), 76.4, 76.6, 76.7, 76.10(1), 76.10(1)"j," 76.10(2), 76.11 ARC 8639 4/20/88

Intermediate care facilities, intermediate care facilities for the mentally retarded, 81.6(11)"o," 82.5(11)"m" ARC 8641 4/20/88

Medically needy, 86.10(6) ARC 8642 4/20/88

Health maintenance organizations, 88.3(2) ARC 8665 4/20/88

State payment program for services to adults, ch 132 ARC 8638 4/20/88

Gamblers assistance program, 162.1, 162.3(1), 162.4(3) ARC 8677 5/4/88

INSPECTIONS AND APPEALS DEPARTMENT[481]

- Care facilities — to whom license is issued, 57.3(4), 58.3(4), 59.3(4), 62.3(3), 63.3(5), 64.3(4) **ARC 8654** 4/20/88
 Administration of insulin in care facilities, 57.19(3)"c," 62.15(2)"d," 63.18(3)"c" **ARC 8655** 4/20/88

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181] "umbrella"

- Motor vehicle service contracts, 23.3 to 23.8, 23.12, 23.13, 23.20, 23.21, 23.23 to 23.25, 23.31 to 23.34 **ARC 8659** 4/20/88
 Health maintenance organizations, 40.5(3) **ARC 8651** 4/20/88

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[341] "umbrella"

- Employer's contribution and charges, claims and benefits, benefit payment control, 3.4, 3.7(2), 3.7(3), 3.25, 3.26, 3.40(2), 3.43(12), 3.47, 3.82, 4.13(2), 4.39(13), 4.58, 5.15 **ARC 8650** 4/20/88

LOTTERY DIVISION[705]

REVENUE AND FINANCE DEPARTMENT[701] "umbrella"

- Operation of the lottery, Lotto America, 4.9(4), 4.9(11), 4.9(12), 12.8, **ARC 8626**, also filed emergency **ARC 8625** 4/20/88
 Lotto, 10.4(3), **ARC 8628**, also filed emergency **ARC 8627** 4/20/88
 Pull-tab general rules, 11.3, **ARC 8685**, also filed emergency **ARC 8684** 5/4/88
 Lotto America, ch 12, notice **ARC 8351** terminated **ARC 8629** 4/20/88
 Lotto America, 12.7(4), **ARC 8683**, also filed emergency **ARC 8682** 5/4/88

MANAGEMENT DEPARTMENT[541]

- Organization — personnel management information system board of review, 1.8(1) **ARC 8698** 5/4/88
 Rescind 270—ch 5, filed emergency **ARC 8699** 5/4/88

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"

- Amend and transfer 470—chs 135 and 136 to 653—chs 1 to 25, filed emergency **ARC 8692** 5/4/88

NATURAL RESOURCES DEPARTMENT[561]

- Groundwater protection program evaluation, ch 15 **ARC 8694** 5/4/88

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"

- Licensure to practice RN/LPN, 3.2(2)"c" **ARC 8616** 4/20/88
 Disciplinary proceedings, ch 4 **ARC 8653** 4/20/88

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641] "umbrella"

- Hearing aid dealer examiners, 470—145.6(1) **ARC 8624** 4/20/88
 Speech pathology and audiology examiners, 470—155.5, 155.7(8) **ARC 8697** 5/4/88

PUBLIC BROADCASTING DIVISION[225]

CULTURAL AFFAIRS DEPARTMENT[221] "umbrella"

- Fair information practices, ch 3 **ARC 8666** 5/4/88

RACING AND GAMING DIVISION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481] "umbrella"

- Mutuel rules — daily triple wagering, 8.2(4)"1," filed emergency after notice **ARC 8667** 5/4/88

REAL ESTATE EXAMINING BOARD[193E]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181] "umbrella"

- Public records and fair information practices, ch 5 **ARC 8634** 4/20/88

REGENTS BOARD[681]

- Personnel administration, 3.39(2) **ARC 8644** 4/20/88

REVENUE AND FINANCE DEPARTMENT[701]

- Forms — substitution of official Iowa tax returns, 8.25 to 8.35 **ARC 8673** 5/4/88
 Assessment practices and equalization, 71.12(2)"c," 71.12(3)"c" **ARC 8674** 5/4/88
 Administration, cigarette tax, tobacco tax, 81.16, 82.4(1), 83.3(1)"3," 83.3(2) **ARC 8664** 4/20/88

TRANSPORTATION DEPARTMENT[761]

- Motor vehicle equipment, regulations applicable to carriers, 450.1, 520.1(1)"a" and "b," **ARC 8633**, also filed emergency **ARC 8632** 4/20/88

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181] "umbrella"

- Disconnection rules, 19.4(15), 19.4(15)"c" and "d," 20.4(15), 20.4(15)"c" and "d" **ARC 8687** 5/4/88
 Directory listings, 22.3(2)"i" **ARC 8661** 4/20/88
 Telephone outages, rescind 22.6(1)"b" and reletter **ARC 8660** 4/20/88

DIVISION II
Filed Rules, Filed Without Notice, and
Filed Emergency After Notice

Bulletin

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]	
Fertilizers and agricultural lime — sample fee, 30—8.20(2) ARC 8647	4/20/88
BLIND, DIVISION FOR THE[423]	
HUMAN RIGHTS DEPARTMENT[421] “umbrella”	
Public records and fair information practices, 2.1, 2.2, ch 13 ARC 8702	5/4/88
COLLEGE AID COMMISSION[283]	
EDUCATION DEPARTMENT[281] “umbrella”	
Iowa guaranteed student loans, amendments to 245—ch 10 ARC 8672	5/4/88
DENTAL EXAMINERS BOARD[650]	
PUBLIC HEALTH DEPARTMENT[641] “umbrella”	
Fees, 320—15.2(1), 15.2(2), 15.3(1), 15.3(2) ARC 8678	5/4/88
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]	
Youth affairs, amendments to ch 14 ARC 8630	4/20/88
EDUCATION DEPARTMENT[281]	
Rehabilitation division — public records and fair information practices, 670—35.23 ARC 8688	5/4/88
EMPLOYMENT SERVICES DEPARTMENT[341]	
Public records and fair information practices, ch 2 ARC 8679	5/4/88
JOB SERVICE DIVISION[345]	
EMPLOYMENT SERVICES DEPARTMENT[341] “umbrella”	
Employer’s contributions and charges, claims and benefits, 3.83 to 3.88, 4.1(21), 4.2(1)“h”(1),(2),(3), 4.2(1)“j,” 4.9, 4.20, 4.21, 4.22(2), 4.22(3), 4.51 to 4.54 ARC 8649	4/20/88
Public records and fair information practices, ch 8 ARC 8680	5/4/88
LOTTERY DIVISION[705]	
REVENUE AND FINANCE DEPARTMENT[701] “umbrella”	
Licensing, operation of the lottery, 3.19, 4.18 ARC 8686	5/4/88
NATURAL RESOURCE COMMISSION[571]	
NATURAL RESOURCES DEPARTMENT[561] “umbrella”	
Manufacturer’s certificate of origin, ch 20 ARC 8693	5/4/88
NURSING BOARD[655]	
PUBLIC HEALTH DEPARTMENT[641] “umbrella”	
Nursing education, 2.1, 2.3(2)“d,” 2.6(1)“a,” 2.6(2)“c” ARC 8696	5/4/88
Licensure to practice — RN/LPN, 3.1, filed emergency after notice ARC 8695	5/4/88
Nursing practice for RN/LPN, 6.5(1)“c”(4) ARC 8652	4/20/88
Examination of public records, ch 11 ARC 8617	4/20/88
PHARMACY EXAMINERS[657]	
PUBLIC HEALTH DEPARTMENT[641] “umbrella”	
Minimum standards for the practice of pharmacy, rescind 8.7 and renumber ARC 8623	4/20/88
Biohazard vertical flow hood for preparation of parenteral antineoplastic products, 8.12(2)“a”(5), (6) ARC 8622	4/20/88
Controlled substances, rescind 10.10(5), 10.13(7), 10.13(11) and renumber ARC 8621	4/20/88
Public information and inspection of records, ch 14, rescind 1.1(9) ARC 8669	5/4/88
PUBLIC HEALTH DEPARTMENT[641]	
Fair information practices and public records, ch 175 ARC 8681	5/4/88
PUBLIC SAFETY DEPARTMENT[661]	
Amend and transfer 680—chs 1 to 19 to 661—chs 1 to 19, 630—ch 12 to 661—ch 20, 566—ch 1 to 661—ch 21 ARC 8662	4/20/88
RACING AND GAMING DIVISION[491]	
INSPECTIONS AND APPEALS DEPARTMENT[481] “umbrella”	
Mutuel departments — daily triple wagering, 8.2(4)“l,” ARC 8668, also filed emergency after notice ARC 8667	5/4/88
REGENTS BOARD[681]	
Transfer, renumber and amend 720—chs 1 to 16 to 681—chs 1 to 16 ARC 8619	4/20/88
Personnel administration, 3.39(14), 3.56(5), 3.67, 3.67(2), 3.67(4), 3.69, 3.69(1), 3.70, 3.101 ARC 8643	4/20/88
REVENUE AND FINANCE DEPARTMENT[701]	
Procedure for nonlocal business entity bond forfeitures, 7.27 ARC 8663	4/20/88
Filing returns, payment of tax, penalty and interest; administration; assessments and refund; allocation and apportionment; assessments, refunds, appeals, 12.9, 30.11, 38.2(1)“a” and “f,” 43.3(8)“b,” 51.2(1)“a” and “f,” 52.1(1), 52.4(6)“c,” 52.6(10), 54.2(1), 54.7(5), 54.9, 55.3(5)“b,” 57.2(1)“a” and “f,” 60.3(5)“b” ARC 8675	5/4/88

To All Agencies:

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
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]		
Infectious and contagious diseases, ch 16 IAB 4/20/88 ARC 8648	Second Floor Conference Room Wallace State Office Building East 9th and Grand Ave. Des Moines, Iowa	May 13, 1988 9 a.m.
ARCHAEOLOGIST[685]		
Confidentiality of archaeological site information, ch 14 IAB 4/20/88 ARC 8645	Sixth Floor Conference Room East Side Lucas State Office Building Des Moines, Iowa	May 10, 1988 9 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Public records and fair information practices, ch 100 IAB 4/20/88 ARC 8631	Conference Room 200 E. Grand Ave. Des Moines, Iowa	May 10, 1988 1:30 p.m.
ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]		
Professional development, 3.2, 3.4 IAB 4/20/88 ARC 8637	Board Offices 1918 S.E. Hulsizer Ave. Ankeny, Iowa	May 20, 1988 9 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Requirements for properly plugging abandoned wells, ch 39 IAB 4/20/88 ARC 8658	Kirkwood Community College Iowa Hall, Iowa Room Cedar Rapids, Iowa	May 12, 1988 10 a.m.
	Community Room 111 North Main Street Denison, Iowa	May 13, 1988 10 a.m.
	Ground Floor Auditorium Wallace State Office Bldg. East 9th and Grand Ave. Des Moines, Iowa	May 16, 1988 10 a.m.
HUMAN SERVICES DEPARTMENT[441]		
HMO — Voluntary enrollment, 88.3(2) IAB 4/20/88 ARC 8665	Des Moines District Office City View Plaza, Conference Room 100 1200 University Des Moines, Iowa	May 11, 1988 1 p.m.
INSURANCE DIVISION[191]		
Homeowner's insurance, competitive line IAB 4/20/88 ARC 8646	Sixth Floor Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 1, 1988 10 a.m.
Workers' compensation insurance, competitive market IAB 5/4/88	Sixth Floor Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 24, 1988 10 a.m.
Health maintenance organizations, 40.5(3) IAB 4/20/88 ARC 8651	Fourth Floor Conference Room Side 1 Lucas State Office Building Des Moines, Iowa	May 10, 1988 10 a.m.

JOB SERVICE DIVISION[345]

Amendments to ch 3, Employers
contributions and charges; ch 4, Claims
and benefits; ch 5, Benefit payment
control
IAB 4/20/88 ARC 8650

Division Offices
1000 East Grand Ave.
Des Moines, Iowa

May 11, 1988
9:30 a.m.

LOTTERY DIVISION[705]

Operation of the lottery,
Lotto America, 4.9, 12.8
IAB 4/20/88 ARC 8626

Division Offices
2015 Grand Ave.
Des Moines, Iowa

May 13, 1988
11 a.m.

Lotto, 10.4(3)
IAB 4/20/88 ARC 8628

Division Offices
2015 Grand Ave.
Des Moines, Iowa

May 13, 1988
11 a.m.

Pull-tab general rules,
11.3
IAB 5/4/88 ARC 8685

Division Offices
2015 Grand Ave.
Des Moines, Iowa

May 25, 1988
8:30 a.m.

Lotto America, 12.7(4)
IAB 5/4/88 ARC 8683

Division Offices
2015 Grand Ave.
Des Moines, Iowa

May 25, 1988
8:30 a.m.

NATURAL RESOURCES DEPARTMENT[561]

Groundwater protection
program evaluation, ch 15
IAB 5/4/88 ARC 8694

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

May 24, 1988
10 a.m.

NURSING BOARD[655]

Advanced registered nurse practitioners, 7.3
IAB 4/20/88 ARC 8618

Jester Auditorium
Iowa Methodist School of Nursing
1200 Pleasant St.
Des Moines, Iowa

May 18, 1988
7 p.m.

PUBLIC BROADCASTING DIVISION[225]

Fair information practices,
ch 3
IAB 5/4/88 ARC 8666

McElroy Conference Room
Iowa Public Television
6450 Corporate Drive
Johnston, Iowa

May 24, 1988
9 a.m.

REGENTS BOARD[681]

Merit increases, 3.39(2)
IAB 4/20/88 ARC 8644

Sixth Floor Conference Room
East Side
Lucas State Office Bldg.
Des Moines, Iowa

May 10, 1988
10 a.m.

TRANSPORTATION DEPARTMENT[761]

Motor vehicle safety standards,
motor carrier safety regulations,
450.1, 520.1(1)
IAB 4/20/88 ARC 8633

Department of Transportation
Complex
800 Lincoln Way
Ames, Iowa

June 21, 1988

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]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Historical Division[223]

Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

High Technology Council[267]

EDUCATION DEPARTMENT[281]

College Aid Commission[283]

Iowa Advance Funding Authority[285]

Professional Teaching Practices Commission[287]

School Budget Review Committee[289]

Egg Council[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]

Industrial Services Division[343]

Job Service Division[345]

Labor Services Division[347]

EXECUTIVE COUNCIL[361]

Fair Board[371]

GENERAL SERVICES DEPARTMENT[401]

Health Data Commission[411]

HUMAN RIGHTS DEPARTMENT[421]

- Blind, Division for[423]
- 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]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]

- Employment Appeal Board[486]
- Foster Care Review Board[489]
- Racing and Gaming Division[491]

LAW ENFORCEMENT ACADEMY[501]

- Livestock Health Advisory Council[521]

MANAGEMENT DEPARTMENT[541]

- Appeal Board, State[543]
- City Finance Committee[545]
- County Finance Committee[547]

NATURAL RESOURCES DEPARTMENT[561]

- Energy and Geological Resources[565]
- Environmental Protection Commission[567]
- Natural Resource Commission[571]
- Preserves, State Advisory Board[575]

PERSONNEL DEPARTMENT[581]

PUBLIC DEFENSE DEPARTMENT[601]

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

PUBLIC HEALTH DEPARTMENT[641]

- Substance Abuse Commission[643]
- Professional Licensure Division[645]
- Dental Examiners[650]
- Medical Examiners[653]
- Nursing Board[655]
- Pharmacy Examiners[657]

PUBLIC SAFETY DEPARTMENT[661]

- Confidential Records Council[665]

REGENTS BOARD[681]

- Archaeologist[685]

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]

- Veterinary Medicine Board[811]

- Voter Registration Commission[821]

NOTICE — AGRICULTURAL CREDIT CORPORATION MAXIMUM LOAN RATE

In accordance with the provisions of Iowa Code section 535.12, the Superintendent of Banking has determined that the maximum rate of interest that may be charged on loans by Agricultural Credit Corporations as defined in Iowa Code section 535.12, subsection 4, shall be:

July 1, 1986 — July 31, 1986	11.90%
August 1, 1986 — August 31, 1986	11.70%
September 1, 1986 — September 30, 1986	11.25%
October 1, 1986 — October 31, 1986	11.20%
November 1, 1986 — November 30, 1986	11.20%
December 1, 1986 — December 31, 1986	11.20%
January 1, 1987 — January 31, 1987	10.90%
February 1, 1987 — February 28, 1987	10.90%
March 1, 1987 — March 31, 1987	10.90%
April 1, 1987 — April 30, 1987	10.90%
May 1, 1987 — May 31, 1987	10.90%
June 1, 1987 — June 30, 1987	10.90%
July 1, 1987 — July 31, 1987	10.90%
August 1, 1987 — August 31, 1987	10.90%
September 1, 1987 — September 30, 1987	10.90%
October 1, 1987 — October 31, 1987	10.90%
November 1, 1987 — November 30, 1987	10.90%
December 1, 1987 — December 31, 1987	10.90%
January 1, 1988 — January 31, 1988	10.90%
February 1, 1988 — February 29, 1988	10.90%
March 1, 1988 — March 31, 1988	10.90%
April 1, 1988 — April 30, 1988	10.90%

ARC 8691

CITY FINANCE COMMITTEE[545]

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 384.15, the City Finance Committee hereby gives Notice of Intended Action to rescind 230—Chapters 1 to 6 and adopt new rules 545—Chapters 1 to 9, Iowa Administrative Code.

The new rules implement government reorganization which placed the City Finance Committee under the "umbrella" of the Department of Management — Iowa Code section 384.14.

The Committee also proposes to adopt the Governor's Task Force rules for Declaratory Rulings; Petitions for Rule Making and the Agency Procedure for Rule Making printed in Volume I of the Iowa Administrative Code.

Any interested person may make written suggestions or comments on these proposed rules prior to May 25, 1988. Written materials should be sent to the Director, Iowa Department of Management, State Capitol Building, Des Moines, Iowa 50319. Persons who want

to convey their views orally should contact the Director at the above address.

These rules are intended to implement Iowa Code sections 384.13 to 384.22.

Rescind rules 230—Chapters 1 to 6 and adopt the following new rules 545—Chapters 1 to 9.

CHAPTER 1

OPERATIONS OF CITY FINANCE COMMITTEE

545—1.1(384) Purpose. To assure that the proceedings of the city finance committee are conducted in an orderly manner and also to provide that the public is kept informed of actions taken by the city finance committee, the committee adopts the following rules.

545—1.2(384) Membership. The selection, appointment and approval of members to the city finance committee are made as provided for in Iowa Code section 384.13. Names of designees shall be given to the committee chairperson in writing by July 1 of each year, or promptly, if changed.

545—1.3(384) Responsibilities of officers. The officers of the city finance committee shall consist of a chairperson, a vice chairperson and a secretary.

1.3(1) Chairperson. The chairperson shall be elected yearly and shall preside over the proceedings of the city finance committee. Upon a vacancy on the city finance committee the chairperson shall notify the governor that a vacancy exists.

1.3(2) Vice chairperson. The vice chairperson shall serve in absence of the chairperson, and shall be assigned such other duties as the committee determines. The vice chairperson shall be elected yearly.

1.3(3) Secretary. Yearly, the city finance committee shall appoint a secretary to record the proceedings of the committee. The secretary may or may not be a member of the committee.

The secretary shall give advance public notice of the time and place of each meeting. The notice must be in accordance with Iowa Code section 21.4.

At least one week prior to the date of a meeting, the secretary shall prepare a tentative agenda for the next meeting of the committee and distribute this tentative agenda to the persons listed on a mailing list approved by the committee. This agenda shall also list the date, time and place of the meeting.

The secretary shall keep minutes of all proceedings of each meeting. The minutes will constitute the official record of all actions of the committee. Following each meeting, the secretary shall duplicate the minutes and distribute them to the persons listed on the approved mailing list.

When the secretary is absent from a committee meeting, the chairperson shall appoint a member of the committee to act as secretary until such time as the regular secretary is present.

The secretary shall provide to the committee members a list of the committee's members including the members' addresses, telephone numbers and term of office.

545—1.4(384) Subcommittees. The city finance committee may establish temporary or permanent subcommittees to research and investigate items of business to the committee. The rules set forth in this chapter shall guide the subcommittee, if applicable. Subcommittee members shall be appointed by the chairperson and reported to the committee. Subcommittee members need not be members of the committee. They

CITY FINANCE COMMITTEE[545] (cont'd)

shall be reimbursed for expenses in the same manner as committee members.

545—1.5(384) Staff. The executive director of the department of management shall provide staff assistance to the committee as provided by law.

545—1.6(384) Compensation. Committee members are to be compensated as provided by law.

545—1.7(384) Meeting. A meeting of the committee shall be held at the call of the director of the department of management or upon an appeal of the director's decision.

All meetings of the committee shall be open to the public at all times, except that closed meetings may be held for the purposes provided in Iowa Code section 21.5. Closed sessions shall be called and conducted as provided for in section 21.5.

545—1.8(384) Office location. All submissions to or requests of the committee shall be made through the department of management office during normal working hours.

All records, minutes, manuals and other information concerning the proceedings of the committee shall be kept in the office of the director of the department of management. Such information shall be open to inspection by the public during normal working hours.

545—1.9(384) Quorum and majority vote. A quorum shall consist of five members of the committee. All actions of the committee for promulgating rules as provided for by law shall require five votes. All other actions of the committee must be approved by a simple majority vote of the members present at a meeting. The secretary shall record the vote of each member of the committee indicating if the vote was an aye, no, or abstention.

545—1.10(384) Order of business. The meetings of the city finance committee are to be presided over by the chairperson or the vice chairperson. Unless otherwise stipulated in these rules, Robert's Rules of Order are to be followed in conducting the business of the committee.

These rules are intended to implement Iowa Code sections 384.13 to 384.22.

CHAPTER 2 BUDGET AMENDMENTS AND FUND TRANSFERS

PREAMBLE

Consistent with home rule legislation, the city finance committee encourages as much flexibility as possible in the municipal budget administration. At the same time, it is the responsibility of the city finance committee to require those procedures and processes necessary to assure adequate notice to citizens of proposed and adopted changes in the local budget and to provide an opportunity for citizen involvement in the reallocation process.

545—2.1(384,388) Definitions. The following terms when used in the rules of this part have the following meanings:

"Act" means the home rule Act, Acts of the Sixty-fourth General Assembly, chapter 1088, as amended.

"Budget amendment" means any change in the appropriations of a city's budget after the budget has been finally adopted, and that requires preparation and

adoption as provided in Iowa Code section 384.16 and subject to protest as provided in section 384.19.

If in these rules the committee has provided that amendments of certain types or up to certain amounts do not require preparation and adoption as provided in Iowa Code section 384.16 and are not subject to protest as provided in section 384.19, then these types of amendments are not considered to be budget amendments.

"Budget appropriation" means the allocation of the total appropriation to each program for the following fiscal year, as provided for by a city's budget as finally adopted. All appropriations shall be allocated to one or more of the four programs as defined in this rule.

Any expenditure authorized in Iowa Code sections 384.23 to 384.94 shall be deemed appropriated.

"Detailed budget" shall mean documenting revenues and transfers in by sources and funds, and documenting expenditures and transfers out by programs, funds, activities, and characters.

"Fund" means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

"Program" means any one of the following four major areas of public service that the city finance committee requires cities to use in defining its program structure:

1. Community protection;
2. Human development;
3. Home and community environment;
4. Policy and administration.

"Transfers between funds" means the transfer of amounts from one fund to another fund.

545—2.2(384,388) Appropriation of unanticipated amounts. Budget amendments to the adopted city budget to permit the appropriation and expenditure of unencumbered and unanticipated balances, or amounts anticipated to be available from sources other than property taxes but which have not been appropriated in the adopted budget shall be prepared as provided in Iowa Code section 384.16 and subject to protest as provided in section 384.19.

All adopted budget amendments to appropriate and expend unanticipated amounts must be certified to the auditor of the county or counties where the city is located and to the director of the department of management.

545—2.3(384,388) Transfers between programs. Except as specifically provided elsewhere in these rules, all appropriation transfers between programs are budget amendments and shall be prepared as provided in Iowa Code section 384.16 and subject to protest as provided in section 384.19.

All adopted budget amendments to permit the transfer of adopted budget appropriations between programs must be certified to the auditor of the county or counties where the city is located and to the director of the department of management.

545—2.4(384,388) Transfers within programs. Transfers within programs are not budget amendments within the meaning of Iowa Code section 348.18. It is the responsibility of the governing body of each city to

CITY FINANCE COMMITTEE[545] (cont'd)

provide its own written rules for transfers within programs.

545—2.5(384,388) Fund transfers.

2.5(1) General provision. Transfers between funds in one program are types of amendments that do not require preparation and adoption as provided in section 384.16 and are not subject to protest as provided in section 384.19, but such transfers must comply with the state laws regarding the funds and the following subrules:

2.5(2) Emergency fund. No transfer may be made from any fund to the emergency fund.

2.5(3) Debt service fund. Except where specifically prohibited by state law, moneys may be transferred from any other city fund to the debt service fund to meet outstanding principal and interest. Such transfers must be authorized by the original budget or a budget amendment which has been adopted as provided in section 384.16 and subject to protest as provided in section 384.19.

2.5(4) Capital improvements reserve fund. Except where specifically prohibited by state law, moneys may be transferred from any city fund to the capital improvements reserve fund for purposes specified in Iowa Code section 384.7. Such transfers must be authorized by the original budget or a budget amendment which has been adopted as provided in section 384.16 and subject to protest as provided in section 384.19.

2.5(5) City utility fund and city enterprise fund. Any governing body of a city utility, combined utility system, city enterprise, or combined city enterprise which has a surplus in its fund may transfer such surpluses to any other city fund, except the emergency fund, by resolution of the appropriate governing body. For the purposes of this subrule, a surplus may exist only after all required transfers have been made to any restricted accounts in accordance with the terms and provisions of any revenue bonds of loan agreements relating to the utility or enterprise fund.

A surplus shall be defined as the cash balance in the operating account or the unrestricted retained earnings calculated in accordance with GAAP in excess of:

a. The amount of the expenses of disbursements for operating and maintaining the utility or enterprise for the preceding three months, and

b. The amount necessary to make all required transfers to restricted accounts for the succeeding three months.

These rules are intended to implement Iowa Code chapters 384 and 388.

CHAPTER 3 BUDGET FORMS

545—3.1(384) Budget forms. The city finance committee may propose to the director of the department of management forms to be used for public notice of estimates and for certifying the original budget or budget amendments.

These rules are intended to implement Iowa Code sections 384.13 to 384.22.

CHAPTER 4 EMPLOYEE BENEFITS

545—4.1(384) Definition. Employee benefits are defined as and limited to the following.

1. Employer's share of FICA (Federal Insurance Contribution Act).

2. Employer's share of IPERS (Iowa Public Employees' Retirement System).

3. Employer's share of police and fire retirement systems.

4. Employer's share of medical payments under Iowa Code chapters 410 and 411.

5. Workers' compensation costs or insurance premiums.

6. Unemployment benefits.

7. Employer's share of employee benefit plan costs for employees and their dependents which would include only:

Hospital and surgical benefits;

Medical expense benefits;

Major medical benefits;

Dental benefits;

Prescription drug benefits;

Life insurance benefits;

Disability insurance benefits.

545—4.2(384) Mandatory procedures. These employee benefits must be budgeted in the city general fund up to the tax rate limit of that fund with the excess being budgeted in the trust and agency fund for those employees being paid from the city general fund:

1. Employer's share of FICA under Iowa Code section 97C.10.

2. Employer's share of IPERS under Iowa Code section 97B.9.

545—4.3(384) Optional procedures. These employee benefits may be budgeted in either the city general or city trust and agency fund for those employees being paid from the city general fund.

1. Employer's share of police and fire pension and retirement systems under Iowa Code chapters 410 and 411.

2. Employer's share of medical payments under Iowa Code sections 410.18 and 411.15.

3. Workers' compensation or insurance premiums.

4. Unemployment benefits.

5. Employer's share of employee benefit plan costs for employees and their dependents which would include only:

Hospital and surgical benefits;

Medical expense benefits;

Major medical benefits;

Dental benefits;

Prescription drug benefits;

Life insurance benefits;

Disability insurance benefits.

These rules are intended to implement Iowa Code section 384.15(1).

545—4.4(384) Budgeting — other than general fund and road use tax fund. The revenues and appropriations for employee benefits for those employees being paid from any fund other than the city general fund and the road use tax fund shall be budgeted in and paid from the fund from which the employee is being paid.

This rule is intended to implement Iowa Code section 384.15.

CHAPTER 5 PETITIONS FOR RULE MAKING

The city finance committee adopts the petitions for rule making segments of the Uniform Administrative Rules which are printed in the front of Volume I of the

CITY FINANCE COMMITTEE[545] (cont'd)

Iowa Administrative Code, with the following amendments.

545—5.1(17A) Petition for rule making. In lieu of the words "designate office", insert "Room 12, State Capitol, Des Moines, Iowa 50319." In lieu of the words "AGENCY NAME", the heading on the petition form should read: "BEFORE THE CITY FINANCE COMMITTEE"

545—5.3(17A) Inquiries. In lieu of the words "designate official by full title and address", insert "City Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

CHAPTER 6 DECLARATORY RULINGS

The city finance committee adopts the declaratory rulings segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code, with the following amendments.

545—6.1(17A) Petition for declaratory rulings. In lieu of the words "designate office", insert "Room 12, State Capitol, Des Moines, Iowa 50319." In lieu of the words "AGENCY NAME", the heading on the petition form should read:

"BEFORE THE CITY FINANCE COMMITTEE"

545—6.3(17A) Inquiries. In lieu of the words "designate official by full title and address", insert "City Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

CHAPTER 7 AGENCY PROCEDURE FOR RULE MAKING

The city finance committee incorporates the agency procedure for rule-making segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code, with the following amendments.

545—7.5(17A) Written comments. In lieu of the words "identify office and address", insert "City Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

7.6(3) Mailing list. In lieu of the words "designate office", insert "City Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

7.11(1) General. In lieu of the words "specify office and address", insert "City Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

These rules are intended to implement Iowa Code section 8.6.

CHAPTER 8 LAW ENFORCEMENT OFFICER TRAINING REIMBURSEMENT

545—8.1(384) Eligible reimbursement. Cities and counties are eligible for reimbursement of law enforcement officer training costs for law enforcement officers who have resigned. Training costs for officers fired, retired, or disabled shall not be eligible for reimbursement.

545—8.2(384) Reimbursable costs. Costs eligible for reimbursement include all necessary and actual training costs not otherwise recovered which were incurred after July 1, 1980, to comply with the minimum requirements of Iowa Code chapter 80B. To the extent funding is available, costs incurred for approved advanced law en-

forcement training are also eligible for reimbursement. Advanced law enforcement training costs must be approved by the local governing body and deemed legitimate, necessary and proper by the director of the department of management.

Reimbursable training costs include mileage, food, lodging, tuition, compensation of the officer in training and the compensation of a replacement officer while the officer is in training. Mileage, food and lodging costs are reimbursable at the rates normally reimbursed by the claimant to other employees for work related travel. Compensation of the officer in training and the replacement officer(s) includes wages and employer paid payroll taxes, insurance and pension contributions. However, the reimbursable compensation of the replacement officer(s) shall not exceed the reimbursable compensation of the officer in training.

Other costs eligible for reimbursement include those required by the training facility such as training uniforms, supplies or equipment which were paid for by the claimant and not returned to or used by the claimant after training.

545—8.3(384) Filing of claims. Claims for reimbursement shall be filed on forms prescribed by the director of the Department of Management. Forms may be obtained from the department of management.

Claims for payment shall be filed with the Department of Management, Statehouse, Des Moines, Iowa 50319. Claims must be filed within 90 days after the officer has resigned. If a reasonable cause can be shown, the due date may be waived. Claims filed after May 15 of any fiscal year will be considered for reimbursement in the following fiscal year. No more than one claim may be submitted for each reimbursable expense.

Claims shall be signed by the mayor or chairperson of the board of supervisors and attested by the city clerk or county auditor.

545—8.4(384) Documentation. Claims for reimbursement of law enforcement officer training costs shall be accompanied by proper documentation. Such documentation may include copies of invoices, canceled checks, salary and benefits schedules and any other supporting documents deemed necessary by the city finance committee.

545—8.5(384) Reimbursement percentage. The amount of reimbursement shall be determined upon the length of service of the resigned officer after completion of law enforcement training as provided by statute.

545—8.6(384) Payment. Funds available for reimbursement will first be applied to approved claims for minimum law enforcement officer training required under Iowa Code chapter 80B. If the proceeds of the fund are insufficient to reimburse the total amount of the approved claims made during the year, the reimbursements will be prorated. Any remaining funds will be applied to approved claims for advanced law enforcement training on a pro rata basis.

545—8.7(384) Officer rehired. In the event a resigned officer is rehired by the city or county within one year from the date of resignation, the total costs reimbursed to the city or county for law enforcement training of that officer shall be refunded to the law enforcement officer training reimbursement fund. The reimbursement for training costs shall be refunded within 90 days

CITY FINANCE COMMITTEE[545] (cont'd)

of the date of rehire and shall be accompanied by a letter of explanation.

545—8.8(384) Decision appealed. A city or county may appeal a reimbursement decision by the director of the department of management to the city finance committee. The appeal must be submitted in writing within 60 days from the date of notification of a decision from the director. Appeals shall be filed with the City Finance Committee, Department of Management, Statehouse, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 384.15.

CHAPTER 9
TAX RATE SUSPENSION APPEAL

545—9.1(24) Decision appealed. A city may appeal a tax rate suspension decision by the director of the department of management to the city finance committee. The appeal must be submitted in writing no later than February 1 to the City Finance Committee, c/o Department of Management, Capitol Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 24.48.

ARC 8671

COLLEGE AID COMMISSION[283]

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 261.3, the College Aid Commission proposes to amend 245—Chapter 10, "Iowa Guaranteed Student Loan Program," Iowa Administrative Code.

These amendments are made in response to recent federal proposals which set guidelines for proceedings to limit, suspend, or terminate the eligibility of a school or lender when default rates for student borrowers exceed 20 percent. The amendments also correct the reporting period length to correspond with the semi-annual default reports currently in use by the Commission.

Interested persons may submit their comments orally or in writing to the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 (515/281-3501) on or before June 5, 1988.

These rules are intended to implement Iowa Code section 261.3.

ITEM 1. Amend rule 245—10.79(261), the first numbered paragraph, as follows:

1. The default rate on ICAC-guaranteed loans made to or on behalf of students for attendance at a school exceeds fifteen 20 percent for four three consecutive quarters semiannual reporting periods, and the ICAC deems the default rate to be a reflection of the school's inability to administer the ICAC program in accordance with federal regulations and state rules;

ITEM 2. Amend subrule 10.79(2), the first numbered paragraph, as follows:

1. The default rate on ICAC-guaranteed loans made by a lender exceeds fifteen 20 percent for four three consecutive quarters semiannual reporting periods, and the ICAC deems the default rate to be a reflection of the lender's inability to administer the ICAC program in accordance with federal regulations and state rules;

These rules are intended to implement Iowa Code section 261.3.

ARC 8670

EMPLOYMENT APPEAL
BOARD[486]

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 10A.601(6) and 22.11, the Employment Appeal Board gives Notice of Intended Action to adopt Chapter 8, "Public Records and Fair Information Practices," Iowa Administrative Code. The Board proposes to adopt the uniform rules of the Governor's Task Force with modifications.

These rules describe records collected and maintained by the Board. Records held confidential are explained and named. Systems of records which contain information retrievable by personal identifier are explained and named. Procedures used to gain access to open records are set out as well as the requirements for viewing confidential records.

On many occasions there are records from various agencies and departments. Often these records are not the property of the Board.

The records belong to, and are governed by rules of the agency in which the record originated. In order to avoid any errors of compliance with statutes governing records which do not belong to the Board, these proposed rules state that the originating agency has authority to decide issues of confidentiality. The Employment Appeal Board will not release records belonging to any other agency.

The records of the Division of Job Services and the Division of Labor Services are Board records and these proposed rules describe the manner in which fair practices are met.

Written comment will be considered by the Employment Appeal Board, Lucas State Office Building in Des Moines, Iowa 50309, if it is received by May 24, 1988.

These rules are intended to implement Iowa Code sections 10A.601, 22.7, 22.11, and Iowa Code chapters 19A, 80, 88, 89A, 89B, 96, and 97.

EMPLOYMENT APPEAL BOARD[486] (cont'd)

The following new chapter is proposed:

**CHAPTER 8
PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES**

Compliance with the Iowa Fair Information Practices Act requires that government agencies define policies related to information collected or stored by those agencies. The Employment Appeal Board adopts the uniform rules of the Governor's Task Force relating to the procedures for the Public Records Law and the Fair Information Practices Act with the following exceptions:

486—8.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(agency issuing these rules)", insert "Employment Appeal Board".

"Custodian." Delete "the" agency and insert "an". Insert, "The originating agency, if any, is the custodian of records which are used to carry out functions of the originating agency."

"Originating agency" means the government agency which has authority over and custody of records and for whom the board is performing a service.

486—8.3(17A,22) Requests for access to records.

8.3(1) Location of record. In lieu of the words "(insert agency head)" insert "board". In lieu of the words "(insert agency name and address)" insert "Employment Appeal Board, Lucas State Office Building, Des Moines, Iowa 50319."

8.3(2) Office hours. In lieu of the words "(insert customary office hours)" insert "8 a.m. to 4:30 p.m., Monday through Friday".

8.3(7) Fees.

c. Supervisory fee. In lieu of the words "(specify time period)" insert "fifteen minutes".

486—8.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)" insert "the originating agency, or to the board."

486—8.9(17A,22) Disclosures without the consent of the subject.

8.9(1) Open records are routinely disclosed without the consent of the subject.

8.9(2) To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 8.10(22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any

individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

486—8.10(22) Routine use.

8.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record is collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

8.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the board or the originating agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

d. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

e. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

486—8.11(22) Consensual disclosure of confidential records.

8.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 8.7(17A,22).

8.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency to the extent permitted by law may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

486—8.12(22) Availability of records.

8.12(1) The agency records are open for public inspection and copying unless otherwise provided by rule or law.

8.12(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the agency. [Iowa Code sections 422.20, 422.72]

b. Minutes of closed meetings of a government body (Iowa Code section 21.5(4)).

c. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d."

EMPLOYMENT APPEAL BOARD[486] (cont'd)

486—8.13(22) Personally identifiable information. The department maintains systems of records which contain personally identifiable information.

8.13(1) Rule-making records may contain information about people who make written or oral comments about proposed rules. Iowa Code section 17A.4 requires collection and retention of this information. It cannot be retrieved by an individual identifier. It is not stored in a computer system.

During the rule-writing process, committees are occasionally used to gather basic information. Minutes of committee meetings are available for public inspection. The minutes are retained.

8.13(2) Contested case records. Contested case records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records.

Records are collected by authority of Iowa Code section 10A.601. None of the information stored in a data processing system is compared with information in any other data processing system.

Records of hearings are recorded on magnetic cassette tapes or in written transcripts.

These rules are intended to implement Iowa Code sections 22.7 and 22.11 and Iowa Code chapters 10A, 19A, 80, 88, 89A, 89B, 96, and 97.

ARC 8701

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 239.18 and 249A.4, the Department of Human Services proposes to amend Chapter 41, “Granting Assistance,” and Chapter 86, “Medically Needy,” appearing in the Iowa Administrative Code.

These amendments increase the aid to dependent children (ADC) schedule of basic needs as directed by the General Assembly and revise the Medically Needy income levels to correspond to the increase in the ADC schedule of basic needs.

The Chart for Determining Income In Kind is renamed the Chart of Basic Needs Components.

Federal regulations regarding the Medically Needy program only allow federal financial participation for income levels set at 133 percent of the ADC schedule of basic needs. Regulations do, however, allow the income level for a one-member household to be the same as that of a two-member household. The Department has chosen to adopt this option.

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 May 25, 1988.

These rules are intended to implement Iowa Code sections 239.5 and 249A.4 and 1988 Iowa Acts, House File 2447, section 1, subsection 7.

ITEM 1. Amend subrule 41.7(2), paragraph “i,” subparagraphs (1) and (2), as follows:

(1) Shelter expense in excess of that set forth on the chart for determining income in kind of basic needs components in subrule 41.8(2) for the eligible group.

(2) That portion of expense for utilities furnished to tenants which exceeds the amount set forth on the chart for determining income in kind of basic needs components in subrule 41.8(2).

ITEM 2. Amend subrule 41.8(2), introductory paragraph and charts as follows:

41.8(2) Schedule of needs. The schedule of living costs represents one hundred 100 percent (100%) of basic needs. The schedule of living costs is used to determine the needs of individuals when these needs must be determined in accordance with the standard of need defined in 40.1(16) 441-40.1(239). The one hundred eighty-five 185 percent (185%) schedule is included for the determination of eligibility in accordance with 441-41.7(239). The schedule of basic needs is used to determine the basic needs of those persons whose needs are included in and are eligible for an aid to dependent children grant. The eligible group is considered a separate and distinct group without regard to the presence in the home of other persons, regardless of relationship to or whether they have a liability to support members of the eligible group. The schedule of basic needs is also used to determine the needs of persons not included in the assistance grant, when these needs must be determined in accordance with the payment standard defined in 40.1(17) 441-40.1(239). The percentage of basic needs paid to one (1) or more persons as compared to the schedule of living costs is shown on the chart below.

SCHEDULE OF NEEDS

Table with 11 columns (1-10) and 4 rows of data: 185% of Living Costs, Schedule of Living Costs, Schedule of Basic Needs, and Ratio of Basic Needs to Living Costs.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

CHART FOR DETERMINING INCOME IN KIND OF BASIC NEEDS COMPONENTS
(all figures are on a per person basis)

Number of Persons									
1	2	3	4	5	6	7	8	9	10 or more
Shelter									
46.65	48.31	32.84	26.37	21.54	18.39	16.17	14.62	13.26	13.00
48.37	49.96	33.96	27.26	22.29	19.03	16.77	15.13	13.71	13.49
Utilities									
25.30	24.02	16.62	12.06	9.67	8.08	7.53	6.66	6.03	5.90
26.23	24.84	16.15	12.47	10.01	8.36	7.81	6.89	6.23	6.12
Supp. & Repl.									
10.68	8.20	6.33	4.13	3.53	2.99	2.57	2.29	2.04	2.00
11.07	8.48	5.51	4.27	3.65	3.09	2.67	2.37	2.11	2.08
Food									
43.84	47.73	44.34	40.66	36.95	35.88	34.65	34.03	33.90	33.21
45.45	49.36	45.85	42.03	38.22	37.14	35.96	35.25	35.05	34.46
Clothing									
12.64	14.07	13.46	13.47	13.33	12.20	12.02	12.73	12.72	12.46
13.11	14.55	13.92	13.93	13.79	13.66	13.21	13.18	13.15	12.93
Per. Care & Supp.									
7.59	8.20	8.13	8.16	7.94	7.81	7.55	7.50	7.06	6.92
7.87	8.48	8.41	8.44	8.22	8.08	7.78	7.76	7.30	7.18
Med. Cab. Supp.									
1.68	1.68	1.68	1.68	1.68	1.68	1.68	1.68	1.68	1.68
1.74	1.74	1.74	1.74	1.74	1.74	1.74	1.74	1.74	1.74
Communications									
14.62	8.79	6.60	4.22	3.36	2.80	2.40	2.11	1.87	1.83
15.16	9.09	5.79	4.36	3.48	2.90	2.49	2.18	1.93	1.90
Total Per Person									
169	166.50	131.33	114.50	101.40	94	88.43	84.50	81.22	79.90

Investment Demonstration Project," and Chapter 55, "Work and Training Programs," appearing in the Iowa Administrative Code.

These amendments clarify that Aid to Dependent Children-Unemployed Parent (ADC-UP) qualifying parents who participate in the Self-Employment Investment Demonstration (SEID) program are exempt from the ADC-UP active job search requirements. This change will allow ADC-UP households who are in the SEID program to devote their time to training and in establishing their self-employment enterprise.

These amendments also waive the Individual Education and Training Plan (IETP) three-week advance application requirement for Aid to Dependent Children recipients who participate in the Self-Employment Investment Demonstration (SEID) project. This change allows SEID participants to apply for IETP services such as child care and transportation immediately prior to attendance at the training workshop of the SEID project.

Because of the nature of the training schedules within the SEID project, the three-week advance application for IETP services is unreasonable. Since the SEID training project meets IETP criteria as approvable course work, these recipients should have the IETP support services available without making it procedurally impossible for them to do so.

Consideration will be given to all written data, views, and 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 May 25, 1988.

These rules are intended to implement Iowa Code sections 239.5, 249C.3, and 249C.5.

The following amendments are proposed:

ITEM 1. Amend subrule 48.3(3) as follows:

48.3(3) Two-parent families. Only ten families receiving aid to dependent children-unemployed parent assistance may participate in the SEID project. Five of these positions shall be apportioned to the SEID counties in the Waterloo district as described at rule 441-48.2(249C). The remaining five positions shall be apportioned to the SEID counties in the Cedar Rapids district, also described at rule 441-48.2(249C).

a. Program participants who are principal wage earners on aid to dependent children-unemployed parent cases may be self-employed 100 or more hours per month and still be considered unemployed for aid to dependent children-unemployed parent purposes.

b. Participation in SEID is considered an approved training program for the purpose of exempting the qualifying parent from the aid to dependent children-unemployed parent active search for employment or training requirement described at subrule 42.4(4). Exempt status begins when the person begins participating in SEID training and assessment.

ITEM 2. Amend subrule 55.2(1), paragraph "a," as follows:

a. Clients, with the exception of self-employment investment demonstration (SEID) participants, shall apply for individual education and training plan (IETP) services at least three (3) weeks prior to the start of course work. When the course work is participation in the SEID project as described in 441-Chapter 48, clients are only required to apply for IETP services prior to the first training workshop (as identified by the service provider) of the SEID project. Failure to do so shall result in rejection of the application.

ITEM 3. Amend subrule 86.12(1) as follows:
86.12(1) The MNIL is based on one hundred thirty-three and one-third percent of the ADC schedule of basic needs calculated according to federal formula based on family size as follows:

Number of Persons									
1	2	3	4	5	6	7	8	9	10
433	433	608	591	658	725	800	875	941	1033
450	450	525	616	675	758	825	900	975	1066
Each additional person 108									

ARC 8676

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 239.18 and 249C.15, the Department of Human Services proposes to amend Chapter 48, "Aid to Dependent Children Eligibility Under the Self-Employment

ARC 8677**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 162, "Gamblers Assistance Program," appearing in the Iowa Administrative Code.

These amendments change the definition of a compulsive gambler and expand the definition of eligible applicants to include colleges and universities.

The Advisory Committee on Compulsive Gambling recommended when the program was initiated that the Department utilize the definition of a compulsive gambler as listed in the Diagnostic and Statistical Manual (DSM). This definition has now changed in the DSM and is being updated in the rules.

At the present time policy does not allow colleges and universities to apply for grant moneys. Expanding the definition of applicant will facilitate statewide coverage of services.

Consideration will be given to all written data, views, and 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 May 25, 1988.

These rules are intended to implement Iowa Code section 99E.10.

The following amendments are proposed:

ITEM 1. Amend rule 441—162.1(99E) by amending the definition of "applicant" as follows, rescinding the definition of "compulsive gambler" and inserting the following definition in lieu thereof, and adding the following new definition of "division director" in alphabetical order.

"Applicant" means an incorporated agency, an educational institution, or a unit of local government agency who makes application for a grant.

"Compulsive gambler" is a person who meets at least four of the following criteria:

1. Frequent preoccupation with gambling or with obtaining money to gamble.
2. Frequent gambling of larger amounts of money or over a longer period of time than intended.
3. A need to increase the size or frequency of bets to achieve the desired excitement.
4. Restlessness or irritability if unable to gamble.
5. Repeated loss of money by gambling and returning another day to win back losses ("chasing").
6. Repeated efforts to reduce or stop gambling.
7. Frequent gambling when expected to meet social or occupational obligations.
8. Sacrifice of some important social, occupational, or recreational activity in order to gamble.
9. Continuation of gambling despite inability to pay mounting debts, or despite other significant social, occupational, or legal problems that the person knows to be exacerbated by gambling.

"Division director" means the director of the division of mental health, mental retardation, and developmental disabilities of the department of human services.

ITEM 2. Amend subrule 162.3(1) as follows:

162.3(1) All applicants must be an incorporated agency, an educational institution, or a unit of local government.

ITEM 3. Amend subrule 162.4(3), introductory paragraph, as follows:

162.4(3) Grant proposal. Applicants shall submit the proposal to the division director on Form 470-2127, Application for Gamblers Assistance Program. If a proposal does not contain the information specified in the application package or if it is late, it will be disapproved. Proposals shall contain the following information:

NOTICE — INSURANCE**PUBLIC HEARING**

Pursuant to 1987 Iowa Code supplement section 515A.22, notice is hereby given that a hearing will be held by the Commissioner of Insurance on the issue of whether a competitive market exists in this state with regard to workers' compensation insurance. The factors to be considered are as set out in section 515A.22(2), paragraphs "a" through "f." The hearing will be held on May 24, 1988, at 10 a.m., in the sixth floor conference room, Lucas State Office Building, Des Moines, Iowa.

Any person wishing to appear and present evidence or argument on this issue must notify Karen George at the Iowa Division of Insurance, in writing, by May 24, 1988.

This Notice is published pursuant to Iowa Code section 17A.6(1)"c."

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 February of 1988 is 9.89%. 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 May 1, 1988.

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 March of 1988 is 9.86%. 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 June 1, 1988.

ARC 8685
LOTTERY DIVISION[705]
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 99E.9 and 17A.3, the Iowa Lottery Board hereby gives Notice of Intended Action to adopt an amendment to Chapter 11, "Pull-Tab General Rules," Iowa Administrative Code.

The amendment sets the maximum price of pull-tab tickets at \$1, including sales tax.

This amendment was also filed emergency and is published herein as **ARC 8684**. The purpose of this Notice is to solicit public comment on the rule, the content of which is incorporated here by reference.

Any interested person may make written suggestions or comments on the rule prior to May 25, 1988. Written comments or suggestions should be directed to Nichola Schissel, Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312. Persons who want to convey their views orally should contact Nichola Schissel at (515) 281-7870 or at the address above.

A public hearing will be held on May 25, 1988, at 8:30 a.m. at 2015 Grand Avenue, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing.

This rule is intended to implement Iowa Code chapter 99E.

ARC 8683
LOTTERY DIVISION[705]
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 99E.9 and 17A.3, the Iowa Lottery Board hereby gives Notice of Intended Action to adopt an amendment to Chapter 12, "Lotto America," Iowa Administrative Code.

The amendment allows the MUSL Board to set aside funds from the Lotto America prize pool to be used to fund future prizes.

This amendment was also filed emergency and is published herein as **ARC 8682**. The purpose of this Notice is to solicit public comment on the rule, the content of which is incorporated here by reference.

Any interested person may make written suggestions or comments on the rule prior to May 25, 1988. Written comments or suggestions should be directed to Nichola Schissel, Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312. Persons who want to convey their views orally should contact Nichola Schissel at (515) 281-7870 or at the address above. A public hearing will be held on May 25, 1988, at 8:30 a.m. at 2015 Grand Avenue,

Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing.

This rule is intended to implement Iowa Code chapter 99E.

ARC 8698
MANAGEMENT
DEPARTMENT[541]
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 8.6(8), the Iowa Department of Management hereby gives Notice of Intended Action to amend 541—1.8(8), "Access to data in the personnel management information system," Iowa Administrative Code.

In subrule 1.8(1), the sixth additional member was unintentionally excluded from the previous filing of the Department rules.

Any interested person may make written suggestions or comments on these proposed rules prior to May 24, 1988. Written materials should be sent to the Director, Iowa Department of Management, State Capitol Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Director at the above address.

Amend subrule 1.8(1) to read as follows:

1.8(1) Organization. There shall be a personnel management information system board of review consisting of an appointed representative from each of (1) the department of management; (2) the institutions governed by the board of regents; (3) the department of general services; (4) the department of transportation; (5) the department of revenue and finance; *and (6) the department of personnel.* This board will recommend an administrator who will be the contact person for securing information from the system. The price for the production of a requested report will be the cost as determined by the data processing division of the department of general services. Billings will be accomplished under the rules established by the department of general services.

These rules are intended to implement Iowa Code section 8.6.

ARC 8694
NATURAL RESOURCES
DEPARTMENT[561]
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 supplement section 455E.8(7), the Director of the Department of Natural Resources proposes to adopt a new 561—Chapter 15, "Groundwater Protection Program Evaluation."

NATURAL RESOURCES DEPARTMENT[561] (cont'd)

Iowa Code supplement section 455E.8(7) provides that the director shall develop and adopt by rule, criteria for evaluating groundwater protection programs. The Director proposes to adopt rules pertaining to the creation of an evaluation committee, its duties, evaluation criteria, and the identification of the programs to be evaluated.

The Department will conduct one public hearing to receive comments on these proposed amendments. It will be held on May 24, 1988, at 10 a.m. in the 5th Floor West Conference Room in the Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034.

Written comments will be received by the Department at the address given above until ten days following the hearing.

These proposed amendments are intended to implement Iowa Code supplement section 455E.8(7).

The following new chapter is proposed:

**CHAPTER 15
GROUNDWATER PROTECTION
PROGRAM EVALUATION**

561—15.1(455B) Authority and purpose.

15.1(1) Authority. Iowa Code section 455E.8(7) provides that the director of the department of natural resources shall adopt by administrative rule, criteria for evaluating groundwater protection programs.

15.1(2) Purpose. The purpose of these rules is to provide criteria by which the groundwater protection programs promulgated by the 1987 Iowa Acts, chapter 225 and related groundwater programs are to be evaluated on a regular basis.

561—15.2(455B) Reports and scheduling. Groundwater program status reports identified in rule 15.4(2)"b" below shall be prepared annually and shall cover the performance period of the programs during the period from July 1 to June 30 of each state fiscal year. Groundwater program evaluations shall be conducted and a report prepared on a biennial basis. Groundwater program status reports shall be completed by October 1 of each year. Groundwater program evaluations shall be completed by October 1 on even-numbered years. The director will include the groundwater program evaluations into the biennial report required under 455B.263(1).

561—15.3(455B) Evaluation committee.

15.3(1) Groundwater program status reports and groundwater program evaluations shall be performed by an evaluation committee which shall consist of one representative of each of the following:

- a. Board of regents.
- b. Department of public health.
- c. Department of agriculture and land stewardship.
- d. Soil and water conservation district commissioners.
- e. Department of natural resources.

15.3(2) Chairperson. The chairperson of the evaluation committee shall be the representative of the department of natural resources.

15.3(3) Duties. The evaluation committee is responsible for assembling individual agency groundwater program status reports by October 1 of each year. The evaluation committee is also responsible for conducting the groundwater program evaluations and submitting

a consolidated evaluation report to the director of the department of natural resources by October 1 of each even-numbered year. The evaluation committee may seek input from public or private agencies as necessary to conduct the program evaluations.

561—15.4(455B) Evaluation criteria.

15.4(1) Scope. The evaluation criteria shall be utilized to evaluate the groundwater protection programs identified in rule 15.5(455B) below.

15.4(2) Criteria. The evaluation committee shall consider the following criteria:

a. The groundwater protection goal, Iowa Code section 455E.4 and all other policy statements contained in 1987 Iowa Acts, chapter 225.

b. A groundwater program status report which includes a description of the activities required by 1987 Iowa Acts, chapter 225, a description of activities undertaken to comply with 1987 Iowa Acts, chapter 225, an identification of milestones established or met, costs expended, revenues generated, and an identification of agencies responsible for or participating in the program.

c. An identification of the strengths (successes) or weaknesses (failures) of the program including an assessment of: compliance, funding and staffing needs, commitment to meeting milestones, promotion of interagency cooperation and public awareness, and contribution to the resource information base.

d. A description of economic loss or gains resulting from implementation of the program.

e. A description of environmental impacts resulting from implementation of the program including an identification of studies being conducted to assess changes in groundwater quality resulting from program implementation, a description of the findings or results, and an identification of any trends or other significant results.

f. An assessment of whether or not the program is complying with the policy statement(s) or goal including a description of program changes or additions needed for the purposes of: completing mandated program activities; being more effective and efficient at meeting the program's policy statement or declaration; preventing contamination to Iowa's groundwater; and

g. Any other criteria necessary for the evaluation of the groundwater protection programs.

561—15.5(455B) Programs to be evaluated.

15.5(1) The programs to be evaluated are those promulgated by the legislature in 1987 Iowa Acts, chapter 225 and related groundwater programs.

15.5(2) The programs to be evaluated are:

a. Iowa Code chapter 455E, Part 1, "Groundwater Protection," 1987 Iowa Acts, chapter 225;

b. Part 2, "Pesticides and Fertilizers," 1987 Iowa Acts, chapter 225;

c. Part 3, "Wells, Sinkholes, Watersheds and Wetlands," 1987 Iowa Acts, chapter 225;

d. Part 4, "Solid Waste Management and Landfills," 1987 Iowa Acts, chapter 225;

e. Part 5, "Household Hazardous Waste," 1987 Iowa Acts, chapter 225;

f. Part 6, "Storage Tank Management," 1987 Iowa Acts, chapter 225; and

g. All other related groundwater programs.

ARC 8697
PROFESSIONAL LICENSURE[645]
SPEECH PATHOLOGY AND
AUDIOLOGY EXAMINERS

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to amend Chapter 155, "Board of Speech Pathology and Audiology Examiners."

Chapter 155 is currently located at the former agency number (470). Notice of Intended Action has been filed (ARC 8577, IAB 3/23/88) to transfer Chapters 155 and 157 from the former agency number 470 to the new 645 — Chapters 300 and 302. The Board plans to adopt the rule transfer when it adopts the amendments to Chapter 155 noticed in this filing.

The proposed amendments change a reference to "licensure by reciprocity" to "licensure by equivalency," and establish a \$15 fine for the failure of a licensee to notify the Board office of a change of address.

Any interested person may make written comments on these proposed rules not later than May 24, 1988, addressed to Carol J. Barnhill, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed rules are intended to implement Iowa Code chapter 147.

ITEM 1. Amend rule 155.5 (147) by changing the catch words from "Licensure by reciprocity" to "Licensure by equivalency."

ITEM 2. Amend rule 155.7(147) by adding a new subrule 155.7(8) as follows:

155.7(8) The penalty for failure to notify the board office of an address change within 30 days is \$15. If the penalty is not paid by the time of license renewal, the license will not be renewed.

ARC 8666
PUBLIC BROADCASTING
DIVISION[225]

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 303.79(5), the Iowa Public Broadcasting Board of the Public Broadcasting Division of the Department of Cultural Affairs hereby gives Notice of Intended Action

to adopt Chapter 3, "Fair Information Practices," Iowa Administrative Code.

These rules are being adopted in order to comply with the requirements of Iowa Code section 22.11, the Iowa Fair Information Practices Act. That statute requires each state agency to adopt rules describing personally identifiable information maintained by the agency, describing what records are confidential, describing procedures for access to records, and describing procedures for making additions to records about a subject. The rule implements the public records law, Iowa Code chapter 22, by outlining how the agency implements the requirements of that Act.

These rules set forth the policies adopted by the Iowa Public Broadcasting Board at its April 6, 1988, meeting to implement the Iowa Fair Information Practices Act.

Consideration will be given to all written data, views, and arguments thereto, received by Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131, attention: Bureau Chief of Administration, before May 24, 1988.

Oral presentations may be made by appearing at a public meeting to be held on May 24, 1988, 9 a.m. in the McElroy Conference Room, Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131.

The following new chapter is proposed:

CHAPTER 3

FAIR INFORMATION PRACTICES

The Iowa public broadcasting board hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in Volume I of the Iowa Administrative Code.

225—3.1(22) Definitions.

"Agency" in these rules means the Iowa public broadcasting board.

"Administrator" means the administrator of the public broadcasting division of the department of cultural affairs.

"Custodian" means the public broadcasting board, the public broadcasting division of the department of cultural affairs, and Iowa public television.

225—3.3(22) Requests for access to records.

3.3(1) Location of record. A request for access to a record should be directed to the Administrator, Public Broadcasting Division, Iowa Public Television, 6450 Corporate Drive, Johnston, Iowa 50131.

3.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. - 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays.

3.3(7) Fees.

c. Insert "one-half hour" in lieu of "(specify time period)".

ARC 8673**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 sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to create a new Division in Chapter 8 entitled "Forms—Substitution of Official Iowa Tax Returns," Iowa Administrative Code.

The new rules 8.25(421,422) to 8.35(421,422) are being created to provide taxpayers with guidance in the use of reproduced, replacement, or computer generated facsimiles of official Iowa tax forms.

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

The Department has determined that the proposed rules 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 May 24, 1988, 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 rules on or before June 3, 1988. 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 the 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 May 27, 1988.

These rules are intended to implement Iowa Code sections 421.17 and 422.21.

The following new division is proposed to Chapter 8.

ITEM 1. 8.2 to 8.24 Reserved.

ITEM 2. The following new division is proposed:

FORMS—SUBSTITUTION OF OFFICIAL IOWA TAX RETURNS

701—8.25(421,422) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

1. The term "department" means the Iowa department of revenue and finance.

2. The term "director" means the director of the Iowa department of revenue and finance.

This rule is intended to implement Iowa Code sections 421.17 and 422.21.

701—8.26(421,422) Use of forms. This rule is to provide guidance for the use of computer generated forms, computerized information, and facsimile forms. Tax preparers and practitioners should give due consideration to this information when tax forms are used which were not supplied by the department. Also, preparers and practitioners are advised that the director reserves the right to make changes to forms when needed without prior notification to users of nondepartment supplied forms.

This rule is intended to implement Iowa Code sections 421.17 and 422.21.

701—8.27(421,422) Reproduction of department supplied forms. Reproduction (photocopy reprinting) of Iowa tax forms may be accomplished without prior approval of the department provided the following conditions are met.

1. There is no variation from the official copy provided by the department including reduction and enlargement.

2. Reprinting or reproduction of the form is not prohibited by another rule within this division.

3. Reprinting or reproduction of the form does not vary from criteria stated elsewhere in this chapter.

This rule is intended to implement Iowa Code sections 421.17 and 422.21.

701—8.28(421,422) Replacement forms. Replacement forms are forms which are re-typeset, produced by imagery, or otherwise replicated using the department supplied form as a model. These forms may include facsimile department forms that have been modified by the addition of pinfeeds, line enlargements, copy deletion or any other modifications. All replacement forms must be submitted to the department for approval prior to use.

This rule is intended to implement Iowa Code sections 421.17 and 422.21.

701—8.29(421,422) Computer generated forms. Computer generated forms are forms that are created in their entirety, including layout, by the computer. These forms must be a facsimile of the department supplied form that it is meant to replace. Also, computer generated Iowa tax forms must have prior approval of the department before the form will be accepted for processing. In addition, computer generated facsimiles of state forms must meet the following conditions.

1. General criteria as established in this division.

2. Be a form the reproduction of which is not prohibited by this division.

3. No deviation in content or spacing from the official form.

This rule is intended to implement Iowa Code sections 421.17 and 422.21.

701—8.30(421,422) Federal forms. Federal tax forms, or their alternates, do not require prior approval for use in Iowa returns provided the form is approved for federal filing and Iowa tax instructions authorize or require the use of federal forms in lieu of Iowa tax forms or schedules.

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

This rule is intended to implement Iowa Code sections 421.17 and 422.21.

701—8.31(421,422) Magnetic tape reporting. Magnetic tape reporting will be accepted for W2, W2P, and 1099 information reports only. No prior approval is needed for the submission of these reports when they are submitted in accordance with department policy. Information concerning the submission of magnetic tape is found in department publication "Guidelines for the Submission of Iowa Income Tax Information Returns" which is available from Taxpayer Services Section, P.O. Box 10457, Des Moines, Iowa 50306 or by telephone (515) 281-3114.

This rule is intended to implement Iowa Code sections 421.17 and 422.21.

701—8.32(421,422) Magnetic disk reporting. Magnetic disks are not an acceptable method of reporting information to the department.

This rule is intended to implement Iowa Code sections 421.17 and 422.21.

701—8.33(421,422) Forms that may not be reproduced. Certain forms supplied by the department cannot be duplicated or reproduced because of special processing requirements for the forms. These forms will normally have an optical scan line with special characters or print to ensure that automated processing equipment accurately credits the proper accounts. Forms that may not be reproduced include but are not limited to:

1. Sales/Use tax returns.
2. Withholding tax returns.
3. Motor Vehicle Fuel tax returns.
4. Annual Withholding Verified Summary of Payments forms.
5. Department generated accounts receivable notices.

This rule is intended to implement Iowa Code sections 421.17 and 422.21.

701—8.34(421,422) Failure to obtain required approval. Alternate forms filed with the department which have not been given prior approval and which disrupt normal processing procedures of the department will be returned directly to the taxpayer. It is the taxpayer's responsibility to ensure that all purchased alternate forms have been approved by the department.

This rule is intended to implement Iowa Code sections 421.17 and 422.21.

701—8.35(421,422) General information. The following general information is applicable to all reproduced, replacement, or computer generated forms.

1. Paper. Paper must be of at least equal quality to stock used by the department. Recommended paper is at least 18 pounds (17" x 22"; 500 sheets) or 45 pounds (25" x 38"; 500 sheets). Carbon bonded paper is prohibited for all forms. It is preferred that the color of the paper substantially duplicate the color of the original return; however, white may be used for all returns.

2. Ink. Black ink should be used in the printing of returns.

3. Size. Reproduced or computer generated forms must be the same size as the original return supplied by the department.

4. Legibility. All forms must have a high standard of legibility, both as to printing and fill-material.

5. Distinctive markings and symbols. Some Iowa tax forms contain distinctive symbols by certain line items

on the return. These symbols must be reproduced on the submitted forms.

6. Labels. Preprinted labels furnished by the department, such as the income tax peel-off label, should be affixed to returns submitted to the department. This will expedite processing and result in increased efficiency.

7. Accuracy of reproduction. Forms submitted for approval should be a facsimile of the department supplied form. No variation from the original form will be allowed for forms which are identified as returns. Replacement schedules may be approved with slight variations from the department schedule.

8. Assembly of forms. Reproduced forms should be assembled in sequence with the back page of a form immediately following the front page. Staples should be placed in the same position as would normally be used on the original form.

9. Information reported. Care should be taken to ensure accuracy of information reported. The information that is reported is the responsibility of the reporting company not a company that has produced computer software or is submitting the information as an agent of the reporting company.

10. Department approval. Forms that require prior approval should be forwarded to the Department of Revenue and Finance, Information and Management Services Division, P.O. Box 10460, Des Moines, Iowa 50306. Use of this address will expedite replies to requests for approval. Normally, approval will be granted for use of the forms for one year only. If you have doubts about a form or its need for approval, the form should be submitted for consideration.

11. Changes. The director reserves the right to make changes to the information and information format required without notification to users. Users of substitute forms should make arrangements to secure approval for forms on an annual basis. Normally, forms content requirements will be available during the latter part of October of each year for that tax year.

These rules are intended to implement Iowa Code sections 421.17 and 422.21.

ARC 8674

**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 71, "Assessment Practices and Equalization," Iowa Administrative Code.

These amendments are being made to clarify the procedures used in selecting equalization appraisals for residential and commercial real estate.

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

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

The Department has determined that these proposed rules will not have an impact on small business within the meaning of Iowa Code section 17A.31.

Any interested person may make written suggestions or comments on these proposed amendments on or before June 3, 1988. 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 the 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 May 27, 1988.

These rules are intended to implement Iowa Code chapter 421.

The following amendments are proposed:

ITEM 1. Amend subrule 71.12(2) by adding the following new paragraph:

c. Equalization appraisal selection procedures for residential real estate. Residential properties to be appraised by department of revenue and finance personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the following manner:

(1) The department appraiser assigned to the jurisdiction shall determine a systematic random sequence of numbers equal to the number of appraisals required and document the following steps.

1. The department appraiser assigned to the jurisdiction shall compute the interval number by dividing the total number of improved properties in the classification to be sampled by the number of appraisals to be performed.

EXAMPLE: In this example, ten appraisals are needed with a total of 1,397 improved residential units. Dividing 1,397 by 10, 139.7 is arrived at, which is rounded down to 139. This is the interval number.

2. The selection of the first sequence number shall be accomplished by having an available disinterested person randomly select a number from one through the interval number.

EXAMPLE: In this example a number from 1 to 139 is to be selected. The person randomly selected number 20.

3. The department appraiser shall develop a systematic sequence of numbers equal to the number of appraisals required. Starting with the randomly selected number previously picked by the disinterested person, add the interval number to this number and to each resulting number until a systematic sequence of numbers is obtained.

EXAMPLE: In this example ten appraisals are needed, so a sequence of ten numbers must be developed. Starting with number 20 and adding the interval number of 139 to it and each resulting number provides the following systematic sequence: 20, 159, 298, 437, 576, 715, 854, 993, 1,132, 1,271.

(2) Number of improved properties.

County jurisdictions - Put the name of each city or township having improved units in the classification to

be sampled into a hat. Draw each one out of the hat and record its name in the order of its draw. Likewise, record the respective number of improved units for each. Then consecutively number all the improved units and document the procedure.

EXAMPLE:

City or Township	Number of Improved Residential Units	Code Numbers
Franklin Twp.	57	1-57
Pleasant View	160	58-217
Jackson Twp.	56	218-273
Johnston	300	274-573
Polk Twp.	110	574-683
Washington Twp.	114	684-797
Maryville	306	798-1103
Camden Twp.	110	1104-1213
Salem	184	1214-1397
Total	1,397	

(3) Determine the location of the improved properties selected for appraisal and document the procedure.

EXAMPLE:

City or Township	Number of Improved Residential Units	Code Numbers	Sequence Number	Entry on Rolls
Franklin Twp.	57	1-57	20	20
Pleasant View	160	58-217	159	102
Jackson Twp.	56	218-273		
Johnston	300	274-573	298-437	25,164
Polk Twp.	110	574-683	576	3
Washington Twp.	114	684-797	715	32
Maryville	306	798-1103	854,993	57,196
Camden Twp.	110	1104-1213	1132	29
Salem	184	1214-1397	1271	58
Total	1,397			

1. The department appraiser shall locate the property to be appraised by finding the relationship between the sequence numbers and the code numbers and identify the property.

EXAMPLE: The first sequence number is 20. Since the improved residential properties in Franklin Township have been assigned code numbers 1 to 57, sequence number 20 is in that location.

To identify this property, examine the Franklin Township assessment roll book and stop at the twentieth improved residential entry.

Document the parcel number, owner's name, and legal description of this property.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

- Vacant building
- Current year sale
- Partial assessment
- Prior equalization appraisal
- Tax exempt

Only one portion of a total property unit (example - a parking lot of a grocery store)

Value established by court action

3. The department appraiser shall determine a substitute property if the originally selected one is

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 20 is ineligible, use code number 21 as a substitute. If code number 21 is ineligible, use code number 22, etc., until an eligible property is found.

If the procedure described in 71.12(2)"c"(3)"3" moves the substitute property to another city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph above moves the substitute property to a preceding city or township, go back to the procedure of 71.12(2)"c"(3)"3" even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(2)"c"(3)"2" above. Alternate properties are selected by using the same procedure described in 71.12(2)"c"(3)"3" above.

5. Follow procedures 71.12(2)"c"(3), items "1" to "4" above for each of the other originally selected sequence numbers.

ITEM 2. Amend subrule 71.12(3) by adding the following new paragraph:

c. Equalization appraisal selection procedures for commercial real estate. Commercial properties to be appraised by department of revenue and finance personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the following manner:

(1) The department appraiser assigned to the jurisdiction shall determine a systematic random sequence of numbers equal to the number of appraisals required and document the following steps.

1. The department appraiser shall compute the interval number by dividing the total number of improved properties in the classification to be sampled by the number of appraisals to be performed.

EXAMPLE: In this example, ten appraisals are needed with a total of 397 improved commercial units. Dividing 397 by 10, 39.7 is arrived at, which is rounded down to 39. This is the interval number.

2. The selection of the first sequence number shall be accomplished by having an available disinterested person randomly select a number from one through the interval number.

EXAMPLE: In this example a number from 1 to 39 is to be selected. The person randomly selected number 2.

3. The department appraiser shall develop a systematic sequence of numbers equal to the number of appraisals required. Starting with the randomly selected number previously picked by the disinterested person, add the interval number to this number and to each resulting number until a systematic sequence of numbers is obtained.

EXAMPLE: In this example ten appraisals are needed, so a sequence of ten numbers must be developed. Starting with number 2 and adding the interval number of 39 to it and each resulting number provides the following systematic sequence - 2, 41, 80, 119, 158, 197, 236, 275, 314, 353.

(2) Number of improved properties.

1. City jurisdictions - Utilizing the assessment book or a computer printout which follows the same order as the assessment book, consecutively number all the improved units and document the procedure.

2. County jurisdictions - Put the name of each city or township having improved units in the classification to be sampled into a hat. Draw each one out of the hat and record its name in the order of its draw. Likewise, record the respective number of improved units for each. Then consecutively number all the improved units and document the procedure.

EXAMPLE:

City or Township	Number of Improved Commercial Units	Code Numbers
Franklin Twp.	4	1-4
Pleasant View	60	5-64
Jackson Twp.	9	65-73
Johnston	100	74-173
Polk Twp.	10	174-183
Washington Twp.	14	184-197
Maryville	106	198-303
Camden Twp.	10	304-313
Salem	84	314-397
Total	397	

(3) The department appraiser shall determine the location of the improved properties selected for appraisal and document the procedure.

EXAMPLE:

City or Township	Number of Improved Commercial Units	Code Numbers	Sequence Number	Entry on Rolls
Franklin Twp.	4	1-4	2	2
Pleasant View	60	5-64	41	37
Jackson Twp.	9	65-73		
Johnston	100	74-173	80,119,158	7,46,85
Polk Twp.	10	174-183		
Washington Twp.	14	184-197	197	14
Maryville	106	198-303	236,275	39,78
Camden Twp.	10	304-313		
Salem	84	314-397	314,353	1,40
Total	397			

1. The department appraiser shall locate the property to be appraised by finding the relationship between the sequence numbers and the code numbers and identify the property.

EXAMPLE: The first sequence number is 2. Since the improved commercial properties in Franklin Township have been assigned code numbers 1 to 4, sequence number 2 is in that location.

To identify this property, examine the Franklin Township assessment roll book and stop at the second improved commercial entry.

The department appraiser shall document the parcel number, owner's name, and legal description of this property.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

REVENUE AND FINANCE DEPARTMENT[701] (cont'd)

Vacant building
 Current year sale
 Partial assessment
 Prior equalization appraisal
 Tax exempt

Only one portion of a total property unit (example - a parking lot of a grocery store)

Value established by court action

3. The department appraiser shall determine a substitute property if the originally selected one is ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 2 is ineligible, use code number 3 as a substitute. If code number 3 is ineligible, use code number 4, etc., until an eligible property is found.

If the procedure described in 71.12(3)"c"(3)"3" above moves the substitute property to a city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph above moves the substitute property to a preceding city or township, go back to the procedure of 71.12(3)"c"(3)"3" above even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(3)"c"(3)"2" above. Alternate properties are selected by using the same procedure described in 71.12(3)"c"(3)"3" above.

5. Follow procedures 71.12(3)"c"(3), items "1" to "4" above for each of the other originally selected sequence numbers.

ARC 8687

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.

Pursuant to Iowa Code section 17A.4, the Utilities Board (Board) gives Notice that on April 15, 1988, the Board issued an order in Docket No. RMU-88-8, In Re: Disconnection Rules, "Order Commencing Rule Making." The Board is proposing to amend subrules 19.4(15) and 20.4(15) relating to disconnection of utility service without notice in the event of tampering with the equipment furnished and owned by the utility.

Currently, paragraph 19.4(15)"c" allows a gas utility to refuse service or disconnect service without notice in the event of tampering with the equipment furnished and owned by the utility. Paragraph 19.4(15)"d" allows a gas utility to refuse or disconnect service without notice in the event of unauthorized use. Paragraphs 20.4(15)"c" and "d" contain the same disconnection provisions for

electric utilities. The Board is concerned that these subrules might allow the utility to make a determination regarding the existence of tampering or unauthorized use and consequently disconnect service to a customer, only to determine later that tampering or unauthorized use had not, in fact, occurred. Therefore, the Board is proposing to strike the words "without notice" from paragraphs 19.4(15)"c" and "d" and 20.4(15)"c" and "d." It should be understood that these amendments would not prohibit a utility from immediately disconnecting service without notice upon a determination of a hazardous condition. Nor do these amendments absolutely prohibit a utility from disconnecting a customer upon a determination of tampering or unauthorized use. The effect of these amendments will be that a utility would be required to give 12 days' written notice before disconnecting a customer upon a determination of nonhazardous tampering or unauthorized use.

Any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before May 24, 1988, by filing the original and ten copies in a form substantially complying with subrule 2.2(2). All communications shall clearly indicate the author's name and the docket in which the comment is submitted. All communications should be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 1. Amend subrule 19.4(15), third unnumbered paragraph as follows:

Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in 19.4(15) "a," and "b," "c," and "d," no service shall be disconnected on the day preceding or day on which the utility's local business office or local authorized agent is closed. Service may be refused or disconnected.

Further amend 19.4(15), paragraphs "c" and "d," as follows:

c. ~~Without notice in~~ In the event of tampering with the equipment furnished and owned by the utility.

d. ~~Without notice in~~ In the event of unauthorized use.

ITEM 2. Amend subrule 20.4(15), third unnumbered paragraph, as follows:

Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in 20.4(15) "a," and "b," "c," and "d," no service shall be disconnected on the day preceding or day on which the utility's local business office or local authorized agent is closed. Service may be refused or disconnected:

Further amend 20.4(15), paragraphs "c" and "d," as follows:

c. ~~Without notice in~~ In the event of tampering with the equipment furnished and owned by the utility.

d. ~~Without notice in~~ In the event of unauthorized use.

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:

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%
December 1, 1987 - December 31, 1987	11.50%
January 1, 1988 - January 31, 1988	10.75%
February 1, 1988 - February 29, 1988	11.00%
March 1, 1988 - March 31, 1988	10.75%
April 1, 1988 - April 30, 1988	10.25%*
May 1, 1988 - May 31, 1988	10.25%

*Submitted as 10.75%, published IAB 4/6/88

ARC 8700**APPEAL BOARD, STATE[543]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 25A.3, the State Appeal Board hereby emergency transfers and adopts amendments to 60—Chapters 1 to 5 transferred to 543—Chapters 1 to 5, Iowa Administrative Code.

These rules reflect the statutory changes and also rescind Chapter 4, "County Indemnification Fund," pursuant to 1986 Iowa Acts, chapter 1246, section 775, which repealed Iowa Code section 331.404.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are unnecessary, impracticable, and contrary to the public interest because the amendment simply transfers State Appeal Board[60] Chapters 1 to 5 to [543] Chapters 1 to 5. Iowa Code section 24.26 creates the State Appeal Board in the Department of Management.

The Department further finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of thirty-five days after publication should be waived and the rules made effective immediately upon filing with the Administrative Rules Coordinator, April 15, 1988. This amendment confers a benefit to the public by conforming to the government reorganization.

This amendment became effective April 15, 1988.

These rules are intended to implement Iowa Code sections 24.26 to 24.48 and 25A.3.

ITEM 1. Transfer 60—Chapters 1 to 5 to 543—Chapters 1 to 5.

ITEM 2. Substitute "Director of Department of Management" for the words "comptroller" or "state comptroller" where they appear in: 1.2(3), 1.11(25A), 2.1(17A), 4.3(332), 4.5(332), and 5.1(1).

ITEM 3. Substitute "Department of Management" for the words "state comptroller" where they appear in: 1.3(1), 1.12(25A), and 3.1(1).

ITEM 4. Iowa Code sections are updated.

ITEM 5. Rescind Chapter 4, County Indemnification Fund.

[Filed emergency 4/15/88, effective 4/15/88]
[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8690**COUNTY FINANCE
COMMITTEE[547]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 333A.4(6), the County Finance Committee hereby transfers rules 292—Chapters 1 to 5 to 547—Chapters 1 to 5, Iowa Administrative Code.

This transfer is made in response to Iowa's reorganization of government which creates the County Finance Committee in the Department of Management pursuant to Iowa Code section 333A.3.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are unnecessary, impracticable, and contrary to the public interest because the amendment simply transfers rules to complete the change from Comptroller to Department of Management to conform with 1986 Iowa Acts, chapter 1245.

The Department further finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of thirty-five days after publication should be waived and the rules made effective immediately upon filing with the Administrative Rules Coordinator, April 15, 1988. This amendment confers a benefit to the public by conforming to the government reorganization.

This amendment became effective April 15, 1988.

The Committee also amends the second sentence of subrule 2.1(3) to concur with Iowa Code section 333A.3(3), which leaves selection of officers to the committee.

These rules are intended to implement Iowa Code chapter 333A.

ITEM 1. Transfer 292—Chapters 1 to 5 to 547—Chapters 1 to 5.

ITEM 2. Update Iowa Code sections.

ITEM 3. Strike the second sentence of subrule 2.1(3).

ITEM 4. Adopt the petitions for rule-making segments of the Uniform Administrative Rules as follows:

**CHAPTER 6
PETITIONS FOR RULE MAKING**

The county finance committee incorporates the petitions for rule-making segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code, with the following amendments.

547—6.1(17A) Petition for rule making. In lieu of the words "designate office", insert "Room 12, State Capitol, Des Moines, Iowa 50319". In lieu of the words "AGENCY NAME", the heading on the petition form should read:

"BEFORE THE COUNTY FINANCE COMMITTEE"

547—6.3(17A) Inquiries. In lieu of the words "designate official by full title and address", insert "County Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

ITEM 5. Adopt the petition for declaratory rulings segments of the Uniform Administrative Rules as follows:

**CHAPTER 7
DECLARATORY RULINGS**

The county finance committee incorporates the declaratory rulings segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code, with the following amendments.

547—7.1(17A) Petition for declaratory ruling. In lieu of the words "designate office", insert "Room 12, State Capitol, Des Moines, Iowa 50319." In lieu of the words "AGENCY NAME", the heading on the petition form should read:

"BEFORE THE COUNTY FINANCE COMMITTEE"

547—7.3(17A) Inquiries. In lieu of the words "designate official by full title and address", insert "County Finance

COUNTY FINANCE COMMITTEE[547] (cont'd)

Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

ITEM 6. Adopt the agency procedure for rule making segments of the Uniform Administrative Rules as follows:

**CHAPTER 8
AGENCY PROCEDURE FOR RULE MAKING**

The county finance committee incorporates the agency procedure for rule making segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code with the following amendments.

7.5(1) Written comments. In lieu of the words "identify office and address", insert "County Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

7.6(3) Mailing list. In lieu of the words "designate office", insert "County Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

7.11(1) General. In lieu of the words "specify office and address", insert "County Finance Committee, Room 12, State Capitol, Des Moines, Iowa 50319."

These rules are intended to implement Iowa Code section 8.6.

[Filed emergency 4/15/88, effective 4/15/88]
[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8684

LOTTERY DIVISION[705]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 99E.9 and Iowa Code chapter 17A, the Iowa Lottery Board emergency adopts and implements an amendment to Chapter 11, "Pull-Tab General Rules," Iowa Administrative Code.

The amendment sets the maximum price for a pull-tab ticket at \$1, including sales tax.

In accordance with Iowa Code section 17A.4(2), the Lottery Board finds that public notice and participation are impractical and unnecessary and contrary to the public interest in that the change allows for the effective marketing of pull-tab tickets in a manner calculated to maximize revenues and is not likely to be a matter affected by public comment.

In accordance with Iowa Code section 17A.5(2)"b"(2), the Board also finds that the usual effective date of this rule, 35 days after publication, should be waived and the rule made effective on April 15, 1988. This effective date confers a benefit upon the public by ensuring that pull-tabs are marketed in the manner best calculated to maximize the revenues available to the Iowa Plan Fund.

The Iowa Lottery Board adopted this rule on April 12, 1988.

This rule is intended to implement Iowa Code section 99E.9.

This rule is also published herein as a Notice of Intended Action, **ARC 8685**, to solicit public comment.

Amend rule 705—11.3(99E) as follows:

705—11.3(99E) Ticket price. The price of a pull-tab ticket shall be ~~50 cents~~ or ~~25 cents~~ not exceed \$1, including sales tax, as determined by the commissioner.

[Filed emergency 4/15/88, effective 4/15/88]
[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8682

LOTTERY DIVISION[705]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 99E.9 and Iowa Code chapter 17A, the Iowa Lottery Board emergency adopts and implements an amendment to Chapter 12, "Lotto America," Iowa Administrative Code.

The amendment allows the MUSL Board to manage funds in the Lotto America prize pool.

In accordance with Iowa Code section 17A.4(2), the Lottery Board finds that public notice and participation are impractical and unnecessary as the change in the calculation of the prize pool is a technical change in the game unlikely to be affected by public participation.

In accordance with Iowa Code section 17A.5(2)"b"(2), the Board also finds that the usual effective date of this rule, 35 days after publication, should be waived and the rule made effective on April 15, 1988. This effective date confers a benefit upon the public by ensuring that the administrative rules of the Iowa Lottery comply with the rules and procedures of the Multi-state Lottery Association.

The Iowa Lottery Board adopted this rule on April 12, 1988.

This rule is intended to implement Iowa Code section 99E.9.

This rule is also published herein as a Notice of Intended Action, **ARC 8683**, to solicit public comment.

Amend rule 705—12.7(99E) by adding the following new subrule:

12.7(4) The MUSL board may set aside a portion of Lotto America sales from the prize pool. Funds set aside shall be used to fund future Lotto America prizes as specified by the MUSL board.

[Filed emergency 4/15/88, effective 4/15/88]
[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8699

**MANAGEMENT
DEPARTMENT[541]**

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 8.6(8), the Department of Management hereby gives Notice of Intended Action to rescind 270—Chapter 5, Iowa Administrative Code.

The Office of State Comptroller was rescinded by 1986 Iowa Acts, chapter 1245, section 103.

MANAGEMENT DEPARTMENT[541] (cont'd)

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are unnecessary, impracticable, and contrary to the public interest because the amendment simply rescinds Chapter 5 to complete the change from Comptroller to Department of Management to conform with 1986 Iowa Acts, chapter 1245.

The Department further finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of thirty-five days after publication should be waived and the rules made effective immediately upon filing with the Administrative Rules Coordinator, April 15, 1988. This amendment confers a benefit to the public by conforming to the government reorganization.

This amendment became effective April 15, 1988.

These rules are intended to implement Iowa Code section 8.6.

Rescind **270—Chapter 5**, "Administration," Iowa Administrative Code.

[Filed emergency 4/15/88, effective 4/15/88]
[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8692

MEDICAL EXAMINERS BOARD[653]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 147.76 the Medical Examiners Board adopts emergency rules transferring 470—Chapters 135 and 136 to the Medical Examiners Board 653—Chapters 1 to 25.

Because of the reorganization of state government by 1986 Iowa Acts, chapter 1245, a new agency identification numbering system for existing state agencies and new "umbrella" agencies was adopted by the Code Editor.

The Medical Examiners Board will be organized and numbered as follows:

Former	Chapter Title	New
[Noticed as] 470—135.600	Fair Information Practices and Public Records Chapters 2 - 9 Reserved	653-1
470—135.1-10	Board of Medical Examiners General	653-10
470—135.101-109	Licensure Requirements	653-11
470—135.201-301	Discipline	653-12
470—135.251 and 470—135.401-402	Standards of Practice and Professional Ethics	653-13
470—136	Chapters 14-19 Reserved Physicians' Assistants Chapters 21-25 Reserved	653-20

In addition to the the transfer of rules to the new agency number, a number of nonsubstantive amendments are made to correct agency names and titles, addresses, gender references, and correct grammatical errors.

The only rule being transferred which contains significant changes in language is rule 135.3(17A),

"Organization of Board." which is being updated to reflect Iowa Code section 147.14(2), to include a physician's assistant on the Board of Medical Examiners.

Pursuant to Iowa Code section 17A.4(2), the Board of Medical Examiners finds that notice and public participation are unnecessary, impracticable and contrary to the public interest because these amendments simply transfer the rules to the appropriate agency and correct them to conform to changes resulting from 1986 Iowa Acts, chapter 1245, effective July 1, 1986.

Pursuant to the Iowa Code section 17A.5(2)"b"(2), the Medical Examiners Board finds that these rules confer a benefit on the public by having a coherent, unified set of rules and should become effective upon filing. Confusion over incorrect references will be eliminated.

The Board of Medical Examiners adopted these rules on April 14, 1988.

These rules implement Iowa Code chapters 147, 148, 148C, 150, and 150A and 1986 Iowa Acts, chapter 1245.

These rules shall become effective immediately upon filing on April 15, 1988.

ITEM 1. Transfer **470—Chapters 135 and 136 to 653—Chapters 1 to 25** and amend as follows:

Substitute the words "Iowa Department of Public Health" for "State Department of Health" wherever the words appear.

Substitute the word "Director" for "Commissioner" wherever the words appear.

Add the digits "-0180." to the zip code of the board's mailing address.

Substitute the words "medicine and surgery, osteopathic medicine and surgery, or osteopathy" for "medicine and surgery, osteopathy and osteopathic medicine and surgery" wherever the words appear.

Substitute the words "medicine and surgery, osteopathic medicine and surgery, or osteopathy" for "medicine and surgery, osteopathic medicine and surgery and osteopathy" wherever the words appear.

Substitute the words "Iowa Code" prior to the words chapter or section for the words "The Code" or "of the Code" wherever the words appear after the reference number.

ITEM 2. Subrule **135.1(17)** and rule **470—135.2(17A)** are amended by adding "147A" and "148C" and deleting "148B".

ITEM 3. Subrule **135.1(20)** is amended by adding "148C" and deleting "148B".

ITEM 4. Rule **470—135.3(17A)** is rescinded and the following inserted in lieu thereof:

653—10.3(17A) Organization of board. The board is comprised of a total of ten members. Five members of the board licensed to practice medicine and surgery; two members of the board licensed to practice osteopathic medicine and surgery; one member approved to practice as a physician's assistant who has all the rights and privileges of a board member but may vote only on matters relating to discipline of a physician's assistant, education of a physician's assistant and rules or policies directly affecting a physician's assistant; and two members from the general public, who are neither licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, or approved to practice as a physician's assistant. All board members are appointed by the governor and confirmed by the Iowa senate. The board member's term of office is three years

MEDICAL EXAMINERS BOARD[653] (cont'd)

and a member may not serve on the board more than three terms or nine years.

[Filed emergency 4/15/88, effective 4/15/88]
[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8695

NURSING BOARD[655]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 17A.3, 147.76, and 147.80, the Iowa Board of Nursing hereby adopts and emergency implements amendments to Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," appearing in the Iowa Administrative Code.

These amendments provide for a change in a number of fees. The purpose of the fee increase is to generate added revenue to cover the appropriations and expenditures in FY '89.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 24, 1988, as **ARC 8446**. These amendments are identical to those published under Notice of Intended Action except effective dates have been added after the fee changes.

Emergency action is taken in relationship to implementation of the rule in accord with Iowa Code section 17A.5(2)"b"(1). In FY'89 the Board's appropriation will exceed projected revenues; therefore, fees need to be adjusted prior to the normal effective date of this rule to guarantee adequate income in compliance with Iowa Code section 147.80. The fee changes will become effective on April 15, 1988, except for the original license fee based on the registered nurse examination, which will become effective on July 1, 1988.

The Iowa Board of Nursing adopted and emergency implemented this rule on a telephone conference call on April 13, 1988.

These amendments are intended to implement Iowa Code sections 17A.3, 147.76, and 147.80.

The following amendments are adopted:

Amend rule 655—3.1(17A,147,152,258A), definition of "Fees," numbered paragraphs 1,2,3,5, and 6, as follows:

1. For the original license based on the registered nurse examination, ~~\$40 45.~~ (Effective July 1, 1988)

2. For the original license based on the practical nurse examination, ~~\$30 40.~~ (Effective April 15, 1988)

3. For a registered nurse/licensed practical nurse license by endorsement, ~~\$56 60.~~ (Effective April 15, 1988)

5. For reactivation of a license to practice as a registered nurse/licensed practical nurse, based on ~~\$12 \$16~~ per year, or any portion thereof, totals ~~\$36 48~~ for a license lasting more than 24 months up to 36 months. (Effective April 15, 1988)

6. For the renewal of a license to practice as a registered nurse/licensed practical nurse, ~~\$36 48~~ for a three-year period. (Effective April 15, 1988)

[Filed emergency after Notice 4/15/88, effective 4/15/88]
[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8667

RACING AND GAMING
DIVISION[491]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 99D.7, the State Racing Commission hereby emergency adopts and implements an amendment to Chapter 8, "Mutuel Departments," Iowa Administrative Code.

The amendment to subrule 8.2(4) provides for daily triple wagering at greyhound tracks, subject to Commission approval.

In compliance with Iowa Code section 17A.4(2), a Notice of Intended Action was published in the Iowa Administrative Bulletin on February 10, 1988, as **ARC 8357**, and no public comment was received.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules, 35 days after publication, should be waived and the rules be made effective April 11, 1988, as they confer a benefit on the public by ensuring the Commission's ability to achieve the financial results expected by the public and the state of Iowa.

The Commission adopted this amendment at a regular meeting on April 6, 1988.

The emergency amendment will be rescinded June 8, 1988, when the version adopted under the regular rule-making process is effective; see **ARC 8668** herein.

This amendment is intended to implement Iowa Code chapter 99D.

Amend subrule 8.2(4), by adding paragraph "1" as follows:

1. Daily triple wagering. The amount wagered on the winning combination, being the runner or betting interest finishing first in each of the three races comprising the daily triple, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning daily triple combination; the payoff includes the amount wagered and the profit.

(1) The daily triple pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place and show pool shown on the tote board, nor to the rules governing the distribution of such other pools.

(2) A valid daily triple ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and the ticket shall constitute an acceptance of daily triple provisions and rules of the Iowa racing commission.

(3) A daily triple may be given a distinctive name to be selected by the association conducting the races, such as "PICK 3," subject to the prior approval of the commission.

(4) The daily triple pari-mutuel pool consists of amounts contributed for a selection for win only in each of three consecutive races designated by the association with the prior approval of the commission. Each person purchasing a daily triple ticket shall designate the winning runner in each of the three races comprising the daily triple.

(5) The net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly

RACING AND GAMING DIVISION[491] (cont'd)

designate the winners in all three races comprising the daily triple.

(6) If no ticket is sold combining the three winners of the daily triple, the net amount in the pari-mutuel pool shall be distributed among the holders of tickets which include the winners of at least two of the three races comprising the daily triple.

(7) If no ticket is sold combining at least two winners of the daily triple, the net amount in the pari-mutuel pool shall be distributed among holders of tickets which include the winner of any one race comprising the daily triple.

(8) If no ticket is sold that would require distribution of the daily triple pool to a winner under this rule, the association shall make a complete and full refund of the daily triple pool.

(9) If for any reason one of the races comprising the daily triple is canceled, the net amount of the pari-mutuel pool shall be distributed as provided above in 8.2(4)“1”(6) to 8.2(4)“1”(8).

(10) If for any reason two or more of the races comprising the daily triple are canceled, a full and complete refund will be made of the daily triple pool.

(11) In the event a daily triple ticket designates a selection in any one or more of the races comprising the daily triple and that selection is scratched, excused or determined by the stewards to be a nonstarter in the

race, the actual favorite(s), as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs.

(12) In the event of a dead heat for win between two or more runners in any daily triple race, all runners in the dead heat for win shall be considered as winning runners in the race for the purpose of calculating the pool.

(13) No pari-mutuel ticket for the daily triple pool shall be sold, exchanged or canceled after the time of the closing of wagering in the first of the three races comprising the daily triple, except for refunds on daily triple tickets as required by this paragraph “1,” and no person shall disclose the number or amount of tickets selecting winners of daily triple races until the stewards have determined the last race comprising the daily triple to be official. At the conclusion of the second of the three races comprising the daily triple, an association may, with the prior approval of the commission, display potential distributions to ticket holders depending upon the outcome of the third race of the daily triple.

[Filed emergency after Notice 4/11/88, effective 4/11/88]
[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8702**BLIND, DIVISION FOR THE[423]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 601K.122, 601K.126, and 22.11, the Commission for the Blind of the Department of Human Rights hereby rescinds rule 2.1(601K), "Confidential Information," and adopts Chapter 13, "Public Records and Fair Information Practices," Iowa Administrative Code.

These rules are adopted to comply with Iowa Code chapter 22 which requires each state agency to adopt rules describing personally identifiable information and confidential records maintained by the agency and explaining procedures by which the public may access or make additions to agency records. These rules set forth the policies adopted by the Commission for the Blind to implement the Iowa Fair Information Practices Act.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on February 10, 1988, as **ARC 8385**. A public hearing was held on March 2, 1988.

These rules were adopted by the Iowa Commission for the Blind on March 11, 1988, and will become effective June 8, 1988.

These rules are identical to those published in the Notice of Intended Action except for correction of technical errors made in the listing of records in rule 13.14(17A,22), changes made as a result of the Report of the Governor's Task Force on Uniform Rules of Agency Procedure, and comment received at the public hearing.

As a result of comment received at the public hearing, a new paragraph "e" was added to subrule 13.3(7).

These rules are intended to implement Iowa Code section 22.11.

The adopted rules are as follows:

ITEM 1. Rescind rule **2.1(601K)**, and renumber rule **2.2(601K)** as **2.1(601K)**.

Further amend renumbered subrule **2.1(3)**, second paragraph, by striking the last sentence as follows: ~~However, pursuant to rule 2.1(601K), they may not be provided with confidential information relative to an applicant without the informed written consent of the applicant.~~

ITEM 2. Add a new chapter as follows:

**CHAPTER 13
PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES**

423—13.1(17A,22) Definitions. As used in this chapter:

"Agency" in these rules means the commission for the blind.

"Authorization for release of information" means the form prescribed by the agency for the purpose of authorizing the release of a confidential record, signed and dated by the person empowered to release the information.

"Case record" means the file of personally identifiable or confidential information on a client, collected pursuant to the provisions of the Rehabilitation Act of 1973, as amended.

"Client" means an individual who is applying for or who has applied for, or who is receiving or has received, benefits or services under any agency program.

"Confidential record" in these rules means a record which is not available as a matter of right for examination

and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" in these rules means the agency, or a person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

"Open record" in these rules means a record other than a confidential record.

"Personally identifiable information" in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or part of a "public record" as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

"Record system" in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier, such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

423—13.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

423—13.3(17A,22) Requests for access to records.

13.3(1) Location of record. A request for access to a record should be directed to the administrator of the commission for the blind or the particular agency office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Commission for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. If a request for access to a record is misdirected, agency personnel will promptly forward the request to an appropriate person within the agency.

13.3(2) Office hours. Open records shall be made available during all customary office hours, which are between 8 a.m. and 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

13.3(3) Request for access. Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and phone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

13.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size

BLIND, DIVISION FOR THE[423] (cont'd)

or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code section 22.8(4) or 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 13.4(17A,22) and other applicable provisions of law.

13.3(5) Security of record. No person shall, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

13.3(6) Copying. A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

13.3(7) Fees.

a. **When charged.** The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. **Copying and postage costs.** Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. **Supervisory fee.** An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or part of the estimated fee.

(2) When a requester has previously failed to pay a fee charged under this subrule, the custodian may require advance payment of the full amount of any

estimated fee before the custodian processes a new request from the requester.

e. A client shall not be charged a search and supervisory fee nor a copying fee for access to the client's own case record.

423—13.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 13.3(17A,22).

13.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

13.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

13.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of the record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable, and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

13.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

13.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

423—13.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

BLIND, DIVISION FOR THE[423] (cont'd)

13.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat that record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

13.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Request for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

13.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the agency from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

13.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

13.5(5) Request granted or deferred. If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

13.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the

requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

423—13.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain record. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review a written statement must be dated and signed by requester, and shall include the current address and phone number of the requester or the requester's representative.

423—13.7(17A,22) Authorization for release of information by the subject of a confidential record. The subject of a confidential record may consent to agency disclosure to a third party of that portion of a record concerning the subject by completing an "Authorization for release of information" form. The consent must identify the record or records that may be disclosed; the person, or class of persons, to whom the record or records may be disclosed; and, if applicable, the time period during which the record may be disclosed. The agency may require the subject of the record and the person to whom the record is to be disclosed to provide proof of identity.

423—13.8(17A,22) Notice to suppliers of information. When the agency requests provision of information by a client or any other person, the agency shall inform the person of the following:

1. The authority under which the information is collected;
2. The principal purposes for which the information will be used or released;
3. What persons outside the agency might routinely have access to the information;
4. Which parts of the requested information are required and which are optional, and the consequences of failing to provide the information requested; and

BLIND, DIVISION FOR THE[423] (cont'd)

5. The situations in which completing an "Authorization for release of information" form is or is not required before releasing information.

13.8(1) Persons who are unable to communicate in English or who rely on special modes of communication shall be provided explanations through methods they can understand.

13.8(2) This information shall be provided to each client for agency services as a part of the application process.

423—13.9(17A,22) Disclosures without the consent of the subject. Open records are routinely disclosed without the consent of the subject. To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Lawful disclosure will generally occur without notice:

1. For routine use as defined in rule 13.10(17A,22) or in the notice for a particular record system;

2. To a recipient who has provided the agency with advance written assurance that the record will be used solely for statistical purposes in an audit or evaluation, or in research which is directly connected with the administration of the agency's programs; provided that the record is used only for the purposes provided; is released only to individuals officially connected with the audit, evaluation or research; is not released to the subject of the record; is managed in a manner which safeguards confidentiality; and does not appear in a final product in a form which would reveal personally identifiable information;

3. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought;

4. When necessary to protect the subject of the record or others when the subject poses a threat to safety;

5. To the legislative fiscal bureau under Iowa Code section 2.52;

6. In the course of employee disciplinary proceedings; or

7. In response to a court order or subpoena.

423—13.10(17A,22) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statutes other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

1. Disclosure to commissioners or staff members who have a need for the record in the performance of their duties. The custodian of the record may upon request of any commissioner or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use a confidential record;

2. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order;

3. Disclosure to the department of inspections and appeals, or to other impartial hearing officers appointed

by the administrator pursuant to these rules, for matters in which services or functions are being performed on behalf of the agency;

4. Transfers of information within the agency, to other state or federal agencies, or to local units of government as appropriate to administer the program for which the information is collected;

5. Release of information to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully; or

6. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

423—13.11(17A,22) Consensual disclosure of confidential records.

13.11(1) The subject of a record may complete the agency "Authorization for release of information" form, consenting in writing to agency disclosure of confidential records as provided in rule 13.7(17A,22).

13.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

13.11(3) Obtaining information from a third party. In order to obtain medical or psychological records or other information needed to determine program eligibility or to provide services, the agency may be required to make requests for information to third parties which may involve the release of personally identifiable and confidential information about the subject of a record. Except as provided in rule 13.9(17A,22), the agency may do so only when an "Authorization for release of information" form has been properly executed by the subject of the record.

423—13.12(17A,22) Release to subject. The subject of a confidential record, or the representative of the subject of a confidential record, may file a written request to review confidential records about that person. The agency shall make all information in the case record accessible to the subject or the subject's representative in a timely manner, except:

1. The identity of a person providing information to the agency when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18);

2. The work product of an attorney; and

3. Investigative reports of peace officers, except as required pursuant to Iowa Code section 22.7(5).

13.12(1) Medical or psychological information which the staff believes may be harmful to the subject of a case record shall not be released directly to the individual, but must be provided through a representative, a physician, psychiatrist, or a certified substance abuse counselor, as appropriate.

13.12(2) If a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

423—13.13(17A,22) Availability of records.

13.13(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

13.13(2) Confidential records. The following records, categorized by agency program area, shall be held

BLIND, DIVISION FOR THE[423] (cont'd)

confidential. The statutory authority for confidentiality of each record system is given.

<u>Records</u>	<u>Statutory Authority</u>
ADMINISTRATION	
Central blind registry (c)	Iowa Code section 259.1
Client financial documents	Iowa Code section 259.1
Employment applications	Iowa Code section 22.7(11)
Minutes, closed meetings,	Iowa Code section 21.5(4)
Commission for the blind	
Performance evaluations	Iowa Code section 19A.15
Personnel records	Iowa Code section 19A.15
Personnel attendance records	Iowa Code section 19A.15
Portions of agency staff manuals or indexed general statements of policy when disclosure of the information would: (1) enable law violators to avoid detection; (2) facilitate disregard of requirements imposed by law; or (3) give a clearly improper advantage to persons who are in an adverse position to the agency	Iowa Code sections 17A.2 and 17A.3
Unemployment claims	Iowa Code section 19A.15
ADULT ORIENTATION AND ADJUSTMENT CENTER	
Orientation center student information	Iowa Code section 259.1
Orientation center student list	Iowa Code section 259.1
Orientation center student/alumni database (c)	Iowa Code section 259.1
BUSINESS ENTERPRISE PROGRAM	
Closing vendor inventories	Iowa Code section 259.1
Individual operator Management training records	Iowa Code section 259.1
Operator assignment selection records	Iowa Code section 259.1
Vendor equipment inventories	Iowa Code section 259.1
Vendor financial information	Iowa Code section 259.1
INDEPENDENT LIVING REHABILITATION SERVICES	
Case records	Iowa Code section 259.1
Client case number book	Iowa Code section 259.1
Client closure book	Iowa Code section 259.1
Client contact itineraries	Iowa Code section 259.1
Library field contact report	Iowa Code section 259.1
Field operations staff reports	Iowa Code section 259.1
LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED	
American college testing service test materials	Iowa Code section 22.7(19)
American printing house for the blind availability inquiries	Iowa Code section 22.7(13)
Applications for library service	Iowa Code section 259.1
Book order records	Iowa Code section 22.7(13)
Circulation records	Iowa Code section 22.7(13)
CMLS microfiche and printout book of library patron records	Iowa Code section 22.7(13)
EI cassette machine pilot project user listing	Iowa Code section 22.7(13)
Hand-thermoformed braille library patron list	Iowa Code section 22.7(13)
Instructional materials center purchase orders	Iowa Code section 22.7(13)
Inter-library library patron loan records	Iowa Code section 22.7(13)
Iowa basic skills test materials	Iowa Code section 22.7(19)
Iowa federation of women's clubs library patron request records	Iowa Code section 22.7(13)
Iowa Lions bible distribution list	Iowa Code section 22.7(13)
Library patron correspondence	Iowa Code section 22.7(13)
Library patron equipment inventory	Iowa Code section 22.7(13)
Library patron orders, monthly reports	Iowa Code section 22.7(13)
Library patron braille requests and production records	Iowa Code section 22.7(13)
Library patron braille request exchange list	Iowa Code section 22.7(13)
New library patron listing	Iowa Code section 22.7(13)
NLS subscription transaction records	Iowa Code section 22.7(13)
NLS updates on library patron service changes	Iowa Code section 22.7(13)
Out-of-state library patron duplication records	Iowa Code section 22.7(13)
Pioneer service reports	Iowa Code section 22.7(13)
Recording for the blind circulation records	Iowa Code section 22.7(13)
Tape purchase correspondence	Iowa Code section 22.7(13)
Textbook tracking materials	Iowa Code section 22.7(13)

VOCATIONAL REHABILITATION SERVICES

Annual SGA closure list	Iowa Code section 259.1
Case records	Iowa Code section 259.1
Certification letters	Iowa Code section 259.1
Claim and verification requests	Iowa Code section 259.1
Client contact itineraries	Iowa Code section 259.1
Client orientation schedule list	Iowa Code section 259.1
Dept. of personnel braille typing tests	Iowa Code section 19A.15
Monthly field operations staff reports	Iowa Code section 259.1
SSA responses to claim & verification requests	Iowa Code section 259.1

NOTE: (c) indicates information is also stored on a computer database.

13.13(3) Personally identifiable information. This subrule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems defined in rule 13.1(17A,22). For each record system, this subrule describes the legal authority for the collection of information. These record systems, categorized by agency program area, are:

<u>Records</u>	<u>Legal Authority for Collection</u>
ADMINISTRATION	
Accounts payable vouchers	Iowa Code section 259.1
Central blind registry (c)	Iowa Code section 259.1
Client financial documents	Iowa Code section 259.1
Employment applications	Iowa Code section 19A.15
Performance evaluations	Iowa Code section 19A.15
Personnel records	Iowa Code section 19A.15
Personnel attendance records	Iowa Code section 19A.15
Unemployment claims	Iowa Code section 19A.15
ADULT ORIENTATION AND ADJUSTMENT CENTER	
Orientation center student information	Iowa Code section 259.1
Orientation center student list	Iowa Code section 259.1
Orientation center student/alumni database (c)	Iowa Code section 259.1
BUSINESS ENTERPRISE PROGRAM	
Closing vendor inventories	Iowa Code section 259.1
Individual operator management training records	Iowa Code section 259.1
Operator assignment selection records	Iowa Code section 259.1
Vendor equipment inventories	Iowa Code section 259.1
Vendor financial information	Iowa Code section 259.1
INDEPENDENT LIVING REHABILITATION SERVICES	
Case records	Iowa Code section 259.1
Client case number book	Iowa Code section 259.1
Client closure book	Iowa Code section 259.1
Client contact itineraries	Iowa Code section 259.1
Client equipment inventory cards	Iowa Code section 259.1
Library field contact report	Iowa Code section 259.1
Field operations monthly reports	Iowa Code section 259.1
LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED	
American printing house for the blind library patron availability inquiries	Iowa Code section 601K.123
Applications for library service	Iowa Code section 601K.123
Book order records	Iowa Code section 601K.123
Circulation records	Iowa Code section 601K.123
CMLS microfiche and printout book of library patron records	Iowa Code section 601K.123
EI cassette machine pilot project user listing	Iowa Code section 601K.123
Hand-thermoformed braille library patron list	Iowa Code section 601K.123
Instructional materials center purchase orders	Iowa Code section 601K.123
Inter-library library patron loan records	Iowa Code section 601K.123
Iowa federation of women's clubs library patron request tracking	Iowa Code section 601K.123
Iowa Lions bible distribution list	Iowa Code section 601K.123
Library patron correspondence	Iowa Code section 601K.123
Library patron equipment inventory	Iowa Code section 601K.123
Library patron orders, monthly reports	Iowa Code section 601K.123
Library patron braille requests and production records	Iowa Code section 601K.123
Library patron braille request exchange list	Iowa Code section 601K.123
New library patron listing	Iowa Code section 601K.123
NLS subscription transaction records	Iowa Code section 601K.123

BLIND, DIVISION FOR THE[423] (cont'd)

NLS updates on library patron service changes	Iowa Code section 60K.123
Out-of-state library patron duplication records	Iowa Code section 60K.123
Pioneer service reports	Iowa Code section 60K.123
Recording for the blind circulation records	Iowa Code section 60K.123
Tape purchase correspondence	Iowa Code section 60K.123
Textbook tracking materials	Iowa Code section 60K.123

VOCATIONAL REHABILITATION SERVICES

Annual SGA closure list	Iowa Code section 259.1
Case records	Iowa Code section 259.1
Certification letters	Iowa Code section 259.1
Claim & verification requests	Iowa Code section 259.1
Client contact itineraries	Iowa Code section 259.1
Client orientation schedule list	Iowa Code section 259.1
SSA responses to claim & verification requests	Iowa Code section 259.1

NOTE: (c) indicates information is also stored on a computer database.

13.13(4) Open records. Agency records are open for public inspection and copying unless otherwise provided by rule or law. These record systems, categorized by agency program area, are routinely available to the public. They do not generally contain personally identifiable information or confidential information.

Records

ADMINISTRATION

Acknowledgements of gifts and bequests contributions
 Administrative rules, public docket and rule-making records
 Advisory boards, commissions, associations, committees and task forces: correspondence, minutes and general information
 Aids and appliances, accounts receivable
 Annual reports
 Building blueprints
 Building equipment reference manuals and data
 Cooperative agreements
 CSAVR, correspondence and general information
 Dept. of education, correspondence, fiscal records and general information
 Dept. of personnel procedures manual
 Employee handbook
 Equipment maintenance agreements
 Executive calendar, current and past
 Federal financial reports
 Federal funds request authorizations
 Federal government agencies, correspondence and reports
 Film and videotape information
 Fire evacuation procedures
 Fiscal information on special projects
 Forms, indexed
 General complaints and criticisms from the public
 General letters of appreciation from the public
 General requests and inquiries from the public
 General statements of agency policy, indexed
 Gift law, general information
 Iowa management training system, general information
 Job opening announcements
 Legislators, listing
 Legislative correspondence and general information
 Mailing lists
 Maintenance work orders (c)
 Membership, payment approvals
 Minutes, Iowa commission for the blind
 Monthly financial reports, dept. of revenue
 National council of state agencies for the blind, correspondence and general information
 New staff seminar schedules and evaluations
 Out-of-state travel authorization requests and approvals
 Personnel classifications, job descriptions and pay schedules
 Personnel instructional pamphlets
 Photographs and resumes, administrator and commission members
 Pool/gym agreements
 Position description questionnaires
 Press releases and news clippings
 Private organizations, correspondence and general information
 Product safety chemical data sheets
 Professional and technical associations, correspondence and general information
 Public records docket
 Publications
 Rehabilitation administrative management program, general information and correspondence
 Rehabnet, general information and memos
 Rental and lease agreements
 Sixtieth anniversary, general information
 Staff service certificates
 State government agencies, correspondence and reports
 State vehicle dispatcher monthly reports
 Statements of grant awards
 Studies, surveys and proposals
 28E agreements
 Utility consumption and cost data (c)

BUSINESS ENTERPRISE PROGRAM

Blueprints and equipment layouts
 Randolph-Sheppard Act
 State plan, Randolph-Sheppard Act
 Vendor forms

INDEPENDENT LIVING REHABILITATION SERVICES

CSAVR independent living committee
 Grant applications and instructional memos
 Independent living forms
 Independent living procedure memos and schedules
 Part C announcements and reference materials
 Reference materials on alternative techniques
 Special project grant, 1983
 State plan for independent living services
 Title VII, part b grant, reports and correspondence

LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED

Acquisition of bibles, general information
 American printing house for the blind federal quota orders
 American federation for the blind directory of agencies
 APH central automated resource list
 Application transfer technique study
 Bibliographies, by subject
 Bindery tracking records
 Book inspection survey
 Books proofread for sale, listing
 Braille alphabet cards
 Braille instruction manuals and sign booklets
 Brochures from other libraries for the blind
 Card catalog microfilming information
 Card catalog uniform entries authority
 Card file of print books about blindness
 Card file of cassettes processed
 Cassette books, number assignment record
 Catalog production and master records
 Censorship, general information
 Circulation, general information
 Comprehensive mailing list system (CMLS), general information
 Computer installation information
 Computer software and software manuals
 Copyright clearance records
 Deaf-blindness, general information
 Diebold repairs, general information
 Disabilities, general information
 Duplicators, general information
 EI cassette instructional video
 Eligibility, general information
 Equal employment opportunity, general information
 Equipment manuals
 Forms, inventory and masters (c)
 Free matter for the blind and physically handicapped, general information
 General library statistics
 Guidelines for tapists
 Health care facilities in Iowa, listing
 Historical collection of uncataloged examples of tactile systems
 Instructional materials center, general information
 Intention and completion forms for the American printing house for the blind
 Iowa computer assisted network advisory board minutes, 1985
 Iowa federated women's clubs, listing
 Iowa library directory
 Iowa libraries: a time to grow 1985-90 (program planning guide)
 Iowa lion's sight and hearing foundation
 Large type format, general information
 Lead worker, general information
 Library automation report, 1983
 Library consumer advisory committee minutes and general information
 Library grants
 Library materials invoices
 Library staff procedures manuals
 Logs, various department systems
 Machines, general information
 Magazine inventory
 Magazine transaction merge procedures
 Magazines, reference materials on selection, transcription and subscription
 Mailing lists
 Marantz, general repair information
 Modems, general information
 Monthly reports on non-users of library service
 National braille association bulletins
 NLS availability listings
 NLS automation reports
 NLS, general correspondence and information
 NLS removal authorization documentation
 Non-borrower purchase orders
 OCR scanners, general information
 Postal service, general information
 Publication catalogs
 Publishers, listing
 Radio reading for the blind, production information
 Reader enrollment and delivery system (READS), general information
 Records management listing of library records
 Request for proposal for local area network
 Salvaging rigid talking book discs, instruction manual
 Shelving, general information
 Showbirds, general information
 Space utilization report
 Speech/braille computer output, general information
 Titles received, book listing
 Training grant, general information
 Transcriber's workshop, documentation and information
 Vendor listing
 World book encyclopedia, informational material
 XESS, listing of books removed from the collection

NOTE: In addition to the above records, a complete inventory of all materials available for circulation is maintained in the library's card catalog.

VOCATIONAL REHABILITATION

Available readers and drivers listing
 Dept. of personnel, certified disabilities program

BLIND, DIVISION FOR THE[423] (cont'd)

Commission policies on service provision
 Computer technology reference materials
 Counselor instructional manual
 Field operations statistical reports
 504 subcommittee meeting records
 General resource materials on employment and vocational
 rehabilitation
 Health resources and information
 Information on U. S. civil service and personnel management
 In-service training agendas
 In-service training grant
 Job openings posting book
 Medical reference pamphlets and brochures
 Paratransit advisory committee reference materials
 Photographs
 RCEP training advisory committee reference listing
 Reference materials on Targeted jobs tax credit, Job
 training partnership act and PWI programs
 Rehabilitation Act of 1973, as amended 1986
 Rehabilitation services administration annual report on
 post-employment services and annual reviews
 Rehabilitation services administration federal regulations
 Rehabilitation services administration monthly cumulative
 caseload report
 Rehabilitation services administration quarterly cumulative
 caseload report
 Rehabilitation services administration program and cost report
 Social security disability and SSI reference materials
 Speeches by Kenneth Jernigan and Jacob tenBroek
 SSA administrative procedure letters
 SSA program instructions and resource materials
 Staff procedure memos
 Staff territory assignments
 State facilities plan
 State plan for vocational rehabilitation services
 Supported employment reference materials
 Telephone directories for DVRS and AEA personnel
 Transition committee minutes and reference materials
 Veterans administration resource materials
 Vocational rehabilitation guidelines and procedures

NOTE: (c) indicates information is also stored on a computer database.

The following record systems, categorized by agency program area, are open to access by the public, but may contain personally identifiable or confidential information:

<u>Records</u>	<u>Statutory Authority</u>
ADMINISTRATION	
Accounts payable vouchers	Iowa Code section 259.1
Accounting inter-agency correspondence and information	Iowa Code sections 259.1 and 19A.15
Applications for education leave and educational assistance	Iowa Code section 19A.15
Correspondence, general	Iowa Code section 259.1
Gifts and bequests trust account records	Iowa Code section 601K.123
Minutes, supervisors meetings	Iowa Code section 259.1
BUSINESS ENTERPRISE PROGRAM	
Closed vending facilities	Iowa Code section 259.1
Correspondence, general	Iowa Code section 259.1
Correspondence vendor	Iowa Code section 259.1
Licenses	Iowa Code section 259.1
Minutes, state vendor committee	Iowa Code section 259.1
Vending facilities (33 locations)	Iowa Code section 259.1
INDEPENDENT LIVING REHABILITATION SERVICES	
Agency contact documentation	Iowa Code section 259.1
Bi-state independent living center	Iowa Code section 259.1
Client equipment inventory cards	Iowa Code section 259.1
General correspondence, 1981-84	Iowa Code section 259.1
Helen Keller national center, grant, reports, and correspondence	Iowa Code section 259.1
LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED	
Braillewriter equipment inventory	Iowa Code section 601K.123
Marantz equipment inventory and repair records	Iowa Code section 601K.123
Proofreader circulation assignments	Iowa Code section 601K.123
Tape exchange correspondence	Iowa Code section 601K.123
Volunteer braille and tape production records	Iowa Code section 601K.123
VOCATIONAL REHABILITATION	
General correspondence	Iowa Code section 259.1
Intra-office and inter-office memos	Iowa Code section 259.1
Lions typewriter acquisition list	Iowa Code section 259.1

NOTE: (c) indicates information is also stored on a computer database.

423—13.14(17A,22) Automated data processing capabilities. All records are stored on paper and not in automated data processing systems unless otherwise noted. Data processing systems used by the agency do not permit the comparison of personally identifiable

information in one record system with personally identifiable information in another record system, unless specifically noted.

423—13.15(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier;

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22;

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency;

4. Apply to records of grantees which administer state-funded programs, nor to individual vendors licensed by the agency pursuant to the federal Randolph-Sheppard Act; or

5. Make available to the public, records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code chapters 17A and 22.

[Filed 4/19/88, effective 6/8/88]
 [Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8672**COLLEGE AID COMMISSION[283]*****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.37, the College Aid Commission adopts amendments to 245—Chapter 10, "Iowa Guaranteed Student Loan Program," Iowa Administrative Code.

The amendments identify the school's role in advising and counseling GSL borrowers; specify that a school must refund all unused loan proceeds to the lender within 30 days of a student's withdrawal date; indicate that a student enrolled at least half-time in a course of study necessary for enrollment in a program leading to a degree or certification is eligible for GSL, SLS, and PLUS Loans; clarify language in the administrative rules; add SLS references as appropriate; define lenders of last resort; and expand upon the origination fee explanation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 10, 1988, as **ARC 8360**. These rules are identical to those published under Notice with two exceptions: In the first unnumbered paragraph of 10.59(261), "July 1, 1982" should have been "July 1, 1987" and in the first paragraph of 10.74(261) "PLUS" should not change to "PLUS/SLS".

These rules were adopted in final form on April 12, 1988.

These rules will become effective on June 8, 1988.

These rules are intended to implement Iowa Code chapter 261.

*Note agency number change.

COLLEGE AID COMMISSION[283] (cont'd)

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules [amendments to Ch 10] is being omitted. With the two exceptions noted above, these rules are identical to those published under Notice as **ARC 8360**, IAB 2/10/88.

[Filed 4/13/88, effective 6/8/88]

[Published 5/4/88]

[For replacement pages for IAC, see IAC Supplement, 5/4/88.]

ARC 8678**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners adopts amendments to 320—Chapter 15, "Fees," Iowa Administrative Code, relating to fees for renewal of dental and dental hygiene licenses.

The amendments adjust the renewal fees to generate revenue sufficient to cover the cost of appropriation allotments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 9, 1988, as **ARC 8480**.

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

These amendments were approved at the April 14, 1988, meeting of the Board.

These rules will become effective on June 8, 1988, at which time the emergency filed rules, **ARC 8479**, will be rescinded.

These rules are intended to implement Iowa Code section 147.10.

ITEM 1. Amend subrules 15.2(1) and 15.2(2) to read as follows:

15.2(1) The fee for renewal of a license to practice dentistry for a biennial period shall be ~~one hundred dollars (\$100)~~ \$120 for an active practitioner and ~~fifty dollars (\$50)~~ \$60 for an inactive practitioner.

15.2(2) The fee for renewal of a license to practice dental hygiene for a biennial period shall be ~~fifty dollars (\$50)~~ \$70 for an active practitioner and ~~twenty-five dollars (\$25)~~ \$35 for an inactive practitioner.

ITEM 2. Amend subrules 15.3(1) and 15.3(2) to read as follows:

15.3(1) Failure to renew a dentist license within 30 days after expiration shall require a renewal fee of ~~one hundred fifty dollars (\$150)~~ \$170 for active practitioners and ~~seventy-five dollars (\$75)~~ \$85 for inactive practitioners.

15.3(2) Failure to renew a dental hygiene license within 30 days after expiration shall require a renewal fee of ~~seventy-five dollars (\$75)~~ \$95 for an active practitioner and ~~thirty-five dollars (\$35)~~ \$45 for an inactive practitioner.

[Filed 4/14/88, effective 6/8/88]

[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8688**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 259.3 and 22.11, the State Board of Vocational Education amends [Public Instruction Department 670] Chapter 35, "Rehabilitation Division," Iowa Administrative Code.

This rule complies with the requirements of Iowa Code section 22.11, the Iowa Fair Information Practices Act, which requires each state agency to adopt rules describing personally identifiable information maintained by the agency, what records are confidential, procedures for access to records, and procedures for making additions to records about a subject. The rule also implements Iowa Code section 259.1 providing for the acceptance of the Rehabilitation Act of 1973, as amended, which provides for treating records of and about clients of the agency as confidential.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 9, 1988, as **ARC 8489**.

Interested persons were allowed to comment on the rule. An oral hearing was scheduled for March 30, 1988; however, no one appeared to comment on the proposed rule. No written comments were received by the Division concerning the proposed rule.

The State Board of Vocational Education adopts, with the following exceptions and amendments, subrules 35.23(1) to 35.23(8) modeled on rules X.1 to X.8 of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in Volume I of the Iowa Administrative Code.

The following general revisions and modifications, along with minor clarification, were also made pursuant to guidelines published by the Attorney General's Office to subrules 35.23(9) to 35.23(16) as submitted in the Notice of Intended Action:

1. Former subrule 35.23(1) (excluding first paragraph), entitled "Purpose and scope," is now subrule 35.23(16).

2. Subrule 35.23(2) now provides a statement of policy; old subrule 35.23(1), unnumbered paragraph, is therefore unnecessary.

3. Subparagraph 35.23(13)"b"(2), concerning tax records, cites Iowa Code section 422.72, not 422.17.

4. Deletion of the term "exempt records" in the Task Force Report required merger of old subrule 35.23(13), "Confidential records" and 35.23(14), "Exempt records." New subrule 35.23(13) treats as confidential records all records which the agency may or must withhold from public inspection. This required other changes.

5. Attorney work product and other privileges have been added to the list of confidential records as subparagraph 35.23(13)"b"(7).

6. Paragraph 35.23(13)"c," "Authority to release confidential records" was added because the Task Force report proposed procedural rules regarding the agency's discretion to release particular confidential records.

The State Board of Vocational Rehabilitation adopted this rule on April 14, 1988.

This rule is intended to implement Iowa Code section 22.11.

This rule will become effective June 9, 1988.

Rescind rule 670—35.23(259) and insert in lieu thereof the following:

EDUCATION DEPARTMENT[281] (cont'd)

The division of vocational rehabilitation, Iowa department of education, hereby adopts, with the following exceptions and amendments, the rules relating to the public records law and fair information practices Act of the Governor's Task Force on Uniform Rules of Agency Procedure which are printed in Volume I of the Iowa Administrative Code.

670—35.23(22) Use and exchange of information.

35.23(1) Definitions. As used in this chapter:

"Agency." In lieu of the words ("official or body issuing these rules") insert "division of vocational rehabilitation of the department of education".

Add and insert in alphabetical order the following definitions:

"Aggregate data" is information on one or more aspects of division clients, or from some specific subgroup of division clients, without ability to discern personally identifiable data on any individual.

"Case record" means the file of personally identifiable information on an individual collected to carry out the purposes of the division as defined in the Rehabilitation Act of 1973, as amended, and the Social Security Act. This information remains a part of the case record and subject to these rules even when temporarily physically removed, either in whole or in part, from the file folder in which it is normally kept.

"Client" means an individual applying for or receiving benefits or services from any part of the division. The term "client" shall include former clients and denied applicants of the division whose files or records are retained by the division.

"Designated representative" may be anyone the client designates. The term does not necessarily mean a legal representative. The designee may be a parent, legal guardian, friend, doctor, attorney, or other designated person. In instances where the division determines that information requested by the client might be potentially harmful to the client, the agency may require that the information be released to a designated representative. Furthermore, the agency may require that the designated representative be a person knowledgeable and skilled in conveying the type of information in question.

35.23(3) Requests for access to records.

a. Location of record. In lieu of the words "(insert agency head)" insert "office where the record is kept". In lieu of the words "(insert agency name and address)" insert "the Division of Vocational Rehabilitation, 510 East 12th Street, Des Moines, Iowa 50319".

b. Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)" insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays."

g. Fees.

(3) Supervisory fee. In lieu of the words "(specify time period)" insert "one-half hour in duration".

35.23(6) Procedure by which a subject may have additions, dissents, or objections entered into the record. In lieu of the words "(designate office)" insert "the Division of Vocational Rehabilitation, 510 East 12th Street, Des Moines, Iowa 50319."

35.23(9) Disclosures without the consent of the subject.

a. Open records are routinely disclosed without the consent of the subject.

b. To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

(1) For a routine use as defined in subrule 35.23(10) or in any notice for a particular record system.

(2) To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.

(3) To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

(4) To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

(5) To the legislative fiscal bureau under Iowa Code section 2.52.

(6) Disclosures in the course of employee disciplinary proceedings.

(7) In response to a court order or subpoena.

35.23(10) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

g. Release of information to employers or placement agents in connection with the employment or placement of the client is considered a routine use for administration of the program. Signed consent is needed for only those with alcohol, drug abuse, or mental health problems.

EDUCATION DEPARTMENT[281] (cont'd)

h. The exchange of necessary client information between the disability determination bureau and the client services bureau will be considered a routine use.

35.23(11) Consensual disclosure of confidential records.

a. Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in subrule 35.23(7).

b. Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

c. Obtaining information from a third party. The agency is required to obtain information to establish eligibility, determine the amount and type of assistance, and determine if the person is suitably employed. Requests to third parties for this information involve the release of confidential identifying information about individuals. Except as provided in subrule 35.23(10), the agency may make these requests only when the individual has authorized the release on a division of vocational rehabilitation services release of information form, or an appropriate equivalent from the other party.

35.23(12) Release to subject.

a. Subjects of confidential records may file a written request to review the records about themselves as provided in subrule 35.23(6). However, the agency need not release the following records to the subject:

(1) The identity of a person providing information to the agency need not be disclosed directly or indirectly when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18), or other provision of law.

(2) Records need not be disclosed to the subject when they are the work product of an attorney or otherwise privileged.

(3) Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code subsection 22.7(5).)

(4) As otherwise authorized by law.

b. Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

35.23(13) Availability of records.

a. Open records. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

b. Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

(1) Sealed bids received prior to the time set for public opening of bids (Iowa Code section 72.3).

(2) Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72).

(3) Records which are exempt from disclosure under Iowa Code section 22.7.

(4) Minutes of closed meetings of a government body (Iowa Code section 21.5(4)).

(5) Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly

unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d."

(6) Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangement, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

1. Enable law violators to avoid detection;

2. Facilitate disregard of requirements imposed by law; or

3. Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3).

(7) Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

(8) Any other records made confidential by law.

(9) The division has the authority to collect and maintain records on individuals under the Rehabilitation Act of 1973, as amended; 34 CFR 361.49 (January 1981); the State Plan for Vocational Rehabilitation Services, sections 1 and 9.4, approved by the State Board of Vocational Education; and the Social Security Act. Iowa Code section 259.1 accepts the provisions and benefits of the Rehabilitation Act. Requirements to maintain the confidentiality of personally identifiable information and its release under certain circumstances are provided by those laws and the following:

Freedom of Information Act (5 U.S.C. 552 added by P.L. 90-23 and amended by P.L. 93-502 and P.L. 94-409).

Privacy Act of 1974 (5 U.S.C. 552a) P.L. 93-579.

Drug Abuse Office and Treatment Act (P.L. 92-255, 21 U.S.C. 1175) as amended by the Comprehensive Alcohol and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendment of 1974 (P.L. 93-282) (42 U.S.C. 4582) Section 6103 of the Internal Revenue Code (26 U.S.C. 6103), as amended by the Tax Reform Act of 1976 (P.L. 94-455).

"Government in the Sunshine Act" (P.L. 94-409)

The Family Education Right and Privacy Act (FERPA) (P.L. 93-568).

Part B, Title XVI of the Federal Coal Mine & Safety Act.

Iowa Code Section 259.9 accepts the Social Security System rules for the disability determination program of the division of vocational rehabilitation services. Failure to follow the provisions of the Vocational Rehabilitation Act of 1973, as amended, can result in the loss of funds under 34 CFR 361.4 (January 1981). The agency has agreed in its state plan for this program that all personal information concerning clients is confidential and that identifiable personal information concerning clients may be released only with the informed written consent of the client or the client's representative, except as permitted by federal law. See 34 CFR 361.49 (January 1981). Any contrary provisions

EDUCATION DEPARTMENT[281] (cont'd)

in Iowa Code chapter 22 must be waived in order to receive federal funds, services, and essential information for the administration of this program.

Records maintained by the division which contain client identifiable personal information about clients and which are considered confidential include:

1. Personnel records. Some of this information may be confidential.

2. Client case files. All items are personally identified and covered under the above cited statutes.

3. Client Service Record (CSR-300) computer data base, when personally identifiable information is included.

4. Vendor computer data base, when personally identifiable client information is included.

5. Records and transcripts of hearings on appeals.

6. Any and all computer data bases of client and applicant names and other identifiers.

7. Any and all computer-generated reports which contain individually identifiable information.

c. Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in subrule 35.23(4). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in paragraph 35.23(4)"c."

35.23(14) Personally identifiable information. This rule describes the nature and extent of the personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in subrule 35.23(1). For each record system, the legal authority for the collection of that information is that described in subrule 35.23(13). This rule describes the means of storage of that information. The agency could compare personally identifiable information in different data processing systems.

The record systems maintained by the agency include:

a. Personnel records. These contain information relating to initial application, job performance and evaluation, reprimands, grievances, notes from and reports of investigations of allegations related to improper employee behavior, and reports of hearings and outcomes of reprimands and grievances. This material is maintained in paper format, except that some information on former employees is converted to microfiche. Some of the information in personnel records may be confidential, under Iowa Code section 22.7(11).

b. Client case records. An individual file is maintained for each person who has been referred to or applied for the services of the agency. The file contains a variety of personal information about the client, which is used in the establishment of eligibility and the provision of agency services. All information is personally identifiable and is confidential under the statutes and regulations cited in subrule 35.23(13). The client file is maintained only in a paper format.

c. Client Service Record (CSR-300) computer data base. This information is stored in a data processing system. It contains personal data items about individual clients. Under the statutes and regulations cited in subrule 35.23(13) it is confidential where an individual can be

identified. The data in the aggregate is not personally identifiable and is open.

d. Vendor purchase records. This is a record of purchases of goods or services made for the benefit of individual clients of the agency. The record contains the client's name and other personal identifiers and is, therefore, confidential. The records are kept in both paper and data processing format. Lists of nonclient vendors, services purchased, and the cost of those services are open when retrieved from a data processing system without personally identifiable data or agency clients.

e. Records and transcripts of hearings or client appeals. These are kept only in paper format and contain personally identifiable information about a client's case, appeal from or for some action, and the decision which has been rendered. Under the citations of subrule 35.23(13) the identifiable personal information is confidential. Some of the information is maintained in an index provided for in Iowa Code subsection 17A.3(1)"d." Information is available only after confidential identifiable personal information is deleted.

f. All computer data bases of client and applicant names and other identifiers. The data processing system contains client status records organized by a variety of personal identifiers. Under the citations in subrule 35.23(13) these are confidential as long as any personal client identifier is present.

g. All computer-generated reports which contain individually identifiable information on agency clients. The agency may choose to draw or generate reports from a data processing system from time to time, which contain information or an identifier which would allow the identification of an individual client or clients. This material is for internal agency use only and under the citations in subrule 35.23(13) is confidential.

35.23(15) Other groups of records routinely available for public inspection. This subrule describes groups of records maintained by the agency other than record systems as defined in subrule 35.23(14). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, the records listed in paragraphs "a," "b," "c," "d," "h," "i" and "j" may contain information about individuals. All records are stored on paper unless otherwise noted. This rule should generally describe the nature of the record, the type of information about individuals contained in it, and whether the records are open or are confidential in whole or in part.

a. Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

b. Council and commission records. Agendas, minutes, and materials presented to any council or commission required under the Rehabilitation Act of 1973, as amended, or any of the grant programs, such as independent living and supported employment, authorized under laws relating to vocational rehabilitation are available from the state office of the Division of Vocational Rehabilitation, 510 E. 12th Street, Des Moines, Iowa 50319, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by

EDUCATION DEPARTMENT[281] (cont'd)

individual identifier and is not stored on an automated data processing system.

c. Publications. News releases, annual reports, project reports, agency newsletters, etc., are available from the state office of the Division of Vocational Rehabilitation, 510 E. 12th Street, Des Moines, Iowa 50319. Brochures describing various agency programs are also available at local offices of the agency.

Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees.

d. Statistical reports. Periodic reports of statistical information on expenditures, numbers and types of case closures, and aggregate data on various client characteristics are compiled as needed for agency administration or as required by the federal funding source. These reports are compiled from data in an automated data processing system. They do not contain individually identifiable data.

e. Grants. Records of persons receiving grants from division of vocational rehabilitation services are available through the state office of the division of vocational rehabilitation services. Grant records contain information about grantees and may contain information about employees of a grantee collected pursuant to federal requirements. This information is not stored in an automated data processing system.

f. Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

g. Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in every office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to: State Office, Division of Vocational Rehabilitation Services, 510 E. 12th Street, Des Moines, Iowa 50319.

Policy manuals are not stored in an automated data processing system.

h. Operating expense records. The agency maintains records of the expense of operation, including such things as office rent, employee travel expenses, costs of supplies and postage, etc. Some of these records contain personally identifiable information. The records are kept in a data processing system, as well as on paper.

i. Training records. Lists of training programs, the persons approved to attend, and associated costs are maintained in these records, which are maintained only on paper. They do contain information about individuals.

j. Facility surveys. Records of agency reviews of facilities providing services to the agency are maintained and used to determine the current acceptable fee schedule. Information about individuals may be included. Some parts of these records may be confidential.

k. All other records that are not exempted from disclosure by law.

35.23(16) Applicability. This rule implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records.

This rule does not:

a. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

d. Apply to grantees, including local governments or subdivisions administering state funded programs.

e. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of records to the general public or to any subject individual or party to the litigation or proceedings shall be governed by applicable constitutional principles, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

This rule applies only to the division of vocational rehabilitation services of the Iowa department of education.

This rule is intended to implement Iowa Code section 22.11.

[Filed 4/15/88, effective 6/9/88]

[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8679**EMPLOYMENT SERVICES
DEPARTMENT[341]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Director of the Department of Employment Services hereby adopts Chapter 2, "Public Records and Fair Information Practices," Iowa Administrative Code.

These rules were published as Notice of Intended Action in the Iowa Administrative Bulletin, February 24, 1988, as **ARC 8413**. Changes from the rules as noticed were made to accommodate the final version of the Governor's Task Force on Uniform Rules to Implement Public Records Laws and Fair Information Practices Act.

This chapter is adopted in order to comply with the requirements of Iowa Code section 22.11, the Iowa Fair Information Practices Act. Iowa Code section 22.11 requires this state agency to adopt rules describing personally identifiable information maintained by the agency, describing what records are confidential, describing procedures for access to records, and describing procedures for making additions to records about a subject. This chapter implements Iowa Code chapter 22, by outlining how the agency implements the requirements of Iowa Code chapter 22.

Rules 2.1(22,84A) to 2.8(22,84A) are the rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in Volume I of the Iowa Administrative Code with some minor exceptions and amendments to make the uniform rules applicable to the Department of Employment Services and 29 Code of Federal Regulations 70 which requires a broader application of the rules to include the information received from a person which may be an individual, corporation, governmental entity, estate, trust, partnership, association, or any other legal entity.

EMPLOYMENT SERVICES DEPARTMENT[341] (cont'd)

Rule 2.9(22,84A) lists when disclosure of a record occurs without the consent of the subject of the record. Included are the disclosure of an open record and the disclosure of a confidential record for routine use, to another governmental entity for civil or criminal law enforcement activity, to the legislative fiscal bureau, in the course of an employee disciplinary proceeding, and in response to a court order or subpoena.

Rule 2.10(22,84A) defines routine use and indicates the routine uses of agency records such as uses by the agency staff in the performance of the duties for which the information was collected as well as the uses by the listed entities for the purposes indicated.

Rule 2.11(22,84A) indicates those records about the subject of the record which the agency need not release to the subject of the record. The agency need not release to the subject the identity of another person providing information to the agency, the work product of an attorney, a peace officer's investigative report, and, where a record has multiple subjects, the agency may take reasonable steps to protect confidential records of another subject.

Rule 2.12(22,84A) specifies those records which are open, and those records which are confidential and may be withheld from public inspection. Confidential records include labor market records made available to the agency under an agreement with the U.S. Department of Labor, Bureau of Labor Statistics, county economic development survey records made available to the agency under an agreement with the Division of Job Service, Department of Employment Services, sealed bids pursuant to Iowa Code section 72.3, tax records pursuant to Iowa Code sections 422.20 and 422.72, records provided for under Iowa Code section 22.7, subsection 21.5(4), paragraph "d" of subsection 17A.3(1), those portions of agency staff manuals containing operational tactics or allowable tolerances, and records which constitute attorney work product or other privileges.

Rule 2.13(22,84A) describes the personally identifiable information contained in the agency's record systems. This rule also describes the legal authority for the collection of the personally identifiable information, the means of storage and indicates that the agency's data processing system matches, collates, or permits the comparison of the personally identifiable information in one record system with that in another record system.

Rule 2.14(22,84A) describes the applicability of this chapter by specifying that it is not intended to require the agency to index files by a person's name, make records available which are not available under the public records law, or include the availability of records compiled in reasonable anticipation of litigation. This chapter does not apply to grantees unless otherwise provided by law or agreement nor does it govern records if their release is governed by the rules of another agency.

These rules were adopted by the Director of the Department of Employment Services on April 15, 1988, and will become effective June 8, 1988.

These rules are intended to implement Iowa Code chapter 22.

Add new 341—Chapter 2 as follows:

CHAPTER 2
PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES

The department of employment services hereby adopts the rules of the Governor's Task Force on Uniform Rules

of Agency Procedure relating to public records and fair information practices which are printed in Volume I of the Iowa Administrative Code with the following exceptions and amendments:

341—2.1(22,84A) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "the department of employment services".

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

"Personally identifiable information." In lieu of the words "an individual in a record which identifies the individual and which is contained in a record system", insert "a person in a record which identifies the person and which is contained in a record system".

"Record system." In lieu of the words "an individual, number, symbol, or other unique retriever assigned to an individual", insert "a person, number, symbol or other unique retriever assigned to the person".

341—2.3(22,84A) Requests for access to records.

2.3(1) Location of record. In lieu of the words "(insert agency head)", insert "director". Also, in lieu of the words "(insert agency name and address)", insert "Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319".

2.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

2.3(4) Response to requests. In lieu of the words "X.4", insert "2.4(22,84A)".

2.3(7) Fees.

c. Supervisory fee. In lieu of the words "(specify time period)", insert "one-half hour".

341—2.4(22,84A) Access to confidential records. In lieu of the words "rule X.3", insert "rule 2.3(22,84A)".

341—2.6(22,84A) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319".

341—2.7(22,84A) Consent to disclosure by the subject of a confidential record. Remove the parentheses around "(and, where applicable, the time period during which the record may be disclosed)".

341—2.9(22,84A) Disclosure without the consent of the subject.

2.9(1) An open record is routinely disclosed without the consent of the subject.

2.9(2) To the extent allowed by law, disclosure of a confidential record may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without consent of the subject:

a. For a routine use as defined in rule 2.10(22,84A).

b. To another governmental agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative

EMPLOYMENT SERVICES DEPARTMENT[341] (cont'd)

of such governmental agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

c. To the legislative fiscal bureau under Iowa Code section 2.52.

d. Disclosure in the course of employee disciplinary proceedings.

e. In response to a court order or subpoena.

341—2.10(22,84A) Routine use.

2.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer, employee, and agent, or on the custodian's own initiative, determine what constitutes legitimate need to use a confidential record.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Disclosure to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

341—2.11(22,84A) Release to a subject.

2.11(1) The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 2.6(22,84A). However, the agency shall not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject when the information is authorized to be held confidential pursuant to Iowa Code subsection 22.7(18) or other provision of law.

b. A record need not be disclosed to the subject when it is the work product of an attorney or is otherwise privileged.

c. A peace officer's investigative report shall be withheld from the subject, except as required by Iowa Code subsection 22.7(5).

d. As otherwise authorized by law.

2.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

341—2.12(22,84A) Availability of records.

2.12(1) Open records. Agency records are open for public inspection and copying unless otherwise provided by law or rule.

2.12(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Labor market records made available to the agency under an agreement with the United States Department

of Labor, Bureau of Labor Statistics, and withheld from public inspection pursuant to 29 Code of Federal Regulations 70 dated July 1, 1987.

b. County economic development survey records made available to the agency under an agreement with the division of job service, department of employment services, and withheld from public inspection pursuant to Iowa Code subsection 96.11(7).

c. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

d. Tax records made available to the agency pursuant to Iowa Code sections 422.20 and 422.72.

e. Records which are exempt from disclosure under Iowa Code section 22.7.

f. Minutes of closed meetings of a government body pursuant to Iowa Code subsection 21.5(4).

g. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d."

h. Those portions of the agency's staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by the agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would, pursuant to Iowa Code sections 17A.2 and 17A.3:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

i. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code subsection 22.7(4), section 622.10, and section 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

2.12(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 2.4(22,84A). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

341—2.13(22,84A) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.1(22,84A). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

EMPLOYMENT SERVICES DEPARTMENT[341] (cont'd)

2.13(1) The record systems maintained by the agency are:

a. Labor market records. These records are collected from employing units under an agreement with the United States Department of Labor, Bureau of Labor Statistics, for the purposes of analyzing and distributing general labor market information including current employment statistics, employment by occupation statistics, local area unemployment statistics, wage and hour statistics, and permanent mass layoff and plant closing statistics. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

b. County economic development survey records. These records are collected from employing units and individuals under an agreement with the division of job service, department of employment services, for the purposes of providing local economic development groups with statistical information on the number and characteristics of individuals available for employment within a county as well as providing employee wage by occupation and benefit information. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

c. Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code subsection 22.7(11). Some of these records are stored in an automated data processing system and may be retrieved by a personal identifier.

d. Other groups of records routinely available for public inspection. This paragraph describes groups of records maintained by the agency other than in a record system as defined in rule 2.1(22,84A):

(1) Rule making. Rule-making records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(2) Committee records. Agendas, minutes, and materials presented to the department of employment services coordinating committee are available from the custodian, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection 21.5(4). Coordinating committee records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3 and subsection 84A.2(4). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available at the administrative office of the agency. Brochures describing various agency programs are available at the adminis-

trative office of the agency. Agency news releases, project reports, and newsletters may contain information about persons, including agency staff or members of agency committees. These records are not stored on an automated data processing system and may not be retrieved by a personal identifier.

(4) Statistical reports. Periodic reports of labor market information are available from the agency. Statistical reports do not contain information about persons.

(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to paragraph "g" of subrule 2.12(2). These records may contain information about a person collected under the authority of Iowa Code section 84A.1.

(6) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

(7) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in the administrative office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to the custodian of the record, Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. Policy manuals do not contain information about persons.

(8) All other records that are not exempted from disclosure by law.

2.13(2) All data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

345—2.14(22,84A) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about persons by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

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[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8680**JOB SERVICE DIVISION[345]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 96.11 and 22.11, the Commissioner of the Division of Job Service hereby adopts Chapter 8, "Public Records and Fair Information Practices," Iowa Administrative Code.

These rules were published as Notice of Intended Action in the Iowa Administrative Bulletin, February 24, 1988, as **ARC 8414**. Changes from the rules as noticed were made to accommodate the final version of the Governor's Task Force on Uniform Rules to Implement Public Records Laws and Fair Information Practices Act.

This chapter is adopted in order to comply with the requirements of Iowa Code section 22.11, the Iowa Fair Information Practices Act, and subsection 96.11(7). Iowa Code section 22.11 and subsection 96.11(7) require this state agency to adopt rules describing personally identifiable information maintained by the agency, describing what records are confidential, describing procedures for access to records, and describing procedures for making additions to records about a subject. This chapter implements Iowa Code chapter 22 and subsection 96.11(7), by outlining how the agency implements the requirements of Iowa Code chapter 22 and subsection 96.11(7).

Rules 8.1(22,96) to 8.8(22,96) are the rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in Volume I of the Iowa Administrative Code with some minor exceptions and amendments to make the uniform rules applicable to the Division of Job Service and Iowa Code subsection 96.11(7) which requires a broader application of these rules to include the information received from a person which may be an individual, corporation, governmental entity, estate, trust, partnership, association, or any other legal entity.

Rule 8.9(22,96) lists when disclosure of a record occurs without the consent of the subject of the record. Included are the disclosure of an open record and the disclosure of a confidential record for routine use, to another governmental entity for civil or criminal law enforcement activity, to an agency administering or charged with a duty under a program of public assistance or child support enforcement, to the Legislative Fiscal Bureau, in the course of an employee disciplinary proceedings, and in response to a court order or subpoena.

Rule 8.10(22,96) defines routine use and indicates the routine uses of agency records such as uses by the agency staff in the performance of the duties for which the information was collected as well as the uses by the listed entities which require prior notification to the person for a purpose consistent with Iowa Code chapter 96.

Rule 8.11(22,96) indicates those records about the subject of the record which the agency need not release to the subject of the record. The agency need not release to the subject the identity of another person providing information to the agency, the work product of an attorney, a peace officer's investigative report, and, where a record has multiple subjects, the agency may take reasonable steps to protect confidential records of another subject.

Rule 8.12(22,96) specifies those records which are open, and those records which are confidential and may be withheld from public inspection. Confidential records include employment services records, unemployment insurance tax and unemployment insurance benefit records, including the initial determination made by the agency representative under Iowa Code subsection 96.6(2) as to the benefit rights of an individual, sealed bids pursuant to Iowa Code section 72.3, tax records pursuant to Iowa Code sections 422.20 and 422.72, records provided for under Iowa Code section 22.7, subsection 21.5(4), paragraph "d" of subsection 17A.3(1), those portions of agency staff manuals containing operational tactics or allowable tolerances, and records which constitute attorney work product or other privileges.

Rule 8.13(22,96) describes the personally identifiable information contained in the agency's record systems. This rule also describes the legal authority for the collection of the personally identifiable information, the means of storage, and indicates that the agency's data processing system matches, collates, or permits the comparison of the personally identifiable information in one record system with that in another record system.

Rule 8.14(22,96) describes the applicability of this chapter by specifying that it is not intended to require the agency to index files by a person's name, make records available which are not available under the public records law, or include the availability of records compiled in reasonable anticipation of litigation. This chapter does not apply to grantees unless otherwise provided by law or agreement nor does it govern records if their release is governed by the rules of another agency.

These rules were adopted by the Commissioner of the Division of Job Service on April 15, 1988, and will become effective June 8, 1988.

These rules are intended to implement Iowa Code chapter 22 and subsection 96.11(7).

Add new 345—Chapter 8 as follows:

CHAPTER 8**PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES**

The division of job service of the department of employment services hereby adopts the rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in Volume I of the Iowa Administrative Code with the following exceptions and amendments:

345—8.1(22,96) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "the division of job service of the department of employment services".

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

"Personally identifiable information." In lieu of the words "an individual in a record which identifies the individual and which is contained in a record system", insert "a person in a record which identifies the person and which is contained in a record system".

"Record system." In lieu of the words "an individual, number, symbol, or other unique retriever assigned to an individual", insert "a person, number, symbol or other unique retriever assigned to the person".

JOB SERVICE DIVISION[345] (cont'd)

345—8.3(22,96) Requests for access to records.

8.3(1) Location of record. In lieu of the words "(insert agency head)", insert "commissioner". Also, in lieu of the words "(insert agency name and address)", insert "Division of Job Service, Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319".

8.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

8.3(4) Response to requests. In lieu of the words "X.4", insert "8.4(22,96)".

8.3(7) Fees.

c. Supervisory fee. In lieu of the words "(specify time period)", insert "one-half hour".

345—8.4(22,96) Access to confidential records. In lieu of the words "rule X.3", insert "rule 8.3(22,96)".

345—8.6(22,96) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the Division of Job Service, Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319".

345—8.7(22,96) Consent to disclosure by the subject of a confidential record. Remove the parentheses around "(and, where applicable, the time period during which the record may be disclosed)". Also, in lieu of the words "(Additional requirements may be necessary for special classes of records)", insert "If the agency is required to obtain from a third party a confidential record about the subject to establish eligibility under a program administered by the agency, the agency has the authority under Iowa Code subsection 96.11(8) to obtain a confidential record deemed necessary for the administration of Iowa Code chapter 96."

345—8.8(22,96) Notice to suppliers of information. Insert immediately following "or by other appropriate means", "including: Form 70-5007, handbook for private employers, to employing units; Form 70-6200, facts for workers, to individuals claiming unemployment insurance benefits; Form 70-8005, release of information poster, to individuals applying for employment services; and Form 60-0243, notification of information release, or Form 65-5334, release of information, when manual or automated, respectively, prior notice to a person of the release of information to an authorized entity is performed".

345—8.9(22,96) Disclosure without the consent of the subject.

8.9(1) An open record is routinely disclosed without the consent of the subject.

8.9(2) To the extent allowed by law, disclosure of a confidential record may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without consent of the subject:

a. For a routine use as defined in rule 8.10(22,96); however, Iowa Code subsection 96.11(7) requires notification of the subject prior to some routine uses.

b. To another governmental agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or

criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such governmental agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

c. To an agency of this or another state or of the federal government which administers or operates a program of public assistance or child support enforcement under either federal law or the law of this or another state, or which is charged with a duty or responsibility under any such program, and if that agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under Iowa Code subsection 96.11(7). The requesting agency shall be provided, with respect to any named individual specified, any of the following:

(1) Whether the individual is receiving, has received, or has made application for unemployment compensation under Iowa Code chapter 96.

(2) The period, if any, for which unemployment compensation was payable and the weekly rate of compensation paid.

(3) The individual's most recent address.

(4) Whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and the rate of pay.

(5) Wage information.

d. To the legislative fiscal bureau under Iowa Code section 2.52.

e. Disclosure in the course of employee disciplinary proceedings.

f. In response to a court order or subpoena.

345—8.10(22,96) Routine use.

8.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

8.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer, employee, and agent, or on the custodian's own initiative, determine what constitutes legitimate need to use a confidential record.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order, including disclosure to the county attorney for the county attorney's use in the performance of duties under Iowa Code subsection 331.756(5).

c. Disclosure of information to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

d. Disclosure with prior notification to the subject and for a purpose consistent with Iowa Code chapter 96 to any of the following:

(1) An agency of this or any other state, or a federal agency responsible for the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

JOB SERVICE DIVISION[345] (cont'd)

(2) The Bureau of Internal Revenue of the United States Department of the Treasury.

(3) The Iowa department of revenue and finance.

(4) The Social Security Administration of the United States Department of Health and Human Services.

(5) An agency of this or any other state or a federal agency responsible for the administration of public works or the administration of public assistance to unemployed workers.

(6) Colleges, universities, and public agencies of this state for use in connection with research of a public nature, provided the agency does not reveal the identity of the subject.

(7) An employee of the department of employment services, a member of the general assembly, or a member of the United States Congress in connection with the employee's or member's official duties.

(8) A political subdivision, government entity, or nonprofit organization having an interest in the administration of job training programs established pursuant to the federal Job Training Partnership Act.

(9) A designated representative of a business or labor organization having in excess of 100 members.

345—8.11(22,96) Release to a subject.

8.11(1) The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 8.6(22,96). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject when the information is authorized to be held confidential pursuant to Iowa Code subsection 22.7(18) or other provision of law.

b. A record need not be disclosed to the subject when it is the work product of an attorney or is otherwise privileged.

c. A peace officer's investigative report may be withheld from the subject, except as required by Iowa Code subsection 22.7(5).

d. As otherwise authorized by law.

8.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

345—8.12(22,96) Availability of records.

8.12(1) General. Agency records are open for public inspection and copying unless otherwise provided by law or rule.

8.12(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Unemployment insurance tax records made available to the agency and withheld from public inspection pursuant to Iowa Code subsection 96.11(7).

b. Unemployment insurance benefit records, including an initial determination made by the agency's representative under Iowa Code subsection 96.6(2) as to the benefit rights of an individual, made available to the agency and withheld from public inspection pursuant to Iowa Code subsection 96.11(7).

c. Employment service records made available to the agency and withheld from public inspection pursuant to Iowa Code subsection 96.11(7).

d. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

e. Tax records made available to the agency pursuant to Iowa Code sections 422.20 and 422.72.

f. Records which are exempt from disclosure under Iowa Code section 22.7.

g. Minutes of closed meetings of a governmental body pursuant to Iowa Code subsection 21.5(4).

h. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d."

i. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would, pursuant to Iowa Code sections 17A.2 and 17A.3:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

j. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code subsection 22.7(4), section 622.10, and section 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

8.12(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 8.4(22,96). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 8.4(3).

345—8.13(22,96) Personally identifiable information.

This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 8.1(22,96). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

8.13(1) The record systems maintained by the agency are:

a. Unemployment insurance tax records. These records are collected from each employing unit pursuant to Iowa Code subsection 96.11(7) for the purpose of determining liability to provide unemployment insurance coverage for its employees as well as maintaining its employee

JOB SERVICE DIVISION[345] (cont'd)

wage and employment information for unemployment insurance rate computation and contribution assessment and collection purposes, unemployment insurance benefit payment and charging purposes, and labor market information purposes. For a more complete description of the content of these records, see 345—Chapters 2 and 3. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

b. Unemployment insurance benefit records. These records are collected from each individual claiming unemployment insurance benefits pursuant to Iowa Code subsection 96.11(7) for the purposes of determining an individual's eligibility for, the amount and duration of, and the assessment and collection of any overpayment of, unemployment insurance benefits. For a more complete description of the content of these records, see 345—Chapters 4, 5, and 6. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

c. Employment service records. These records are collected from each individual applying for employment and each employing unit offering employment pursuant to Iowa Code subsection 96.11(7) for the purpose of providing employment services to the individual and the employing unit. For a more complete description of the content of these records, see 345—Chapter 7. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

d. Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code subsection 22.7(11). Some of these records are stored in an automated data processing system and may be retrieved by a personal identifier.

e. Other groups of records routinely available for public inspection. This paragraph describes groups of records maintained by the agency other than in a record system as defined in rule 8.1(22,96):

(1) Rule making. Rule-making records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(2) Council records. Agendas, minutes, and materials presented to the job service advisory council are available from the custodian, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection 21.5(4) or which are otherwise confidential by law. Council records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3 and subsection 96.11(5). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available at the administrative office of the agency. Brochures describing

various agency programs are available at the administrative office of the agency. Agency news releases, project reports, and newsletters may contain information about persons, including agency staff or members of the job service advisory council. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(4) Statistical reports. Periodic reports of labor market information are available from audit and analysis section of the bureau of staff services, department of employment services. Statistical reports do not contain information about persons.

(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to paragraph "h" of subrule 8.12(2). These records may contain information about a person collected under the authority of Iowa Code subsection 96.11(7).

(6) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

(7) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in the administrative office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to the Custodian of the Record, Division of Job Service, Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. Policy manuals do not contain information about persons.

(8) All other records that are not exempted from disclosure by law.

8.13(2) All data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

345—8.14(22,96) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about persons by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

[Filed 4/15/88, effective 6/8/88]

[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8686

LOTTERY DIVISION[705]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99E.9 and 17A.3, the Iowa Lottery Board, on April 12, 1988, adopted amendments to Chapter 3, "Licensing," and Chapter 4, "Operation of the Lottery," Iowa Administrative Code.

These amendments set forth the procedure for setting base retailer compensation and provide for additional compensation in the form of sales incentives not to exceed 1 percent of gross lottery sales.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 27, 1988, as **ARC 8352**.

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

These rules are intended to implement Iowa Code subsection 99E.9(3), paragraph "l," and paragraph "n," subparagraphs (3) and (4).

These rules will become effective June 8, 1988.

ITEM 1. Rescind rule 705—3.19(99E).

ITEM 2. Rescind rule 705—4.18(99E) and the implementation clause following the rule and insert in lieu thereof the following:

705—4.18(99E) Retailer compensation. The lottery, with board approval, shall set the base amount of retailer compensation. The base amount of compensation shall be specified in the contractual agreement between the lottery and the retailer. The lottery may increase the total amount of retailer compensation by implementing sales incentive programs. The additional compensation paid to retailers as the result of all sales incentive programs shall not exceed 1 percent of annual, gross lottery sales.

This rule is intended to implement Iowa Code subsection 99E.9(3), paragraph "l," and paragraph "n," subparagraphs (3) and (4).

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ARC 8693

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 106.3, the Natural Resource Commission adopts a new 571—Chapter 20, "Manufacturer's Certificate of Origin," Iowa Administrative Code.

This chapter provides a format and a procedure for providing Manufacturer's Certificate of Origin required by 1987 Iowa Acts, chapter 134, section 6.

Chapter 20 delineates the information describing the vessel that shall be furnished on the MCO by the manufacturer. It describes the procedure by which the MCO is furnished to the buyer and used by the buyer to apply for a vessel title and provides that the MCO becomes a part of the permanent vessel record.

This chapter was published under Notice of Intended Action as **ARC 8187** in the December 2, 1987, Iowa Administrative Bulletin.

A public hearing was held on this matter on December 22, 1987. No comments were received. The Department has made three grammatical and no substantive changes to the chapter.

These rules become effective June 8, 1988.

These rules are intended to implement Iowa Code section 106.3 and 1987 Iowa Code supplement sections 106.77 and 106.79.

CHAPTER 20

MANUFACTURER'S CERTIFICATE OF ORIGIN

571—20.1(106) Definitions. As used in this chapter, unless the context clearly requires a different meaning:

"At retail" means to dispose of a vessel to a person who will devote it to a consumer use.

"Beam or width" means the transverse distance between the outer sides of the boat at the widest point excluding handles and other similar fittings, attachments, and extensions.

"Capacity plate" means the U.S. Coast Guard capacity plate bearing the information required by federal regulations governing boats and associated equipment. It shall not mean capacity plate information furnished by the boating industry association, national marine manufacturers association or any similar organization.

"Department" means department of natural resources.

"Essential parts" means all integral and body parts of a vessel required to be titled under Iowa Code chapter 106, the removal, alteration, or substitution of which would tend to conceal the identity of the vessel or substantially alter its appearance, model, type or mode or method of operation.

"Length" means the straight line horizontal measurement of the overall length from the foremost part of the boat to the aftermost part of the boat, measured from end to end over the deck excluding sheer, and measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not included in the measurement.

"Manufacturer's certificate of origin" means a certification signed by the manufacturer or importer that the vessel described has been transferred to the person or dealer named and that the transfer is the first transfer of the vessel in ordinary trade or commerce. The terms "manufacturer's certificate," "importer's certificate," "manufacturer's statement," "MSO" and "MCO" shall be synonymous with the term "manufacturer's certificate of origin."

"New vessel" means every vessel which has not been sold at retail and not previously titled in this state or any other state.

"Person" means an individual, partnership, firm, corporation, or association.

"Reconstructed vessel" means every vessel of a type required to be titled under Iowa Code chapter 106 materially altered by the removal, addition, or substitution of essential parts, new or used.

"Specially constructed vessel" means every vessel of a type required to be titled under Iowa Code chapter 106, not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vessels and not materially altered from its original construction.

NATURAL RESOURCE COMMISSION[571] (cont'd)

571—20.2(106) Applicability. This chapter shall apply to all vessels required to be titled under Iowa Code chapter 106.

571—20.3(106) Certificate of origin—content. The following information shall be furnished, required and stated in the certificate of origin.

- 20.3(1) Date of transfer.
- 20.3(2) Invoice number which covers the transfer of this particular vessel.
- 20.3(3) Name and complete address of dealer to whom the boat is being transferred.
- 20.3(4) Trade name and model of vessel.
- 20.3(5) Model year of vessel.
- 20.3(6) Manufacturer's hull identification number (HIN) or serial number of hull if HIN not available.
- 20.3(7) Type of boat.
 - a. Runabout.
 - b. Houseboat.
 - c. Open utility boat.
 - d. Cruiser.
 - e. Sailboat.
 - f. Pontoon boat.
 - g. Other (describe).
- 20.3(8) Propulsion.
 - a. Inboard/outdrive.
 - b. Inboard.
 - c. Outboard.
 - d. Sail only.
 - e. Manual.
 - f. Horsepower if applicable.
- 20.3(9) Fuel (if applicable).
 - a. Gasoline.
 - b. Diesel.
 - c. Other.
- 20.3(10) Hull material.
 - a. Fiberglass.
 - b. Plastic.
 - c. Steel.
 - d. Wood.
 - e. Aluminum.
 - f. Other.

20.3(11) Length overall in feet and inches (exact measurement required). For pontoon boats and houseboats this shall be the deck measurement.

20.3(12) Beam in feet and inches (exact measurement required). For pontoon boats and houseboats this shall be the deck measurement.

20.3(13) U.S. Coast Guard capacity plate information (where applicable).

- a. Maximum horsepower rating.
- b. Maximum persons capacity in whole persons.
- c. Maximum weight capacity (persons, motor, gear, etc.).

20.3(14) A certification by the manufacturer that this is the first transfer of a new vessel and that all information given is true and accurate.

20.3(15) Manufacturing firm name and complete address.

20.3(16) Signature and title of authorized person.

20.3(17) The reverse side of the certificate shall contain information regarding assignment of the vessel to facilitate transferring it from the dealer to the purchaser. The information shall consist of:

- a. The purchaser's name and address.
- b. Certification that the vessel is new and has never been registered in this or any other state.
- c. Signature of authorized agent or dealer.

571—20.4(106) Procedure—manufacturer.

20.4(1) The manufacturer of the vessel shall enter all applicable information on the certificate of origin for each vessel.

20.4(2) The manufacturer's authorized agent shall sign the certificate and by so signing certify that all information contained on the certificate is true and accurate.

20.4(3) The completed certificate of origin shall be delivered to the dealer with the vessel to which it applies.

571—20.5(106) Procedure—dealer.

20.5(1) Upon sale of a vessel the dealer shall complete the first assignment information required on the reverse of the certificate of origin.

20.5(2) The dealer shall deliver the certificate of origin to the purchaser along with a bill of sale or receipt showing that the person has purchased the vessel for consumer use.

571—20.6(106) Procedure—purchaser.

20.6(1) The purchaser shall utilize the information contained on the certificate of origin to complete the information required on the application for vessel title.

20.6(2) The purchaser shall surrender the certificate of origin to the county recorder upon applying for a vessel title.

571—20.7(106) Procedure—county recorder.

20.7(1) The county recorder shall verify that the information contained in the application and the certificate of origin correspond and shall utilize that information so far as possible in issuing the vessel title.

20.7(2) The county recorder shall retain the certificate of origin as a part of the permanent record of that vessel's title transactions.

571—20.8(106) Vessel titling. A person shall not title a vessel after December 31, 1987, without furnishing to the county recorder a manufacturer's certificate of origin.

These rules are intended to implement Iowa Code section 106.3 and 1987 Iowa Code supplement sections 106.77 and 106.79.

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ARC 8696

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3, 147.76, and 258A.3, the Iowa Board of Nursing adopts amendments to Chapter 2, "Nursing Education Programs," Iowa Administrative Code.

These amendments define the qualifications of heads of nursing education programs and their faculty.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 24, 1988, as **ARC 8407**. These amendments have been changed from the Notice of Intended Action as follows:

Paragraph 2.6(1)"a." The requirements for "qualified faculty" are further reduced, and implementation of the consultant requirement is delayed until September 1, 1993.

NURSING BOARD[655] (cont'd)

Subparagraphs 2.6(2)"c"(2) and (3) reduce the requirements of faculty members who teach nursing by extending the period of acceptance of master's degrees in applicable fields from 1993 until 1997.

Subparagraph 2.6(2)"c"(5) provides an exception to the requirements of faculty members for those who are hired only to teach in the clinical setting.

Subparagraph 2.6(2)"c"(6) provides a mechanism whereby a program can obtain a waiver of the head of the program or faculty requirements.

These rules are intended to implement Iowa Code section 152.5.

These rules will become effective June 8, 1988.

The following amendments are adopted:

ITEM 1. Amend rule 655—2.1(152) by adding the following definition in alphabetical order:

Faculty. The teaching staff in nursing. This includes anyone who provides didactic or clinical instruction in nursing, when the person is assigned by the program to provide this instruction for courses in the curriculum. The definition of faculty applies to any teaching staff in nursing regardless of the amount of time spent teaching, the level of payment, type of contract, or temporary nature of the position.

Further amend rule 655—2.1(152) by amending the definition of "Head of the program" as follows:

Head of the program. The dean, chairperson, director, or coordinator of the nursing education program(s) *who is responsible for the administration of the program(s)*.

ITEM 2. Rescind subrule 2.3(2), paragraph "d," subparagraphs (1) to (4) and insert in lieu thereof the following:

(1) A head of the program who is hired or rehired after September 1, 1988, and before September 1, 1993, shall have a master's or doctoral degree with a major in nursing or an applicable field. This person shall have a nursing major at the baccalaureate, master's, or doctoral level.

1. Applicable fields include but are not limited to education, counseling, psychology, sociology, health education, health administration, public health. One who wishes to fill this requirement with education in an applicable field not listed may petition the board for determination of applicability.

2. The date of hire is the first day employed with compensation at a particular nursing education program. The date of rehire is the first day of resumption of employment with compensation after an absence from teaching of more than one term; this does not apply to one who was on leave to obtain further academic education.

(2) A head of the program who is hired or rehired after September 1, 1993, shall have a master's or doctoral degree with a major in nursing at either level.

ITEM 3. Amend subrule 2.6(1), paragraph "a," to read as follows:

a. There shall be a sufficient number of qualified faculty to meet program objectives. *Until the program head and a majority of the program's faculty are adequately prepared, the program shall review and revise its curriculum under the direction of an outside consultant.*

(1) *Adequately prepared shall mean:*

1. *A head of the program hired prior to September 1, 1993, shall have a master's or doctoral degree with a major in nursing or an applicable field. A head of the program*

who is hired after September 1, 1993, shall have a master's or doctoral degree with a major in nursing at either level.

2. *A faculty member shall have a master's or doctoral degree with a major in nursing or an applicable field. The baccalaureate, master's or doctoral degree must be in nursing.*

(2) *The consultant requirement shall go into effect on September 1, 1993, and is as follows:*

1. *The review shall be done every three years and shared promptly with the board. The program shall show positive progression in meeting the recommendations of the consultant.*

2. *The consultant shall be a registered nurse who is doctorally prepared with an emphasis in education and experienced in nursing education. The consultant shall be approved by the board or as a site visitor for the National League for Nursing.*

3. *A program that meets the requirement in paragraph "a" shall be exempt from the consultant requirement.*

ITEM 4. Rescind subrule 2.6(2), paragraph "c," subparagraphs (1) to (5) and insert in lieu thereof the following:

(1) A faculty member who is hired after September 1, 1988, and before September 1, 1993, shall have at least a baccalaureate degree with a major in nursing or an applicable field at the time of employment. This person shall have a master's or doctoral degree with a major in nursing or applicable field by September 1, 1993. The baccalaureate, master's, or doctoral degree must be in nursing.

1. Applicable fields include but are not limited to education, counseling, psychology, sociology, health education, health administration, public health. One who wishes to fulfill this requirement with education in an applicable field not listed may petition the board for a determination of applicability.

2. The date of hire is the first day employed with compensation at a particular nursing education program. The date of rehire is the first day of resumption of employment with compensation after an absence from teaching of more than one term; this does not apply to one who was on leave to obtain further academic education.

(2) A faculty member who is hired or rehired after September 1, 1993, and before September 1, 1997, shall have a master's or doctoral degree with a major in nursing at the baccalaureate, master's, or doctoral level at the time of employment. The master's or doctoral degree shall be in nursing or an applicable field. The date of hire is the first day employed with compensation at a particular nursing education program. The date of rehire is the first day of resumption of employment with compensation after an absence from teaching of more than one term; this does not apply to one who was on leave to obtain further academic education.

(3) A faculty member who is hired or rehired after September 1, 1997, shall have a master's or doctoral degree with a major in nursing at either level at the time of employment. The date of hire is the first day employed with compensation at a particular nursing education program. The date of rehire is the first day of resumption of employment with compensation after an absence from teaching of more than one term; this does not apply to one who was on leave to obtain further academic education.

NURSING BOARD[655] (cont'd)

(4) A faculty member who is hired or rehired after September 1, 1993, to teach a master's program shall have a doctoral degree with a major in nursing at the master's or doctoral level.

(5) Those faculty hired only to teach in the clinical setting shall be exempted from subparagraphs (1) to (3) if the faculty member is closely supervised to assure proper integration of didactic content into the clinical setting. If hired or rehired after September 1, 1993, those hired only to teach in the clinical setting shall have at least a baccalaureate degree with a major in nursing. The date of hire is the first day employed with compensation at a particular nursing education program. The date of rehire is the first day of resumption of employment with compensation after an absence from teaching of more than one term; this does not apply to one who was on leave to obtain further academic education.

(6) The head of the program may petition the board for a waiver from the requirements in subrules 2.3(2), 2.6(1), paragraph "a," and 2.6(2). The board shall require the program to demonstrate its efforts and progress in meeting these requirements. The board, if it determines a waiver is warranted because of unusual or unforeseen circumstances, shall issue a waiver for a limited period of time and may indicate conditions which must be met.

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ARC 8669**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of 1987 Iowa Code supplement sections 155A.11 and 155A.14 and Iowa Code sections 204.301 and 22.11, the Iowa Board of Pharmacy Examiners hereby adopts a new Chapter 14, "Public Information and Inspection of Records," Iowa Administrative Code.

The rules were approved during the March 16, 1988, meeting of the Iowa Board of Pharmacy Examiners and will become effective July 1, 1988.

The new chapter is being adopted to implement the requirements of the Iowa Fair Information Practices Act.

Notice of Intended Action was published in the February 10, 1988, Iowa Administrative Bulletin as ARC 8374.

Changes from the Noticed rules were made to accommodate the final version of the Governor's Task Force on Uniform Rules to Implement Public Records Law and Fair Information Practices Act.

These rules are intended to implement Iowa Code section 22.11.

Rescind subrule 1.1(9) and adopt the following in lieu thereof:

CHAPTER 14
PUBLIC INFORMATION AND
INSPECTION OF RECORDS

The Iowa board of pharmacy examiners hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency

Procedure relating to public records and fair information practices are printed in Volume I of the Iowa Administrative Code.

657—14.1(155A,204,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)." insert "Iowa Board of Pharmacy Examiners."

657—14.3(155A,204,22) Requests for access to records.

14.3(1) Location of record. In lieu of the words "(insert agency name and address)" insert "Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319."

14.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)" insert "8 a.m. to 4:30 p.m. daily excluding Saturdays, Sundays, and legal holidays."

14.3(7) Fees.

c. Supervisory fee. In lieu of the words "(specify time period)" insert "fifteen minutes."

657—14.6(155A,204,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)" insert "the executive secretary."

657—14.9(155A,204,22) Disclosures without the consent of the subject.

14.9(1) Open records are routinely disclosed without the consent of the subject.

14.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 14.10(155A,204,22) or in the notice for a particular record system.

b. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

657—14.10(155A,204,22) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible

PHARMACY EXAMINERS BOARD[657] (cont'd)

with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all board records:

a. Disclosure to those officers, employees, investigators, members, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer, employee, investigator, or member, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the attorney general's office for use in performing its official function.

d. Transfers of information within the board office and among board members; to other state agencies, boards, and departments; to federal agencies; to agencies in other states; to the National Association of Boards of Pharmacy; or to local units of government as appropriate to carry out the board's statutory authority.

e. Information released to the staff of federal or state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

657—14.11(155A,204,22) Consensual disclosure of confidential records.

14.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 14.7(155A,204,22).

14.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

14.11(3) Obtaining information from a third party. The board is required to obtain information to verify and investigate complaints concerning licensees and registrants. Requests to third parties for this information may involve the release of confidential records requiring special procedures.

a. Where necessary, the board shall obtain from the subject individual an authorization for the release of specially protected information on a form that meets the requirements of the law.

b. To obtain alcohol and drug abuse patient information, the board shall obtain special authorization from the subject individual on a "Consent to Release Alcohol and Drug Abuse Patient Information" form or other appropriate form.

657—14.12(155A,204,22) Release to subject.

14.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 14.6(155A,204,22). However, the board need not release the following records to the subject:

a. The identity of a person providing information to the board need not be disclosed directly or indirectly

to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. See Iowa Code section 22.7(5).

d. As otherwise authorized by law.

14.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.

657—14.13(155A,204,22) Availability of records.

14.13(1) Open records. Board records are open for public inspection and copying unless otherwise provided by rule or law.

14.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the board (Iowa Code sections 422.20 and 422.72);

b. Prior to initiation of a contested case, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of the board or its employees or agents which relate to licensee discipline (Iowa Code section 258A.6(4));

c. Records of controlled substances disposed of or destroyed (Iowa Code section 204.506);

d. Criminal history or prior misconduct of an applicant for licensure (Iowa Code section 147.21(1));

e. Information relating to the contents of an examination for licensure (Iowa Code section 147.21(2));

f. Information relating to the results of an examination for licensure other than final score except for information about the results of an examination which is given to the person who took the examination (Iowa Code section 147.21(3));

g. Information contained in professional service abuse reports or other investigative reports relating to the abuse of controlled substances (Iowa Code section 204.504);

h. Minutes of closed meetings of the board (Iowa Code section 21.5(4));

i. Records of closed session board disciplinary hearings (Iowa Code sections 258A.6(1) and 21.5(4));

j. Information or records received from a restricted source and any other information or records made confidential by law.

k. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d."

l. Those portions of the board's staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by the board staff in conducting audits, in making inspections, in negotiating settlements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

PHARMACY EXAMINERS BOARD[657] (cont'd)

(3) Give a clearly improper advantage to persons who are in an adverse position to the board. See Iowa Code sections 17A.2 and 17A.3.

m. Information contained in reports of theft or loss of controlled substances.

n. Any other records made confidential by law.

14.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 14.4(155A,204,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 14.4(3).

657—14.14(155A,204,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 14.1(155A,204,22). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. The description also indicates whether the record system contains any confidential information, and includes the legal authority for confidentiality. The record systems maintained by the board are:

14.14(1) Records of board disciplinary hearings. These records contain information about licensees and controlled substance registrants who are the subject of a board disciplinary proceeding or other action. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 258A and 204 and 1987 Iowa Code supplement chapter 155A and is stored electronically and on paper. The information contained in "closed session" board hearings records is confidential in whole or in part pursuant to Iowa Code sections 21.5(4) and 258A.6(1).

14.14(2) Complaint reports. These records contain information about licensees, controlled drug registrants, and the persons they serve. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 204 and 1987 Iowa Code supplement chapter 155A and is stored on paper only. The information contained in these records is confidential in whole or in part pursuant to Iowa Code sections 22.7(18) and 258A.6(4).

14.14(3) Continuing pharmaceutical education records. These records contain educational information about pharmacists licensed by the board. This information is collected pursuant to the authority granted in 1987 Iowa Code supplement chapter 155A and is stored on paper only.

14.14(4) Controlled drug samples records. These records contain information about controlled substance registrants who receive samples of controlled drugs from drug manufacturers. The records include the name, strength, and quantity of controlled drugs received by the registrant, and the identity of the manufacturer. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 204 and is stored on paper only.

14.14(5) Controlled substance registration records. These records contain information about pharmacies;

individual practitioners including doctors of medicine, osteopathy, dentistry, veterinary medicine, podiatry, and optometry; manufacturers and distributors; researchers; hospitals and clinics; other health care facilities, such as long-term care facilities and intermediate care facilities; analytical laboratories; and teaching institutions. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 204 and is stored on paper, in automated data processing systems, and on microfiche.

14.14(6) Controlled drug destruction reports. These records contain information about the disposal or destruction of controlled substances in the possession of registrants. The records include the name, strength, quantity, and form of all controlled substances disposed of or destroyed, and the identity of the registrant. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 204 and is stored on paper only. The information contained in these records is confidential in whole pursuant to Iowa Code section 204.506.

14.14(7) Examination records. These records contain information about applicants for any of the following examinations: National Association of Boards of Pharmacy Licensure Examination, Federal Drug Law Examination, and Iowa Drug Law Examination. These records may also contain information about applicants who pursue licensure by reciprocity, score transfer, or other means. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 147 and 1987 Iowa Code supplement chapter 155A and is stored on paper only. The information contained in these records is confidential in part pursuant to Iowa Code sections 147.21(2), 147.21(3), 22.7(1), and 22.7(19).

14.14(8) Pharmacy internship records. These records contain information about pharmacy interns and their preceptors. This information is collected by the board pursuant to the authority granted in 1987 Iowa Code supplement section 155A.6 and is stored on paper only. The information contained in these records may be confidential in part pursuant to Iowa Code section 22.7(1).

14.14(9) Investigative reports. These records contain information about the subjects of board investigations and the activities of board investigators. The records include a variety of attachments such as interviews; drug audits; medical records; pharmacy records; exhibits; police reports; and investigators' comments, conclusions, and recommendations. This information is collected by the board pursuant to the authority granted in Iowa Codes chapters 147, 203A, and 204 and 1987 Iowa Code supplement chapter 155A and is stored electronically and on paper. The information contained in these records is confidential in whole or in part pursuant to Iowa Code sections 22.7(2), 22.7(5), 22.7(6), 22.7(9), and 22.7(19); 147.21(1); 204.504; and 258A.6(4).

14.14(10) Licensure records. These records contain information about pharmacists, pharmacies, wholesalers, and itinerant vendors who are licensed by the board. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 203 and 1987 Iowa Code supplement chapter 155A and is stored on paper, in automated data processing systems, on microfiche, and in the state archives.

14.14(11) Personnel records. These records contain personal information about board members and staff. This information is stored on paper and microfiche. The

PHARMACY EXAMINERS BOARD[657] (cont'd)

personal information contained in these records may be confidential in whole or in part pursuant to Iowa Code section 22.7(11).

14.14(12) Professional service abuse reports. These reports contain information pertaining to known or alleged drug dependent persons and other controlled substance law offenders within the state. This information is collected by the board pursuant to the authority granted in Iowa Code section 204.504(1)"c" and is stored on paper only. The information contained in these reports is confidential in whole or in part pursuant to Iowa Code section 204.504.

14.14(13) Routine inspection reports. These records contain information about pharmacies, controlled substance registrant offices, manufacturers and distributors, and wholesalers who are inspected by agents of the board to determine compliance with state and federal law. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 204 and 1987 Iowa Code supplement chapter 155A and is stored on paper, in automated data processing systems, and on microfiche.

14.14(14) Notifications to the board. These records contain reports of theft or loss of controlled substances; reports of pharmacy openings, closings, change of ownership, change of location, or change of pharmacist in charge; reports of the sale or transfer of prescription drugs; reports of out-of-state purchases of controlled substances; reports of disasters, accidents, or emergencies affecting drugs; and reports of pharmacists' change of address or place of employment. This information is collected by the board pursuant to the authority granted in 1987 Iowa Code supplement section 155A.19(1)"g" and is stored on paper, in automated data processing systems, and on microfiche. The information contained in reports of theft or loss of controlled substances may be confidential in whole or in part pursuant to subrule 14.4(5).

657—14.15(155A,204,22) Other groups of records. This rule describes groups of records maintained by the board other than record systems as defined in rule 14.1(155A,204,22). These records are routinely available to the public. The board's files of these records do not contain confidential information, except where indicated. These records may contain information about individuals and include:

14.15(1) Board calendars, agenda, news releases, statistical reports and compilations, newsletters, publications, correspondence, and other information intended for the public. These records may contain information about individuals, including board members and staff, and are stored on paper only.

14.15(2) Minutes of open meetings of the board. These records contain information about people who participate in board meetings. This information is collected pursuant to Iowa Code section 21.3 and is stored electronically and on paper.

14.15(3) Records of board rule-making proceedings. These records may contain information about individuals making written or oral comments on rules proposed by the board. This information is collected pursuant to Iowa Code section 17A.4 and is stored electronically and on paper.

14.15(4) Licensing and registration records, including the name, location, date of original licensure or registration, certificate number, and the status of licensure or registration of a licensee or registrant. This information is open to the public and is collected pursuant to Iowa Code section 147.8 and other authority granted in Iowa Code chapter 204 and 1987 Iowa Code supplement chapter 155A and is stored on paper, in automated data processing systems, on microfiche, and in state archives. Records which identify particular persons served by the licensee or registrant, such as incident reports or complaint investigations, may be confidential in whole or in part, and therefore are not routinely available to the public.

14.15(5) Board decisions, findings of fact, final orders, advisory opinions, and other statements of law or policy issued by the board in the performance of its function. These records are open to the public pursuant to Iowa Code section 258A.6(4), except for information that is confidential, and are stored on paper only.

657—14.16(155A,204,22) Data processing system. The board does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

657—14.17(155A,204,22) Purpose and scope. This chapter implements Iowa Code section 22.11 by establishing board policies and procedures for the maintenance of records.

This chapter does not:

1. Require the board to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the board which are governed by regulations of another board or agency.

4. Apply to grantees, including local governments or subdivisions, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of the records to the general public or to any subject individual or party to litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.

These rules are intended to implement Iowa Code section 22.11.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8681**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 135.11(13) and 22.11, the Department of Public Health hereby adopts Chapter 175, "Fair Information Practices and Public Records," Iowa Administrative Code.

This chapter was published under Notice of Intended Action as **ARC 8353** in the Iowa Administrative Bulletin, January 27, 1988.

The Noticed rules were based on draft uniform rules of the Governor's Task Force on Uniform Rules of Agency Procedure, and included the full text of the uniform rules. The uniform rules were revised by the Task Force on March 4, 1988, in response to public comment.

The adopted rules adopt rules 1 to 8 of the Task Force's final report by reference, with certain exceptions noted. Final revisions in the Task Force rules included deleting the "exempt" category of records. Rules 9 to 16 of the Noticed rules (now rules 9 to 17) have also been revised to delete references to "exempt" records and group them in the category of confidential records. Other changes in rules 9 to 17 included editorial changes and adding several records to the record inventory which were overlooked in the Notice.

These rules were adopted by the Board of Health on March 15, 1988.

These rules will be effective July 1, 1988.

These rules are intended to implement Iowa Code section 22.11.

**CHAPTER 175
FAIR INFORMATION PRACTICES
AND PUBLIC RECORDS**

The public health department adopts, with the following amendments and exceptions, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in Volume I of the Iowa Administrative Code.

641—175.1(17A,22) Definitions. As used in this chapter:

"Agency" or "department" in these rules means the Iowa department of public health.

641—175.3(17A,22) Requests for access to records.

175.3(1) Location of record. A request for access to a record should be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, Attention: Record Request. The department will forward the request to the appropriate person.

175.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

175.3(7) Fees.

c. Search and supervisory fee. An hourly fee may be charged for actual agency expenses in searching for and supervising the examination and copying of requested records. The fee shall be based upon the actual costs incurred. The agency shall post the hourly fees to be

charged in routine cases for search and supervision of records.

Except as provided in Iowa Code section 144.46, no fee shall be charged if the records are not made available for inspection, or if the time required does not exceed one hour in duration, or if the time required for the search was the result of agency error or record keeping problems. Iowa Code section 144.46 specifically allows for fees for vital record searches when the record is not copied or is not found and is implemented by 641—96.4(144).

641—175.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.

In lieu of the words "(designate office)" substitute the words "the office in which the record is maintained".

641—175.7(17A,22) Consent to disclosure by the subject of a confidential record.

Delete the phrases in parentheses.

641—175.8(17A,22) Notice to suppliers of information.

Delete the sentence in parentheses.

641—175.9(17A,22) Disclosures without the consent of the subject.

175.9(1) Open records are routinely disclosed without the consent of the subject.

175.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 175.10(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record;

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

641—175.10(17A,22) Routine use.

175.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

175.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

performance of their duties. Disclosure to employees of federal, state and local agencies, and other researchers for purposes of bona fide research. The custodian of the record may, upon receipt of a request or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

641—175.11(17A,22) Consensual disclosure of confidential records.

175.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 175.7(17A,22).

175.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

641—175.12(17A,22) Release to subject.

175.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 175.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

175.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

641—175.13(17A,22) Availability of records.

175.13(1) General. Agency records are open for public inspection and copying subject to supervision unless otherwise provided by rule or law.

175.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Records which identify a person infected with a contagious or infectious disease required to be reported under Iowa Code chapter 139, and maintained as confidential pursuant to Iowa Code section 139.2.

b. Records which identify a person infected with a sexually transmitted disease required to be reported under Iowa Code chapter 140, and maintained as confidential pursuant to Iowa Code sections 140.3 and 140.4.

c. HIV screening records collected pursuant to 1987 Iowa Acts, chapter 216.

d. Vital records maintained by the agency pursuant to Iowa Code chapter 144, and held confidential pursuant to 144.43. These records include records of births, deaths, fetal deaths, adoptions, marriages, divorces, annulments and related data and correspondence. Certified copies of such records may be made available only as outlined in 641—96.7(144).

e. Radioactive materials licensee files of the Radiological Health program, which are kept confidential by terms of an agreement with the federal Nuclear Regulatory Commission pursuant to Iowa Code section 136C.11.

f. Records of the WIC program (special supplemental food program for women, infants and children) required by 7 CFR 246.26(d) (February 13, 1985) to be maintained as confidential records. These include certain files of the program participant data base, WIC food checks, WIC vendors, combined agency files, U.S.D.A. correspondence referring to program participants, and appeals.

g. Reports maintained as confidential by the emergency medical services (EMS) program pursuant to subrule 132.8(3). These include the Iowa prehospital care report and Iowa ambulance advanced emergency care report.

175.13(3) Portions of the following records shall be kept confidential under Iowa Code section 22.7:

a. Records which contain medical record information protected by Iowa Code section 22.7(2). Such information may be found in records including the following:

(1) Chlamydia screening records.

(2) Cancer screening records.

(3) Rheumatic fever prophylaxis program records.

(4) Sexual assault examination and reimbursement program records.

(5) Client records in the SIDS (Sudden Infant Death Syndrome) program records and the Birth Defects/Genetic Counseling program.

(6) Sterilization reimbursement records.

(7) Patient records in the AZT drug reimbursement program.

(8) Work-related disease program file.

(9) Conditional paramedic pilot project records and medical audits maintained by the emergency medical services (EMS) program.

(10) Records and correspondence of the refugee health program.

(11) Case records and immunization records maintained in the first-aid room at the state capitol.

(12) Chronic renal disease program patient files.

(13) Bureau of health promotion records which contain medical information protected by Iowa Code section 22.7(2). This includes medical information from screening programs for blood pressure, diabetes, cholesterol and colorectal cancer; from diabetes outpatient education assessment, fitness assessment and health risk appraisals; and correspondence containing medical information.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

(14) Correspondence relating to these or other programs which contains medical records.

b. Homemaker/home health aide program records dealing with training exceptions which include educational records protected by Iowa Code section 22.7(1).

c. Records of the radiological health program dealing with radiography technicians and radiography technician testing results which include educational records protected by Iowa Code section 22.7(1).

d. Manufacturer "notice of sale" records filed by the Radiological Health program, which are kept confidential pursuant to Iowa Code section 22.7(6).

e. Certain consumer product and safety information maintained by the Health Engineering section for which section 6 of the federal Consumer Products Act requires confidentiality.

175.13(4) Minutes of closed meetings of a government body (Iowa Code section 21.5(4)) shall be kept confidential.

175.13(5) Identifying details in final orders, decisions and opinions shall be kept confidential to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d."

175.13(6) Portions of agency staff manuals, instructions or other statements issued shall be kept confidential which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

a. Enable law violators to avoid detection;

b. Facilitate disregard of requirements imposed by law; or

c. Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

175.13(7) Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged shall be kept confidential. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

175.13(8) Records exempted from public inspection under any other provision of law shall be kept confidential.

175.13(9) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 175.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 175.4(3).

641—175.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule

175.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. A data processing system does not match, collate, or permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system, unless so indicated. The record systems maintained by the agency are:

175.14(1) Division of family and community health.

a. Records of the public health nursing and homemaker/home health aide programs collected pursuant to Iowa Code section 135.11(15). These records are stored on paper, electronically or both, depending on the specific type of record.

b. Records of the maternal and child health programs collected pursuant to Iowa Code sections 135.11(19) and 709.10 and chapter 255A. These records are stored on paper, electronically or both, depending on the specific type of record. Data processing systems are being developed to link certain client data in these programs with client data in the WIC program.

c. Records of the nutrition and WIC (supplemental food program for women, infants and children) programs collected pursuant to Iowa Code section 135.11(1) and Chapter 17 of the federal Child Nutrition Act of 1966 as amended. These records are stored on paper, electronically or both, depending on the specific type of record. Data processing systems are being developed to link certain client data in this program with client data in maternal and child health programs.

d. Records of the birth defects institute collected pursuant to Iowa Code chapter 136A. These records are stored on paper.

e. Records of the dental health programs collected pursuant to Iowa Code section 135.11(19), funded primarily by maternal and child health funds. These records are stored on paper or electronically, depending on the specific type of record.

f. Records of the lead abatement program collected pursuant to 1987 Iowa Acts, chapter 55. These records are stored on paper.

g. The above listed records are open, except for confidential records noted in rule 175.13(17A,22).

175.14(2) Division of disease prevention.

a. Records of reportable contagious and infectious diseases (including epidemiology and immunization records) collected pursuant to Iowa Code chapter 139. These records are stored on paper, electronically or both, depending on the specific type of record. Except for statistical reports, these records are confidential as outlined in subrule 175.13(2)"a."

b. Records of reportable sexually transmitted diseases collected pursuant to Iowa Code chapter 140. These records are stored on paper, electronically or both, depending on the specific type of record. Except for statistical reports these records are confidential as outlined in 175.13(2)"b."

c. Refugee health program records collected pursuant to Iowa Code section 135.11(1) and Section 412(c)(3) of the federal Immigration and Naturalization Act. These records are stored on paper, electronically or both, depending on the specific type of record. Certain medical information in these records is confidential as outlined in 175.13(3)"a"(10).

d. Records of the environmental health programs collected pursuant to Iowa Code section 135.11(1) and

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

PL96-510, section 104(d)(1), 40 CFR-763 effective June 28, 1983, and 40 CFR-761 effective May 31, 1979, dealing with asbestos, PCB and other environmental health factors. These records are stored on paper, electronically or both, depending on the specific type of record. Certain medical information in the work-related disease program file may be confidential, as outlined in 175.13(3)"a"(8). Certain asbestos, PCB and lead inspection records are collected under contract with the federal Environmental Protection Agency, and requests for such records would be referred to that agency.

e. Records of the health engineering program collected pursuant to Iowa Code chapter 138 and sections 192.31 and 135.12. These records are stored on paper.

f. Records of the radiological health program collected pursuant to Iowa Code chapters 136B and 136C. These records are stored on paper, electronically or both, depending on the specific record. Certain of these records are confidential as outlined in 175.13(3), paragraphs "c" and "d."

g. Records of the veterinary public health program collected pursuant to Iowa Code chapter 139. These records are stored on paper. Certain medical information in these records may be confidential as outlined in 175.13(2)"a."

h. Records of the emergency medical services program collected pursuant to Iowa Code chapter 147A. These records are stored on paper, electronically or both, depending on the specific type of record. Some of these records are confidential as outlined in 175.13(2)"g" and 175.13(3)"a"(9).

i. Records of the AZT drug reimbursement program collected for purposes of implementing a federal grant program authorized by HR 1827. These records are stored on paper. Certain patient records are confidential as outlined in 175.13(3)"a"(7).

j. Case records and immunization records maintained in the first-aid room at the state capitol. These records are collected under the general authority of Iowa Code section 135.11(1), are stored on paper, and are maintained as confidential as outlined in 175.13(3)"a"(12).

175.14(3) Division of central administration.

a. Vital records collected pursuant to Iowa Code chapter 144, including records of births, deaths, fetal deaths, adoptions, marriages, divorces, annulments and related data and correspondence. These records are stored on paper, microfiche and electronically. These records are confidential as noted in subrule 175.13(2)"d."

b. Licensing records of the professional licensing boards. These records are identified in rules filed by the individual licensing boards (IAC 645). They contain information about individuals, some of which is confidential.

c. An electronic inventory of records maintained by the department, which indicates the type of information contained on the record, contact person for the record, how the record is stored, whether the record is confidential, and whether it contains personally identifiable information. This inventory is maintained by the information management bureau.

d. Fiscal records maintained by the division are generally originated by the department of revenue and finance or the department of management. Requests for these records, stored on paper or electronically, will be referred by the department to the appropriate agency.

e. Personnel records maintained by the department include:

(1) Personnel records containing information about employees, families and dependents, and applicants for positions with the agency. Some of this information is confidential under Iowa Code section 22.7(11).

(2) Copies of county public health nursing files maintained by the department to assist local boards of health in following merit principles in their employment practices as required by Iowa Code section 137.6(4) as it relates to employment of public health nurses per Iowa Code section 143.1. Requests for these records will be referred by the department to the county of origin of the record.

175.14(4) Division of substance abuse and health promotion.

a. Records of the bureau of health promotion collected pursuant to Iowa Code section 135.11(1). Certain medical information in these records is confidential as outlined in 175.13(3)"a"(13). The medical information from wellness programs and screening programs is stored on paper.

b. Records of substance abuse programs of this division are identified in rules adopted by the substance abuse commission (IAC 643).

175.14(5) Office of health planning.

a. Records of the certificate of need program collected pursuant to Iowa Code sections 135.61 to 135.83 and the 1122 review program pursuant to Iowa Code section 135.11(1) and PL92-603.1122. These records are stored on paper.

b. Records of the chronic renal disease program collected pursuant to Iowa Code sections 135.45 to 135.48. These records are stored on paper, electronically or both, depending on the specific type of record.

c. Contract records of the health data commission pursuant to Iowa Code section 145.3(1). These records are stored on paper and electronically.

d. Records of health maintenance organization reviews pursuant to Iowa Code section 514B.4. These records are stored on paper.

e. Annual hospital surveys collected pursuant to Iowa Code sections 135.74 and 135.75. These records are stored on paper and electronically.

f. All of the above records are open, except for confidential medical information as noted in section 175.13(3)"a"(12).

175.14(6) Governor's alliance on substance abuse.

a. Records of the high-risk youth grant program collected pursuant to Iowa Code section 135.11(1) and the federal Anti-Drug Abuse Act of 1986. These records are stored on paper.

b. Records of the narcotic control grant program collected pursuant to Iowa Code section 135.11(1) and the federal Anti-Drug Abuse Act of 1986. These records are stored on paper.

c. These records are open.

641-175.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 175.2(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in 175.13(17A,22). The records listed may contain informa-

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

tion about individuals. All records are stored on paper unless otherwise noted.

175.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments or proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

175.15(2) Council and commission records. Agendas, minutes, and materials presented to the councils, committees and commissions listed below are available from the department, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3.

- a. Advanced emergency medical care council (no longer in existence).
- b. Birth defects advisory committee.
- c. Governor's alliance on substance abuse.
- d. Governor's emergency medical services advisory council (no longer in existence).
- e. Iowa health data commission (permanent file rotates among agencies with the chair of the commission).
- f. Iowa organ and tissue transplant commission.
- g. Immunization action advisory council.
- h. Maternal and child health advisory council.
- i. Perinatal standards committee.
- j. Renal disease advisory committee.
- k. Sexual abuse advisory committee.
- l. SIDS advisory committee.
- m. State agency coordinating committee.
- n. State board of health.
- o. State health facilities council.
- p. State plumbing code committee (no longer in existence).
- q. Statewide health coordinating council.
- r. Other ad hoc task forces and committees appointed by the Department.

175.15(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available from the public information office. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees.

175.15(4) Statistical reports. Periodic reports of vital statistics records are available from the vital statistics section in the division of central administration.

175.15(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 175.13(17A,22) or 175.14(17A,22). These records may contain information about individuals.

175.15(6) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

175.15(7) Policy manuals. Policy or program manuals of various programs may be obtained by contacting the program.

175.15(8) All other records that are not exempted from disclosure by law. Other records used by the agency include correspondence files, surveys conducted by programs, information and data files, and records used for processing purposes internally (such as data processing and word processing requests, supply shipments, etc.). Some of these records may contain

information about individuals. Correspondence files may contain confidential information protected by statutes cited in 175.13(17A,22) of these rules.

641—175.16(17A,22) Data processing systems. Except where otherwise noted, data processing systems used by the agency do not permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

641—175.17(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

[Filed 4/15/88, effective 7/1/88]

[Published 5/4/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/4/88.

ARC 8668

RACING AND GAMING DIVISION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code section 99D.7, the State Racing Commission hereby adopts an amendment to Chapter 8, "Mutuel Departments," Iowa Administrative Code.

This amendment to subrule 8.2(4) provides for daily triple wagering at greyhound tracks, subject to Commission approval.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 10, 1988, as ARC 8357.*

There were no public comments received and there were no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 99D.

This amendment will become effective June 8, 1988.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986,

*See also ARC 8667 herein.

RACING AND GAMING DIVISION[491] (cont'd)

page 485, the text of this amendment [8.2(4)“1”] is being omitted. This amendment is identical to the one published under Notice as ARC 8357, IAB 2/10/88.

[Filed 4/11/88, effective 6/8/88]
[Published 5/4/88]

[For replacement pages for IAC, see IAC Supplement, 5/4/88.]

ARC 8675**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 12, “Filing Returns, Payment of Tax, Penalty and Interest,” Chapter 30, “Filing Returns, Payment of Tax, Penalty and Interest,” Chapter 38, “Administration,” Chapter 43, “Assessments and Refund,” Chapter 51, “Administration,” Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” Chapter 54, “Allocation and Apportionment,” Chapter 55, “Assessments, Refunds, Appeals,” Chapter 57, “Administration,” and Chapter 60, “Assessments, Refunds, Appeals,” Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 9, 1988, as ARC 8503.

Amendments to rules 701—12.9(422) and 701—30.11(423) remove paragraphs which bar the refund of sales and use taxes based upon the alleged validity or legality of the law. The statutory provision was repealed by 1986 Iowa Acts, chapter 1194.

Amendments to subrules 38.2(1), 43.3(8), 51.2(1), 52.6(10), 55.3(5), 57.2(1), and 60.3(5) bring the Iowa rules into conformance with the Iowa Supreme Court decision in Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review, 414 N.W.2d 113. The Court in this case ruled that after the three-year statute of limitations for assess-

ment or refund had expired only adjustments peculiar to the finalized federal audit could be made to the Iowa income tax return.

The amendment to subrule 52.1(3) is to remove a definition of a term which is not used in Chapter 52 of the rules.

The amendment to subrule 52.4(6) is to correct an erroneous citation to an Iowa Code section.

The amendment to subrule 52.6(10) is to correct a typographical error.

The amendment to subrule 54.2(1) is to complete the citations to United States Supreme Court cases.

The amendment to subrule 54.7(5) is to bring the subrule into conformance with the Iowa Code. The current subrule requires that radio and television companies have broadcast assets located within and without Iowa in order to be able to apportion income. This is more restrictive than Iowa Code section 422.33(2) which merely requires that a corporation's business be carried on within and without the state in order to be able to apportion income. The amendment also provides an effective date.

The amendment to rule 701—54.9(422) is to establish a 60-day protest period to protest the Director's actions in denying a taxpayer's request to use an alternative apportionment method. This 60-day protest period is consistent with the 60-day protest period to protest the assessment of additional income tax as set forth in Iowa Code section 422.28.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective June 8, 1988, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 422.25 and 422.73.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules [amendments to Chapters 12, 30, 38, 43, 51, 52, 54, 55, 57, and 60] is being omitted. These rules are identical to those published under Notice as ARC 8503, IAB 3/9/88.

[Filed 4/13/88, effective 6/8/88]
[Published 5/4/88]

[For replacement pages for IAC, see IAC Supplement, 5/4/88.]

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
Education Department[281]	Chapter 4 [IAB 3/23/88]	Seventy days from effective date of April 27, 1988.
Transportation Department[761]	602.11 [IAB 2/10/88, ARC 8375]	Seventy days from effective date of March 16, 1988. ARRC lifted 4/21/88.

CIVIL RIGHTS COMMISSION[161]

1979 Objections

On July 11, 1979, the administrative rules review committee voted the following objections:

The committee objects to ARC 0192, item 1, appearing in Vol. 1, IAB 23 (4-18-79), relating to the definition of terms, on the grounds these provisions are beyond the authority of the commission and unreasonable. Specifically, the committee is concerned with subrules 1.1(8) and 1.1(9) appearing under item 1. Subrule 1.1(8) provides:

The term "retirement plan and benefit system" as used in section 601A.12 of the Code relates only to the discontinuation of employment pursuant to the provisions of such retirement plan or system. A retirement plan or benefit system shall be limited to those plans or systems where contributions are limited to those plans or systems where contributions are based upon anticipated financial costs of the needs of the retiree.

It is the opinion of the committee this subrule exceeds the authority of the commission in that it is an overboard interpretation of §601A.13, the Code. That section in essence exempts from the provisions of the Act retirement plans or benefit systems which discriminate on the basis of age or sex, unless the plan is a "mere subterfuge". The exemption does not appear limited to plans or systems "relating only to the discontinuation of employment" or those "where contributions are based upon the anticipated financial costs of the retiree" as the subrule provides. Under the subrule, a plan or system which fails to meet either of the above criteria it would apparently automatically be considered unfair discrimination. If the General Assembly had intended this result it would have so provided within the Act.

It is further the opinion of the committee subrule *1.1(9) defining as "injury", for which damages may be awarded, an offense against a person's dignity, is unreasonable in that it provides no ascertainable standard to determine what damage the offended party has suffered. Under the provisions of §601A.15(8)"a"(8) the commission clearly has the authority to award damages for an injury. The committee believes this term to mean that the party has been harmed in some way that damage received can be measured and appropriate recompense awarded for that damage. Dignity, like beauty, is in the eye of the beholder. Absent a showing that physiological or psychological damage has resulted from an "offense against a person's dignity", it appears impossible to accurately measure the financial equivalent of such an injury or to award appropriate damages.

*Renumbered as 2.1(8) IAB 1/13/88, Objection reimposed 4/20/88

The committee objects to ARC 0192, item 7, [appearing in IAB, 4/18/79] subparagraph 6.2(6)"a"(2), relating to reasonable accommodation, on the grounds the provisions are beyond the authority of the commission. Subrule 6.2(6) requires that employers make "reasonable accommodation to the physical or mental handicaps of an applicant, unless it can be shown to be an "undue hardship". The above cited paragraph provides that reasonable accommodation may include:

Job restructuring, part-time or modified work schedules, acquisition or modifications of equipment or devices, the provision of readers or interpreters, and other similar actions.

It is the opinion of the committee this definition of reasonable accommodation far exceeds that which may fairly be imputed from section 601A.6(1)"a," which in part declares it to be "unfair discrimination" to:

... refuse to hire ... any applicant for employment ... because of ... disability of such applicant or employee, unless based upon the nature of the occupation. If a disabled person is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis of exception to the unfair or discriminating practices prohibited by this subsection.

For the purposes of the above paragraph, section 601A.2(11) defines disability as:

... the physical or mental condition of a person which constitutes a substantial handicap, but is unrelated to such person's ability to engage in a particular occupation.

In reading these two sections together and giving effect to each, it appears that the Civil Rights Act prohibits employment discrimination on the grounds of disability only if either of the following criteria are met: (1) The handicap is not related to that particular occupation, or (2) The applicant is qualified by training or experience to perform that occupation, even if the handicap does relate to the occupation.

The General Assembly clearly has the authority to ban any or all discrimination against disabled persons, or to require employers to make the type of "reasonable accommodation" mandated by subrule **6.2(6)"a"(2). However, the statute does neither. Instead the criteria listed in the above paragraph are established to prohibit discrimination only against a "qualified" disabled applicant. The statute is designed to benefit the handicapped individual who has managed to overcome his or her disability. To mandate this type of reasonable accommodation would, in the case of more affluent employers, require that the handicap be ignored, and require these employers to overcome the handicap for the applicant. If employers are to make this type of reasonable accommodation the General Assembly should so provide by law, or specifically authorize the civil rights commission to make rules on the subject. To proceed otherwise implies that an administrative agency may interpret a broadly worded statute to mean whatever the agency chooses, and reduces that statute itself to a mere tool for the transferring of law making power to administrative agencies.

The committee also objects to paragraph **6.2(6)"b" in its entirety, on the grounds it is unreasonable. The paragraph lists the criteria to be used in determining whether an employer must make any reasonable accommodation at all. Under the provisions of paragraph 6.2(6)"a"(1), employers must make the job site accessible to and usable by handicapped persons. If this type of accommodation is to be mandated at all, the burden should be equally imposed upon all employers, without singling out any specific groups to be exempt from the burden imposed.

**Renumbered as 8.27(6)"a"(2) and 8.27(6)"b" IAB 1/13/88, Objection reimposed 4/20/88

Objection Reimposed

At its April 20 meeting the committee voted to reimpose two 1979 objections to rules which required employers to provide specific types of "reasonable accommodation" to the handicaps of employees (paragraphs 6.2(6)"a"(2) and 6.2(6)"b") and defined the terms "injury" and "benefit systems" (Subrules 1.1(8) and 1.1(9).

Subsequent to the 1979 objections, subrule 1.1(9) was deleted by the commission, rendering that portion of the objections inoperative. The remaining portions remained in place and in effect until they were deleted when the rules at issue were renumbered and promulgated by the commission as part of the reorganization process. The committee action will reinstate those objections into the Iowa Administrative Code.

The rules appear as part of ARC 8275 in X IAB 15 (1-13-88) and are codified as paragraphs 161 IAC 8.27(6)"a"(2) and "b," relating to reasonable accommodation, and subrule 2.1(8), relating to the definition of the term "injury".

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

March 1988

BANKS

Loan Production Facilities. Iowa Code § 524.213 and 524.1201. The Superintendent of Banking has discretion to authorize loan production facilities which do not perform core banking functions at any location in Iowa. (Senneff to Tubbs, Superintendent of Banking, 3-31-88) #88-3-8(L)

CHIROPRACTORS

Board of Chiropractic Examiners. Iowa Code §§ 151.1(3); 151.8; 151.10. Iowa Code § 151.10 allows an individual to choose not to be tested in or utilize chiropractic physiotherapy as a condition for licensure. Chapter 151 does not address whether individuals can be required to take courses in the procedures authorized by law if they do not intend to utilize those procedures. (McGuire to Miller, State Senator, 3-1-88) #88-3-1(L)

CONSTITUTIONAL LAW; ELECTIONS

Campaign Finance Disclosure. First Amendment, U.S. Const.; Iowa Code Supp. § 56.2(6) (1987); 1987 Iowa Acts, Ch. 112, § 2. If Iowa Code Supp. § 56.2(6) (1987) were challenged in a court of law, it would be held unconstitutional under the First and Fourteenth Amendments of the U.S. Constitution because the U.S. Supreme Court has held that the enforcement of campaign disclosure laws regarding expenditures for publications or broadcasts must be limited to publications or broadcasts containing express advocacy. The 1987 amendment goes beyond regulating express advocacy to require disclosure when publications or broadcasts are favorable or unfavorable to an identifiable candidate. (Bolin to Williams, Executive Director, Campaign Finance Disclosure Commission, 3-15-88) #88-3-4

COUNTIES

Board of Review. 701 Iowa Admin. Code § 71.20(1)(a). Under 701 Iowa Admin. Code § 71.20(1)(a), a retired farmer does not qualify as a farmer under Iowa Code § 441.31 (1987), and consequently may not serve on the county board of review, unless the retired farmer "remains in reasonable contact" with the prior farming operation. The prior opinion of Benton to Martens, Iowa County Attorney, #86-5-4(L) is overruled. (Benton to Martens, Iowa County Attorney, 3-4-88) #88-3-2(L)

ENVIRONMENTAL PROTECTION

Hazardous waste generators. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6925, 6926, 6973(a); Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 42 U.S.C. §§ 9604, 9607; Iowa Code Supp. §§ 455B.301A, 455B.304-455B.306, 455B.310, 455E.3, 455E.5, 455E.6, 455E.11 (1987); 1985 Iowa Acts, ch. 260, § 12 (House File 476); 1987 Iowa Acts, ch. 233, § 204(5) (Senate File 511). Provisions of the groundwater protection act establishing a solid waste account within a groundwater protection fund and provisions relating to closure, postclosure leachate control and treatment do not immunize generators of waste later classified as hazardous from liability for cleanup costs. Generators of hazardous waste must follow federal RCRA requirements. (Sarcone to Scieszinski, Monroe County Attorney, 3-29-88) #88-3-7(L)

PUBLIC RECORD

Abstract of Driver's Operating Record. §§ 22.2, 22.3 and 321A.3(1), Iowa Code (1987). A copy of a computer master tape of the abstract of driver operating records of the Department of Transportation is a public record and can be obtained without paying the fee required for a certified abstract of an operating record by Iowa Code § 321A.3(1) (1987). (Krogmeier to Rensink, 3-22-88) #88-3-6(L)

SCHOOLS; HEALTH

Withholding of life-sustaining procedures. Iowa Code § 144A.2(4); 144A.3, 144A.7, 144A.9(1)(c); Uniform Rights of the Terminally Ill Act, § 1(3). A school is not a health care provider under chapter 144A. Thus a school has no mandatory duty under the statute to either withhold life-sustaining procedures for a terminally ill child or transfer the child to another facility. Given the difficulties of application of the statute to minors and the significance of the decision in question, a school would be well advised under the current Iowa law to require a court order before agreeing to neither summon medical personnel nor administer first aid to a terminally ill child. (Osenbaugh to Lepley, Director, Iowa Department of Education, 3-10-88) #88-3-3(L)

STATE OFFICERS AND EMPLOYEES

Professional and Occupational Licensing Boards; Iowa Accountancy Examining Board; Gender Balance. Iowa Code §§ 69.16A, 69.19, 116.3(1), 116.9 (1987). Members of both the Accountancy Examining Board and the Accounting Practitioner Advisory Council are appointed by the governor, confirmed by the senate, and serve terms commencing May 1st. The gender balance of this eight member Board can be either five-three or four-four. (Weeg to Henze, Chairman, Accountancy Examining Board, 3-16-88) #88-3-5(L)

STATUTES CONSTRUED

1987 IOWA CODE

	OPINION
22.2	#88-3-6(L)
22.3	#88-3-6(L)
56.2(6)	#88-3-4
69.16A	#88-3-5(L)
69.19	#88-3-5(L)
116.3(1)	#88-3-5(L)
116.9	#88-3-5(L)
144A.2(4)	#88-3-3(L)
144A.3	#88-3-3(L)
144A.7	#88-3-3(L)
144A.9(1)(c)	#88-3-3(L)
151.1(3)	#88-3-1(L)
151.8	#88-3-1(L)
151.10	#88-3-1(L)
321A.3(1)	#88-3-6(L)
455B.301A	#88-3-7(L)
455B.304-455B.306	#88-3-7(L)
455B.310	#88-3-7(L)
455E.3	#88-3-7(L)
455E.5	#88-3-7(L)
455E.6	#88-3-7(L)
455E.11	#88-3-7(L)
524.213	#88-3-8(L)
524.1201	#88-3-8(L)

1987 IOWA ACTS

	OPINION
Ch. 112, § 2	#88-3-4
Ch. 233, § 204(5) (S.F. 511)	#88-3-7(L)

1985 IOWA ACTS

	OPINION
Ch. 260, § 12, H.F. 476	#88-3-7(L)

IOWA ADMINISTRATIVE CODE

	OPINION
701, § 71.20(1)(a)	#88-3-2(L)

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED - APRIL 13, 1988

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. 87-520. IOWA WEST RACING ASSOCIATION v. IOWA
DEPARTMENT OF REVENUE.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge. Reversed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato and Andreasen, JJ. Opinion by McGiverin, C.J. (9 pages \$3.60)

Iowa West is a nonprofit corporation organized pursuant to Iowa Code section 99D.9 (1985) for the purpose of operating a dog racing track. Iowa West is required by Iowa Code chapter 99B to distribute its net profits to charitable, public, patriotic or other philanthropic organizations. In 1985, Iowa West sought and was granted a property tax exemption for its race track. The Department of Revenue challenged that exemption. The hearing officer's proposed order found that Iowa West's property did not qualify for a property tax exemption under Iowa Code section 427.1(9). The district court reversed the director's decision and concluded that the property tax exemption should be granted. The Department has appealed. OPINION HOLDS: I. While Iowa West's activities may benefit philanthropic causes, the property is used to facilitate pari-mutuel gambling with a view toward pecuniary profit. We have repeatedly concluded that the laudable goals of nonprofit organizations do not qualify them for property tax exemptions when those organizations use their property for other than direct charitable purposes. II. Looking to Iowa Code chapter 99D, we find nothing to persuade us that the legislature intended that licensed racing facilities be exempt from property taxes. Chapter 99D limits certain additional taxes that may be levied upon a licensee of that chapter in subsections 99D.14(4) and (5). Property taxes are not included in this fairly extensive list. III. The different lists of organizations eligible for benefits in sections 99B.(3)(b) and 427.1(9) provide further evidence that the legislature did not intend to exempt racing facilities from property taxation. These lists do not entirely coincide. We find our traditional analysis under Iowa Code section 427.1(9) applicable to licensees under chapter 99D. Iowa West is not eligible for a property tax exemption.

No. 87-189. STATE v. JACKSON.

Appeal from the Iowa District Court for Ringgold County, Thomas Bown, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato and Andreasen, JJ. Opinion by McGiverin, C.J. (12 pages \$4.80)

The defendant was accused of trying to hire someone to kill his wife. He was initially charged with attempted murder, but this charge was dismissed with prejudice because it was not filed within 45 days of arrest as required by Iowa R. Crim. P. 27(2)(a). The State then filed the present charge of solicitation to commit murder. The defendant was convicted of that charge, and he has appealed. OPINION HOLDS: I. The dismissal of the earlier attempted murder charge does not bar the present solicitation charge. The doctrine of collateral estoppel is clearly not at issue here. We decline to adopt the doctrine of episodic immunity, which would require the State to join in one trial all of the charges against a defendant arising out of a single criminal incident. Solicitation is not a lesser included offense of attempted murder, and the solicitation charge therefore was not dismissed when the attempted murder charge was dismissed. Finally, the second prosecution based on the same incident does not deny the defendant fundamental fairness. II. The district court did not err by denying the defendant's motion for mistrial. The prosecutor's closing argument did not, as the defendant suggests, imply that the defendant had a duty to give his current exculpatory story to police at an earlier time. Moreover, the motion for mistrial was untimely.

NO. 87-741. PAHRE v. AUDITOR OF THE STATE OF IOWA.

Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge. Affirmed. Considered by Larson, P.J., and Schultz, Carter, Neuman, and Snell, JJ. Opinion by Larson, J. (10 pages \$4.00)

A guarantor of thrift certificates in an industrial loan company, which claimed it had relied on a defective audit prepared by loan company's accountant, appeals from summary judgment in its suit against the accountant. OPINION HOLDS: We do not believe the accountant can be liable to the guaranty corporation for allegedly defective financial statements, because we do not believe that the guaranty corporation was within the class of parties identifiable by the accountant at the time the audits were made, or a member of the class intended by the accountant to be a user of the audit under the Restatement (Second) of Torts section 552(2) and the holdings of our prior cases. The audited financial statements for the loan company were prepared prior to the existence of the guaranty corporation, and the accountant did not know that the loan company would submit the statements to the guaranty corporation in its attempt to gain membership to it. We believe, accordingly, that the district court was correct in dismissing the petition on the basis of a lack of duty.

No. 87-689. THOMPSON v. CITY OF OSAGE.

Appeal from the Iowa District Court for Mitchell County, Gilbert K. Bovard, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato, and Andreasen, JJ. Opinion by Andreasen, J. (7 pages \$2.80)

The Thompsons petitioned for writ of certiorari to challenge the authority of the City of Osage to condemn a temporary easement over their property. The City filed a motion to dismiss which challenged the court's jurisdiction to issue a writ of certiorari. OPINION HOLDS: I. A petition for writ of certiorari must be filed within thirty days from the time the tribunal, board, or officer exceeded its jurisdiction or otherwise acted illegally. The City argues that Thompsons' time period for commencing their certiorari action started on January 19, 1987, when they were served with a notice of assessment. Thompsons argue that the time period for commencing their action started on February 20, 1987, when the commissioners met, awarded damages, and notice of the award was mailed to the Thompsons. Under Iowa law the City retained the right to limit or reduce the property interest to be condemned prior to the time of assessment. Thus, the City condemnation was not final for the purpose of Iowa Rule of Civil Procedure 319 until the assessment became final under Iowa Code sections 472.14, .17 & .18. II. The Thompsons argue the City has no authority to condemn their land for a temporary easement. We disagree. Where the permanent and temporary easements are specifically described and the purpose is clearly stated, the compensation commission can determine the condemnation damage. The condemnation proceedings to secure both a permanent and temporary easement over and across Thompsons' property is not illegal.

No. 87-113. SANDERS v. GHRIST.

Appeal from the Iowa District Court for Polk County, Anthony M. Critelli, Judge. Reversed and remanded. Considered by Larson, P.J., and Schultz, Carter, Neuman, and Snell, JJ. Opinion by Snell, J. (7 pages \$2.80)

This case arises from allegations that Ghrist failed to properly diagnose and treat a malignant tumor which resulted in Ivan T. Sanders' death. Among the theories under which plaintiffs sought damages was included Sanders' lost chance to survive the disease. The district court gave no instruction for the potential damages available under the lost chance of survival theory, notwithstanding plaintiffs' request for such an instruction. OPINION HOLDS: The instructions, read as a whole, fail to convey to the jury the legal theory on which a lost chance of survival recovery is based. The legal theory supporting a recovery for lost chance of survival should be included as part of the proximate cause and the damages instructions. Plaintiffs' motion for new trial should have been granted. Accordingly, we reverse the judgment of the district court and remand this case for a new trial.

No. 86-1548. WILLIAMS v. STATE.

Appeal from the Iowa District Court for Jones County, Thomas M. Horan, Judge. Affirmed. Considered by Harris, P.J., and Larson, Schultz, Lavorato, and Snell, JJ. Opinion by Snell, J. (12 pages \$4.80)

A three-member disciplinary committee found Williams, an inmate of the Iowa State Men's Reformatory in Anamosa, to have violated a prison rule. Williams then initiated the present postconviction action. The district court denied relief, and Williams has appealed. OPINION HOLDS: I. Williams contends that denying his appellate counsel access to the confidential information used by the disciplinary committee violates his rights to effective assistance of counsel as guaranteed by the sixth and fourteenth amendments to the federal constitution and by state statute. In addition, he claims the denial violates his right to meaningful access to the courts as guaranteed by the fifth and fourteenth amendments to the federal constitution. A. As Williams has no sixth amendment right to counsel at his disciplinary hearing, much less, we think, does he have such a right in proceedings instituted to challenge the results of that hearing. B. Iowa Code section 663A.5 (1985) grants an individual the right to effective assistance of counsel in postconviction actions which seek to challenge prison disciplinary proceedings. We hold this guaranty extends to appellate, as well as trial, counsel. Williams' statutory right must be balanced against the legitimate institutional needs and objectives which our cases have recognized. Prison officials are entitled to exercise discretion in refusing to disclose the identity of confidential informants in order that the safety of such persons will not be jeopardized. Williams' appellate counsel could not have successfully argued either of his grounds for relief even with access to the confidential information. Consequently, counsel's inability to see the information did not affect his competence as Williams' counsel. C. The right of access to the courts is a substantive guarantee secured by the due process clause. Williams' right to court access must be weighed against the interests of the institution in which he resides. In weighing Williams' right to court access against the State's interests, the State prevails. Williams has failed to demonstrate an impermissible restraint on his right to court access. II. Under Iowa Code § 903A.1 (1985) the decision whether good conduct credits are to be forfeited is to be made only by an independent hearing officer, appointed pursuant to section 903A.1. Of the three-member committee which both heard the disciplinary case against Williams and ordered the forfeiture of his good conduct credits, only one was a hearing officer. The decision to forfeit Williams' conduct credits was concurred in by all committee members. There is nothing in this record showing a prejudice against Williams

No. 86-1548. WILLIAMS v. STATE (continued).
that would taint the result. The independence required of the hearing officer is that the officer not be personally involved in the incident for which discipline is sought or in prior disciplinary actions against the inmate. The one hearing officer satisfied this measure and the statutory directive regarding inmate disciplinary procedure. The presence of the other two committee members was in an advisory capacity only; their votes in favor of disciplining Williams were superfluous.

No. 86-1498. RYAN v. ARNESON.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Allamakee County, James L. Beeghley, Judge. Decision of court of appeals affirmed in part and vacated in part, district court judgments affirmed. Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Andreasen, JJ. Opinion by Andreasen, J.

(15 pages \$6.00)

The plaintiff in this boundary dispute action appealed from the district court's judgment quieting title in the defendants, and awarding actual and punitive damages to the defendants along with attorney fees. The Iowa Court of Appeals affirmed the trial court's judgment quieting title in the defendants. The court of appeals concluded that it was error for the district court to refuse to consider the juror's affidavits and thus did not determine if the punitive damage award was excessive. The court of appeals awarded the defendants an additional \$1000 of attorney fees and remanded the case. The parties have sought further review. OPINION HOLDS: I. The trial court's finding the plaintiff had not established title by acquiescence under Iowa Code section 650.15 or by adverse possession is affirmed. II. Based on Iowa's adoption of language identical to Federal Rule of Evidence 606(b), and the policy reasons for insulating the manner in which the jury reaches its verdict, we now adopt the federal rule which protects each of the components of deliberation including juror arguments, statements, discussions, mental and emotional reactions, votes, and any other feature of the process occurring in the jury room. The district court was correct to disregard affidavits of jurors concerning a quotient verdict. III. In determining whether the punitive damage award is excessive, we consider whether the award is reasonably related to the malicious conduct of the defendant which resulted in actual injury or damage to the plaintiff. The trial court did not exceed its discretion in denying the plaintiff's motion for judgment notwithstanding the verdict or new trial based upon an excessive punitive damage award. IV. Iowa Code section 639.14 (1987) allows attorney fees both at trial and on appeal in an attachment action.

No. 86-896. KRUGMAN v. PALMER COLLEGE OF CHIROPRACTIC.

On review from the Iowa Court of Appeals. Decision of court of appeals vacated; district court judgment affirmed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato and Andreasen, JJ. Opinion by McGiverin, C.J. (14 pages \$5.60)

Krugman appeals the trial court's order precluding her from using three of her medical experts at trial and dismissing her petition as a sanction for failing to meet court-ordered discovery deadlines. The court of appeals held that there was an abuse of discretion, reversed the trial court, and remanded for a trial. OPINION HOLDS: The legal standards by which we judge a court's exercise of discretion in imposing sanctions are well established. Our decision in Postma v. Sioux Center News, 393 N.W.2d 314 (Iowa 1986), condensed the law from our prior opinions for the guidance of the bench and bar. Given the foregoing authorities, it was within the trial court's discretion to order dismissal. Plaintiff's attorney was aware of several discovery orders and willfully did not comply with them in the hope, it appears, that a last minute motion for continuance which cited a conflicting trial date would solve his difficulties. When the trial court dismissed plaintiff's petition in April, 1986, it was under a duty to consider our case processing time standards in its deliberations. On the date of trial, this action was over three and one-half years old, and the trial court was faced with the choice of either continuing or dismissing the case. We agree with the trial court that the fault here lies with plaintiff's attorney. He agreed to several dates that he later failed to meet, and he agreed to them knowing the potential for conflict. Most of his trial preparation was done in response to various motions by opposing counsel. We also find it relevant that there is a long record of procrastination and inattentiveness on his part in this case. As we have cautioned before, continuances are to be discouraged, and attorneys should not take responsibility for more litigation and legal work than they can reasonably handle. Where possible, more than one attorney should be versed in pending litigation. We regret that the sanction in this case visits the sins of counsel on his client. But a litigant chooses counsel at peril, and here, as in countless other contexts, counsel's disregard of his professional responsibilities can lead to extinction of the client's claim. Finding no abuse of discretion, we affirm the trial court's ruling and judgment dismissing plaintiff's cause of action.

No. 87-727. STATE v. COLE.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. Remanded with directions. Considered en banc. Opinion by Snell, J. (4 pages \$1.60)

Cole pled guilty to delivery of less than one ounce of marijuana. He appeals because he believes he is guilty not of a class "D" felony, as the district court's judgment and sentencing order reflects, but rather of a serious misdemeanor. The situation to which Cole pled brings him within the purview of Iowa Code section 204.401(1) (1985), which makes the unlawful delivery of certain controlled substances a class "D" felony. However, Cole's situation also comes within the ambit of Iowa Code section 204.410 (1985), which provides that one guilty of an accommodation offense should be sentenced as if convicted of a serious misdemeanor under Iowa Code section 204.401(3). OPINION HOLDS: We think the legislature's reference in section 204.410 to section 204.401(3) is intended to encompass both sentencing and classification of offense. We agree with Cole that the judgment against him is properly classified as a serious misdemeanor. We remand this case to the district court to modify the sentencing order.

No. 87-285. IOWA STATE BOARD OF ENGINEERING EXAMINERS v. OLSON.

Appeal from the Iowa District Court for Polk County, Harry Perkins, Jr., Judge. Affirmed. Considered by Larson, P.J., and Schultz, Carter, Neuman, and Snell, JJ. Opinion by Snell, J. (10 pages \$4.00)

The Iowa State Board of Engineering Examiners sought injunctive relief against defendant, Kenneth G. Olson. The petition alleged that Olson, although not registered to do so in Iowa, was engaging in the practice of professional engineering and using designations in conjunction with his name tending to imply his status as a professional engineer. The district court dismissed the Board's petition, and the Board has appealed. OPINION HOLDS: I. Olson's activities as a safety consultant and expert witness do not constitute the practice of professional engineering as defined in Iowa Code section 114.2. II. Since 1981 Olson has not used designations in conjunction with his name tending to imply his status as a professional engineer licensed in Iowa. A 1981 compromise and settlement between the Board and Olson necessitates that we not consider evidence of his activities prior to that date.

No. 86-454. SECURITY STATE BANK v. TAYLOR.

Appeal from the Iowa District Court for Clayton County, William G. Klotzbach, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato, and Andreasen, JJ. Opinion by Harris, J. (8 pages \$3.20)

No. 86-454. SECURITY STATE BANK v. TAYLOR (continued).

Defendants raise a number of due process claims in this farm mortgage foreclosure suit. The trial court rejected them and ordered foreclosure. OPINION HOLDS: I. The Taylors contend they were denied due process because there was no hearing prior to when a receiver was appointed to take control of their property. Iowa Code section 680.2 indicates that a hearing will normally precede the appointment of a receiver but our case law provides for an exception: a court has discretion to act without notice when reasonably satisfied it is necessary to prevent damage to or loss of property. There was no due process violation in the appointment of a receiver in this case. The record supports the trial court's belief that an immediate appointment was necessary to prevent the Taylors from selling any more of the secured property. II. The Taylors claim they were denied a constitutional right to a jury trial. They demanded a jury trial on legal issues they raised in a counterclaim they filed with their answer. But those who choose not to appear at trial waive their right to participate in the decision whether to waive the jury; the waiver can be effected by all the parties who are present for trial. The Taylors were not present and cannot now complain that those who were present unanimously elected to waive a jury. III. The Taylors claim a separate due process violation in connection with the use of a county law library. Because the Taylors are not attorneys the law library was not as freely accessible to them as it would have been to a practicing attorney. Private citizens who wish to use a county law library must yield to court business. The access ordered here was vastly more than adequate to satisfy any due process claims of the Taylors.

No. 87-155. SCHARK v. GORSKI.

Appeal from the Iowa District Court for Wapello County, Phillip R. Collett, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato, and Andreasen, JJ. Opinion by Harris, J. (7 pages \$2.80)

This medical malpractice suit was dismissed by plaintiffs before trial but after completion of extensive and expensive discovery. Defendants contend the discovery costs should be taxed to plaintiffs. They appeal from a trial court determination that there is no authority to tax costs of discovery when a suit is dismissed prior to trial. OPINION HOLDS: I. Court costs are taxable only to the extent provided by statute. An award of deposition costs against the losing party is limited by Iowa rule of civil procedure 157(a). In interpreting rule 157(a), we said in Woody v. Machin, 380 N.W.2d 727, 730 (Iowa 1986), that "a cost award may include only the cost of depositions which are introduced into evidence in whole or in part at trial." II. We are not persuaded to overrule our Woody holding. The trial court was correct in holding it lacked jurisdiction to tax discovery costs in an action dismissed before trial.

No. 87-459. PERKINS v. FARMERS TRUST AND SAVINGS BANK.

Appeal from the Iowa District Court for Dickinson County, Tom Hamilton, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato, and Andreasen, JJ. Opinion by Harris, J. Dissent by Carter, J. (11 pages \$4.40)

In this case two liens compete for the same crop. A bank holds a security interest and farm landlords hold a statutory lien for unpaid cash rent. This dispute concerns which of the liens has priority. The trial court held for the landlords. We affirm. OPINION HOLDS: I. Iowa Code section 554.9104(b) states that the UCC does not apply to a landlord's lien. The language creating this gap in the law does not hint how it should be filled. Most courts have proceeded by what should be characterized as the non-code approach. Under this majority approach the priority question is resolved on the basis of precedents existing outside (and therefore often prior to) the UCC. We think the majority rule implements section 554.9104(b). A holder of the landlord's lien should not be treated as a UCC lienholder. We adopt the majority rule and hence resort to Iowa common law to resolve the priority conflict. II. Prior to the UCC we established the rule that the landlord's right to the increase of stock was superior to that of the chattel mortgage holder. The landlord's lien is superior to the rights of the chattel mortgage with regard to crops not yet in existence at the time the chattel mortgage was entered into, whether for a purchase-money mortgage or a general purpose chattel mortgage. III. In 1982 the landlords signed a waiver subordinating their lien to the bank's security interest. The landlords assert this waiver was in turn waived by the bank's course of conduct in failing to enforce it. The record here supports the trial court finding that the bank, by its course of conduct, waived its claim of priority. IV. In 1985, as a part of a new loan agreement, the tenants were directed henceforth to have farm proceeds checks made out jointly to the tenants and the bank. The change in course of conduct in the present case was made known to the tenants but was not communicated to the landlords. The change in the bank's course of conduct was not binding on these landlords without some notice to them. DISSENT ASSERTS: I have no disagreement with the court's conclusion that the statutory landlords' lien is prior to the bank's security interest in the crops. I disagree with its additional conclusion that the bank, through a course of conduct, waived its rights under the subrogation agreement executed by the landlords. The bank's failure to invoke its contractual priority at some earlier time is in no way indicative of a waiver of that right.

NO. 87-593. FS CREDIT CORPORATION v. TROY ELEVATOR, INC.

Appeal from the Iowa District Court for Davis County, Dan F. Morrison, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato, and Andreasen, JJ. Opinion by Lavorato, J. (5 pages \$2.00)

In this case, the FS Credit Corporation sued Troy Elevator, Inc. for conversion of a corn crop in which FS allegedly held a security interest. We remanded the case for the district court to consider (1) whether the evidence of past waivers together with evidence of the 1982 dealings constituted an implicit waiver of the consent condition in 1982, and (2) whether an agent of FS executed an express waiver of the lien on the crop. The district court found that FS had waived the consent condition by continuing its prior course of dealings in 1982 and that its agent had executed an effective lien waiver. FS has appealed. OPINION HOLDS: We hold that substantial evidence supports the district court's conclusions regarding the factual issues we instructed it to address on remand. Accordingly, we affirm.

NO. 86-1757. ALTENA v. UNITED FIRE AND CASUALTY COMPANY.

Appeal from the Iowa District Court for Sioux County, James L. McDonald, Judge. Affirmed. Considered by Harris, P.J., and Larson, Schultz, Lavorato, and Snell, JJ. Opinion by Lavorato, J. (17 pages \$6.80)

In this declaratory judgment action, plaintiff Gail Altena asked the district court to construe two insurance policies of defendant Senard Altena to cover damages caused by his alleged sexual abuse of her. Senard's insurer, the United Fire and Casualty Company (UFC), filed a motion for summary judgment, contending that damages from Senard's acts came within a policy clause excluding from coverage injuries intended by the insured. Gail also moved for summary judgment, arguing that coverage is required because Senard's testimony indicates he did not intend any injury to result from his acts, although the acts themselves were intentional. The district court granted UFC's motion and denied Gail's. The court held that intent to injure must be inferred as a matter of law from such acts and that any resulting damages were therefore excluded from coverage. Gail has appealed from this ruling. OPINION HOLDS: We think UFC established as a matter of law that Senard intended injury, thus triggering the exclusion clauses of his insurance policies. We therefore affirm.

NO. 87-446. STRUEBIN v. STATE OF ILLINOIS.

Appeal from the Iowa District Court for Scott County, Margaret S. Briles, Judge. Affirmed. Considered by Larson, P.J., and Schultz, Carter, Neuman, and Snell, JJ. Opinion by Schultz, J. (9 pages \$3.60)

The issue presented by this appeal is whether judgments entered by an Iowa District Court against the State of Illinois may be enforced by garnishment of tax revenues owed to Illinois by a corporation located in Iowa. OPINION HOLDS: I. Illinois' claim of immunity must fail. We are not addressing the issue of whether Illinois can deny plaintiffs relief in its own court of claims. Rather, we are allowing our own courts to enforce a judgment entered in this state. Illinois has no right to immunity from enforcement of the judgments against it in this state. II. Under the facts of this case we will not, as a matter of comity, give effect to Illinois' refusal to enforce the judgment. While Illinois is free to apply its own statute of limitations in its court of claims we conclude that we should not as a matter of comity apply it in our courts. III. We conclude that the plaintiffs are free to proceed in accordance with the trial court ruling permitting them to garnish funds owed to the State of Illinois that are located within this state.

NO. 86-1377. AYERS v. STRAIGHT.

Appeal from the Iowa District Court for Dallas County, Rodney J. Ryan and Darrell J. Goodhue, Judges. Affirmed in part, reversed in part, and remanded. Considered by Schultz, P.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Schultz, J. (12 pages \$4.80)

The owners of various property interests in a semi-truck and cargo damaged by its intoxicated driver sued two dram shops under the Dram Shop Act, Iowa Code section 123.92 (1981). The dram shops in turn sought equitable contribution from the intoxicated driver, his employers, and the owner of the truck. The district court denied a motion for summary judgment by plaintiffs but granted a motion for summary judgment by defendants. Plaintiffs and a third-party defendant have appealed. OPINION HOLDS: I. Iowa Code section 123.94 prohibits an action for contribution or indemnity by "any insurer, guarantor or indemnitor of any intoxicated person." Section 123.94 does not apply to preclude plaintiffs' actions because the actions do not involve claims for contribution or indemnity; plaintiffs are seeking recovery for their own losses rather than restitution for losses paid on behalf of the intoxicated party to a third person. The district court therefore erred in dismissing plaintiffs' actions. II. The district court correctly refused to dismiss the contribution claims before trial. A dram shop may properly seek contribution from those that share common liability to the injured party. Without a factual hearing, however, this liability cannot be ascertained.

NO. 87-263. ROTH v. REAGEN.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato, and Andreasen, JJ. Opinion by Lavorato, J. (16 pages \$6.40)

In his mandamus and declaratory judgment action against Michael V. Reagen, Commissioner of the Iowa Department of Human Services, Larry Roth alleged that Iowa Code section 235A.18(2) (1987) violated his rights of due process, privacy, and equal protection. The challenged provision of that statute requires the department to keep records of unfounded child abuse accusations for six months. Roth brought this action one day before his record was to be expunged. OPINION HOLDS: I. Roth sought mandamus relief against the commissioner to require him to remove Roth's name from the registry. Our mootness rule requires a claim to be dismissed when judgment, if rendered, will have no practical legal effect upon the existing controversy. We conclude the district court correctly dismissed count I as moot. II. Roth sought relief declaring section 235A.18(2) unconstitutional because it violated his rights of due process, privacy, and equal protection of the law. Our decision that count I is moot renders count II moot as well. Here, however, we think the "public interest" exception to the mootness doctrine applies. III. One's reputation alone is not a property interest sufficient to invoke the procedural protection of the due process clause of the fourteenth amendment. Roth did not prove section 235A.18(2) was unconstitutional on due process grounds and the court correctly denied his motion for summary judgment. We see no reason to disturb the district court's finding that the statute did not violate Roth's right to privacy, especially when Roth fails to support his right of privacy challenge with any substantive argument. We think the statute strikes a proper balance between the state's compelling interest in protecting children against abuse and the individual's interest in privacy and reputation. Thus, Roth is not entitled to relief based on his equal protection argument. Finding no error in the district court's decision, we affirm.

NO. 86-1875. STATE v. McMULLIN.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge. Affirmed. Considered by Larson, P.J., and Schultz, Carter, Neuman, and Snell, JJ. Opinion by Schultz, J. (8 pages \$3.20)

The defendant, charged with first-degree murder, presented an insanity defense. The district court instructed the jury to consider the defendant's insanity defense before it considered whether he was guilty of the offense charged. The defendant was convicted and has appealed, challenging the instruction noted above. OPINION HOLDS: I. We disapprove of the uniform instruction in question. The instruction presents a risk that a jury, upon finding that a defendant is insane, may return a verdict of not guilty by reason of insanity without giving proper consideration to whether the defendant is entitled to a verdict of not guilty by reason of the State's failure to prove its case. However, our disapproval does not entitle this defendant to a new trial. The risk that a jury will fail to consider a not guilty verdict after finding a defendant insane is not involved in this case, since this defendant was not found insane. This defendant was not prejudiced by the defect we find in the instruction. II. We do not believe the instruction suffers from the separate defect urged by the defendant. The defendant argues that instructing the jury to consider whether he was insane before considering whether he was guilty created a presumption that he had the necessary intent and relieved the State of the burden of proving that element of first-degree murder. However, we fail to discern any shifting of the State's required proof. The jury was fully instructed on the elements of first-degree murder and the State's responsibility to prove them. There is no suggestion in these instructions that defendant's failure to establish his insanity defense would automatically satisfy the State's burden of proving that defendant acted willfully, deliberately, or with premeditation.

No. 87-65. DIEHL v. IOWA BEER & LIQUOR CONTROL.

Appeal from the Iowa District Court for Clayton County, George L. Stigler, Judge. Affirmed. Considered by Harris, P.J., and Larson, Schultz, Lavorato, and Snell, JJ. Opinion by Snell, J. (13 pages \$5.20)

A hearing officer for the Iowa Beer & Liquor Control Department determined, following an administrative hearing, that Mary E. Diehl, doing business as The River Queen, had violated various provisions of statutory and administrative law. As a sanction for these alleged violations, the Department suspended Diehl's liquor control license for three weeks. OPINION HOLDS: I. Diehl contends that certain evidence introduced against her at the administrative hearing was obtained in violation of her constitutional rights to be free of unreasonable searches and seizures. On balance, we think the burdens resulting from the exclusionary sanction's application exceed the potential benefits to such an extent as to make its application in this license suspension proceeding inappropriate and unwise. II. A liquor control license may be suspended if alcohol is sold to any person on credit, except with a bona fide credit card. Diehl contends the credit sales involved were made pursuant to a bona fide credit card system. Her credit system involved the use of two index cards, both of which were retained by Diehl. We think that in prohibiting all credit sales except those involving a bona fide credit card, the legislature intended to ban all direct credit running from a retailer to its patrons. We hold that systems such as that established by Diehl were not within the contemplation of the legislature when it provided the "bona fide credit card" exception to the prohibition of credit sales of beer and alcoholic beverages. III. The agency also premised its suspension of Diehl's license on a finding that Diehl had knowingly permitted gambling on The River Queen in violation of section 123.49(2)(a). The agency's finding on this issue was premised upon Diehl's use of pull-tabs. In determining whether a particular device was used for gambling, we employ the following test: Was the device adapted and designed to play any game of chance for money or other things of value? We think use of the pull-tabs constituted gambling within the statute. The decision of the agency and the district court is fully consonant with our law and is accordingly affirmed.

NO. 86-1601. STATE v. MOUNT.

Appeal from the Iowa District Court for Story County, Mark S. Cady, Judge. Reversed and remanded. Considered by Larson, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Opinion by Neuman, J. (15 pages \$6.00)

A jury returned verdicts finding Mount guilty of both first-degree robbery and first-degree burglary, affirmatively answering an interrogatory concerning Mount's possession of a firearm at the time of the "offense." The trial court entered judgment accordingly, and this appeal followed. OPINION HOLDS: I. The defendant was not denied his right to speedy trial. The disruption caused by the delayed ruling on Mount's late-filed motions to suppress evidence constituted just cause for the court's decision to briefly delay commencement of Mount's trial. Thus we find no abuse in the trial court's refusal to dismiss the case on this ground. II. The defendant's next issue raises the question whether the district court must instruct on lesser included offenses where, as here, defendant's primary defense is that of alibi. The State concedes the legal tests were met for submitting the lesser included offenses of second-degree robbery and second-degree burglary. The question is whether the evidence meets the factual test, an ad hoc determination made on a case by case basis. Defendant's reliance on an alibi defense does not lessen the State's burden of proving each and every element of the offense charged beyond a reasonable doubt. Identity of the assailant was not the only contested issue. Based on evidence produced by the State the defense contended the "gun" was, in fact, a toy. Here, the jury could have reasonably rejected both defendant's alibi theory and the State's evidence which would elevate the crimes to first degree. Thus we hold that a trial court must instruct on lesser offenses unless a reasonable person viewing the evidence could only conclude that the major offense, or no offense, has been committed. We reverse Mount's conviction and remand for a new trial. III. The investigating police officer was allowed by the trial court, over Mount's timely objection, to recount in detail the victim's description of the incident. On retrial, we trust the State will follow the better practice of relying on the victim's firsthand description of her assailant. IV. The trial court imposed consecutive sentences, each to include a five-year minimum, based on a single interrogatory concerning Mount's possession of a firearm. On retrial, we caution the trial court to interrogate the jury concerning possession of a firearm on each offense submitted for the purpose of properly applying the enhanced punishment provision of section 902.7.

NO. 87-227. MID-IOWA COMMUNITY ACTION INC. v. IOWA
STATE COMMERCE COMMISSION.

Appeal from the Iowa District Court for Polk County,
A.M. Critelli, Judge. Affirmed in part, reversed in part,
and remanded. Considered en banc. Opinion by Neuman, J.
(10 pages \$4.00)

This appeal concerns the scope of authority granted the Iowa Utilities Board to order payment of refunds to customers who have paid unlawful utility charges, and to impose civil penalties for violation of laws pertaining to utility service disconnection. OPINION HOLDS: I. We agree with the district court that the legislature intended, by its revision of section 476.3, to allow the board to order the refund of overcharges and illegally collected revenue. Thus we affirm the district court's remand to the agency to determine and order the appropriate refunds. II. For Iowa Electric's use of unlawful disconnection notices, appellants sought civil penalties pursuant to Iowa Code section 476.20(4). We think that the reference to section 476.51 in section 476.20(4) was clearly intended as a road map to guide the reader's attention to the general section for implementing these penalties, and was intended to incorporate all provisions of section 476.51 into the penalties allowed under section 476.20(4). Proof of willfulness is thus required before civil penalties can be imposed. The decision by the district court to require the agency to reconsider its findings on this issue must, therefore, be reversed.

NO. 87-798. STATE v. MAHERS.

Appeal from the Iowa District Court for Polk County,
Richard A. Strickler, Judge. Sentence vacated; remanded for
resentencing. Considered by Larson, P.J., and Schultz,
Carter, Neuman, and Snell, JJ. Per curiam. (3 pages \$1.20)

An assistant Polk County attorney agreed to make no recommendation regarding sentencing in exchange for defendant's plea to the crime of burglary in the second degree. In spite of this agreement, the county attorney advised the presentence investigator that "[t]he state recommends incarceration." The recommendation was incorporated into the presentence report relied upon by the district court. Defendant was sentenced to imprisonment not to exceed ten years. He has appealed, seeking to be sentenced on terms consistent with the plea bargain. OPINION HOLDS: We vacate the sentence previously imposed and remand this case for resentencing before a different district judge. In accordance with the promise made by the State to refrain from commenting on disposition, it shall see to the removal of any nonconforming statements in the presentence investigator's report.

NO. 86-1357. BUILDERS TRANSPORT, INC. v. STATE.

Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge. Affirmed. Considered by Larson, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Opinion by Larson, J. (9 pages \$3.60)

In early 1986, the plaintiff sought to sue the State for negligent supervision of a regulated insurance company. However, the plaintiff was faced with an amendment to the Tort Claims Act, Iowa Code ch. 25A, barring claims for negligent financial regulation in "all cases filed on or after July 1, 1986." In June 1986 the plaintiff filed its claim with the State Appeal Board, normally the first step in a tort claim against the State. On the same date, in an attempt to avoid the July 1 cutoff for negligent supervision claims, the plaintiff filed a suit against the State in district court. The plaintiff concedes that the district court suit was premature. However, the plaintiff argues it had no choice; the imminent cutoff of such suits made it impossible for the plaintiff to wait for disposition of the appeal board proceedings. The district court rejected this argument and sustained the State's special appearance, holding that jurisdiction was absent because the plaintiff had waited neither for disposition of the appeal board proceedings nor for the statutory six-month period after the filing of the appeal board claim. OPINION HOLDS: I. We agree that jurisdiction was absent in the district court proceeding because of the pendency of the appeal board claim. This result is not affected by the practical problems caused by the timing of the statutory amendment. II. Iowa Code section 25A.14(11), the amended statute barring claims for negligent financial regulation in "all cases filed on or after July 1, 1986," bars all such claims unless the district court suit was filed on or before the target date. Cases where only the appeal board proceeding was filed before the target date cannot be preserved, and in such cases there is no extension of time allowing a delayed filing of the district court proceeding. III. Our interpretation of the cutoff provision in section 25A.14(11) does not deny the plaintiff due process because the Tort Claims Act does not create a property right, for the purpose of due process analysis, in a cause of action against the State. In the field of tort claims against the State sovereign immunity is still the rule, and suits may be maintained only to the extent that sovereign immunity has been expressly waived by the legislature.

NO. 86-887. GOTTSCHALK v. SIMPSON.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Jackson County, Max R. Werling, Judge. Decision of court of appeals and judgment of district court affirmed. Considered by McGiverin, C.J., and Harris, Larson, Schultz, and Lavorato, JJ. Opinion by Larson, J. (9 pages \$3.60)

This unique case involves two installment land sale contracts. The Gottschalks sold farmland on contract to Preglers, who in turn sold a portion of this same land on subcontract to Simpson. Preglers defaulted and Gottschalks began, but never completed, forfeiture proceedings. Simpson was served with notice. Before forfeiture was completed, but after thirty days had passed, Preglers assigned their subcontract to Gottschalks who then sought payment from Simpson on the subcontract. He refused and Gottschalks then instituted this foreclosure action. The case went to trial, and the district court ordered foreclosure of the contract, thereby rejecting Simpson's argument that Gottschalks had no interest in the Pregler-Simpson subcontract. Simpson appealed, contending: (1) the forfeiture of Preglers' rights occurred automatically thirty days after service of the notice, thus Preglers could not assign their interest in the subcontract to Gottschalks; (2) by commencing a forfeiture proceeding, Gottschalks had elected a remedy inconsistent with foreclosure; and (3) there was "a termination, rescission, or abandonment" of the subcontract. OPINION HOLDS: I. Ordinarily, nothing is required to complete a forfeiture except the passage of the thirty days after notice. See Iowa Code §§ 656.2, .4. Even if forfeiture would otherwise have occurred automatically thirty days after service of notice, the record in the present case clearly shows a waiver by Gottschalks of forfeiture proceedings. Preglers gave, and Gottschalks accepted, a quitclaim deed which expressly provided it was "in lieu of forfeiture." The thirty-day period provided by chapter 656 for curing of defaults was not intended to drop a curtain on any future negotiations or settlement attempts undertaken by the parties during the thirty-day period, or to preclude a waiver of forfeiture by the seller. We hold that the time for performance in this case had been waived by the Gottschalks and that the deed given in lieu of forfeiture after the expiration of the thirty days was effective to pass to the Gottschalks all of the interest that Preglers had in the subcontract with Simpson. II. For the reasons stated in Division I of this opinion, Gottschalks had not pursued forfeiture to its conclusion; it was waived before the remedy was complete. Gottschalks could therefore not be bound to that election. III. Under the reasoning of Division I there was no forfeiture; the effect of Preglers' assignment of the subcontract to Gottschalks was to make Gottschalks the sellers, and title could be delivered by them to Simpson. There was, therefore, no ground for rescission. Preglers' assignment of their interest in the Simpson subcontract merely substituted Gottschalks for Preglers. This did not amount to an abandonment. We believe the case was properly decided in the district court and the court of appeals.

NO. 87-222. DIEHL v. DIEHL.

Appeal from the Iowa District Court for Clarke County, Peter A. Keller, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato, and Andreasen, JJ. Opinion by Carter, J. (11 pages \$4.40)

The plaintiff was injured when a car in which she was riding left the road. She sued the driver of the car, her fourteen-year-old son. The jury found son and mother each partly at fault, and the mother was awarded a judgment against the son for part of her damages. The son has appealed. OPINION HOLDS: I. This suit is not barred by any immunity protecting children from suit by their parents. II. The plaintiff mother's alleged failure to supervise her son's driving is not an absolute bar to this action, but is instead merely an item of causal negligence for the jury to compare with the defendant's negligence. III. The evidence was sufficient to justify submission to the jury of specifications of negligence on both failure to maintain proper lookout and failure to maintain control. IV. The district court erred by instructing the jury that the plaintiff mother could only be found negligent if she had actual knowledge of the statutory requirements concerning who may supervise a child under age sixteen driving with an instruction permit. Actual knowledge of the statutory requirements is not a prerequisite to a finding of negligence. However, we do not believe this instructional error requires reversal, because the verdict indicates that the jury found against the plaintiff as to her claimed lack of knowledge of the law.

NO. 87-133. CITY OF SIOUX CITY v. GREATER SIOUX CITY PRESS CLUB.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Andreasen, JJ. Opinion by Carter, J. (9 pages \$3.60)

The Greater Sioux City Press Club and the Iowa Freedom of Information Council, who are defendants in this declaratory judgment action, appeal from the district court's order allowing the plaintiff, City of Sioux City, to withhold from public inspection employment applications received from candidates for the position of city manager. The sole issue on this appeal is whether the employment applications sought to be inspected by the defendant and intervenor are communications of the type described in a statutory exception from the disclosure provisions of chapter 22. OPINION HOLDS: It is the legislative goal to permit public agencies to keep confidential a broad category of useful incoming communications which might not be forthcoming if subject to public disclosure. We believe that employment applications fall within this area of legislative concern. We conclude that the district court's interpretation of section 22.7(18) was correct. The employment applications which are involved in the present litigation and for which the applicants themselves did not authorize disclosure may be maintained with confidentiality by their public custodians.

NO. 86-1755. CANNON v. NATIONAL BY-PRODUCTS, INC.

Appeal from the Iowa District Court for Clinton County, C. H. Pelton, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Carter, Lavorato, and Andreasen, JJ. Opinion by Carter, J. (13 pages \$5.20)

Plaintiff, James E. Cannon, sued his former employer, National By-Products, Inc., for wrongful discharge. Plaintiff alleged that his employment contract included the written personnel policies which had been unilaterally prepared by defendant and placed in force prior to the time of his discharge. The trial court submitted to the jury the issue of whether these personnel policies had been integrated into plaintiff's contract of employment. If the jury found that the personnel policies were part of plaintiff's contract, it was then permitted to find that his discharge was improper if not for cause. As so instructed, the jury found for the plaintiff. Defendant appeals from the resulting judgment. OPINION HOLDS: I. The evidence was sufficient to support the jury's findings that the personnel policies were part of the plaintiff's employment contract, and that the plaintiff therefore was not an employee at will. We discussed the issue of whether personnel policies may become part of an employment contract in Young v. Cedar County Work Activity Center, 418 N.W.2d 844, 847-48 (Iowa 1987). In applying the principles which we approved in Young, we conclude that in the present case the question of whether the written personnel policies became part of plaintiff's contract is to be determined on the basis of plaintiff's reasonable expectations. The issue of how these written personnel policies were perceived by plaintiff was, on the present record, an issue to be determined by the trier-of-fact. The trial court correctly submitted the issue to the jury. II. Defendant's arguments notwithstanding, we find no need to resort to rules requiring additional consideration for modification of an at-will agreement. III. As we have previously indicated in Wolfe v. Graether, 389 N.W.2d 643 (Iowa 1986), in the permanent employment cases, the requirement of additional consideration is an adjunct rule of interpretation and does not relate to sufficiency of consideration to enforce a promise. IV. We do not believe the plaintiff's action is barred by his failure to avail himself of in-house review procedures provided in the employee handbook. Under this record, the employer has shown no prejudice from the plaintiff's failure to seek in-house review. V. We do not believe the admission of challenged evidence on damages requires reversal, where the instructions limited the jury to permissible elements of damage and where the verdict indicates the jury followed those instructions.

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